

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO.514 OF 2000

EVARISTO MUGABI ----- PLAINTIFF
VERSUS
ATTORNEY GENERAL ----- DEFENDANT

JUDGMENT
BEFORE HON. LADY JUSTICE KANYANGE SUSAN

Background

The plaintiff Evaristo Mugabi sued the defendant Attorney General with other 11 defendants. He claimed that he was the owner of land comprised in kibuga block 29 plots 114 and 115. He sold land to Solome N. Walusimbi on the 12th March 1990. The said Solome Walusimbi breached the agreement and failed to pay the full purchase price. The agent Bumbakali Mulamira who had the duplicate title allegedly told him it had got lost. The plaintiff obtained a special certificate of title.

Later Bumbakali handed over the title deeds without his knowledge to Solome. The said Solome presented forged transfer forms to the servants of the defendant and in collusion the land was transferred fraudulently. Solome N. Walusimbi sold plot 115 to Allen N. Nsubuga on 9th July 1999 and plot 115 to Rowana Ruvuza on 28th June 1999. Later Andrew Ruvuza and Rowana Ruvuza sold plot 115 to Tonny Bafiirawala Kavuma, Allen N. Nsubuga sold plot 114 to Daniel

Nsubuga Kikapyo who registered it in the names of his children Esther Nassuna, David Kasozi, George Mubiru, John Paul Miito and Edith Mulungi Namiiro.

Suit against the 2nd – 12th defendants were withdrawn by the plaintiff and he also settled with the 6th defendant Tonny Bafirawala Kavuma. The caveat lodged by the plaintiff on plot 114 was removed by the Registrar on 1st February 1990 and the plaintiff said he was not notified. The plaintiff has the 1st special certificate of title to plots 115 and 114 of the suit property.

In their defence the 1st defendant denied any liability whatsoever in the fraudulent acquisition of land by the said Solome N. Walusimbi. That the said Solome N. Walusimbi presented a duly signed transfer form for registration and that the caveat lodged by the plaintiff lapsed and there was no collusion, or conspiracy in removing the said caveat.

Representation

The plaintiff an Advocate and represented himself while the 1st defendant was represented by **M/s Adongo Imelda** a Senior State Attorney from Attorney General's Chambers.

Issues

1. Whether the plaintiff has a cause of action against the defendant

2. Whether the defendant's servants and or agents acted fraudulently on the process of transferring the suit property
3. Whether the 1st special certificate of title is valid
4. What remedies are available to the parties

Resolution

1Whether the plaintiff has a cause of action against the defendant.

A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed on every fact which if denied the plaintiff must prove in order to obtain a Judgment. It must be disclosed when its shown that the plaintiff had a right that was violated, resulting in damage and the defendant is liable. This position was reiterated in the Supreme Court decision of **Tororo Cement Co Ltd versus Fokina International Ltd SCCA no 2 of 2001**

The question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached to so as to form part of it. see **Kabonge versus Road Tarmack Ltd versus Npart CA no 3 of 2000.**

In the amended consolidated plaint, in paragraph 3 the plaintiff alleged that he was the registered proprietor of the suit land. paragraph 12, that in collusion with or with assistance of the

servants or agents of the 1st defendant the forged transfer was presented by 2nd defendant for registration. Paragraph 15, that the transactions constituted fraud.

Counsel for 1st defendant submitted there is no cause of action as there was no conspiracy.

I find that since plaintiff alleges his land was fraudulently transferred by help of the 1st defendants servants, then he has a right, that was allegedly violated by the 1st defendant. Issues of fraud and connivance are all triable issues.

I thereby find that there is a cause of action.

2. Whether the defendant's servants and of agents acted fraudulently on the process of transferring the suit property.

Fraud has been defined in the case of **Zaabwe versus Orient Bank Ltd & others SCCA No.4 of 2006** to mean an intentional perversion of truth for purposes 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 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.

In Kampala Bottlers Ltd versus 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 '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 take advantage of such act.

The plaintiff Evaristo Mugabi stated that in March 1990 he instructed one Bumbakali Mulamira to sell his land comprised in kibuga Block 29 plot 114 and 115 located at Mulago village. He introduced Solome Naluwoza Walusimbi as the buyer on 12th March 1990.

They agreed at 16 million shilling and she was to pay down-payment of Shs.5,500,000 on 30-06-1990 though period was extended. A transfer was made and he remained with it. During May 1990 the agent Bumbakali Mulamira reported loss of duplicate certificate of title. He applied for special certificate of title which was issued on 05-09-1990.

