

**CIVIL SUIT NO. HCT-00-LD-CS-0526-2019**

## VERSUS

**BEFORE: HON. JUSTICE BERNARD NAMANYA**

Demetrius Jones

of the suit property, hence this suit. All the parties involved in the suit, including some of the witnesses, are close family relatives. The plaintiff and the defendant are cousins. The next friend, Betty Kaheru Bena, is the plaintiff's mother, and an aunt to the defendant.

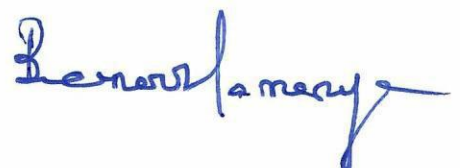
2. The defendant denies any wrong doing. He claims to have lawfully acquired the suit property, and states that the plaintiff was of sound mind when she sold her property to him.

**Representation:**

3. The plaintiff was represented by Mr. Max Mutabingwa of M/s Mutabingwa & Co. Advocates. The defendant was jointly represented by Mr. Asodio Jordan of M/s Ochieng Associated Advocates and Mr. Luyima Jabali of Mwesigwa Rukutana & Co Advocates.
4. The plaintiff produced eight witnesses to prove her case: PW1 (Kaheru Betty Bena), PW2 (Nantume Proscovia), PW3 (Lubega Joel), PW4 (Nakawala Hasfa), PW5 (Saasi Allan), PW6 (Mutegeki Robert), PW7 (Samuel Wako Majoli), and PW8 (Dr. Byamah Brian Mutamba).
5. The plaintiff relied on the following documents:
  - i). Exh.P1 – Photograph;
  - ii). Exh.P2 – Photograph;
  - iii). Exh.P3(a) – Sale agreement for plot at Kasangombe dated 6/32013;
  - iv). Exh.P3(b) – Sale agreement for plot on Block 291 Plot 294 at Kasangombe;



- v). Exh.P4 – Collection of documents for transfer of funds (Western Union, WorldRemit, etc.);
  - vi). Exh.P5 – Letter from chairperson, Wakiso Town Council dated 27/11/2018;
  - vii). Exh.P6 – Caveat by next friend dated 19/12/2018;
  - viii). Exh.P7(a) – Transfer form dated 2018;
  - ix). Exh.P7(b) – Application for consent to transfer dated 21/6/2018;
  - x). Exh.P8 – Notice to vacate suit property dated 20/4/2018;
  - xi). Exh.P9 – Letter from KCCA on custody of the plaintiff's children dated 24/4/2018;
  - xii). Exh.P10 – Application for custody to the Family and Children Court;
  - xiii). Exh.P11 – Collection of the plaintiff's medical documents;
  - xiv). Exh.P12 – Medical report from Wandegaya Medical Chambers dated 7/3/2019;
  - xv). Exh.P13 – Medical report from Butabika hospital dated 31/8/2020;
  - xvi). Exh.P14 – Medical report from Department of Psychiatry, Makerere University dated 18/10/2019; and
  - xvii). Exh.P15 – Receipts from Nakasero hospital.
6. The defendant produced the following four witnesses to prove his case: DW1 (Lester Kaganzi), DW2 (Muhumuza Isaac), DW3 (Mpiima Godfrey), and DW4 (Namatovu Fazilah).
7. The defendants relied on the following documents:
- i). Exh.D1 – Sale agreement between the plaintiff and the defendant dated 24/4/2018;





- ii). Exh.D2 – Acknowledgment of final payment dated 13/6/2018;
- iii). Exh.D3 – Certificate of title for the suit property;
- iv). Exh.D4 – CD recording of a telephone call between the plaintiff and the defendant;
- v). Exh.D5 – Transcript of the telephone call (Luganda version) by Makerere University Centre for Language;
- vi). Exh.D6 – Transcript of the telephone call (English version) by Makerere University Centre for Language; and
- vii). Exh.D7 – Response to notice to vacate premises by lawyers of the next friend dated 28/3/2019.

