

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
LAND DIVISION

CONSOLIDATED CIVIL SUITS NOS. 247, 340 OF 2007 AND NO. 17 OF 2008

SPEAR MOTORS LIMITED ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

- 1. HILLARY KIIZA**
- 2. NANTONGO CISSY**
- 3. ELIMU MARTHA**
- 4. MAKITENDE MUTABULAWO**
- 5. JUSTINE SARAH KASULE**
- 6. STEVEN MATANDA**
- 7. GIDEON MUHENDA**
- 8. STELLA MUHENDA**
- 9. BESIGYE CHRIS**
- 10. COMMISSIONER LAND**

REGISTRATION ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON: JUSTICE NYANZI YASIN

JUDGMENT

- 1.** This is a consolidated Suit where the plaintiff sued the defendants separately for the following orders;
 - i. A permanent injunction to stop any further subdivisions and transfers or encroachment on the land described as plot 114 block 215 at Kulambiro
 - ii. A declaration that the defendants' titles were erroneously procured and issued by then the Registrar of Titles and that are subject of cancellation by the Registrar of titles

- iii. A declaration that the plaintiff's title is first in time and takes precedence over all titles held by the defendants or their successors in title
- iv. A declaration that the defendants titles do not relate or refer to the plaintiffs land in plot 114
- v. An order that the register be rectified to the effect that the defendants erroneous titles issued subsequently be cancelled
- vi. An order for vacant possession by all the defendants, their agents and or their servants from plot 114
- vii. Costs of the suit and
- viii. Any other relief as court deems fit.

2. Plaintiff's case

3. The brief facts of the case are that the plaintiff is the lawful registered proprietor of plot No. 114 Block 215 land at Kulambiro Kyadondo having obtained ownership of it under instrument No. KLA 127791 in 1987. However, although in the land registry the land title is still intact, the physical ground was from 1997 to 2006 divided into different plots such as plot Nos. 632, 663 and 662 by Hussein Tamale and Christopher Ssali who allegedly by mistake or error believed it to be plot No.116 yet not, and they subsequently sold the above mentioned plots to the 4th to 8th defendants. The above plots were further subdivided into plot Nos. 1535, 1553 and 1552 and sold them to the 1st, 2nd, 3rd and 9th defendants. All the above subdivisions were done without the consent of the plaintiff hence this suit.

4. Defendants' case

5. The 1st and 2nd defendants in their written statement of defence averred that the alleged erroneous subdivision on plot 114 is false as the subdivision was approved and sanctioned by the registrar of lands having confirmed Hussein Tamale as the registered proprietor of the suit land. They stated that there was no error in the survey or creation of the subdivisions as alleged, since Hussein Tamale was cleared by the registrar of titles as the owner of the subdivided plot.
6. They further averred that they are the registered proprietors and currently in possession of the land comprised in block 215 plot 662 having legally acquired it by purchase from the then registered proprietors; Gideon Muhenda and Stella Muhenda. They contend that the said errors are not attributed to them and cannot be a basis of cancellation of their title which they acquired as bona fide purchasers for value without notice.
7. The 3rd defendant also in her written statement of defence aver that in February 2005 she purchased Block 215 Plot 1553 and that she is a bona fide purchaser since she did not participate in any perpetuation of mistakes or errors. She added that the Plaintiff's certificate of title annexed to the plaint is contested for lack of a plot number.

8. The 4th to 8th defendants averred that the survey was carried out upon approval of the Registrar of Titles who subsequently issued the titles upon subdivision, and that even if they were issued in error, the plaintiff's remedy lies in compensation by the land registry and or Attorney General. They stated that they did not purchase Plot 114 but from the various plots which were subdivided from the same plot upon proper instructions from the land office.
9. The defendants added that they are bona fide purchasers for value without notice of any fraud and that the plaintiff's admission of fraud committed by Hussein Tamale and Christopher Ssali cannot be attributed to them.
10. The 9th defendant in his written statement of defence also averred that he purchased plot 1535 in 2003 from Hassan M. Wandera without any impediment preventing him from being registered as the proprietor. That after purchase, he constructed a house and started living there in 2005. He contended that the plaintiff's allegation that the transfer of Plot No. 1535 into his names was by mistake is unfounded, false, preposterous and presumptuous.

11. Issues to be considered by court

- i. Whether the plaint by consolidation is in compliance with the order of court dated 17th March, 2009.
- ii. Whether the plaint by consolidation discloses a cause of action

- iii. Whether the defendants' titles were erroneously procured and issued by the Registrar of titles
- iv. Whether the plaintiff has a lawful and proper title to the suit land
- v. Whether the defendants are bona fide purchasers without notice of error or fraud
- vi. Whether the title in the name of the 1st counter defendant ought to be cancelled
- vii. What remedies are available to the parties?

12. Legal Representation

- 13. Counsel James Mukasa Sebugenyi represented the plaintiff, Joseph Kyazze represented the 1st and 2nd defendants, Gilbert Nuwagaba represented the 4th to 9th defendants and Tonny Arinaitwe represented the 3rd defendant.
- 14. The matter proceeded by way of written submissions and the submissions of all the parties are on the court record.

