

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT No. 67 of 2013

SSERUMAGA WILLIAM ===== PLAINTIFF
VERSUS

EMMANUEL KAZIBWE =====DEFENDANT

BEFORE: HON. LADY JUSTICE FLAVIA NASSUNA MATOVU
JUDGMENT

1. INTRODUCTION

The Plaintiff filed this suit against the defendant seeking for cancellation of the defendant's names from the certificate of title to land comprised in Kyaddondo Block 265 Plot 817. He claimed that at all material times he was the unregistered purchaser of the suit land having purchased the same from the then registered proprietor Princess Nalinya Kasalina Nkinzi on 3/3/1975. After purchase of the said land he took possession of the same and fenced it off but did not acquire registration of the same on to the certificate of title. In October 2006, the defendant fraudulently acquired the suit land from the said Kasalina Nkinzi. He however failed to utilise the said land due to resistance from the plaintiff. The plaintiff thus filed the instant case seeking for;

- a) declaration that the land comprised in Kyadondo Block 265 Plot 817 belongs exclusively to him.

- b) declaration that the said land was transferred to the defendant when it was not available to the late Catherine Nkinzi for grant to the defendant.
- c) declaration that the defendant's title to the suit land was obtained fraudulently and thus null and void.
- d) an order directing the Registrar of Titles to cancel the defendant's names from the certificate of title and replace them with those of the plaintiff.
- e) an order that the defendant delivers the certificate of title to the plaintiff for cancellation.
- f) A permanent injunction be issued restraining the defendant, his servants and agents from laying any further claims to the suit land or interfering with it in any way.
- g) General damages for fraud and inconvenience, and costs of the suit.

The defendant on the other hand denied having acquired registration of the said land fraudulently. He maintained that he acquired the same from one Busulwa Alex and Fred Sinnabulya who had got the said land from Kasalina Nkinzi as a gift. That before purchase he conducted a search from the land registry and ascertained that the same was registered in the names of Kasalina Nkinzi. He also inquired from the said Nkinzi who confirmed to him that she had donated the said land to Sinnabulya and Busuulwa. He consequently bought from these two people but got the transfer documents from Nkinzi. He thus called upon the court to dismiss the case with costs.


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2. **BACKGROUND:**

i. The suit land formerly belonged to the late Nalinya Kasalina Nkinzi now deceased. In 1971, the plaintiff allegedly purchased a Kibanja on the said land from one Amitai Lwanga and started utilising it as a farm. On the 3rd of March, 1975, he bought registrable interest in the said kibanja from Nkinzi who consequently signed for him all the necessary transfer documents. However he did not effect transfer of the land into his names and in 2006, the defendant acquired the same land from Busulwa and Sennabulya who had allegedly acquired it from Kasalina Nkinzi as a gift. The said land is currently registered in the names of the defendant and the plaintiff claimed that the said registration was tainted with fraud based on the following particulars

- The defendant based his purchase on an agreement which was forged or appeared to be forged.
- The defendant bought the suit land with full knowledge that it did not belong to the late Kasalina Nkinzi and the vendors.
- The defendant did not exercise due diligence before buying and registering the land into his names.
- The defendant bought the suit land fully aware that it was part of the farm owned by the plaintiff and or he bought the land without caring to know who owned the farm.
- The defendant conducted a search on the land from the local authorities after buying and registering the land into his names.


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- The defendant registered himself on the suit land in order to defeat the plaintiff's interest in the same.
- The defendant abstained from making the relevant inquiries for fear of learning the truth regarding the property he was going to buy.
- The consideration he paid for the suit land was excessively far below the true sale value of an acre of land in that location at that given time.

b) The defendant on the other hand insisted that the late Kasalina Nkinzi donated the suit land to Busuulwa Alex and Fred Ssinabulya in gratitude for the work they had done for her, but the same remained in her name on the Blue page certificate of title in the Land Office. That in April, 2006, he purchased the suit land at Ugx 15,000,000/- (Uganda Shillings Fifteen Million Only) from the said Busuulwa Alex and Ssinabulya Fred.