**Locus in quo visit:**

- 8. On the 22 June 2023, court carried out a locus in quo visit to the suit property located at Wakiso Town, Kasangombe in the presence of counsel for the plaintiff and defendant as well as the plaintiff's next friend and the defendant. The defendant's witness, Namatovu Fazilah was also present.
- 9. PW1 (Kaheru Betty Bena) took the oath, gave evidence, was cross examined and re-examined by counsel for the defendant and the plaintiff respectively. She testified that she took over management of the suit property when the houses were at the window level and completed the construction.
- 10. DW2 (Muhumuza Isaac) took the oath, gave evidence, was cross examined and re-examined by counsel for the plaintiff and the defendant respectively. He testified that all the rental units are occupied by tenants paying 300,000 shs per month for each of the four rental units, and 200,000 shs for the small rental unit by the gate. He also testified that he took over when the rental units were not



fully complete. That he is the one that installed the plumbing system. That only one rental unit was habitable, the rest were not. That he is the one that built the small rental unit by the gate.

11. Court observed that the suit property comprises of four rental units and a small rental unit by the gate, enclosed in a wall fence.

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

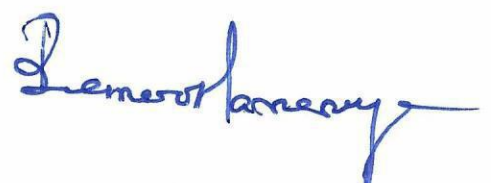
12. The following issues were framed for court's determination:
  - i). Whether the plaintiff had mental capacity to enter into an agreement for sale of the suit land to the defendant.
  - ii). Whether the defendant entered into the agreement for the sale of the suit land and whether the agreement is null and void.
  - iii). Whether the purported transfer/registration of the suit land into the names of the defendant was fraudulent.
  - iv). What remedies are available to the parties?
13. Before commencement of the trial, a question arose as to whether the suit was properly instituted through Betty Kaheru Bena as the next friend. The plaintiff, Tina Mbabazi, appeared before court on the 8 June 2022, and was examined by the then presiding Judge, who was satisfied that she was unable to conduct her own affairs. The Judge made these key observations: *"I have examined the plaintiff and I conclude that Tina Mbabazi cannot manage her own affairs."* He accordingly granted an order for the plaintiff to prosecute her suit through her next friend, Betty Kaheru Bena, who is also her mother.



14. I have read the defendant's written submissions, and they have raised the issue of the next friend's locus standi again. In view of the earlier order by this court issued on the 8 June 2022, allowing the plaintiff to prosecute her suit through her next friend, my decision is that the objection concerning the next friend's locus standi is misconceived. It is accordingly overruled.

**Issues No.1, 2 & 3:**

15. Issues No.1, 2 and 3 shall be handled jointly.
16. The plaintiff, who brought this action through her mother, Betty Kaheru Bena seeks cancellation of the defendant's certificate of title, on grounds that she was of unsound mind when she sold and transferred the suit property to the defendant. The plaintiff makes several other allegations of fraud against the defendant as set out in paragraph 10(a) to (m) of the Amended Plaint. 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))*.
17. In order to achieve cancellation of the defendant's certificate of title, the plaintiff must prove that fraud was committed and is attributable to the defendant. 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)*.





18. The type of fraud in this case is unique: the next friend alleges that the defendant took advantage of the plaintiff's unsound mind to fraudulently deprive her of the suit property. In order for the plaintiff to succeed, she must prove that she was mentally incapacitated, and that the defendant knew of her mental illness but took advantage of her, to deprive her of the suit property. 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 paragraph 34-025).
19. In the case of Boustany v. Piggot [1993] 69 P. & C.R. 298, the brief facts of the case were that Ms. Catherine Piggot was the owner of several properties in St. John's Antigua but due to her incapacity, she was unable to effectively manage the properties. Because of this, management of the properties was placed in the hands of Mr. George Piggot. Prior to the take over by Mr. George Piggot, Ms. Catherine Piggot had on the 30 November 1976, leased the property to Mrs. Boustany for a term of 5 years effective from the 1 January 1977 at a monthly rent of USD 833.33. Between 1977 and 1980, Mr. George Piggot, acting on behalf of Ms. Catherine Piggot, negotiated with Barclays Bank for lease of a property adjoining to that of Mrs. Boustany at a monthly rent of USD 5,830. In September 1980, when Mr. George Piggot was temporarily absent from St. John's, Mrs. Boustany persuaded Ms. Catherine Piggot to revise the lease of 1976, and they agreed on a new lease by which Mrs. Boustany was to pay a monthly rent of USD 1,000 for a term of 20 years effective 1 January 1982. In 1981, Ms. Catherine Piggot was diagnosed with Parkinson's disease (a brain disorder). Mr. George Piggot brought an action for a declaration that the lease was an unconscionable bargain. The High Court decided the matter in favour of Mr. George Piggot. Mrs. Boustany appealed to the Court of Appeal which



dismissed the appeal. On the appeal to the Privy Council, the court agreed with the trial Judge. Lord Templeman held that Ms. Catherine Piggot must have been under a total misapprehension of facts when she agreed to the new lease term, and that Mrs. Boustany prevailed upon Ms. Catherine Piggot to grant her a fresh lease when she knew that she could not get it from Mr. George Piggot or anyone else. That Mrs. Boustany knew that Ms. Catherine Piggot's conduct was unconscionable, and took advantage of her to extract unfair lease terms. He held that the trial Judge was right to set aside the lease on the grounds that the lease was an unconscionable bargain.

