

the 1st defendant, and became the registered owner in July 2012. It further stated that it is a bona fide purchaser for value without notice of any other third party's interest. The 3rd defendant averred that it acted upon the instructions of Kampala District Land Board to register the 2nd defendant as the owner of the suit land.

Representation:

2. The plaintiff was represented by Mr. Magellan Kazibwe from M/s Magellan Kazibwe & Co. Advocates, while the 1st defendant was represented by Mr. Kiboneka Richard from M/s Nyanzi, Kiboneka & Mbabazi Advocates and the 2nd defendant was represented by Mr. Katende Jimmy from M/s Katende, Serunjogi & Co. Advocates.

The plaintiff's evidence:

3. The plaintiff produced 4 (four) witnesses to prove her case. PW1 (Teddy Nanyonga), PW2 (Paul Ouma), PW3 (Muhammad Ssendawula Kajubi) and PW4 (Petua Bukosera).
4. The plaintiff adduced evidence of the following documents that were admitted in evidence:
 - i) Exh.P1-A copy of a sale agreement dated 14th October 1974 between the plaintiff and Penina Omwanyi.
 - ii) Exh.P2-A copy of statutory declaration dated 18th November 2004, sworn by Poly Ouma (1st defendant).
 - iii) Exh.P3-A copy of a letter dated 4th March 1969, addressed to the Town Clerk Office, Naguru Housing Manager and the Manager Nakawa Housing Estate for Kiswa Housing estate from the Penina Omwanyi, applying for a lease on the suit land.



- xv) Exh.P15-A copy of a sale agreement dated 28th February 2008, between the 1st and 2nd defendants.
- xvi) Exh.P16-A copy of an enforcement notice dated 22nd August 2012 issued to the 2nd defendant.
- xvii) Exh.P17-A copy of a sale agreement dated 21st January 1968 between Charles Orido and the 1st defendant.

The defendants' evidence:

- 5. The defendants produced 3 (three) witnesses to prove their case. DW1 (Polly Ouma), DW2 (Walyawula Stephen), and DW3 (Vinay Patel). The 1st defendant adduced Exh.D1 – A copy of a register book showing landlords and tenants of the area.

Locus in quo visit:

- 6. On 19 December 2023, I carried out a locus in quo visit to the suit land in the presence of counsel for the plaintiff; and counsel for the 1st and 2nd defendants. The parties present were Polly Ouma (1st defendant) and the 2nd defendant was represented by Isha Jobanputra.
- 7. PW2 (Paul Ouma) took oath, gave evidence at the locus and was cross-examined and re-examined by counsel. DW1 (Polly Ouma) and DW2 (Waryawura Stephen) took oath, gave evidence at the locus and were also cross-examined and re-examined by counsel.
- 8. I observed that there were several developments on the suit land as identified in the sketch plan I drew that is in the record of proceedings.

Issues to be determined by the court:

- 9. The following are the issues for determination by the court:

- i). As between the plaintiff and the 1st defendant, who is the rightful purchaser of the suit land from Charles Orido and Penina Omwanyi.
- ii). Whether the certificate of title was fraudulently acquired.
- iii). Whether the 2nd defendant's purchase of the suit property was lawful.
- iv). Whether the 2nd defendant was fraudulently registered.
- v). What remedies are available to the parties?

Decision of the court:

Issue No.1: As between the plaintiff and the 1st defendant, who is the rightful purchaser of the suit land from Charles Orido and Penina Omwanyi

10. This court already pronounced itself on the rightful purchaser of the suit land. The issue was determined in *High Court Civil Suit No.229 of 2007: Poly Ouma v. Teddy Nanyonga*, in a judgment delivered by Justice Rubby Aweri Opio on the 18 June 2013. The court held that Teddy Nanyonga, who is the plaintiff in the instant suit, is the rightful purchaser of the suit land. Accordingly, it is my decision that the plaintiff (Teddy Nanyonga) is the rightful purchaser of the suit land. The relevant sections of the judgment of Hon. Justice Rubby Aweri Opio are reproduced below:

