

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
CIVIL APPEAL NO. 16 OF 2021  
(Arising from Civil Suit No. 051 of 2019)

5 SSEKITTO DICK.....APPELLANT

VERSUS

PETER WILL SSEBANAKITA.....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK

10 Judgment

This is an appeal against the decision of the Chief Magistrate of Mpigi at Mpigi Her Worship Ruth Nabaasa, delivered on the 02<sup>nd</sup> June, 2021.

**Background:**

15 The respondent sued the appellant for a declaration that he is the lawful owner of land comprised in Mawokota – Mpigi Block 91 Plot 705 land at Kalumba, a permanent injunction against the appellant and his agents from trespassing on the suit land, general damages and costs of the suit.

20 That on 22<sup>nd</sup>/1/2019, the respondent purchased the suit land from the registered proprietor Mulindwa Robert. That the said Mulindwa Robert transferred the suit land to the respondent who was registered on the Certificate of Title on the 3/2/2019.

25 It is the appellant’s case that he purchased half an acre of land comprised in Mawokota Block 91 Plot 171, at Maziba from Mulindwa Robert in 2014. That the appellant subsequently took vacant possession, started cultivation and construction on the same.

On 13/4/2019, the appellant started to construct on the suit land. The respondent filed a suit against the appellant due to his continued interference with the respondent’s enjoyment of the suit land. Judgment was entered in favour of the respondent.

30 The appellant being dissatisfied with the said decision filed the instant appeal whose grounds as per the Memorandum of appeal are as follows;

1. That the learned Trial Magistrate erred in law and fact and failed in her duty to evaluate the evidence on record when she held that the suit property was vacant at the time of the acquisition by the respondent.
2. That the learned Trial Magistrate erred in law and fact and misdirected herself when she held that Mr. Kasaato's interest was not mentioned in the agreement between the appellant and Mulindwa Robert.
3. That the learned Trial Magistrate erred in law and fact and misdirected herself on the legal principle that a vendor cannot sell what he already sold.
4. That the learned Trial Magistrate erred in law and fact and misdirected herself when she relied on conjecture and assumption by holding that there was nothing to show the exact area where the appellant had purchased.
5. That the learned Trial Magistrate erred in law and fact and misdirected herself on the law relating to fraud.

The appellant filed miscellaneous application No. 194 of 2021, to adduce additional evidence on appeal by way of testimony of Mulindwa Robert and court allowed the application. The witness was cross examined and reexamined in open court.

#### **Representation:**

Ms. Justine Nakajubi together with Mr. Tusiime Ausi Kivibedda appeared for the appellant while Mr. Henry Agaba appeared for the respondent. Both parties filed written submissions.

#### **Submissions:**

**Ground 1: That the learned Trial Magistrate erred in law and fact and failed in her duty to evaluate the evidence on record when she held that the suit property was vacant at the time of the acquisition by the respondent.**

Counsel for the appellant submitted that at the time the appellant purchased the suit land there were bibanja holders/squatters who the proprietor (Robert Mulindwa) notified about the purchase and they were to leave the suit land particularly a one Kasaato who the proprietor gave alternative land. That Kasaato's occupation of the suit land was corroborated by PW2 the area Chairperson. DW2 an employee of Mulindwa Robert who helped vacate Kasaato confirmed that the appellant was left in utilization of the suit land. That Phida Namata an independent witness at locus, wife to Kasaato also confirmed that it was the appellant who purchased the suit land.

Counsel further submitted that DIDI proved that Mulindwa Robert bought land at Nkinzi where he resettled Kasaato which was corroborated by the evidence of PW2 and DW2 and the independent witness at locus.

Counsel added that the sketch map as drawn by the trial Magistrate did not depict what was observed at locus. That the plantations of cassava that were found on the suit land during the locus visit were said to belong to the appellant and yet the trial Magistrate found that the suit land was vacant. That had the Chief Magistrate evaluated this piece of evidence she would have found that the suit land was not vacant and there was activity taking place on the same.