20. In the case of Hart v. O'Connor [1985] 2 ALL ER 880, the brief facts of the case were that in 1977, the appellant entered into an agreement to buy farmland in New Zealand which was the subject matter of a testamentary settlement. Unknown to the appellant, the vendor was of unsound mind when he signed the agreement. In May 1980, the trustees and beneficiaries of the estate applied to set aside the agreement on the ground that the vendor was of unsound mind when he entered into it and the contract was unfair to him. The trial Judge held that, although the vendor's unsoundness of mind was not apparent, his unsoundness of mind coupled with the unfairness of the contract which resulted because of the parties' consequent inequality of bargaining position made the contract unenforceable. The New Zealand Court of Appeal allowed an appeal by the respondents. The appellant appealed to the Privy Council, which decided the matter in favour of the appellant, and held that where a contract was entered into by a person of unsound mind whose affliction was not apparent, and whose consequent incapacity was not known to the other contracting party, the validity of that contract was to be judged by the same standards as a contract made by a person of sound mind. Accordingly, the contract was not voidable by the





person of unsound mind or by his representative on the ground that it was unfair, in the sense of there being contractual imbalance between the parties, unless the unfairness amounted to equitable fraud which would have enabled the complaining party to avoid the contract if he had been sane. Since the appellant was guilty of no unconscionable conduct, and there was no equitable fraud, victimisation, taking of advantage, overreaching or other unconscionable action which might have justified the intervention of equity to restrain an action by the appellant at law, the contract would not be rescinded for incapacity and unfairness.

21. In the case of Benedict Male v. Nsubuga Samuel, High Court of Uganda Civil Suit No. 240 of 2008, where the defendant alleged that the vendor lacked mental capacity to sign a sale agreement and instruments of transfer of land, Justice Alexandra Nkonge held that:

*“Since the plaintiff in this case was a friend to the family, he ought to have known better, and not take advantage of his friend’s vulnerability. All in all, no court would in fairness endorse any transaction made by a party in that state.”*

22. Accordingly, the position of the law is that a party that contracts with a person of unsound mind, and has knowledge of the person’s unsound mind, but takes advantage of him or her to the detriment of his or her interests, is culpable for fraud which avoids the contract. The result is different, if one contracting party is unaware that the other party is of unsound mind; such a contract will be upheld by the courts of law. The difference between the two scenarios is awareness or lack of awareness of the person’s unsound mind.



23. Section 55 (1) & (2) of the Mental Health Act (2018)<sup>1</sup> provides that:

*“(1) A determination of the mental health status of a person shall be carried out, where it is required for proceedings before a court of law or for any other official purpose.*

*(2) A determination under subsection (1) shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner.”*

**The plaintiff's evidence:**

24. PW8 (Dr. Byamah Brian Mutamba), a competent witness under the law for purposes of guiding court on the plaintiff's mental status, testified that he is a senior consultant psychiatrist at Butabika hospital. That the plaintiff is his patient at Butabika hospital, and that she was initially treated as an outpatient but was later admitted on the 30 July 2020 (Exh.P13). That she was discharged, and is currently receiving outpatient care. PW8 testified on the plaintiff's mental health status as follows:

*“She was in a poor state of mind that requires continuous observation, regular intervention, both medical and counselling. Poor state of mind means that she is unable to live independently and safely make decisions to enhance her recovery hence the need for admission. If left alone, she can pose a danger to herself or those around her.”*

25. PW1 (Betty Kaheru Bena) testified that she is the mother of the plaintiff, Tina Mbabazi and the next friend in the suit. That in 2013, the plaintiff purchased