15. Plaintiff's evidence

- 16. PW1 Gordon Wavamuno aged 76 years testified in chief that himself and Spear Motors Ltd purchased Kyadondo Plot 114 Block 215 measuring 2 acres in 1987 and registered as proprietors on 17th of December, 1987. That out of mistake, illegality, forgery, error, connivance, omission and commission in the land registry and fraud by a one Hussein Tamale and Christopher Ssali, carried out a subdivision of Spear Motors Limited's land whereas it should have

been done on Plot 116 to obtain Plots 628 and 629. He said that the defendants claim to the land originated with a certificate of title dated 9th December, 1997 in the name of Christopher Ssali(Administrator of late Y. Gabiri) which is only not subsequent to Spear Motor's Land title and interest in 114 but also issued as a result of mistake.

17. PW2 Mike Baingana testified that that the knowledge he has regarding the case concerns records and reports of his predecessors, research, and information gathered, analysis and correlation of facts and records. That the record of the land office, Kampala Capital City Authority show that the lands office erroneously made two different sets of certificates of title for land comprised in Kyadondo Block 215 Plot 114 at Kurambiro whose certificate of title was created in 1958 under instrument No. KLA 12955 in the names of Wasswa (a minor until 4-4-75) and transferred to the plaintiff on 17/12/1987 under instrument No. 127791. The other title was created on 9/12/1997 for Christopher Ssali under instrument No.KLA 92842. Christopher Ssali transferred the same to Tamale Hussein on 8/01/1999 under instrument No. KLA 201519.
18. He said that the 2nd title was erroneously made as there was already existing certificate for the land comprised in Kyadondo Block 215 plot 114 at Kulambiro. That it was the 2nd erroneous certificate of title that caused subdivisions of Kyadondo Block 215 Plot 114 since the mutation form was signed by a one Hussein Tamale. He

testified that the erroneous subdivisions were conducted in not more than two months from the date of transferring the title to Hussein Tamale and the subdivisions created certificates of title for Kyadondo Block 215 Plots 628 and 629. Plot 628 created plots 632 and 633 while plot 629 creates plots 661 and 663.

19. He further testified that it is those plots that were subdivided to create other plots that a complaint was raised against and the land registration department in the year 2000 realized their error and had on several occasions attempted to cancel the certificates of title that came out of the certificate of title of Ssali Christopher. He told court that the defendants are not bona fide purchasers since the origin of their title is illegal. He added that the suit land is largely vacant save for some buildings that encroach on it and that cancellation of those certificates shall not cause any hardships to the defendants who were yet to put any developments thereon.
20. In cross-examination PW2 said that the records are not attributed to the 1st and 2nd defendants. That they gave instructions to cancel and discovered that Ssali and Tamale had died and they did not start a suit against them between 1999 and 2011 but they lodged a caveat in 2007. He said that it is only plots 1535 and 1552 that are developed.
21. In re-examination PW2 showed court the pictures of the notices to the public that the plaintiff displayed to indicate that land was not for sale. He added that apart from the notices on the ground, there

were notices from the land office; there was a notice of 2000 and 2012 that were served to the defendants through their lawyers.

22. Defence evidence

23. DW1 Dr. Kiiza Hilary in his evidence in chief testified that himself and the 2nd defendant sometime in 2006 purchased Plot No.662 Block 215 measuring approximately 0.173 hectares from a one Gideon Muhenda and Stella Muhenda. They were given a photocopy of the duplicate certificate of title to enable them do a search and physical inspection of the land and they found that the land was registered in the names of Gideon and Stella having been registered on 7th of April, 2000 and there was no caveat. He said the white page for plot 662 confirms the then existing status of the register of the land in 2006.
24. He testified that while they had embarked on the development of their land, in April 2007 they received a letter from M/s Sebalu & Lule Advocates claiming that the land comprised in Kyadondo Block 215 Plot 114 at Kulambiro was registered in the names of the plaintiff. The letter was to the effect that they stop developing the land. He told court that they did not know of the errors alluded to and that they do not know about the existence of Plot 114
25. DW2 Matanda Steven told court that he holds a duplicate certificate of title for plot 663 Block 215. He said he came to know about the subdivisions since 2001 and that he is aware the plaintiff has a duplicate certificate of title. He testified that since then, he

has engaged lawyers to help him with his case. That his lawyer is the same lawyer for the 4th, 5th, 7th and 9th defendants and also acted for Hilda Achan and Alfred Okum. He said that he clearly understood P.10 which was copied to the L.C.1 in 2001. He further said that he did not do back ground investigations but only dealt with Hussein Tamale, but after signing the sale agreement he inquired from the people who told him that plot 114 belonged to Hussein Tamale. To go on, DW2 told court that he has not developed the land as yet.

26. DW3 Besigye Chris in his evidence to court said that by way of agreement dated 16th of February, 2003 he purchased plot 1535 and immediately constructed on the land and started living there. That in 2006 when plot 633 was transferred in to the 4th defendants names, the land office was already aware of the complaints by spear motors ltd and had written to the 4th defendant but went ahead to authorize the subdivision of plot 633 belonging to the 4th defendant giving rise to plot 1535 which was transferred into his names.
27. In cross-examination DW3 said that in the agreement the plot is described as plot 116 and plot 114 is not mentioned. He said he never got P.16, it was addressed to Nakitende and his lawyer has never brought it to his attention. Nakitende did not tell him about the correspondence from the land office before she sold the land to him. He added that he has not looked at Ex p.9, 10, 11 and 14