That Busuulwa Alex and Ssinabulya Fred introduced the him to the late Kasalina Nkinzi who signed a transfer instrument and mutation form in his favour

A resurvey of the area was then conducted and a duplicate certificate of title was issued to him in October, 2007.

The defendant therefore maintained that the plaintiff was a trespasser and was not in possession of the suit land at the time he purchased it.


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3. ISSUES

- a. Whether the plaintiff was in possession of the suit land at the time the defendant purchased the same.
- b. Whether the plaintiff has any interest in the suit land .
- c. Whether the defendant is a bonafide purchaser for value without notice of the plaintiff's unregistered interest in the suit land.
- d. Whether defendant acquired registration of the suit land fraudulently.
- e. What remedies are available to the parties?

4. LEGAL REPRESENTATION:

The plaintiff was represented by M/s Mbogo & Co. Advocates while the defendant was represented by M/s Lutakoome & Co. Advocates.

5. LAW APPLICABLE:

The Constitution of the Republic of Uganda, 1995.

The Land Act, Cap 227.

The Registration of Titles Act, Cap 230

The Judicature Act, Cap 13

The Civil Procedure Act, Cap 71

The Limitation Act.

The Civil Procedure Rules,

Common law and Case law.


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6. PLAINTIFF'S EVIDENCE

- a) The plaintiff called two witnesses who both gave sworn evidence and closed his case.
- b) PW1 was William Serumaga, the plaintiff. He testified that he was the unregistered purchaser of the suit land. That 12/2/1971 he bought a kibanja covering the suit land from late Amitai Lwanga. Subsequently on 3/3/1975, he bought registrable interest of the land on which the kibanja was situated from Princess Nalinya Kasalina Nkinzi the registered proprietor at Ug. Shs. 5000 which he paid in instalments. That he had a cattle farm next to the land and after purchase he expanded his farm to cover the said land. He named the said land "paddock No. 6" and fenced it off with materials that he bought from Ministry of Animal Health Veterinary Department.
- c) After purchase the said Nkinzi executed for him transfer and consent to transfer form. However, he did not effect transfer of the land into his names because during that time all land in Uganda was declared public land by Amin's Government. That eventually his documents got misplaced and was only able to trace them in 2005 but still feared to submit them to land office for registration because he thought they would be stolen. That in 2007 he embarked on the process of registration of the said land into his names and Nkinzi signed for him mutation forms and the land was to be resurveyed to ascertain the acreage. It was during the resurvey exercise that the Chairman LC 1 called him and informed him that the

defendant had presented to him documents purporting to have bought plot 817 next to his land. He then went to the chairman's place and on reaching defendant showed certificate of title to plot 817 and a letter allegedly written by Ninzi to the effect that she had given plot 817 to Fred Sennabulya and Alex Busuulwa. Defendant alleged that he had bought the said land from these two people at Ug. Shs. 15 million. The plaintiff tendered to court several documents in support of his case which I have carefully studied.

d) In cross examination, he stated that at the time he bought from Nkinzi, the land had no plot number and he did not know when plot 817 was established. He did not put any caveat on the said land. That the process of selling the suit land to the defendant was false.

e) PW2 was Peter Wasswa, the chairman LC 1 Bunamwaya Ngobe B. He testified that that he had been in the area since 1968 and had known the plaintiff since 1971. That the plaintiff had owned a farm and forest in Bunamwaya. That the plaintiff first acquired the suit land as a kibanja and he later bought land from Nalinya Nkinzi. That the plaintiff had been using the said land as one of his paddocks. However in 2006, the defendant went to their office with a complaint that he owned the plaintiff's plot, the same having been sold to him by Busuulwa and another. He invited the two parties to his office but the defendant did not attend. Instead he sent a sales agreement.


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- f) In cross examination, PW2 testified that he settled in Bunamwaya in 1968. That he could not recall the plot number of the land that Sserumaga bought and he was not present when the plaintiff bought the suit land. That the plaintiff never lodged a caveat on the suit land and that when that he received a complaint from the defendant that plaintiff had trespassed on his land and he forwarded the parties to court in 2006. Further that the plaintiff showed the local authorities the sale agreement through which he purchased the suit land, but did not have a certificate of title and the defendant presented to the local authorities his certificate of title.
- g) In re-examination, he stated that he knew the Plaintiff as his village mate having stayed in Bunamwaya Ngobe for many years. He never knew the Defendant until he came later claiming the suit land.