“The counter plaintiff testified that she bought the suit property from Penina Omwanyi and her husband Charles Orido on 14/10/1974 and tendered the sale agreement in court as evidence which was not contested. She further testified that the document dated 21/01/1968 between Charles Odida and Polly Ouma purporting to be a sale agreement for buying the same land was fake because the real owners of the land were Penina Omwanyi and Charles Orido but not Charles Odida and Penina Akullo. She stated that in 1968 the land was still belonging to Penina Omwanyi and Charles Orido. She tendered in a letter which Penina wrote to the Town Clerk Kampala dated 4/3/1965 where

they were applying for the lease of the suit property. She also tendered in court KCC ground rent rate receipts for various years as demand notes in the names of Charles Orido and Penina Omwanyi, since she had not changed them in her own names. She testified that she took over the property after 1½ months after buying the same and has been in occupation since 1974. She told court that the plaintiff started claiming for the suit property after her mother had died. Section 110 of the Evidence Act Cap 6 stipulates that; “When the question is whether any person is owner of anything of which he or she is shown to be in possession, the burden of proving that he or she is not the owner is on the person who affirms that he or she is not the owner”. The counter defendant in this case chose to withdraw his case and not defend the allegations drawn by the counter plaintiff in the counterclaim or even rebut them. This amounted to an admission on the part of the counter defendant. Accordingly, I find that the counter claimant has proved a prima facie case that she is the rightful owner of the suit property. Issue No.1 and 2 are accordingly answered in favour of the counter claimant. With regard to remedies sought in the counter claim, having answered the 1st and 2nd issue in favour of the counter claimant; it goes without saying **that the counter claimant is the lawful owner of the suit property,** their five children who are depending upon their mother for survival have legal and equitable interest; estate and rights in the suit land and developments thereon and **the plaintiff has no interest on the suit property.** A permanent injunction is issued accordingly against the plaintiff from interfering with the defendant’s quiet enjoyment of the suit land.”

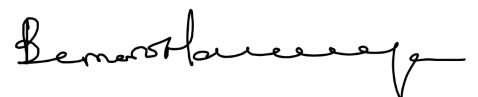


Issue No.2: Whether the certificate of title was fraudulently acquired.

11. It is the settled position of the law that obtaining of a certificate of title in order to defeat an unregistered interest of another person amounts to fraud. 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 (coram: Odoki CJ, Oder, Tsekooko, Karokora and Kanyeihamba JJ.SC (per the judgment of Benjamin Odoki, CJ) it was held that:*

“It is now well settled that to procure registration of title in order to defeat an unregistered interest amounts to fraud. In Marko Matovu & Others vs Mohammed Ssevivi and Another, Civil Appeal No. 7 of 1978 (CA), David Sajjaaka Nalima vs Rebecca Musoke, Civil Appeal No. 12 of 1985 (SC) and Uganda Posts and Telecommunications vs Lutaaya Civil Appeal No.36 of 1995 (SC) this Court approved the holding of the High Court in Katarikawe vs Katwiremu (supra) where it was stated: "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.”

12. As per the judgment of Justice Rubby Aweri Opio in *High Court Civil Suit No.229 of 2007: Poly Ouma v. Teddy Nanyonga*, the plaintiff (Teddy Nanyoga) already proved that she purchased the suit land on the 14 October 1974. The plaintiff immediately took possession of the suit land and rented it to various tenants. The 1st defendant (Polly Ouma) obtained a certificate of title for the suit land, Leasehold Register Volume 4341 Folio 2 Plot 41



Mugavu Road, Kampala on the 17 May 2012. By this time, the plaintiff (Teddy Nanyonga) had been in occupation of the suit land for 38 years!