Counsel for the respondent on the other hand submitted that it was the respondent's evidence that the appellant was not in occupation of the suit land at the time the alleged trespass took place and there were no structures on the land. This evidence was corroborated by PW2 the area Chairperson who told court that the suit land had not been utilized for four years.

PW3 stated that the suit land was occupied by the respondent and the crops on the land belonged to Kasaato. The appellant only started construction on Plot 705 after he had been told that people were surveying his land which was stopped by Police. Thus, there were no structures on the suit land and that is Block 91 Plot 705, measuring approximately 0.09 Hectares equivalent to 0.24 acres and what the appellant purchased and part of which Kasaato's family resides on was 0.5 acres or 0.20 Hectares. The land that was visited during locus was Plot 705 and the neighbouring land on which Kasaato's family lives on. That the evidence adduced alludes to the fact that the land was vacant at the time that it was purchased and the trial Magistrate rightly found so.

**Ground 2: That the learned Trial Magistrate erred in law and fact and misdirected herself when she held that Mr. Kasaato's interest was not mentioned in the agreement between the appellant and Mulindwa Robert.**

Counsel for the appellant submitted that Kasaato was utilizing the suit land at the time he bought it, however, he was relocated by Mr. Mulindwa Robert and this was corroborated by the independent witness at locus. That the appellant only allowed Kasaato's son to remain on the suit land because the school he was attending was nearer than the alternative location. That had the trial Chief Magistrate evaluated the evidence as a whole she would have found otherwise.

Counsel for the respondent on the other hand submitted that it was an agreed fact that the respondent was the registered proprietor of land comprised in Mawokota Block 91 Plot 705 while the appellant was the owner of land comprised in Mawokota Block 91 Plot 171 and both parties bought from Mulindwa Robert. The suit land however, is Mawokota Block 91 Plot 705. Counsel argued that more than one person cannot own the same legal interest in the same parcel of land.

Counsel added that both Mulindwa Robert and the appellant admitted to the fact that the sale agreement did not give the description of the half acre of land that the appellant bought, it only gave measurements. That all the evidence as adduced by the appellant indicated that his piece of land was unknown and that the land owned by the respondent is different both in acreage and description from that of the appellant.

Further, that Mulindwa who sold land to the appellant and the respondent was unable to tell court where he sold to the appellant and the proper measurements of Plot 171. That he also did not explain to court how Plot 705 was created. Counsel noted that had the purchase by the respondent been fraudulent then Mulindwa would have challenged it.

Counsel for the respondent concluded that Mulindwa sold land to the appellant in unclear terms and by the end of the day, Mulindwa had sold all the plots curved out of plot 171 Block 91 Mawokota to several persons.

**Ground3: That the learned Trial Magistrate erred in law and fact and misdirected herself on the legal principle that a vendor cannot sale what he already sold.**

Counsel for the appellant submitted that the trial Magistrate misdirected herself in the application of the principle that the vendor cannot resale what he does not have. That in the instant case Mr. Mulindwa upon sale of the suit property to the appellant in 2014, had nothing more lawful in regard to the suit property to give away either equitably or legally to any other person including the respondent in 2019.

Counsel for the respondent on the other hand submitted that the appellant and respondent bought distinct pieces of land and the respondent obtained a certificate of title whose indefeasibility is protected under **Section 59** of the Registration of Titles Act.

Counsel added that a purchaser of land holding a land agreement only obtains equitable interest whereas a purchaser who even though they purchased the same land subsequently, but without notice of 3<sup>rd</sup> party interest if they transfer such land into their names thereby bringing it within the operation of the Registration of Titles Act. Such a purchaser is protected under **Section 181** of the Registration of Titles Act. (**See: Katarikawe v. Katwiremu and Another (1977) H.C.B 187**).