7. DEFENDANT'S EVIDENCE:

- a) The defendant called three witnesses who all gave sworn evidence.
- b) DW1 was Emmanuel Kazibwe, the defendant himself. He testified that in 2006, he was informed by one Joseph Semanda that there was a plot of land for sale at Bunamwaya. Semanda led him to Alex Busuulwa and Sennabulya Fred who informed him that Princess Kasalina Nkinzi had donated to them land comprised in Kyaddondo Block 265 Plot 817 as reward of services rendered by them to her. They informed him that the

land was still registered in the names of Nkinzi. He inspected the land and found it was bushy and not developed. He went to Nkinzi who confirmed that she had donated the land to the two men. He conducted a search at the land registry and ascertained that that land was registered in the names of Nkinzi without any incumbrances. He also discovered that the suit land Plot 817 was on a Blue page certificate of title. Nkinzi then told him that she was ready to sign transfer forms in his favour upon payment of the agreed purchase price. He then paid the agreed purchase price of Ug. Shs. 15 million to Busuulwa and Sennabulya whereupon Nkizi executed transfer forms in his favour. That the plaintiff did not have any valid claim to the suit land. The defendant tendered to court several documents in support of his case which I have carefully studied.

- c) In cross examination he testified that before purchasing the land, he did not visit any neighbours to make inquiries because he was informed by the late Nkinzi that she owned all the land and she was the one who had also sold to the neighbours. That when he inspected the land, Kasalina Nkinzi was not present but was represented by Alex Busuulwa and Fred Ssenabulya who had powers of attorney to represent her. That before he bought the suit land, he conducted a search in the land registry and ascertained that the land was in the name of the late Kasalina Nkinzi. That during the transaction, he did not consult the local council authorities because he trusted


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Fred Ssenabulya and Alex Busuulwa. He contended that the plaintiff was not in possession of the land because at the time of inspecting the land, it was a bush. That he was unable to take possession of and utilise the land because he was stopped by the local authorities when they asked him to present documentation.

d) In re-examination, he stated that he found out about the availability of the land through a friend of his called Joseph Semanda.

e) DW2 was Busuulwa Alex. He testified he was one of the workers of Nkinzi's Mailo land which was measuring about 4 acres and that Nkinzi died in 2009. That in April 2006, as a reward for the services rendered to her, Nkinzi donated to him together with Sinnabulya Fred the suit land measuring about one acre. That before she could execute transfer in their favour, they decided to sell the land to defendant at Ug. Shs. 15 million. They requested Nkinzi to execute a transfer directly to the defendant and she accepted. That the plaintiff had no valid claim to the suit land.

f) In cross examination DW2 insisted that before late Nkinzi donated the land she took them to the land and showed it to them. That the land was not fenced, it was a forest, was not fenced and could be accessed without going through the plaintiff's land. That the defendant failed to use the land because the plaintiff made it impossible for him to do so. That when the land was donated to him, he neither used it nor fenced it off. That the agreement of donation dated 27/4/2006 was written by Kasalina Nkinzi and he could not


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explain why the ink of the plot number was different from that of the entire document.

f) DW 3 was Senabulya Fred. He testified that he together with DW2 were caretakers of Nkinzi's land in Bunamwaya. In 2003 he identified Plot 817 which was vacant. In 2005, Nkinzi donated this plot to him as a reward for services rendered to her but she did not sign transfer forms immediately. In 2006, they decided to sell the said land. They sold it to the defendant and that the plaintiff did not have any interest in the suit land. In cross examination he stated that they sold the land to the defendant at 15 million whereupon Nkinzi signed transfer forms in his favour.

