

their application for extension of the lease. It was also argued that the circumstances under which Kampala District Land Board handled the application for extension and its failure to conduct due diligence and visit the suit land amounted to fraudulent conduct.

78. In the case of *Kampala District Land Board & Chemical Distributors v. National Housing and Construction Corporation*, Civil Appeal No. 2 of 2004, the Supreme Court of Uganda (per Benjamin Odoki, CJ) held that:

“It is now well settled that to procure registration of title in order to defeat an unregistered interest amounts to fraud.”

79. In the case of *Kampala District Land Board & Chemical Distributors (supra)*, the Supreme Court of Uganda (per Benjamin Odoki, CJ) citing the case of *John Katarikawe v. William Katweremu & Others (1977) H.C.B.187*, further held that:

“Although mere knowledge of unregistered interest cannot be imputed as fraud under the Act, it is my view that where such knowledge is accompanied by a wrongful intention to defeat such existing interest that would amount to fraud.”

80. The evidence on record shows that on the 29th March 2006, the 2nd defendant was granted a new lease by Kampala District Land Board and a certificate of title was issued (Exh.P16). The new lease granted to the 2nd defendant purports to include land claimed by the plaintiffs (Plot 4 measuring 0.205 Hectares). The circumstances under which the new lease was granted by Kampala District Land Board are not clear.

81. Going by the procedures for obtaining new leases laid out in the *Land Regulations (2001)*, Kampala District Land Board ought to have conducted due diligence on the land sought to be leased including a physical inspection of the land, in which case they would have discovered that the plaintiffs hold an equitable interest in the land in the form of St. John's Guest House, as confirmed by court during the locus in quo visit.
82. In short, Kampala District Land Board acted in error by granting a new lease to the 2nd defendant that purported to include the land and developments owned by the plaintiffs without taking into account the plaintiff's equitable interest.
83. DW2 (Hope Mugenyi) in her testimony (cross examination) stated that:
"I visited the land before purchase. There were so many structures including a house/structure. I don't know if it was a guest house [...] When court visits the land, I can show you the structure in question [...] When I visited the land the seller was with me [...] I have never taken possession of the plaintiffs' land. I never filed any suit against the plaintiffs [...] I have never developed the land because our plan includes the area where the guest house is."
84. It is abundantly clear that the 3rd defendant purchased the land subject to the equitable interest of the plaintiffs. DW2 (Hope Mugenyi) confirmed that she inspected the land in the presence of the seller prior to signing the purchase agreement and saw a building on the land. She stated that she did not know if that was St. John's Guest House. However, during the locus in quo visit to the land, I was shown the building housing St. John's Guest House which sits on the suit land (Plot 4).



85. The position of the law as stated above is clear (*see Kampala District Land Board & Chemical Distributors (supra)*). There is no way that the equitable interest of the plaintiffs that was so visible to all the interested parties could be defeated by the 3rd defendant procuring a certificate of title.
86. It is my holding therefore, that the inclusion of the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares owned by the plaintiffs in the lease granted to the 2nd defendant was fraudulent.
87. On the basis of the evidence on court record and as per my findings in Issues No. 1 & 3, it is my finding is that the 3rd defendant did not acquire good title over the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares owned by the plaintiffs. Kampala District Land Board had no legal capacity to lease land over which the plaintiffs owned an equitable interest in the form of physical developments on the land (St. John Guest House).
88. The plaintiffs own property on land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala, which according to the uncontested evidence on record is valued at UGX 2 billion (see Exh.P12 and the testimony of PW4 (Paul Mungati)).
89. It was not possible in law, for the grant of a certificate of title for the land comprised in land comprised Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 to the 2nd defendant and the subsequent sale to the 3rd defendant to extinguish the equitable interest in Plot 4 owned by the plaintiffs.

90. Therefore, it is my finding that the plaintiffs own an equitable interest in land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala.
91. Further, it is my finding that the subsequent acquisition of the land comprised Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 by the 3rd defendant had no effect on the plaintiffs' equitable interest in Plot 4.
92. The plaintiffs failed to adduce evidence to prove fraud to wholly impeach the 3rd defendant's certificate of title for the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 (*see Bugembe v Eriaku & Anor [2018] UGHCLD 16*). The plaintiffs have only succeeded in proving that their land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares does not form part of the 3rd defendant's certificate of title.
93. Accordingly, it is my finding that certificate of title for the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 shall be rectified to deduct land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares. The 3rd defendant shall be the lawful owner of the remainder of the land after the plaintiffs' land measuring 0.205 Hectares has been deducted.

Issue No.8: What remedies are available to the parties?

94. This court is vested with power to direct the Commissioner for Land Registration to cancel illegally obtained certificates of title; rectification of certificates of title containing errors; and reinstatement of certificates of title

compensation payable to the plaintiff; and iii) that some law for the time being in force authorises the award of exemplary damages (*Rookes v. Bernard [1946] ALL ER 367*).

98. Having regard to the evidence on record and the law, it is my decision that the plaintiffs are not entitled to an award of exemplary damages.

General damages

99. The plaintiffs prayed for the award of general damages. According to the evidence on record, despite the existence of a legal dispute between the parties, the plaintiffs have all along been in possession of land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close on which they operate a business known as St. John's Guest House. In my opinion, a claim for general damages has not been established, and I therefore decline to award general damages.

Costs

100. In the interest of promoting reconciliation between the parties as required by *Article 126 (2) (d) of the Constitution of Uganda (1995) as amended*, I order that each party shall bear its own costs.

Summary of main findings:

101. Before I issue my final orders in this case, I wish to summarise my main findings as follows:

(Amendment) Act, 2004)) is fatal. The results and decisions of a process undertaken by the Commissioner for Land Registration in breach of the foregoing provisions of the law cannot be sanctioned by a court of justice and are void ab initio, illegal and of no legal consequence.

- 6) In light of the constitutional and legal mandate of District Land Boards, as provided for under *article 241 (2) of the Constitution of Uganda (as amended)* and *section 60 (2) (c) of the Land Act (Cap 227)* regarding leasing of land, the Commissioner for Land Registration is legally obliged to accord Land Boards a hearing prior to cancelling leasehold certificates of title.

Final orders of the Court:


102. Pursuant to the powers vested in this Court, I grant the following remedies:

- 1) An order directing the Commissioner for Land Registration to rectify the certificate of title for the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 and deduct land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares owned by the plaintiffs.
- 2) An order directing the Commissioner for Land Registration to reinstate the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close measuring 0.205 Hectares.



- 3) An order directing the Commissioner for Land Registration to transfer land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala from Rev. John Obokech and Catherine Obokech to the plaintiffs.
- 4) Each party shall bear its own costs

I SO ORDER.


BERNARD NAMANYA
JUDGE
9th March 2023


9 March 2023 at 9:22am.

Wandera Ogallo	Counsel for the plaintiffs
Richard Bwayo	Counsel for the 2 nd defendant
Geoffrey Turyamusiima	Counsel for the 3 rd defendant
George William Egaddu	1 st plaintiff
Jane Grace Egaddu	2 nd plaintiff
Hope Mugyenyi	A representative of the 3 rd defendant
Winnie Nabule	Court Clerk

Wandera Ogallo: The matter is for Judgment. We are ready to receive the Judgment.

Court:

Judgment delivered in open chambers.


BERNARD NAMANYA
JUDGE
9th March 2023