28. In re-examination DW3 said that when he was buying the land the Duplicate Certificate of title had plot No.116 but later on the plot was found to be plot 114
29. DW4 Muhenda Gideon told court that sometime in 2000 his wife and him bought land comprised in Kyadondo Block 215 plot 662 land at Kulambiro from a one Hussein Tamale and sometime in 2001, they received a letter from the in charge, Kampala Mailo office notifying them that one Hussein Tamale illegally caused the subdivision of plot 114 being the land owned by the plaintiff and that he intended to cancel the said certificates for having been erroneously issued out of an illegal survey and that they should claim from plot 116.
30. He further said that upon purchase, they applied for the loan from the Uganda Ecumenical Church Loan Fund Ltd and mortgaged their title. That when ECLOF lodged the certificate of title with land office for registration of the mortgage, the land office declined to release the certificate of title back to ECLOF on account of dispute over the land. Following that background, they filed Miscellaneous Application No.108 of 2021 and the certificate was handed back to them and in 2007 they transferred the same to the 1st and 2nd defendants
31. In cross- examination he said that he came to know about the dispute by way of a letter from the land office and one of those letters is P.10 and he responded to it using DE.11 and land office replied in p.17 but he did not notify the 1st and 2nd defendants about

the dispute before selling the land to them. He added that the dispute came to his knowledge after purchase and transfer of the land in their names.

32. DW5 Matha Elimu in his evidence in chief told court that she bought the land comprised in Kyodondo Block 215 plot 1553 at kulambiro from a one Nakitende Mutabulawo Mukhwana and that she is currently the registered proprietor. That he bought plot 1553 having been surveyed off from plot 663. They did a survey from the land office at Kampala and confirmed that the land was indeed registered in the names of Nakitende. The local authorities also confirmed the same. She surveyed of 76 feet by 143 feet and she was registered as the proprietor on 2nd of May, 2006.
33. That upon purchase, she started the construction of the six storage apartments. That from the time she purchased the land, no one disturbed her possession until May 2007 when Spear Motors engaged her servants and police personnel who came to the land, condemned everybody on the site and detained them at Kira road police division, demolished structures and left her property unattended to and took away the construction materials. That she followed up the matter and she was informed that Spear Motors had a court order restraining her from conducting or carrying on any development on the land. That she brought the same to the attention of Nakitende who said that she was not aware of the interests of the plaintiff.

34. DW6 Goloba Haruna senior registrar of titles on behalf of the commissioner land registration in his evidence in chief said that on 17th December, 1987 under instrument No. KLA 12955 Spear Motors entered into proprietorship of the land comprised in Kyadondo Block 215 plot 114 having been transferred from Wasswa (A minor until 4-2-75) who had been registered under instrument No.KLA12955 of 8-1-1958. That the suit land measured 2.0 acres per its root from MRV 1617 Folio 9 which was subdivided off the mother title held under MRV 305 Folio 13 whose original owner was Yokana Gabiri.
35. He said that the 1st parallel title that was first registered in Christopher Ssali (Administrator of the estate of the late Y. Gabiri) measuring 0.802 hectares does not have its root to the mother MRV 305 Folio 13 but at the closure of MRV 305 Folio 13 its Plot 116 is among others that were created. In 1999 Hussein Tamale filled in mutation forms dated 18th February 1999 for the subdivision of land comprised in Kyadondo Block 215 Plot 114 which forms erroneously stated 114 to be his land. The subdivision of plot 114 proceeded from there on the presumption that Hussein Tamale owned Plot 114 leading to the creation of new plots. That after the subdivision, Hussein Tamale proceeded to register the new plots in his names which he further subdivided and immediately sold off to Justine Sarah Kasule, Gideon and Stella Muhenda and to Nakitende Mutabulawo Muhkwana

36. That upon the above subdivisions, the plaintiff wrote a complaint to the Kampala Mailo Office about the illegal sub-divisions of the land by Christopher Ssali and Hussein Tamale. Kampala Mailo office replied to spear motors acknowledging that Kyadondo Block 215 Plot 114 was still intact in the registry with no signs of entry points and the letter was copied to Justine Sarah Kasule, Steven Matanda, Hilda Acan, Nakitende Mutabulawo and Gideon and Stella Muhenda. In that letter, the office of the Kampala Mailo office notified the registered proprietors of their intention to cancel their titles for having been issued after erroneous survey and asked them to engage with spear motors to further find an amicable solution to the dispute.
37. He further told court that Nakitende Mutabulawo, Steven Matanda, Justine Sarah Kasule and Gideon and Stella Muhenda through their lawyers Mwesigwa- Rukutana & Co. Advocates wrote in response to the letter of 25/06/2001 to the Commissioner Land Registration inquiring about the status of the land considering their status as recent proprietors of the land and the Commissioner Land Registration responded by advising them to heed the advice of the registrar of titles and instead claim Block 215 Plot 116 which rightly belonged to Christopher Ssali instead of claiming plot 114. That advice was never heeded to by the parties but they instead went ahead with the subdivisions.
38. The issues will be resolved as argued by counsel for the plaintiff.

39. *ISSUE NO. 1: Whether the plaint by consolidation is in compliance with the order of court dated 17th March, 2009.*

40. Submissions

41. Counsel for the plaintiff cited Order.11 rule 1 of the Civil Procedure Rules and submitted that the plaintiff had instituted Civil Suit No. 247 of 2007 against the 1st and 2nd defendants as transferees and joint registered proprietors of land at Kyadondo Block 215 Plot 662 seeking cancellation of their title having been issued in error and as a result of fraud. That he also instituted Civil Suit No.340 of 2007 against the 3rd defendant as transferee and registered proprietor of Kyadondo Block 215 plot 1553 for cancellation of her title as having been issued in error and as a result of fraud, and Civil Suit No. 17 of 2008 against the 4th to 10th defendants and their predecessors in title as transferees and or registered proprietors of the land at Kyadondo Block 215 Plots 629,662,663,2552, 1553 and 1535 for cancellation of their respective titles having been issued in error and as a result of fraud.