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<sup>1</sup> The Act entered into force on the 18 February 2021 by virtue of Statutory Instrument No. 25 of 2021 – The Mental Health Act (Commencement) Instrument, 2021





the suit property, and subsequently became a registered owner of the land on the 11 March 2015 (Exh.D3). That the plaintiff started construction of rental units on the land but failed to complete. That she then got money from her son, Samba John who lives in Norway, and used the money to complete construction of the rental units (see Exh.P4 – transfer of funds by Western Union and World Remit, etc). That by the time she completed construction, the plaintiff's mental health had deteriorated, and she eventually became a person of unsound mind. PW1 testified that she took the plaintiff for treatment of her mental illness at Mulago hospital, Nakasero hospital, Wandegaya Medical Centre, Makerere University and Butabika hospital. She testified that the plaintiff completely became a person of unsound mind. That at one time she found her eating from the public wastebin outside her home. That she was forced to take full custody of the plaintiff's children, and started staying with them. Subsequently, she went to court and obtained a court order for custody. Exh.P10 is the application that PW1 filed for custody of the children at the Family and Children's Court at the Law Development Centre in 2018. That the transfer form (Exh.P7(a)) is alleged to have been signed in 2018, and yet the plaintiff was already a person of unsound mind. PW1 claims that no consideration was paid by the defendant. That the transfer form made false entries that there were NIL developments whereas the suit property was already developed with rental units, and that the consent form declared a consideration of Ushs 4,000,000 yet the suit property is worth much more.

26. PW2 (Nantume Proscovia) testified that she knows the plaintiff as a person of unsound mind. That the plaintiff once assaulted her and harmed her and that she even has a scar. That the plaintiff would undress, remain nude in public and





even eat from the wastebin. That by 2017/2018, the plaintiff had become totally mad and could not understand what she was doing.

27. PW3 (Lubega Joel) testified that the plaintiff was totally mad and that in 2015, he was called to Bakka Trading Centre and found her totally undressed and nude. That the police at Bakka police station would often call him to take his mad woman away, and that very often, the plaintiff would sleep at police cells. That it is not possible that the plaintiff would have made an agreement to sell land in 2018, and yet she was already totally mad.
28. PW4 (Nakawala Hasfa) testified that she is a police officer, No.35464 CPL and that in 2017, Kaheru Betty reported to the Child and Family Protection Unit, Wakiso Police and reported a case of child neglect. That she later got information that the plaintiff's boyfriend, Kawooya and Namatovu Fazilah intended to sell the suit property. That she summoned the plaintiff, together with Kawooya and Namatovu Fazilah. That the plaintiff reported but looked like a person of unsound mind and a total nuisance. According to her, the plaintiff could not have entered into the transaction for sale of the suit property in her state. PW5 (Saasi Allan, SGT No.21110), another police officer testified in support of PW4's testimony.

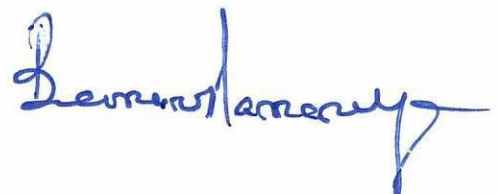
**The defendant's evidence:**

29. DW1 (Lester Kaganzi), an Advocate of the High Court, testified that the plaintiff approached him, and expressed a need for legal services to draft a sale agreement for the suit property. That the plaintiff personally appeared before him, he interviewed her and proceeded to draft a sale agreement. That the parties later appeared before him and they signed a sale agreement for the suit property. According to DW1, the plaintiff appeared to be in a sober state of



mind when she appeared before him. That he also represented the plaintiff in relation to an application for custody of her children that her mother filed at the Family and Children's Court at the Law Development Centre. In cross examination, he stated that he first met the plaintiff in 2018. That the plaintiff was paid 100 million shillings after signing the agreement.

30. DW2 (Muhumuza Isaac) testified that in 2018 he purchased the suit property from the plaintiff, who happens to be his cousin, at a consideration of 200 million shillings after being informed of its availability by Namatovu Fazilah. That before he went ahead with the purchase, he telephoned her mother, Betty Kaheru Bena, who blessed the sale but suggested that the purchase price should not be given to the plaintiff but instead placed on her account so that the plaintiff does not misuse it. That the plaintiff rejected the suggestion of not receiving the purchase price. That he then proceeded to pay the purchase price directly to the plaintiff. That he paid the first instalment of 50 million shillings to the plaintiff through Namatovu Fazilah. That on the 24 April 2018, he paid a further sum of 100 million shillings. That on the 13 June 2018, he paid the final balance of 50 million shillings. He adduced Exh.D1 (sale agreement dated 24 April 2018) and Exh.D2 (acknowledgement of final payment) to prove that he paid the full purchase price. That after paying the full purchase price, the plaintiff handed over signed transfer forms, her passport size photographs and National ID to facilitate conveyance of the land to him. He denied knowledge of the plaintiff's mental incapacity. That the suit property comprises of 4 rental units each bringing in 350,000 shillings.
31. DW3 (Mpiima Godfrey), Local council I chairman of Kasangombe, Mpunga Ward, testified that, he knows the plaintiff as the former owner of the suit





property. That on the 14 April 2018, he drafted a sale agreement for the suit property, with Namatovu Fazilah representing the defendant. That after the parties signed the sale agreement, the plaintiff received payment of 50 million shillings.