Counsel further submitted that even if the appellant and respondent had purchased the same land which is not the case, it would still be possible for the respondent to acquire legal interest in the land notwithstanding that the appellant purchased first and only subsisted on an equitable interest which is surpassed by

legal interest provided that the respondent is a bonafide purchaser with valuable consideration and unknown to any existing 3<sup>rd</sup> party interests.

Counsel noted that the trial Chief Magistrate was alive to the case of **H. M Kagingidi v. Essence Alphonse, H.C.C.S No. 289 of 1986** and **Katarikawe v. Katwiremu and Another (Supra)**, which held that; a purchaser who had concluded a sale agreement with the owner of land immediately becomes the owner of land and the vendor becomes his trustee in title. That the trial Magistrate also went further to list the conditions to be met when applying the above principle. Thus, she correctly applied the law and this court should uphold the same.

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10 **Ground 4: That the learned Trial Magistrate erred in law and fact and misdirected herself when she relied on conjecture and assumption by holding that there was nothing to show the exact area where the appellant had purchased.**

Counsel for the appellant submitted that upon purchase of the suit land the appellant agreed to pay the balance upon clearing the ground, meaning that the physical piece of land had been visited. Thus, the appellant clearly knew the location and what he was purchasing off Plot 171 and the same was visited during locus in quo proceedings.

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**Ground 5: That the learned Trial Magistrate erred in law and fact and misdirected herself on the law relating to fraud.**

20 Counsel for the appellant submitted that at the time of purchase of the suit land, he was in occupation of the same carrying out cultivation. Thus, the respondent ought to have done due diligence. Counsel relied on the case of **Grace Manjeri Nafula v. Brigadier General Elly Kayanjaand Others, H.C.C.S No. 136 of 2011**, which cited the case of **UP & TC v. Abraham Katamba (1997) 5 KALR 103** where it was held that; as the law now stands a person who purchases an estate which he knows to be in occupation and use of another other than the vendor without carrying out the due inquiries from the persons in occupation and use commits fraud.

30 Further, that failure to make reasonable inquiries of the persons in possession and use of the land or the purchaser's ignorance or negligence to do so formed particulars of fraud.

That the trial Magistrate erred when she lowered the standard of due diligence in land matters and that a search for registered land was sufficient while the unregistered land, inquiries from neighbours and local leaders was enough which is wrong. Thus, the appeal should be allowed.

Counsel for the respondent on the other hand submitted that the trial Magistrate critically examined the evidence in relation to any would be acts of fraud on the part of the respondent. That the respondent obtaining a certificate within 9 days in itself cannot amount to fraud, on the contrary it indicates how effective the land office is.

Counsel concluded that the trial Magistrate appreciated and rightfully applied the law on fraud as per the authorities provided by both counsel. Thus, the trial court did not misdirect itself on the law relating to fraud.

### **Analysis of court:**

#### **Duty of the first appellate court:**

Whereas it is the duty of the first appeal court to make its own findings and arrive at its own conclusions from the evidence on record, it is also the duty of such appellate court to attach the greatest weight to the opinion of the trial Magistrate who saw the witnesses. An appellate court will not substitute its own opinion for that of the trial court and a judgment of facts will be upheld unless it is satisfactorily shown to be unsound or contrary to the weight of the evidence on record. (See: **Okeno v. Republic [1972] E.A. 32 and Watt v. Thomas (1947) 2 All. E. R. 584.**)

I have carefully considered the evidence on record, the exhibits tendered in court and the submissions of both parties in regard to this appeal. I accordingly resolve this appeal as here under.

Ground one: the appellant argues that the trial Magistrate erred when she found that the suit land was vacant at the time of purchase by the respondent. That the said land was being occupied by Kasaato who was later relocated by Mulindwa Robert the registered proprietor from whom the appellant and respondent bought from. The suit land in the instant case is the land bought by the respondent Block 91 Plot 705 and the same was said to have been vacant and the appellant was not utilizing it. This was corroborated by PW2 who told court that the suit land had not been utilized in four years. The appellant only got to start construction on the suit land in 2019 upon knowing that people were surveying the same which fact he does not deny. The construction was stopped by Police.