42. He argued that in compliance and based on the agreed position by consent, the plaintiff duly filed the consolidated plaint on 13 February 2015 setting out distinctly the claim against each defendant and the reliefs sought against the defendants jointly and or severally

43. Counsel for the 1st and 2nd defendants on the other hand submitted that pursuant to the order that allowed the consolidation of the

three suits, the plaintiff filed a consolidated plaint on 17th April, 2009 and later filed another plaint on 13th February, 2015. He argued that the 2nd plaint was filed after the plaintiff had sought for leave to add the 10th defendant which leave was granted but no order was granted to the plaintiff to amend the plaint and change pleadings against the 1st and 2nd defendants.

44. He contended that in breach of the order allowing an amendment of the plaint to add the 10th defendant, the plaintiff proceeded to make other amendments to the consolidated plaint which were not in the initial consolidated plaint. He said trespass and general damages were not in the first consolidated plaint and submitted that the plaintiff's consolidated plaint filed in 2015 is not compliant with the order of consolidation granted by court.

45. It should be noted that other defendants did not submit on this issue.

46. Courts Determination of Issue No. 1

47. I have looked at the record and noted that the plaintiff sued the 1st and 2nd defendants under Civil Suit No.247 of 2007 and in paragraph 4 of that plaint, the plaintiff was claiming trespass against the 1st and 2nd defendants and in paragraph 8 (b) he prayed for general damages.

48. The Application that sought to consolidate the 3 suits is Civil Suit No. 116 of 2008 and Justice Anna Magezi in her ruling dated 17th

of March, 2009 while allowing the application for consolidation said “ *I therefore allow the application as I am convinced order 11 of the CPR is relevant since similar questions of law and fact are involved*”

49. And Justice Monica Mugenyi in her ruling dated 7th of July, 2014 she said “ *I abide by the Order of my sister Magezi J that Civil Suit 0247 of 2007, 0340 of 2007 and 0017 of 2008 be and are hereby consolidated. Accordingly, for clarity and expedience of procedure, it is hereby ordered that the plaintiff file a consolidated plaint that does not depart from his earlier pleadings in the three suits afore cited. He should file the same in court and serve copies thereof on opposite counsel by/ on 31st July, 2014 at 4:00pm. Parties are ordered to file a joint scheduling memorandum by/ on 29th August, 2014 at 4:00pm. Hearing of the consolidated suit shall ensue on 8th December, 2014 at 9:00am...*”
50. Following the above ruling, the plaintiff filed a consolidated plaint dated 31st of July, 2014. However, in the court proceedings of 8th December, 2014 counsel for the 1st and 2nd defendants contended that there was departure from the pleadings in the amended plaint when the plaintiff included fraud in it and an agreement was reached between the parties that fraud be included in the consolidated plaint.
51. The plaintiff then filed another consolidated plaint dated 2nd February, 2015 wherein under paragraph 4(a) he claims trespass

against the 1st and 2nd defendant and also prays for general damages against them.

52. Order 6 rule.7 of the Civil Procedure Rules provides that “ No pleadings shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading”
53. In Jani Properties Ltd. vs. Dar es Salaam City Council [1966] EA 281; and Struggle Ltd vs. Pan African Insurance Co. Ltd. (1990) ALR 46 – 47, It was found that the parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and moreover, the court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings.
54. In the instant case, following the ruling of Justice Monica Mugenyi the claims contended by counsel for the 1st and 2nd defendants to have caused departure, were covered by the amended plaint against the 1st and 2nd defendants dated 23rd of May, 2007. As per the findings of Justice Mugenyi the consolidated plaint was to

capture what was in the initial plaint of each consolidated party which the plaintiff did. Trespass and general damages are captured in paragraphs 4 and 8(b) of the amended plaint for Civil Suit No.247 of 2007 and therefore apply to that suit.

55. I therefore do not find merit in the objection.

56. Issue No. 1 is answered in the affirmative.

57. **ISSUE NO.2: Whether the plaint by consolidation discloses a cause of action**

58. Submissions

59. Counsel for the plaintiff while citing Order 7 rule.1 (e) of the Civil Procedure Rules and the case of Auto Garage Vs. Motokov [1971] EA 314 submitted that the consolidated plaint filed by the plaintiff on the 2nd of February, 2015 clearly shows that the plaintiff duly and distinctly set out the causes of action and the facts constituting the causes of action against each defendant in the plaint.

60. Counsel for the 1st and 2nd defendants on the other hand made extensive submission on this issue but the upshot of his submission is that what the plaintiff is claiming against the 1st and 2nd

defendants which is fraud, forgeries, mistake and illegality are not attributed to them and for that reason, the plaint does not disclose a cause of action since no right was violated by the 1st and 2nd defendants.