13. It is the law that for a person to successfully claim to be a bona fide occupant, he/she must have been in occupation or possession of the suit land for more than 12 years at the time of coming into force of the *Constitution of Uganda (1995)* without any challenge from the registered owner. See *Article 237(8) of the Constitution of Uganda (1995)*; *Section 29(2) of the Land Act (Cap 227)*; and *Kampala District Land Board & Anor v. NH&CC (supra)*.
14. The plaintiff (Teddy Nanyonga) has absolute protection under the law as a bona fide occupant having been in occupation of the suit land for 38 years in 2012 when a leasehold certificate of title was created over the suit land.
15. The certificate of title for the suit land, Leasehold Register Volume 4341 Folio 2 Plot 41 Mugavu Road, Kampala was issued on the 17 May 2012. By this time, the plaintiff had by letter dated 26 July 2011 (Exh.P11) informed Kampala District Land Board of her interest in the suit land. It was fraudulent for Kampala District Land Board to enter into a lease agreement with the 1st defendant (Polly Ouma) on the 16 May 2012 in order to defeat the plaintiff's possessory interest in the land, which was well within the knowledge of the Board.
16. With these proven facts, I find no difficulty in holding that the Certificate of Title for the land comprised in Leasehold Register Volume 4341 Folio 2 Plot 41 Mugavu Road, Kampala was fraudulently obtained.



Issues No.3 & 4: Whether the 2nd defendant's purchase of the suit property was lawful; and Whether the 2nd defendant was fraudulently registered.

17. Under these two issues, the only question for resolution by the court is whether fraudulent acquisition of the certificate of title for the suit land is attributable to the 2nd defendant (P & B Infrastructure (U) Ltd). The 2nd defendant contends that it is a bona fide purchaser for value without notice of fraud (see paragraph 7(b) of its written statement of defence).

18. It is a fundamental rule that a purchaser of a legal estate for value without notice has an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or incumbrancer. The onus of proof lies on the person putting forward this plea. It is a single plea, and is not sufficiently made out by proving purchase for value, and leaving it to the claimant to prove notice if he or she can. The purchaser must act in good faith. Any sharp or unconscionable conduct may disentitle a purchaser from putting forward this defence. The purchaser must undertake a full investigation of title before completing the purchase. In order to derive benefit from the doctrine, a purchaser must have made all the usual and proper inquiries, and still found nothing to indicate the equitable interest of a third party. A purchaser who falls short of this standard cannot not plead that he or she had no notice of third-party rights which proper due diligence would have discovered. A purchaser is deemed to have constructive notice of a fact if he or she had actual notice that that there was some incumbrance, and a proper inquiry would have revealed what it was; or deliberately abstained from inquiry in an attempt to avoid having notice; or omitted by carelessly or for any other reason, to make an inquiry which a purchaser acting on skilled advice ought to have made, and which would have revealed the incumbrance. A purchaser has a duty to inspect the land and make a full

land. By the authority of the case of *Kampala Bottlers Ltd v. Damanico (U) Ltd*, Supreme Court Civil Appeal No.22 of 1992 (coram: S.W.W. Wambuzi, C.J., A. Oder, J.S.C., H. Platt, J.S.C), fraud is clearly attributable to the 2nd defendant.

24. The inevitable conclusion is that the 2nd defendant is not a bona fide purchaser for value without notice of fraud.

Issue No.5: What remedies are available to the parties?