It is my considered view that the suit land by description is that which was purchased by the respondent and it is the same that was visited during locus, the trial Magistrate was therefore right to find that the same was vacant during the time of purchase. Mulindwa Robert in his witness statement stated that the sale he made after the appellant bought was a mistake due to the belief that there was excess land after he had been informed so by his surveyor Rayan. If the suit land

was indeed being utilized by the appellant it then would not have been resold to the respondent as he claims. The appellant only started construction in 2019 when the respondent had bought the suit land and started surveying the same. That was the same time he put up notices that the said land was not for sale.

5 This ground of appeal hereby fails.

Ground two: it is not disputed that Kasaato was a squatter on the suit land when the appellant bought the same. He was relocated by Mulindwa Robert to another piece of land in Nsavu-Kizzi with the help of Kaluma Ignatious and Matovu Deogratiuous upon purchase by the appellant. And it was the evidence of the  
10 appellant that only the Kasaato's son remained on the suit land for easy access to his school since he was in primary seven by then. The appellant claims to have bought the suit land in 2014, and Kasaato's son was in primary seven at the time, this therefore, means that upon completion of primary seven, Kasaato's son also left the suit land.

15 I have had the benefit of reading the sale agreement between the appellant and Mulindwa Robert and indeed the agreement does not mention Kasaato's interest on the suit land anywhere. In the circumstances I am unable to fault the trial Magistrate in finding so. Kasaato was a squatter and he was relocated, he is therefore, not expected to be included in the sale agreement as he no longer had  
20 any interest in the suit land after being relocated.

I find no merit in this ground of appeal, it hereby fails.

In regard to ground three, the appellant contended that the trial Magistrate misapplied the law that a vendor could not resale what they already sold. In the instant case the appellant bought land that was not clearly described save from the  
25 plot it was bought from and the size being half an acre. The respondent however, bought land described as Block 91 plot 705 measuring one and half acres. Even if it is true that a vendor can sell different interests in the same piece of land, this is not the case in the instant matter. Mulindwa Robert in his testimony clearly stated that on 27<sup>th</sup> November 2014, he sold to the appellant and his wife a piece of land  
30 measuring half an acre to be mutated from the certificate of title for land comprised in Block 91 Plot 171 at Lungala in Mpigi District. Meaning that the appellant was meant to acquire a legal interest in the land he bought however, he has never received the certificate of title and that leaves him with only an equitable interest in the suit land.

35 Mulindwa Robert further stated that he then instructed his surveyor Rayan Sekajjugo to subdivide Plot 171 since he had sold from the said land to various individuals. And thereafter the Certificate of title was to be given to Matovu

Deogratious the land broker that connected the appellant to Mulindwa. That after sometime the appellant called him and informed him that he had received the certificate of titles, however, Mulindwa did not probe for which exact pieces he had received the titles since they had dealt in the different piece of land off Plot 5 171.

It was further stated by Mulindwa Robert that any sale he made after 27<sup>th</sup> November, 2014 was a mistake which he attributed to Rayan who told him that there was excess land left off plot 171 after he had obtained certificates of title for the various pieces that had been sold.

10 Mulindwa stated that he was willing to refund the purchase price to the respondent. That the land that was sold to the respondent was in error and he never signed any sale agreement with him. This only happened after he had been misguided by Rayan that there was residue land off plot 171 who paid him UGX 15 5,000,000/= Mulindwa stated that he only sold to the appellant and that he had never had any dealings with the respondent and that the sale agreement he has was never signed by him. This was all the doings of Rayan whom he trusted and also admitted that he was equally responsible for his actions.