32. DW4 (Namatovu Fazilah) testified that he knows the plaintiff, and the defendant, who are both his relatives. That about the 1 April 2018, the plaintiff informed her that she intended to sell the suit property and she passed on the information to the defendant, who agreed to purchase the property. That she paid the plaintiff, the first instalment of 50 million shillings, and the rest of the purchase price was paid, part of which she used to purchase a Toyota Land Cruiser at 22 million shillings. That the plaintiff was engaged in buying and selling of properties and motor vehicles.

**The decision of the court:**

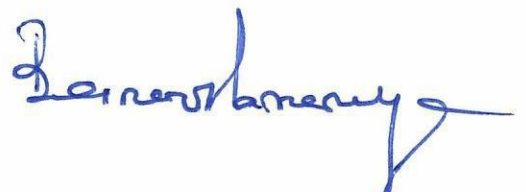
33. I have carefully evaluated the evidence adduced by both parties. The crucial question for me to decide is the alleged mental incapacity of the plaintiff at the time of signing the contract for sale of land. PW8 (Dr. Byamah Brian Mutamba), a senior consultant psychiatrist at Butabika hospital gave evidence to this court that the plaintiff is patient of the hospital, and that when she appeared before him she was in a poor state of mind, meaning that the plaintiff is unable to live independently, and safely make decisions. He went further to state that if left alone, she can pose a danger to herself or those around her. The plaintiff was at one time an inpatient at Butabika hospital but she is now an outpatient. His medical report of the plaintiff was admitted in evidence as Exh.P13. His evidence before this court was unchallenged. I have no reason to doubt his medical assessment of the plaintiff. The evidence of PW8 (Dr.





Byamah Brian Mutamba) alone is enough for this court to conclude that the plaintiff was under mental incapacity when she is alleged to have signed an agreement for the sale of the suit property on the 24 April 2018.

34. But before me is more evidence of the plaintiff's mental incapacity from her own mother: PW1 (Betty Kaheru Bena), who is her next friend in this suit, gave evidence before this court, and was on the verge of shedding tears, as she narrated how her daughter, who had a promising life, became mentally ill. It was because of the poor state of mind that the plaintiff was in, that her mother was forced to take custody of her two children, Catherine Kanyunyuzi and Kellon Kelly (Exh.P10). On the 24 April 2018, the Probation Officer of Kampala Capital City Authority wrote a letter granting temporary custody of the plaintiff's children to Betty Kaheru Bena (Exh.P9). Incidentally, on that very day, the 24 April 2018, when temporary custody of the children was being granted to the plaintiff's mother, is when the plaintiff is alleged to have sold the suit property to the defendant. PW2 (Nantume Proscovia), PW3 (Lubega Joel), PW4 (Nakawala Hasfa) and PW5 (Saasi Allan, SGT No.21110), all gave evidence to this court on the mental incapacity of the plaintiff.
35. Although the defendant led evidence from witnesses who claimed that the plaintiff was of sound mind, I don't believe that their evidence is credible, because I am convinced that the defendant was very much aware of the plaintiff's mental incapacity but chose to take advantage of her. This is especially so, considering that the two, plaintiff and defendant, are cousins.



36. The key point is that a person of unsound mind is incapable of making a rational judgment to bind him or herself in a contract. Section 12(1) of the Contracts Act (2010) which provides that:

***“12. Sound mind for purposes of contracting***

*(1) For purposes of entering into a contract, a person is said to be of sound mind, if at the time of entering into the contract, that person is capable of understanding the contract and of forming a rational judgment as to its effect upon his or her interests.” underlining is mine for emphasis*

37. Thus, according to section 11(1)(b) of the Contracts Act (2010), a person of unsound mind has no capacity to contract. The learned author, Cook<sup>2</sup>, gives the rationale for this position of the law as follows:

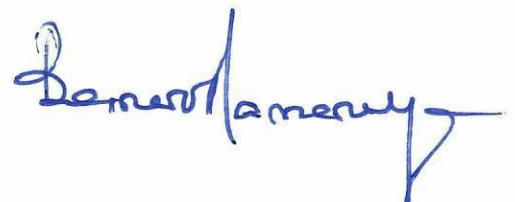
*“[...] in order to create an agreement, there must be consent of parties [...] the two essential elements in consent are that it must be free and it must be intelligent. Consent cannot be given where one of the parties is without an intelligent mind; therefore, [...] a lunatic cannot give consent; and consequently, he cannot enter into a contract [...] In the case of a lunatic, [...] the intellectual faculties are so obscured and the judgment so disordered that the agreement which is the foundation of the contract cannot have taken place, and, there being no contract, there will be no primary obligation, and therefore no liability to a secondary one [...] every person dealing with a lunatic with knowledge of his incapacity is deemed to perpetrate upon him a fraud which avoids the contract.”*

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<sup>2</sup> W. G. H. Cook., Mental Deficiency and the English Law of Contract. Columbia Law Review, May 1921, Vol. 21, No. 5 (May 1921). Columbia Law Review Association, Inc. <https://www.jstor.org/stable/1111915>



38. Can it be said that the plaintiff was capable of understanding and making a rational judgment the contract for sale of land? The next friend led evidence to prove that the plaintiff was moving about in public, naked and eating from public wastebins. I have no reason to doubt this evidence. I believe that the plaintiff, in the state described by her witnesses, was incapable of understanding and making a rational judgment on the contract for sale of land. The evidence of PW8 (Dr. Byamah Brian Mutamba), a senior consultant psychiatrist at Butabika hospital, proves that the plaintiff was in a poor state of mind, and unable to make a rational judgment. Accordingly, I am satisfied that, in the eyes of the law, the plaintiff was incapable of understanding and making a rational judgment on the contract that she is alleged to have signed.
39. It is my decision that the plaintiff's next friend has proved to my satisfaction, that the plaintiff was mentally incapacitated on the 24 April 2018, when she is alleged to have signed the agreement for the sale of the suit property, and later signed the transfer deed for the suit property.
40. The question is whether the plaintiff's mental incapacity is enough to rescind the contract for sale of the suit property. The law on the subject is that mental incapacity alone is not enough for an aggrieved party to rescind the contract unless it can be proved that the other party knew that the aggrieved party was mentally incapacitated, and took advantage of the aggrieved party by engaging in fraudulent conduct. See Boustany v. Piggot (supra); and Hart v. O'Connor (supra).

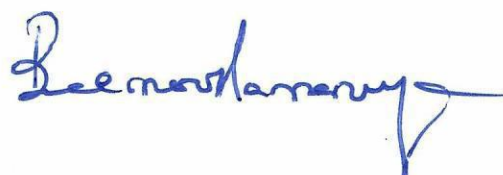




41. Next, I consider the actions of the defendant to determine if it was within his knowledge that the plaintiff was in a poor state of mind and took advantage of her.
42. It is to be recalled that the defendant admitted that the plaintiff, Tina Mbabazi is his cousin, and Betty Kaheru Bena, the next friend is his aunt. Since these are his close biological relatives, the presumption is that the defendant knows them only too well. I have already held that the plaintiff has proved to my satisfaction that she was in a poor state of mind when she signed the contract for the sale of the suit property, and transfer forms. Considering the overwhelming evidence before this court, of the plaintiff's mental incapacity, including undressing in public and eating from public wastebins, surely the defendant, a close biological relative, must have been aware of the misfortune that had befallen his cousin, Tina Mbabazi. This court does not accept the claim that he did not know that the plaintiff was in a poor state of mind as confirmed by the expert evidence of PW8 (Dr. Byamah Brian Mutamba, consultant psychiatrist working with Butabika hospital).
43. The defendant must have taken advantage of the plaintiff's mental incapacity to lure her into selling her property. Considering that the plaintiff is his cousin, the defendant knew that the plaintiff's mental health taken a turn for the worst, and instead of coming to her aid, the defendant chose to exploit her, and take her property through a bogus purchase. I find that the defendant is guilty of unconscionable and coercive use of power to the disadvantage of a mentally ill person.

A handwritten signature in blue ink, appearing to read 'Demosthenes', with a long horizontal stroke extending to the right.