Between March 1990 and August 1990 the 2nd defendant and his agent lodged a forged transfer form which was not dated, did not show consideration, it was embossed without consideration, misspelt his name and his signature was purported to have been signed before

Bernard Gwisa. That officials at Land Registry colluded or assisted the 2nd defendant to register forged transfer plot 114 on 28-02-1990 and plot 115 on 26-06-1991.

Entry on each page was made on 28-02-1990 though lodgment on the register was 28-02-1991. He lodged a caveat on 13th-9-1991 and the officials of the defendant conspired to remove it without giving him notice.

On 09-07-1999 the 1st defendant's servants registered a transfer of suit property to the 3rd defendant and on the 09th July 1999 issued a second special certificate to the 1st defendant knowing he had the first one. He also stated the particulars of fraud to wit.

- Registering a fraudulent / forged transfer depriving him of plot 114 on 28-02-1990 and plot 115 on 28th June 1991
- Registering the transfer instead of rejecting it because of the apparent irregularities on its face
- Issuing the 2nd special certificate of title to plots 115 and 114 when they knew that he had the first special certificates of title
- Registering the 2nd defendant transfers to the ,3rd, 4th, and 5th defendants when they knew he had special certificates of titles to plots 114 and 115
- Removing caveat on the suit property without first giving him notice as required



- Colluding with the 2nd defendant to defraud him by falsifying entries on the register
- Issuing a 2nd certificate of title to plot 115 on 09-08-1999
- Registering a caveat by the 2nd defendant on the suit property

PW2 – Eddy Nsamba a registered valuer valued the unimproved land at Mulago. Plot 114 at Shs.460,000,000/= and plot 115 at 500,000,000/=. He said the land was now occupied by other people.

PW3 – Namuwaya Catherine a Principle Government Analyst tendered in a laboratory report authored by Olanya Joseph Okong where it was found that Evaristo Mugabi did not write the questioned signatures on the photocopy of land transfer forms for Block 29 plots 114 and 115.

The plaintiff submitted that registrars falsified entries on the land registers in favour of Solome Naluwoza Walusimbi. They also removed caveat without notifying him. That the suit land was transferred on 28-02-1990 yet he first met Walusimbi on 12-03-1990. That the land was transferred on 28-02-1990 yet affidavit of Solome reads 21-09-1990.

The defendant submitted that they did not act fraudulently but it is the plaintiff who did as he asked for a special certificate on 20th

February 1990 which was issued on 15th March 1990 but transacted with the duplicate certificate at the beginning of March 1990.

That also a notice to caveator of application to remove caveat which was dispatched to the plaintiff on his address of Mugabi & Co. Advocates plot 2 Wilson Road P O Box 5360 – Kampala and endorsed thereon by plaintiff but he did not comply with requirements within 60 days, therefore the period lapsed.

The certificate of title of Block 29 plot No.115 indicates it was registered in the names of Solome Naluwoza Walusimbi on the 28-02-1990. The encumbrance's page shows that the plaintiff Mugabi lodged a caveat on 13th September 1991 and it lapsed. While on certificate of Block 29 plot 114 land was transferred from the names of the plaintiff to Solome Naluwoza Walusimbi on 28th June 1991 and caveat by the plaintiff lodged on 13th September 1991 and it shows it lapsed.

The plaintiff alleges that the transfer form used by Solome Naluwoza Walusimbi to transfer land was not signed by him as she had not paid consideration for the land despite their agreement. His witness PW2 tendered in a report authored by Olanya Joseph indicating he did not sign the transfer forms.

In the case of **Nazmudin Gulam Hussein Viram versus Nicholas Roussous Supreme Court Civil Appeal no 1 of 2006** Basing on the

handwriting experts evidence Justice Tabaro found that the transfer deed was forged.

In instant case the plaintiffs evidence on the forged transfer forms was not rebutted by any defence evidence, thus I find that the transfer forms transferring land to Solome Naluwoza were forged.

The plaintiff also alleged that his caveat was lapsed without giving him notice by the defendant's agents and it was transferred to third parties.

I have examined the titles and found that plaintiff lodged caveat on 13th September 1991 on plots 115 and 114 and it lapsed.

Section 140(2) of the Registration of Titles Act prescribes the legal process for the removal of the caveat.

It states that 'Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any Will or settlement or by the Registrar, every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of sixty days after notice being given to the caveator that the proprietor has applied for the removal of the caveat.