However, it was the evidence of the respondent that in January, 2019 a land broker called Rayan Ssekajugo approached him that there was prospective land being sold 20 in Maziba Village Mpigi Town Council and introduced him to Mr. Mulindwa Robert who introduced himself as the registered proprietor of land comprised in Block 91 Plot 705, Mawokota and was desirous of selling the said land at a price of UGX 10,000,000/=. That he made a visit to the land together with Rayan Ssekajugo and Robert Mulindwa whereby they agreed at a price of UGX 25 9,000,000/=. That he instructed his surveyor Kintu Shaban to open boundaries of the said land which was vacant and the same was done, mark stones were identified in his presence, Rayan Ssekajugo and a one Steven Sonko a resident of Maziba.

Further, that after he carried out a search at the land office in Kampala and 30 discovered that Robert Mulindwa was the registered proprietor of this land and it had no encumbrances and based on that he went back and executed a sale agreement dated 22/01/2019 purchasing Plot 705 Block 91 Mawokota. Thereafter he introduced himself to the area Chairperson Livingstone Kiwanuka and the certificate of title was consequently transferred into his name in 35 3<sup>rd</sup>/02/2019.

The trial Magistrate in resolving this issue distinguished the instant case from the facts in the case of **Vivo energy (U) Ltd v Shire Petroleum Co. Ltd and 2 Others, H.C.C.S No. 08 of 2016** as cited by counsel for the appellant where she observed



that in the current case it is an issue of registered and unregistered land where as in the Vivo case it was two conflicting legal interests.

The trial Magistrate in her analysis relied on the case of **H. M. Kadingidi v. Essence Alphonse**, H.C.C.S No. 289 of 1986 where it was held that;

5            *“A purchaser who has concluded a sale agreement with the owner immediately becomes the owner of the land and the vendor becomes his trustee in title...”*

That for the above principles to apply the following conditions must be met;

- 10            a. The purchaser must have bought the whole piece of land/plot that is easily identifiable.
- b. The purchaser must have taken effective possession and use of the land.
- c. Any claim must be enforced against the vendor of land.

15            The trial Magistrate found that there was no evidence adduced by the appellant to prove that he ever completed paying for the land he purchased, that the agreement was silent on how big Plot 171 was, nor did the agreement state the exact location where the appellant had bought the half acre from. Therefore, there was no way to determine from the evidence as adduced that indeed it was the piece as owned by the appellant that was again resold to the respondent as the appellant’s land never had any clear description or distinguishing features. The appellant never  
20            lodged a caveat to protect his interests much as he claims that he put up posts that the suit land was not for sale, it was not enough. He ought to have been vigilant to protect his interest in the suit land.

25            I do not find any misapplication of the principle in regard to a vendor reselling to another what they do not have as the trial Magistrate was very alive to the said principle and ably discussed the same. I find no error on her part.

This ground of appeal hereby fails.

Ground 4: the appellant alleges that the trial Magistrate relied on assumptions and conjecture in concluding that the appellant had nothing to show where exactly he bought.

30            I have carefully looked at the record and indeed there is no evidence that was adduced by the appellant to prove the exact place the appellant’s piece of land was located for instance in the north, south, east or west off of plot 171.

35            Counsel argued that the appellant visited the land physically and saw where his piece of land would be curved from and the basis of counsel’s argument is the fact that the agreement indicated that the balance of the consideration would be paid

upon clearance of the ground. However, it was Mulindwa's evidence that the appellant's piece of land was to be surveyed and curved off from plot 171 by his surveyor and there was no location given of where exactly the piece of land was positioned even by the vendor. The vendor himself did not know the piece that was sold to the appellant.

During cross examination Mulindwa Robert was unable to tell court the exact acreage of Plot 171, nor did he know the land in dispute, not even the number of plots that were created out of the said plot 171.

I therefore, do not find the decision of the trial Magistrate to be based on assumptions and conjecture.