8. LOCUS PROCEEDINGS.

The court visited locus in this case. At the locus the court observed that the suit land was fenced off by the plaintiff and could only be accessed through the plaintiff's home. The defendant and his witnesses had to jump over the barbed wire fence to access the land

The plaintiff identified the suit land and he stated that he used it for grazing animals and had named it paddock 6. He showed court the fence that he put in 1972. Court noted that the barbed wire had become in-grown into the trees surrounding the land and that there were climbing trees that had grown over the fence over time.

The defendant informed court that at the time of his purchase, there was no fence on the suit land. He contended that the barbed wire is a recent addition and because the matter has

taken long which explained the in-grown nature of the fence. He also showed court land above the suit land as the access road to the suit land.

9. SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF.

- a) Counsel for the Plaintiff filed written submissions which I have carefully studied and need not reproduce them here. Briefly he submitted that the plaintiff had been in possession of the suit land since 1971 when he bought the kibanja interest and eventually also acquired the legal interest from Nalinya Kasalina Nkinzi. That the receipts of fencing materials bought by the plaintiff to mark off paddock 6 which were tendered as P Exh. 7 were proof that the plaintiff took possession of the suit land.
- b) He submitted that the plaintiff is an unregistered proprietor. He cited the case of **Norah Nassozi & Anor v. George William Kasule; Civil Appeal No. 5 of 2012**, wherein it was held that equity considers a gift complete as soon as the donor has done that which ought to be done, and it is immaterial whether the donee registers a transfer. That since Kasalina Nkinzi had signed the transfer and mutation forms, the land belonged to the plaintiff and his delay to execute a transfer did not in any way negate his proprietorship.
- c) As to whether the defendant was a bonafide purchaser for value without notice, counsel submitted that the defendant did not in anyway intend to obtain a good title. That it was incomprehensible that the land was donated by Kasalina


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Nkinzi to DW2 and DW3 on 27th April, 2006 and on the same day, it was sold to the defendant. That whereas the sale agreement adduced as evidence of the defendant is dated October 12th, 2006, the transfer forms by the late Kasalina Nkinzi had been signed back on the 27th of April, 2006. That at the time, Kasalina Nkinzi owned a square mile of land at Bunamwaya and the same had not yet been subdivided to indicate particular plots. That the defendant did not conduct the necessary due diligence when he only conducted a search in the land registry, but did not consult the local council authority or the neighbours about the ownership of the land.

d) Further, it was contended that the money paid by the defendant to purchase the suit land in 2006 was way below the market value of the land at the time and it should have alerted him that there was a problem with the transaction.

10. SUBMISSIONS BY COUNSEL FOR THE DEFENDANT.

a) Counsel for the defendant also filed written submissions which I have carefully studied and need not reproduce them here. Briefly he raised a preliminary objection to the effect that that the suit was time barred and ought to be dismissed. His argument was that if the plaintiff bought the mailo interest in the suit land on the 3rd of March, 1975, his failure to effect a transfer into his name to date has rendered his claim to the suit land a nullity.

b) With regard to the proprietary interests in the suit land, he submitted that the failure of the plaintiff to present the


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original sale agreement of the kibanja interest between Amitai Lwanga and himself put the consequent claim of the mailo interest in question. He argued that since there was no proof of the original kibanja interest, the plaintiff had no proprietary interest in the land.

- c) He further submitted that the plaintiff's failure to lodge a caveat on the suit land under section 139 of the Registration of Titles Act denied him any protection under the law. That there was no way the defendant would have known that there was an earlier purchase by the plaintiff in 1975. He further submitted that the lack of consent of Kasalina Nkinzi to the kibanja purchase nullified the transaction.

11. SUBMISSIONS IN REJOINDER

In rejoinder, Counsel for the plaintiff submitted that the contract of sale between the defendant and Alex Busuulwa and Fred Ssenaabulya was illegal from the onset and that it should not be condoned by this court. He cited the case of **Makula International v. Cardinal Nsubuga [1982] HCB** wherein it was held that court cannot condone an illegality to pray that this court holds the same in this matter.

Counsel also clarified that the Plaintiff only started the process of acquiring a title to the suit land in 2007 when he approached Kasalina Nkinzi to sign transfer and mutation forms and by then, plot 817 had already been formed.