25. Mesne profits are a mode of compensation that can be claimed against a person in unlawful possession of property. Such person is liable to pay a reasonable sum to the aggrieved party for the wrongful possession of property. *See the case of Inverugie Investments Ltd v. Hackett [1995] 1 WLR 713 and Section 2(m) of the Civil Procedure Act (Cap 71).*
26. When this court conducted a locus in quo visit to the suit land, it was confirmed that the suit property is under the control of the plaintiff, who has delegated her son, Paul Ouma to collect rent from the tenants. According to the evidence of DW3 (Vinay Patel), the 2nd defendant briefly occupied the suit land in 2012 but the plaintiff challenged their occupation and they vacated. The plaintiff then brought new tenants on the suit land. With this evidence, it is my decision that the claim for mesne profits has not been proved by the plaintiff. It is accordingly rejected.
27. The evidence adduced by the plaintiff proves that she has suffered greatly as a result of the 2nd defendant's challenge to her ownership of the suit land. The plaintiff is entitled to general damages for the inconvenience, pain, suffering, deprivation, and mental anguish, that she has suffered at the hands of the 2nd defendant (P & B Infrastructure (U) Ltd). The award of general

damages is at the discretion of the court in respect of what the law presumes to be a natural and probable consequence of the defendant's act or omission. A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong. See the case of *Kibimba Rice Ltd v. Umar Salim*, *Supreme Court Civil Appeal No.17 of 1992*.

28. *Section 177 of the Registration of Titles Act (Cap 230)* provides for cancellation of a certificate of title obtained fraudulently. In the case of *Hilda Wilson Namusoke & 3 Others v. Owalla's Home Investment Trust (E.A) Ltd & Commissioner for Land Registration*, *Supreme Court Civil Appeal No. 15 of 2017*, the Supreme Court of Uganda (per Justice Prof. Tibatemwa-Ekirikubinza) held that: “*Section 177 of the RTA vests powers in the High Court to direct the Commissioner to effect any order of cancellation of a certificate of title...*”

Final order of the court:

29. Judgment is entered in favour of the plaintiff (Teddy Nanyonga) against the defendants with the following declarations and orders:
- 1). That the plaintiff (Teddy Nanyonga) is the lawful owner of the land situated at Plot 41 Mugavu Road, Kiswa Zone 3, Nakawa Division.
 - 2). That the 1st defendant (Polly Ouma) fraudulently obtained a certificate of title for the land comprised in Leasehold Register Volume 4341 Folio 2 Plot 41 Mugavu Road, Kampala.
 - 3). That the 2nd defendant (P & B Infrastructure (U) Ltd) was fraudulently registered on the certificate of title as owner of the land comprised in Leasehold Register Volume 4341 Folio 2 Plot 41 Mugavu Road, Kampala.



- 4). That the 2nd defendant (P & B Infrastructure (U) Ltd) is a trespasser on the land.
- 5). The Commissioner for Land Registration is ordered to cancel the certificate of title for the land comprised in Leasehold Register Volume 4341 Folio 2 Plot 41 Mugavu Road, Kampala.
- 6). That the 2nd defendant (P & B Infrastructure (U) Ltd) shall pay general damages of Ushs 50,000,000 (Uganda Shillings Fifty Million) to the plaintiff (Teddy Nanyonga).
- 7). That the 2nd defendant (P & B Infrastructure (U) Ltd) shall pay interest of 15% per annum on general damages from the date of judgment until payment in full.
- 8). That a permanent injunction is issued restraining the defendants, their agents, servants, workmen and all those claiming under them and/or deriving authority from them, from trespassing, encroaching, interfering and/or in any way dealing with the land.
- 9). That the 2nd defendant (P & B Infrastructure (U) Ltd) shall pay the costs of the suit.

IT IS SO ORDERED.



BERNARD NAMANYA

JUDGE

13 June 2024

13 June 2024 at 1:02pm

Attendance for delivery of the Judgment

Magellan Kazibwe	Counsel for the plaintiff
Nakibuuka Lynette (holding brief for Richard Kiboneka)	Counsel for the 1 st defendant
Nakibinge Nathan (holding brief for Katende Sserunjogi)	Counsel for the 2 nd defendant
All the parties are absent	
Allena Kanyakire	Court Clerk

Magellan Kazibwe:

We are ready to receive the judgment.

Court:

Judgment delivered in open chambers.



**BERNARD NAMANYA
JUDGE**

13 June 2024