61. Counsel for the 3rd defendant also submitted that the 3rd defendant never carried out any transaction on plot 114 alleged to belong to the plaintiff and for that reason, he is not expected to know what happened on plot 114 and later on accuse him of trespass on the land that does not exist. He cited Auto Garage & Anor Vs. Motokov (1971) EA 514 AT 519 and Tororor Cement Vs. Frokina International Ltd SCCA No. 2 of 2001 to support his submission.
62. Counsel for the 4th to 9th defendants on this issue submitted that the plaintiff is the registered proprietor of plot 114 but nowhere in the plaint are the 4th to 9th defendants stated to be responsible for the mistake, error or fraud. He argued that the plaint does not disclose a cause of action against the 4th to 9th defendants.
63. **Courts Determination on Issue No.2**

64. In the case of Auto Garage & Anor Vs. Motokov (1971)EA 514 at 519 and Tororo Cement Vs. Frokina International Ltd SCCA No. 2 of 2001. Court noted that where “a plaint shows that the plaintiff enjoyed a right and that the right has been violated and that the defendant is liable, then... a cause of action has been disclosed
65. In the instant case, the plaintiff’s claim is that he is the proprietor of Kyadondo Block 215 Plot 114 land at Kulambiro having purchased the same in 1987. However, without his knowledge and consent the defendants and their predecessors trespassed on to his land and caused illegal subdivisions on Plot 114.
66. It is trite that in determining the cause of action, court only looks at the plaint and its annexures. See Kapeeka Coffee Works Ltd Vs. Npart CACA No. 3 of 2000. I have looked at the plaint and the annexures attached thereto and found a Duplicate Certificate of title issued to the plaintiff for Kyadondo Block 215 Plot 114 in 1987. The same plot is alleged to have been subdivided around 1999 to 2007 and plots sold to the defendants without his consent.
67. Following the guidance in Tororo Cement Vs. Frokina International Lt (Supra), it is my considered opinion that the plaintiff’s plaint discloses a cause of action against the defendants. He is claiming his land that was allegedly illegally subdivided by

the defendants. Whether it was fraud, error, connivance, or not is a matter to be decided after consideration of evidence.

68. Issue No.2 is therefore answered in the affirmative.

69. **ISSUE NO.4: Whether the plaintiff has a lawful and proper title to the suit land**

70. PW1 the chairman of the plaintiff company told court that the plaintiff's title was created in 1958 under instrument No. KLA 12955 dated 8th of January 1958 in the names of Waswa (a minor until 4-2-75) and it was transferred to the plaintiff on 17th of December, 1987 under instrument No. 127791 as per P.15, P8(1) and P8(2). This evidence is buttressed by the evidence of PW2 and DW6 the Senior Registrar of Titles.

71. Mr. Golooba Haruna who testified on behalf of the Ministry of Lands, Housing and Urban development gave the history of Kyadondo Block 215 Plot 114. In his evidence he said that the land title of the disputed land has its root from MRV 1617 Folio 9 which was divided off the mother title held under MRV 305 Folio 13 whose original owner was Yokana Gabiri. On the 17th of December, 1987 under instrument No. KLA12955, the suit land was transferred into the names of the plaintiff from Waswa (a minor until 4-2-75)

72. Counsel for the 1st, 2nd, 3rd and 4th to 9th defendants on the other hand argued that the plot claimed by the plaintiff does not exist on the ground and secondly, that the title tendered in court does possess a plot number. Counsel submitted that a title that does not exist on the ground cannot be said to have a corresponding title. He cited Kenyanya Wanjala Herbert & 2 others Vs. Robinah Nabikolo & 4 others HCCS No. 771 of 2007.
73. Section 59 of the Registration of Titles Act provides that “ 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 or 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 and described in the certificate is seized or possessed of that estate or interest or has that power.”
74. Section 48(1) of the Registration of Titles Act provides that “ Every instrument excepting a transfer, presented for registration may be in duplicate and shall be registered in the order of and as from the time at which the instrument is produced for that purpose, and instruments purporting to effect the same estate or interest shall,

notwithstanding any actual or constructive notice, be entitled to priority as between themselves according to the date of registration and not according to the date of the instrument.”

75. In Livingstone Ssewanyana Vs. Martin Alier Supreme Court No.4 of 1999. In that case, while there was a subsisting lease, the Commissioner Land Registration issued another lease to the Appellant in 1982. Court found the 2nd lease issued on the same land to be invalid since it was issued in respect of the land which was not available for leasing. Court added that the 2nd lease had no proprietary interest in the suit land and that the title issued to the Appellant was null and void.
76. According to Section 59 above cited, once a certificate of title is issued, it cannot be impeached on account of any informality or irregularity. In John Katarikawe versus Katwiremu & another [1977] HCB 187. It was held inter alia that provisions of Section 61 (now 59) of the Registration of titles Act, Cap 230 are clear that once a person is registered as proprietor of land, his title is indefeasible except for fraud. A similar position was taken in the case of Olinda De souza versus Kasamali Manji [1962] E.A 756 that in absence of fraud, possession of a Certificate of title by a registered proprietor is conclusive evidence of ownership of the land and the Registered proprietor has indefeasible title against the whole world.