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12. DECISION OF COURT.

a) The plaintiff had a duty to prove his case against the defendant on a balance of probabilities except for the allegation of fraud where the standard is slightly above balance of probabilities though not beyond reasonable doubt.

b) Counsel for the defendant raised an objection to the effect that the plaintiff's suit was time barred. He based this on the fact that the plaintiff based his claim on a transfer document that was signed by the then registered proprietor in 1975 which was over 40 years ago and therefore the case was barred by limitation.

S.5 of the Limitation Act provides that no action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or her or, it first accrued to some person through whom he or she claims to that person.

In the instant case, the right of action first accrued to the plaintiff when he realised that the defendant was also claiming interest in the land which he had also bought. Before then he had no reason to file any suit against anybody. This was in 2006 and he filed the suit in 2012. The plaintiff's suit is therefore not barred by limitation and the objection raised by counsel for the defendant is hereby overruled.

Issue 1:


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Whether the plaintiff was in possession of the suit land at the time the defendant purchased the same.

- a) PW1 who was the plaintiff testified that he had been in possession of the suit land since 1971. That he first acquired kibanja interest when he purchased the same from one Amitai Lwanga on 12/1/1971. In support of this fact, he tendered to court an agreement of purchase which was admitted as PEXH 1. Whereas counsel for the defendant submitted that the plaintiff did not avail the original agreement and for that reason court should not rely on the same, perusal of the court record shows that the photocopy was accepted by court after seeing the original agreement. I therefore have no reason to doubt that indeed the plaintiff bought kibanja in 1971.
- b) Plaintiff further testified that he later bought registrable interest in the land from the registered proprietor Nkinzi on 3/3/1975. In support of this fact he also tendered a sale agreement which was admitted as PEXH2. A photocopy of the sale agreement was also accepted by court after seeing the original . That he had been in occupation of the said land since 1971 and had used it as a paddock. His evidence was corroborated by that of PW2 Peter Wasswa who testified that the plaintiff had been utilising the suit land since 1971.
- c) The defendant, on the other hand, testified that after his purchase of the suit land, he took possession of the suit land by constructing a shelter on it, but the same was demolished by the plaintiff and he was dispossessed of the suit land to this date. This simply confirmed that the

defendant never ever effectively took possession of the suit land after his purchase.

- d) The two plaintiff witnesses were consistent in their respective testimonies and I had no reason to doubt them. At the locus the court saw that the plaintiff was indeed in possession of the suit land and from the features on the land it could be seen that he had been in possession for a long time.
- e) I am therefore convinced that by 2006 when the defendant allegedly bought the suit land, the plaintiff was already in actual possession of the same and I resolve the first issue in the affirmative.

Issue 2:

Whether the plaintiff has any interest in the suit land.

- a) As already found above the plaintiff has been in possession of the suit land since 1971. He was in possession of the suit land first as a kibanja holder and subsequently as someone who had purchased registrable interest from the registered proprietor even though he had not yet effected registration of the same.

In the case of **Kaggwa Michael v. Apire John**¹, it was observed that possession confers a possessory title upon a holder of land and a recognisable enforceable right to exclude all others but persons with a better title and that possession of land is in itself

¹High Court Civil Appeal No. 126 of 2019


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a good title against anyone who cannot show a prior and therefore better right to possession.

b) In the instant case, it is clear that the plaintiff was the one in actual possession of the suit land . There is nothing on record to show that the former registered proprietor, Nkinzi ever contested the plaintiff's occupation and use of the suit land. On the contrary evidence shows that 4 years later Nkinzi sold registrable interest to the plaintiff in respect of the same portion of land. This implies that he utilised it with her consent. The defendant on the other had has never acquired actual possession of the suit land from the time of his purchase to the present day.

c) I therefore find that plaintiff has an equitable interest in the suit land both as a kibanja owner and as a purchaser of a registrable interest in the land.