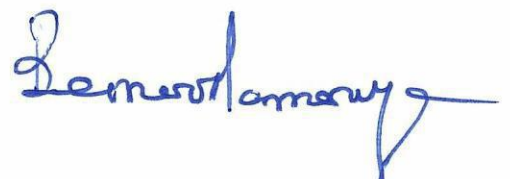
44. The defendant claims that he paid a purchase price of 200 million shillings to the plaintiff for the suit property, but given her poor state of mind, I am not convinced that she actually received this alleged payment. The defendant wants court to believe that the plaintiff signed for the money, and signed transfer deeds for the suit property, but for someone who was moving about naked in public, and eating from public wastebins, how can this court believe that the plaintiff was conscious of what was happening, that she intended to sell her property, and that she actually received 200 million shillings as the purchase price? If plaintiff received payment of 200 million shillings, as the defendant would want this court to believe, then it most likely ended up in a wastebin where she was getting her food. I am reminded of the testimony by one of the defence witnesses, DW4 (Namatovu Fazilah) who testified that after she had paid 50 million shillings to the plaintiff on behalf of the defendant, she drove the mentally ill Tina Mbabazi to Namboole stadium, and while there, Tina Mbabazi paid 15 million shillings to her sister, a one Kayambi Lillian to deliver to her mother, Betty Kaheru Bena, and another 600,000 for upkeep. If this story is to be believed, it is evidence of the plaintiff's lack of rational judgment. One wonders why the plaintiff would not personally hand over the alleged 15 million shillings to her mother, considering that her mother had already taken custody of her children, and was the one taking care of their day-to-day needs. The defence did not call Kayambi Lillian as their witness to back up these claims.
45. The defendant testified that the next friend's actions are driven by vendetta and bad faith, because the plaintiff rejected the idea of the purchase price being paid to her. I do not think that this evidence is credible because issues concerning the plaintiff's mental incapacity began much earlier even before her mother had





discovered that the suit property had been transferred to the defendant. For example, on the 18 April 2018, the next friend made a declaration on oath in support of lodging a caveat on the suit property, on behalf of the plaintiff's minor children, stating that the plaintiff was mentally ill (see Exh.P10). This proves that it is not a made-up story, the plaintiff's mother was genuinely concerned about her daughter's mental status and the fate of her grandchildren.

46. Considering the whole body of the evidence before me, it is my decision that the defendant, who knew very well that the plaintiff was mentally ill, took advantage of her, by luring her into a contract for sale of land with the intention of perpetrating a fraud upon her, and depriving her, of her property. The result is that the contract for sale of land dated 24 April 2018 is rescinded on grounds of fraud. Boustany v. Piggot (supra) applied. See also Megarry & Wade: The Law of Real Property (supra).
47. According to the Supreme Court of Uganda case of Fredrick J.K. Zaabwe v. Orient Bank Ltd & 5 others, SCCA No. 04 of 2006 (coram: Tsekooko, Karokora, Mulenga, Kanyeihamba & Katureebe, JJ.SC), Justice Bart Katureebe (J.S.C) quoting from Black's Law Dictionary, 6<sup>th</sup> Edition at page 660, defined fraud as:
- “An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.”





48. I am satisfied that the defendant's calculated moves in exploiting a mentally ill person, moreover his cousin, a fact that was well within his knowledge, taking advantage of her, and luring her into selling her property to him, perfectly fit the definition of fraud as held by the Supreme Court of Uganda in the case of Fredrick J.K. Zaabwe (supra). The defendant is culpable for fraud in procuring registration as the owner of the suit property.
49. The evidence before me proves that the defendant is the current registered owner of suit property having been entered on the certificate of title on the 21 June 2018 under Instrument Number WAK00177395. The defendant is the direct beneficiary of the fraud executed against the plaintiff, and fraud is therefore attributable to him. See 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).
50. Section 176 (c) of the Registration of Titles Act (Cap 230) provides for cancellation of a certificate of title obtained fraudulently. In the case of Hilda Wilson Namusoke & 3 Others v. Owalla's Home Investment Trust (E.A) Ltd & Commissioner for Land Registration, Supreme Court Civil Appeal No. 15 of 2017 the Supreme Court of Uganda (per Justice Prof. Tibatemwa-Ekirikubinza) held that:
- “Section 177 of the RTA vests powers in the High Court to direct the Commissioner to effect any order of cancellation of a certificate of title [...].”
51. The defendant claimed that he paid 200 million shillings for the suit property but on the transfer form and application for consent to transfer, he inserted a




sum of 4 million shillings. He also indicated NIL developments yet the suit property is developed with rental units (Exh.P7(b)).