In the case of **Emmy Tumwine and 6 others versus Administrator General and Saul Kisiribombo Rumanda Civil Suit no 92 of 2010** lady Justice Nkonge Rugadya held that it is a violation of S.140(2) of

the Registration of Titles Act for the proprietor not to have notified the plaintiffs of the intended removal of the caveat.

While in the case of **Teopista Mugenze versus Pascal Byron Mugenze & 2 others civil suit No.166 of 1992** Lady Justice Monica Mugenyi had this to say 'that the removal of the caveat lodged by the plaintiff with blatant disregard for prescribed legal process did smirk of dishonest dealings in land.'

The defendant submitted that a notice to remove caveat was dispatched to the plaintiff on his address, he did not comply with the requirements and the period elapsed.

In the caveat lodged by the plaintiff dated 11th September 1991 for Block 29 plots 114 and 115 land at Mulago he appointed M/s Mugabi and Co. Advocates plot No.2 Wilson Road P O Box 5360 Kampala as the place at which notices and proceedings related to the caveat may be served.

The defendant tendered in a notice to caveator of application to remove a caveat dated 15th February 1999. It was addressed to Evaristo Mugabi and Co. Advocates P O Box 5360 Kampala and has a stamp of Uganda Posts and Telecommunications corporation, certificate of posting.

I find that the notice of removal of Caveat was duly served on the plaintiff at his address P.O Box 5360 Kampala and no step was taken by him.

The plaintiff alleged that the servants of the defendant acted fraudulently in the process of transferring the suit property.

The standard of proof of fraud is well settled. Fraud must be strictly proved. see **Ratlal G Patel versus Banji Makanyi 1957 EA 314 pg 317**

It is the duty of the plaintiff to prove his case against the defendant. see **Section 101 of the Evidence Act.**

Fraud must also be attributable to the transferee see case of **Kampala Bottlers Ltd versus Damanico U Ltd (supra)**

The plaintiff has not demonstrated in his evidence how the commissioner land registration or government made an intentional perversion of truth for the purpose of registering a forged transfer form. No concrete evidence was led to prove that the servants of government knew the transfer was forged or that Solome had not paid all the consideration.

The plaintiff dropped cases against Bumbakali the broker and Solome the alleged transferees and faulted the servants of government and is asking to be paid 960,000,000 shillings as compensation.

In the case of **Tucker Mubiru versus AG Civil Appeal no 84 of 2013** court of Appeal found that where government is not a transferee of the suit land, it would ordinarily not be liable for fraud, and it would be impossible to impute fraud on the Attorney general under the circumstances.

I thereby find that the servants or agents of the defendant did not act fraudulently in transferring the suit property.

2. Whether the 1st special certificates of title to the suit land now with the plaintiff are valid

The plaintiff submitted that he was issued with special certificates of title which were exhibited in court. They are now not there and after their removal, the defendant sold and transferred the suit land to the former defendants.

In reply the defendants submitted that the plaintiff requested for a special certificate of title on premise that the original got lost and same was issued by the Registrar.

Section 70 of the Registration of Titles Act provides that if the duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, the person having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land on the title

to the land to the best of the deponent's knowledge information and belief and the Registrarmay issue a special certificate of title.

On 20th February 1990 the plaintiff applied for special certificates of title of plot 115 though he said that Bumbakali told him title was lost in May 1990. Special certificates title were issued one of plot 115 on 15th March 1990 and that on plot 114 on 5th September 1990. Plaintiff claims he was introduced to Solome on 17th March 1990. I thus agree with counsel for defendant that plaintiff was dealing in the land especially plot 115 when he had both special certificate and duplicate certificate of title.

Solome Walusimbi applied for a 2nd special certificate for plot 114 and stated that the 1st special certificate of title and the duplicate certificate of title issued earlier have to be cancelled. In her affidavit she stated that the 1st special certificate of title was applied for when she had the duplicate certificate of title.

In order to put record right she applied to cancel duplicate and 1st special certificates of title. The said Solome subsequently transferred the land to third parties.

I thus find that 1st special certificates of title are no longer valid since they had been issued on basis that duplicate certificate was lost but Solome had the duplicate certificate of title and it was

cancelled. A second special certificate of title on plot 114 was issued on 9th August 1999.

In conclusion the plaintiff has failed to prove his case its hereby dismissed with costs.

DATED AT KAMPALA THIS 28th DAY OF Sept 2023

KANYANGE SUSAN

AG JUDGE LAND DIVISION