77. The above authorities therefore mean that the plaintiff's certificate of title cannot be impeached except for fraud which was never pleaded by any of the defendants as against the plaintiff.
78. S.48 puts emphasis on the priority in registration, meaning the first title takes priority over the latter title.
79. In the instant case the plaintiff as per his evidence and that of the DW6 Goloba Haruna the Senior Registrar of titles from the Ministry of Land, he got registered on the title of the land in dispute in 1987 and the latter title was registered in 1997 and 1999 which means the plaintiff's title takes priority over the other.
80. Following the guidance in the case of Livingstone Ssewanyana Supra which I am bound to follow, it is clear that where a title is issued in the existence of another over the same piece of land, the later title would have no proprietary interest in the suit land and therefore null and void. Similar facts were faced by this court in Civil Suit No. 2364 of 2016 Masaba Namunane & Anor Vs. Stirling Civil Engineering Ltd & 4 Others. Where two lease titles had been issued in respect of the same piece of land and this court nullified the later title. I have no strong reason to depart from that decision.
81. In the circumstance, it is found that the plaintiff has a lawful and proper title to the suit land.
82. Issue No. 4: is answered in the affirmative.

83. ISSUE NO.3: Whether the defendants' titles were erroneously procured and issued by the Registrar of titles
84. Having answered issued No. 4 in the affirmative, issue No.3 is automatically answered and for that reason it is also answered in the affirmative.
85. ISSUE NO. 5: Whether the defendants are bona fide purchasers without notice of error or fraud
86. Submissions
87. Counsel for the plaintiff while citing the case of David Sejjaka Nalima Vs. Rebecca Musoke Civil Appeal No.12 of 1985 submitted that the defendants are not bona fide purchasers for value without notice of the errors and fraud effected over the suit land since at all material times the defendants and their predecessors in title were aware of the plaintiff's registered and prior existing title to the suit land and yet they continued to further subdivide the land to create and transfer title.
88. Counsel for the defendants on the other hand submitted that the defendants are bona fide purchasers for value without notice since they were never made aware of the plaintiff's interests in the land and secondly, that they were not part of the errors, mistakes and fraud allegedly claimed by the plaintiff.

89. Mr. Golooba Haruna said after the subdivision of plot 114 by Hussein Tamale registered the titles into his names and immediately sold to Justine Sarah Kasule, Gideon and Stella Muhenda and to Nakitende Mutabulawo Muhkwana. That after the subdivision, the plaintiff wrote a complaint to Kampala Mailo Office about the illegal subdivisions and all the above mentioned purchasers were copied in.
90. That letter written by the Plaintiff was responded to by the Kampala Mailo office in a letter dated 25th of June, 2001 which is P.10. For purposes of clarity I will quote that letter.

*Ms. Justine Sarah Kasule
P.O Box 16071
Wandegeya*

*Mr. Steven Matanda
Kulambiro, Nakawa Division
Kampala*

Ms. Hilda Acan

*Ms. Nakitende Mutabulawo
P.O Box 5476
Kampala*

*Mr. Gideon Muhenda & Ms. Stella Muhenda
P.O Box 12001
Kampala*

Dear Sir/Madams,

*RE: KYADONDO BLOCK 215 PLOTS 632, 633, 661, 662 AND
663, KULAMBIRO*

The land of the particulars herein above refers,

We are in receipt of a complaint from M/S Spear Motors Limited of P.O.BOX 1350, Kampala, to the effect that your predecessors-in -title, one Christopher Ssali and one Hussein Tamale, illegally caused plot 114, being the land owned by the said company, to be sub-divided into plots 632,633,661 and 663, instead of plot 116

Information available on record indicates that the said land was subsequently transferred to you as follows:-

- 1. Plot 632 was transferred to JUSTINE SARAH KASULE of P. Box 16071. Kampala*
- 2. Plot 633 was transferred to STEPHEN MATANDA of Kulambiro-Nakawa Division by the said H. Tamale on the 25.3.1999 under Instrument No. KLA 203222*
- 3. Plot 661 was transferred to HILDA ACAN by the said H. Tamale on 12.8.1999 under Instrument No. KLA 206322*
- 4. Plot 662 was transferred to GIDEON MUHENDA and STELLA MUHENDA on 7.4.2000 under instrument 211802*

Plot 663 was transferred to NAKITENDE MUTABULAWO MUKHANA of P.O. Box 5476 on 7.3.2000 under Instrument KLA 211123

You may need to know that at all material times the certificates of title comprised of Plot 114 in the name of the said company has been intact with no indication on record that the said sub-divisions or transfer ever effected the land

This is therefore to notify you of our intention to cancel all the said certificates for having been erroneously issued out of an illegal survey which purports to affect the land known as plot 114 which is still registered in the names of Spear Motors Limited

You are accordingly given 21 days within which to show good cause as to why the said certificate and sub-divisions should not be cancelled for the said reasons and the position of plot 114 restored on the register

You are advised to contact Spear Motors' Legal Officer to explore possibilities to an amicable settlement

Yours faithfully

*Opio Robert
Officer in charge, Kampala Mailo Office*

*CC. M/s Spear Motors Limited
P.O. Box, Kampala*

*The District Staff Surveyor
Kampala*

*The Charman, Local Council 1,
Kulambiro*

*Hussein Tamale
Kulambiro*

91. Following the above letter, Nakitende Mutabulawo Muhkwana, Steven Matanda, Justine Sarah Kasule, Gideon and Stella Muhenda in DE.11 responded through their lawyer Mwesigwa- Rukutana & Co. Advocates in their letter dated 26th of June, 2001 to the Commissioner informing him how they lawfully acquired their pieces of land and that the registrar of titles has no power to cancel their respective titles.