52. Section 92(1) of the Registration of Titles Act (Cap 230) requires that the true consideration of land must be stated in a transfer instrument. It is the law, that failure to declare the true consideration of land on a transfer form renders registration of a proprietor for land void for fraud. In the case of Betty Kizito v. David Kizito Kanonya & 7 Others (Civil Appeal No. 8 of 2018) [2019] UGSC 28, the Supreme Court of Uganda (per Justice Prof. Tibatemwa-Ekirikubinza, J.S.C) considered the effect of failure to indicate the true consideration on the transfer form, and held that a buyer is not a bona fide purchaser where he or she inserts a lesser figure on the transfer form as consideration than was actually paid in order to defraud government of revenue. Such a transaction becomes tainted with fraud and illegality, and a title deed acquired in such circumstances is null and void because of fraud.
53. Accordingly, in addition to the fraud executed against a mentally ill person, the defendant declared a lesser amount on the transfer form of 4 million shillings instead of 200 million shillings that is alleged to have been paid to the plaintiff. According to the Supreme Court of Uganda in the case of Betty Kizito v. David Kizito Kanonya (supra) that amounts to fraud, rendering the registration of the defendant as owner of the suit property null and void on ground of fraud.

**Counterclaim by the defendant:**

54. The defendant filed a counterclaim to the suit, and prayed for the several reliefs against the plaintiff.



55. In view of my holding above that the defendant was fraudulently registered as owner of the suit property, I dismiss the defendant's counterclaim with costs.

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

56. Counsel for the plaintiff claimed mesne profits of 99,200,000 shillings. The evidence before this court proves that the defendant became registered owner of the suit property on the 21 June 2018. The effective date of physical possession of the suit property is presumed to be 1 July 2018. The defendant has remained in possession of the suit property to date. This means that the defendant has been in possession of the suit property for 62 months. The defendant testified that he earns 1,400,000 per month in rental income. For the 62 months, that the defendant has been in illegal possession of the suit property, the income earned is 99,200,000 shillings. I am satisfied that the plaintiff is entitled to an award of mesne profits of 99,200,000 shillings.

57. Counsel for the plaintiff claimed general damages of 200 million shillings which I consider to be excessive. I award the plaintiff, 25 million shillings in general damages for suffering that the defendant has inflicted on her.

**Final order of the court:**

58. In the final result, I grant the following declarations and orders:

- 1). That the defendant was fraudulently registered as proprietor of the land comprised in Mengo Block 291 Plot 347 at Kasangombe.
- 2). That the Commissioner for Land Registration is directed to cancel a certificate of title in the name of the defendant (Muhumuza Isaac) for land comprised in Mengo Block 291 Plot 347 at Kasangombe.





- 3). That the Commissioner for Land Registration is directed to register Tina Mbabazi as the owner of the land and property comprised in Mengo Block 291 Plot 347 at Kasangombe.
- 4). That the defendant shall vacate the suit property within **3 (three) months** from the date of this judgment, in default of which, he shall be evicted, in accordance with The Constitution (Land Evictions) (Practice) Directions, 2021;
- 5). That a permanent injunction issues restraining the defendant, his agents, servants, workmen and all those claiming under him and/or deriving authority from him from trespassing, encroaching, interfering and/or in any way dealing with the land comprised Mengo Block 291 Plot 347 at Kasangombe.
- 6). That the defendant shall pay mesne profits of 99,200,000 Ushs (Ninety-Nine Million Shillings Two Hundred Thousand only) to the plaintiff.
- 7). That the defendant shall pay general damages of 25,000,000 Ushs (Uganda Shillings Twenty Five Million only) to the plaintiff.
- 8). That the defendant shall pay interest of 15 per annum on general damages from the date of judgment until payment in full.
- 9). That the defendant shall pay costs of the suit to the plaintiff.

**IT IS SO ORDERED.**



**BERNARD NAMANYA**  
**JUDGE**

**25 August 2023**

**Attendance**

25 August 2023 at 10:04am

|  |                           |
|--|---------------------------|
| Mr. Max Mutabingwa                     | Counsel for the plaintiff |
| Mr. Jabal Luyima                       | Counsel for the defendant |
| The plaintiff's next friend is present |                           |
| The defendant is present               |                           |
| Allena Kanyakire                       | Court Clerk               |

**Court:**

Judgment delivered in open chambers.



**BERNARD NAMANYA**  
**JUDGE**

**25 August 2023**