This ground of appeal therefore, fails.

Ground 5: counsel for the appellant argued that the trial Magistrate misdirected herself in the application of the law on fraud in reaching her decision. With due respect, I disagree with this argument, the trial Magistrate made her findings based on the evidence that was before her and found that there were no acts of fraud attributed to the respondent and if anything, he would qualify as a bona fide purchaser for value without third party notice. The respondent was not found to have done any acts that were meant to intentionally deprive the appellant of his land. The respondent just like the appellant was a purchaser of the suit land from Mulindwa Robert. If there is any action to be taken then it should be taken against the vendor who knowingly sold the same piece of land to another purchaser.

I have equally perused the court record and I find no evidence indicating that the respondent committed or was aware of any acts of fraud in obtaining the suit property.

The respondent in the instant case did a search and found that the suit property was registered in the name of Mulindwa Robert the original proprietor with no encumbrance. In the case of **Attorney General v. Henley Property Developers Ltd, Civil Appeal No. 0421 of 2021**, it was stated as follows;

*"...under the torrens system, the register is everything, except in cases of actual fraud on part of the person dealing with the registered proprietor, such person upon registration of title has indefeasible title except on ground of fraud. (See: David Sejjaaka Nalima v. Rebecca Musoke, Civil Appeal No. 12 of 1985, UGSC 12 (09 November 1986)."*

It was further stated that:

*"I also agree that the lands registrar guarantees the accuracy of all the particulars contained on the register. The register is conclusive evidence of*

*ownership and thus, there is no need to search behind or beyond the certificate of title to ensure proven ownership of the land. (See: Kampala Bottlers Ltd v. Damanico (U) Ltd (Civil Appeal No. 22 of 1992) [1993] UGSC 1 (11 January 1993); Aziz Kalungi Kasujja v Naune Tebekanya Nakakande (Civil Appeal No. 63 of 1998)[1998]UGSC 6(25 March 1998).”*

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10 The respondent in the instant case did both a physical search on the land and a search at the land registry. The argument by counsel for the appellant that the respondent did not do due diligence in my opinion is misguided. There was no caveat lodged by the appellant that would have indicated that the suit land was encumbered.

15 Counsel for the appellant also argued that he obtained a certificate of title within 9 days which in my view is not proof of fraud on the part of the respondent. As earlier discussed the suit land was purchased while it was vacant and this was confirmed by PW2.

20 The respondent is currently registered as the proprietor of the Suitland. He claims that he is a bonafide purchaser for value. **Section 59** of the Registration of Titles Act is to the effect that a registered proprietor of the land is protected and his title is indefeasible except in cases of fraud. (See: **Katarikawe v. John Katwiremu & Anor (1977) HCB 187 and Section 176 (c) of the Registration of Titles Act**)

For a title of a bonafide purchaser for value to be impeached, there must have been fraud of the transferee and the transferor.

25 The Court in the case of **Fredrick Zaabwe v. Orient Bank & Others SCCA No, 4 of 2006**, defined fraud to mean; the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

30 In **Kampala Bottlers Ltd v. Damanico (U) Ltd, SCCA No.22 of 1992**, it was held that;

*“ fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters, it was further held that;*

35 *“The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; 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.”*

The acts as outlined by the appellant to constitute fraud committed by the respondent, I find were not proved to the satisfaction of this court. Thus, the title of the respondent is protected under **Section 59** of the Registration of Titles Act which provides as follows;

*“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.”*

I do not find any fault in the evaluation of the evidence in regard to fraud as was done by the trial Magistrate, she properly addressed the same which I am agreeable to. No fraud was ever attributed to the respondent and his title cannot therefore be impeached.

This ground of appeal also fails.

In a nutshell I find that this appeal lacks merit and the same is hereby dismissed with costs. I so order.

Right of appeal explained.

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**OYUKO. ANTHONY OJOK**  
**JUDGE**  
**23/01/2023**