Issue 3:

Whether the defendant is a bonafide purchaser for value without notice of the plaintiff's unregistered interest in the suit land.

a) As already stated, at the time the defendant allegedly purchased the suit land, the plaintiff already had an equitable interest in the same both as a kibanja owner and as purchaser of registrable interest and was also in actual possession of the same. In the case of **Amrattal Purshottan & Anor**² it was held that a bonafide purchaser is a person who acquires property without actual or

² HCCS. No. 289 of 2010.


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constructive notice of any defect in title. The person must have in good faith paid valuable consideration for property without prior notice of any adverse claim and one who has exercised due diligence as well as reasonable caution before entering into a transaction would be a bonafide purchaser.

- b) In the instant case, the defendant claimed to be a bonafide purchaser for value of the suit land who had purchased the same for valuable consideration of 15 million without notice of the plaintiff's unregistered interest in the suit land and consequently acquired registration of the same. I must however note that the defendant allegedly purchased the suit land from two people i.e. Sennabulya and Busuulwa Alex. Whereas Busuulwa (DW2) testified that the reward was in April 2006, Senabulya (DW3) testified that the reward was in 2005 which raised doubt as to whether they were both truthful. In addition, these two people were neither registered proprietors of the suit land nor in possession of the same. They claimed to have got the said land as a gift/donation from the registered proprietor, Nkinzi by virtue of a gift deed that had been executed in their favour on 27/4/2006. This gift was equally not registered on the title. The said Nkinzi was also not in actual possession of the land and as already stated the plaintiff was the one in actual /physical possession of the same.
- c) In light of the above circumstances, the defendant a duty exercise due diligence and ascertain the interest of the person who was in actual possession of the land . He ought

to have made inquiries from neighbours to the land or better still the Local Council Committee members of the area. In his testimony he stated that he did not do so.

d) Due diligence is defined as *"a measure of produce or activity to be expected from, and ordinarily exercised by a reasonable or prudent man under the particular circumstances, not measured by an absolute standard but dependent on the relevant facts of a particular case."*³ Suffice to note that notice will be implied upon a party if he/she neglects to make reasonable inquiries into a particular set of facts⁴. The circumstances of this case required the defendant to make inquiries from neighbors and LC'S before purchase since neither the vendors nor the registered proprietor were in actual possession of the suit land.

e) The defendant testified that he conducted a search on the land, but did not find it necessary to inquire from the neighbors because all the land was initially owned by the late Kasalina Nkinzi. He also testified that he did not find it necessary to inquire from the local council chairperson because he had already interacted with Kasalina Nkinzi who confirmed that she owned the land. In my view this was not due diligence on his part. In the case of **David Ssejjaka Nalima v. Rebecca Musoke**⁵, the Court of Appeal found that failure to make inquiries negates the exception of one being a bonafide purchaser for value without notice and imputes fraud upon him/her. Further in the case of **Rogers Kalyegira Eulogius v. Irene**

³ Black's Law Dictionary, 2nd Edition

⁴ Cheshire and Burns *Modern Law of Real Property* 16th Edition at page 60

⁵ Civil Appeal No. 12 of 1985


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Rukundo Potts⁶; it was held that conducting a search in the land registry is not enough. One ought to conduct a physical search on the land to establish possession and also ask the neighbors about the state of the land.

f) Had the defendant exercised due diligence by inquiring from the neighbors and the LC'S of the area he would have established that indeed the suit land was already being utilized by the plaintiff and would have ascertained that the plaintiff had already purchased the same from the registered proprietor and that the land was therefore not available for purchase.

I therefore find that the defendant was not a bonafide purchaser for value without notice of the plaintiff's unregistered interest in the suit land.

Issue 4 :

Whether defendant acquired registration of the suit land fraudulently.

a) Fraud relates to acts of dishonesty by a party. In the case of **Fredrick Zaabwe vs. Orient Bank & 5 others**⁷ the supreme court 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 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

⁶ High Court Civil Suit No. 181 of 2019

⁷ Civil Appeal No. 4 /2006


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and is intended to deceive another so that he shall act upon it to his legal injury". In **Kampala Bottlers Ltd vs. Domanico (u) Ltd**⁸. the supreme court guided that for one to succeed in case of fraud, the plaintiff must prove that there acts of dishonesty, attributable to the defendant or that the defendant knew of such acts and took advantage of them. I must note that the standard of proof of fraud is slightly higher than balance of probabilities though not beyond reasonable doubt.