92. The Land Registration Department, Kampala through the Commissioner Land Registration in his letter dated 3rd of April, 2002 responded in P.17 and said that;

“ I have read your two letters of the same reference dated 20th July, 2001 and 7th December, 2001 which were written essentially in reaction to a letter, T.KLA/2 of 25th June, 2001 addressed to certain people by the Officer –in –charge, Kampala Mailo office (Registrar of titles). In my considered opinion, your clients should heed the advice of the Registrar of titles and claim plot 116 on Kyadondo Block 215) instead of claiming the abovementioned plots purportedly surveyed out of plot 114

Records in the Titles Registry show that the certificates of title for Kyadondo Block 215 Plot 114 is intact. The registered proprietor of 2.0 acres comprised therein is Spear Motors Limited. In this connection, you will be interested to know that Makerere University Council succeeded in recovering its land located between Wandegaya and New Mulago Hospital from persons that used bogus land titles to claim it.

*Yours faithfully
Jonathan N. Tibisaasa
COMMISSIONER FOR LAND REGISTRATION..... ”*

93. The above letters indicates that Gideon and Stella Muhenda who sold Plot 662 to the 1st and 2nd defendants in 2006 were in the full knowledge of the plaintiff's interests in the suit land but went ahead to sale the same to the 1st and 2nd defendants.

94. The 6th defendant who testified as DW2 also admitted in his evidence that he was informed of the plaintiff's interest in the land by way of a letter in 2001 after he had purchased plot 663 from one Hussein Tamale.
95. The 9th defendant who testified as DW5 said purchased plot 1535 from a one Nakitende Mutabulawo who was well aware of the plaintiff's interests in the suit land but also went ahead to sale the same to the 9th defendant in 2003.
96. The 7th and 8th defendants who as per their evidence purchased plot 662 from Hussein Tamale in 2001 and were copied in P.10, acknowledge that they had knowledge of the plaintiff's interest since 2001.
97. The 3rd defendant who testified as DW3 claims to have purchased Plot 1553 from a one Nakitende Mutabulawo in 2006 and Nakitende was fully aware of the plaintiff's interests at the time.
98. Considering the above analysis, the mentioned parties in P.10 failed to heed to the advice of the Commissioner Land Registration and went ahead to further make subdivisions and sale the land to other parties like the 1st, 2nd, 3rd, and 9th defendants.

99. In the case of Hajji Abdu Nasser Katende Vs. Vithalidas Haridas and Co. Ltd CACA No. 84 of 2003 cited Ndimwibo & 3 Others Vs. Ampaire Civil Appeal No. 65 of 2011. Court provided for the conditions to be proved to establish if the claimant is a bona fide purchaser for value without notice or not, and these include;

- i. That he or she hold a certificate of title
- ii. That he or she purchased the property in good faith
- iii. That he or she had no knowledge of the fraud
- iv. That he or she purchased for valuable consideration
- v. That the vendors had apparent title
- vi. That he or she purchased without notice of any fraud
- vii. That he was not party to the fraud.

100. However, although the above authority provides for the conditions that must be fulfilled, to simplify the resolution of this issue, I will read them together with the following authorities; Kampala Bottlers Ltd Vs. Damanico (U) Ltd SCCA No. 22 of 1992 where court stated that fraud must be attributed to the transferee either directly or by necessary implication. 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. Platts S.C.J held that fraud must be attributed to the transferee and it being a very serious allegation to make against another person, where a person accuses another of fraud it must be pleaded.

101. In Uganda Posts & Telecommunication V. Abraham Katumba (supra) citing Taylor V. Stilbert [1803-13] ALLER 432 court held that failure to make reasonable inquiries of persons in possession and use of the land or the purchaser's ignorance or negligence to do so formed particulars of fraud and the purchaser acquires and takes such purchased land subject to its equities let alone a finding that he or she committed fraud.
102. In David Sejakka Nalima vs Rebecca Musoke Civil. Appeal No. 12 of 1985 (unreported), Court observed that abstaining from making Inquiries does not make you a bona fide purchaser for value and fraud may be attributed to you.
103. From the evidence of the 1st, 2nd, 3rd and 9th defendants they all state in their evidence that they investigated about their respective pieces of land before purchase and that they did search in the land registry as well as inquiring from the Local Council authorities and all confirmed their respective vendors to be the lawful owners of their pieces of land. However, looking at P.10 the L.C.1 of Kulambiro where the suit land is situated was copied in, if the defendants had inquired from him about the status of their respective pieces of land, he would have informed them of the complaint that had been lodged by the plaintiff. Secondly, although all the above mentioned defendants indicate that they did search in the land registry to establish the true owners before purchase of their respective pieces of land, none of them tendered in court a

search report to prove the same. See Section 101 of the Evidence Act

104. It is also important to recount the evidence of DW6 the Senior Registrar of Titles who testified on behalf of the Commissioner Land Registration as a co-defendant that Plot 114 Block 215 is still intact in their records and it has never been subdivided. Meaning that had the defendants correctly searched the register, they would have found the same position that the Senior Registrar of Titles stated to court.
105. It is trite that failure to make reasonable inquiries of persons in possession and use of the land or the purchaser's ignorance or negligence to do so formed particulars of fraud and the purchaser acquires and takes such purchased land subject to its equities let alone a finding that he or she committed fraud. See Taylor V. Stilbbert (Supra). For that reason, it is the opinion of this court that the 1st, 2nd, 3rd and 9th defendants did not obtain their certificates of title in good faith.
106. It is further noted that the 4th, 5th, 6th, 7th and 8th defendants well aware of the complaint lodged by the plaintiff, they went ahead to sale the same to the others with the intent to defraud. See Fredrick Zaabwe V. Orient Bank Limited and others, SCCA No. 4 of 2006 and even those who did not sale, failed to heed to the advice of the Registrar Land Commission per P.10 and 17