- b) In the instant case, the defendant testified that he bought the suit land from Sennabulya and Busuulwa who had received the same as gift from the then registered proprietor. That before purchase he contacted the registered proprietor who confirmed that she had indeed donated the land to the vendors and accepted that she would sign transfer forms directly into his names upon payment of the purchase price. However, the evidence on record shows that whereas the alleged agreement of purchase was executed on 12/10/2006, the transfer instrument in favor of the defendant was executed by the registered proprietor on 27/4/2006 which was months before the alleged purchase. No explanation was given by the defendant to explain this anomaly.
- c) Surprisingly it is on the same date that the donation deed was allegedly executed that the registered proprietor allegedly executed transfer form in favor of the defendant. None of the defense witnesses explained this anomaly. It is

⁸ SCCA No. 22 of 1992


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therefore clear that on 27/4/2006, when Nkizi signed the transfer form in favor of the defendant, the defendant had not purchased the suit land. I failed to appreciate why Nkinzi signed the transfer form in favor of the defendant before the defendant bought the suit land yet all the defendant witnesses testified that it was agreed that she would sign after the defendant had paid the purchase price. The defendant definitely misrepresented to her that he had paid the purchase price on basis of this misrepresentation she signed transfer forms in his favor. This was an act of dishonesty and fraud on the part of the defendant. This, coupled with the fact that the defendant was not a bonafide purchaser for value without notice of the plaintiff's unregistered interest in the land further confirms the defendant's fraudulent dealing in the land.

- d) I therefore find that the defendant acquired registration of the suit land fraudulently and resolve this issue in the affirmative.

Issue 5 :

What remedies are available to the parties?

- a) The plaintiff prayed that he be declared the rightful owner of the suit land. As already found above, the plaintiff had an equitable interest in the suit land both as a kibanja owner and purchaser of registrable interest in the same. The defendant on the other hand was not a bonafide purchaser and acquired registration of the suit land fraudulently. Whereas it is true that a certificate of title is conclusive


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proof of ownership of the land to which the title relates, the same can be impeached for fraud. Having found as above, the plaintiff is hereby declared the rightful owner of the suit land.

- b) Consequently, the Registrar of titles is hereby directed to cancel the registration of Emmanuel Kazibwe as the proprietor of land comprised in Kyadondo Block 265 Plot 817 and register Sserumaga William as the rightful owner.
- c) The Plaintiff also prayed for damages. It is clear that the plaintiff has definitely been inconvenienced by the defendant's unlawful acts as discussed above. He is thus entitled to general damages for the said actions. The plaintiff claimed for 50 million . However from the evidence adduced it is clear that the plaintiff has never been deprived of use of the suit land from the time he acquired it to the present day. He has only been inconvenienced by the fact that it has not been possible for him to be registered on to the title normally without recourse to court. In my view a sum of Ug. Shs. 5 million as general damages would suffice.

13. FINAL ORDERS:

Judgement is hereby entered for the plaintiff against the defendant in the following terms;

- a) The plaintiff is hereby declared to be rightful owner of the land comprised in Kyadondo Block 265 Plot 817.
- b) The Registrar of Titles is hereby directed to cancel the name of Emmanuel Kazibwe from the certificate of title of the


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land comprised in Kyadondo Block 265 Plot 817 and substitute it with the name of Sserumaga William.

- c) The defendant should hand over the duplicate certificate of title to the Registrar of Titles for cancellation.
- d) A permanent injunction is hereby issued restraining the defendant, his servants, agents, employees or anybody claiming under him from laying any further claims on the suit land or in any way interfering with the plaintiff's possession of the same.
- e) The defendant shall pay Ug.shs. 5 million to the plaintiff as general damages.
- f) The defendant shall pay costs of the case to the plaintiff.

Dated at Kampala this 14th day of November 2023.



FLAVIA NASSUNA MATOVU
JUDGE