107. The above mentioned defendants also did not tender in court any proof of due diligence undertaken before purchase of their respective pieces of land. If adequate investigations had been done by the 4th, 5th, 6th 7th and 8th defendants before purchase, it would have come to their notice that there are already more than two certificates of title issued in respect of the same piece of land because their titles had just been created out of plot 114 and it was easy to establish any fraud at that time.
108. It is also noted by this court that under P.10 the Commissioner Land Registration properly indicated that Block 215 Plot 114 was intact and to date it is still intact without any subdivision. This makes this court to wonder where the so many other titles came from if the plaintiff's title was intact in the Land Registry records. This therefore leads this court to a conclusion that the defendants did not make the necessary investigations before purchase. The law is that failure to do due diligence before purchase, fraud may be attributed to you. In Haji Abdu Nasser Katende V. Vithaalidas Haridas & Co. Ltd CACA No. 84 of 2003 citing the case of Sir John Mageire V. Ausi Matovu CACA No.07 of 1996 where Kikonyogo DCJ quoted Okello JA (as he then was) emphatically stated that: "Lands are not vegetables that are bought from unknown sellers. Land is valuable property and buyers are expected to make thorough investigations not only of the land **but also the sellers before purchase.**"

109. In the case of Livingstone Ssewanyana (Supra) the Supreme Court cleared pronounced itself on this position when it noted that a title created in the subsistence of another title on the same piece of land passes no proprietary interest in the suit land and it is therefore null and void. The same position was reached by this court in Masaba Namunane & Anor Vs. Stirling Civil Engineering Ltd & 4 Others (Supra)
110. Needless to say that the defendants' Duplicate Certificates of Title were issued with no land attached to them, which means they cannot be bona fide purchasers for value without notice over non-existing land.
111. Consequently, it is found that the defendants are not bona fide purchasers without notice.
112. Issue No. 5 is also answered in the affirmative
113. ISSUE NO.6: Whether the title in the name of the 1st counter defendant ought to be cancelled
114. Having found under issue No. 4 that the plaintiff has a lawful and proper title, issue No.6 must naturally be answered in the negative.
115. Counter-claim
116. All the above issues having been resolved in the affirmative, the defendants' counter-claim has to fail.

117. ISSUE NO. 7: What remedies are available to the parties?

118. General Damages

119. Counsel for the plaintiff submitted that the plaintiff suffered great inconvenience, strain, cost, grief, and loss in the pursuit of land that it purchased for value and rightly owns. That it has also been deprived of the benefit of parts of its land due to the continued dealings and trespass by the defendants.

120. In Luzinda v. Ssekamatte & 3 Ors (Civil suit -2017/366 [2020] UGHCCD 20 (13 March 2020), court held that general damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved party for any inconveniences accrued as a result of the actions of the defendant.

121. The court record indicates that the 4th to 8th defendants were warned to stop interfering with the plaintiff's quiet possession of its land since 2001 but continued to do subdivisions and sale, in total disregard of the plaintiff's complaint. This caused a lot of inconvenience and expenditure on the part of the plaintiff company. For that reason, the plaintiff is awarded general damages amounting to 250,000,000/= (Two Hundred and Fifty Million Shillings) to be paid by the 4th to 8th defendants.

122. Interests

123. Counsel for the plaintiff prayed for 25% interest per annum from the date of the commencement of the suits in 2007 until payment in full.
124. In Uganda Revenue Authority vs Stephen Mabosi SCCA No.1 of 1996. Court held that an award of interest is discretionary; the basis of such an award is that Defendant has kept the Plaintiff out of his money and the Defendant has had use of it so the Plaintiff ought to be compensated
125. In the present case, the plaintiff has not adduced any evidence in court to prove the kind of money the defendants kept it out of use. However, this court presumes that since 2001, the plaintiff may have developed the suit land or sold it, but because of the defendants' inconveniences, the plaintiff has been unable to use the suit land.
126. In the circumstance, I find an interest rate of 8% per annum from the date of this judgment till payment in full appropriate.
127. This suit therefore succeeds in the following terms;
- i. The plaintiff is declared the lawful and proper owner of Kyadondo Block 215 Plot 114 land at Kulambiro.
 - ii. It is declared that the defendants' certificates of title were fraudulently and or erroneously issued by the Registrar of titles.
 - iii. It is declared that the defendants are trespassers on Kyadondo Block 215 Plot 114 land at Kulambiro

- iv. A permanent Injunction is issued restraining the defendants and their agents or servants from pursuing or effecting any further subdivisions, transfers, or continued encroachment on the suit land described as Block 215 Plot 114 land at Kulambiro.
- v. All the defendants, their agents, servants, assignees, and or successors are ordered to give vacant possession of the suit land.
- vi. The Registrar Land Registration is ordered to recall and cancel all the defendants' titles and all subsequent titles relating to the suit land.
- vii. The plaintiff is awarded 250,000,000/- as general damages at 8% interest
- viii. Costs of the suit are awarded to the plaintiff

GIVEN under my hand and seal of this court this ^{30th} day of ^{August} 2023

.....*Nyanzi Yasin*.....
NYANZI YASIN
TRIAL JUDGE