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IN THE REPUBLIC OF UGANDA

THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.15 OF 2017

*[Coram: Mwendha; Tibatemwa-Ekirikubinza; Mugamba; Nshimye;
Tumwesigye, JJ.S.C]*

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BETWEEN

1. **HILDA WILSON NAMUSOKE**
2. **VINCENT KIWANUKA**
15 3. **BARBARA LUFF**
4. **KENNETH LUBEGA**
As administrators of the Estate of
The late Nambi Magdalene Scott

..... APPELLANTS

20

AND

1. **OWALLA'S HOME INVESTMENT TRUST (E.A) LTD** RESPONDENTS
2. **COMMISSIONER LAND REGISTRATION**

25 *[An appeal arising from the judgment and orders of the Court of Appeal at
Kampala in Civil Appeal No.72 of 2009 before (Hon. Justices: Buteera, Egonda-
Ntende, Obura, JJA) dated 4th July 2017.]*

Representation

30 At the hearing of the appeal, Mr. David Nambale of Nambale, Nerima & Co.
Advocates represented the appellants. The appellants were not present in
Court.

The 1st respondent was represented by Mr. Alfred Madaba while the 2nd
respondent had no legal representative in Court.

Brief Background

On 22nd February 1985, the 1st respondent - Owalla's Home Investment Trust Ltd - was registered as proprietor of land
10 comprised in Kyadondo Block 261 Plot 173, situate at Lukuli, Makindye.

On 7th March 1997, Magdalane Scott Nambi was registered as proprietor of the same property under a special certificate of title.

Following the death of Scott Nambi, the appellants were registered
15 as administrators of her estate on 5th November 2004.

On 11th October 2005, Owalla's Home Investment Trust Ltd lodged a caveat on the special certificate of title and also filed a suit in the High Court vide HCCS No.7 of 2003, seeking to cancel the appellants' title. However, on 16th January 2008, the suit was
20 dismissed with costs for want of prosecution.

Prior to the dismissal of the suit, the 1st respondent lodged a complaint with the Commissioner Land Registration (hereinafter abbreviated as Commissioner). On 6th January 2006, the Commissioner issued a notice to the appellants communicating her
25 intention to cancel their special certificate of title on ground that it was issued in error and to submit objections as to why the certificate should not be cancelled. Furthermore, the Commissioner notified the appellants that the 1st respondent was in possession of the original duplicate certificate of title.

30 On 7th October 2008, the Commissioner issued a notice of cancellation of the appellants' certificate of title. The appellants contended that the cancellation was premised on the ground that the title had been fraudulently obtained.

5 I however note that in the Statutory Declaration sworn on 20th August 2008, by Mr. Robert Opio (a Senior Registrar of Titles) he deponed that the cancellation of the certificate was premised on the fact that it had been issued in error.

10 In response to the notice of cancellation, the appellants filed an application in the High Court vide HCCA No. 81 of 2008 against the Commissioner restraining him from cancelling the title and an order to have the caveat lodged by the 1st respondent vacated.

15 On 26th May 2009, a Ruling of Court dismissing the appellants' application was delivered. The Court *inter alia* held that where the cancellation of title was on the basis of allegations of fraud, the first step was to apply to the High Court under Section 177 of the Registration of Titles Act. If it was fraud embedded in Section 91 (2) of the Land Act, then the Commissioner had powers to cancel the title.

20 The appellants being dissatisfied with the said Ruling appealed to the Court of Appeal on the following grounds:

1. The learned trial Judge erred in law when he held that the Registrar of Titles (CLR) had powers under the Land Act to cancel the appellants' certificate of title for fraud.
- 25 2. The learned trial Judge erred in law when he held that the only procedure for vacating a caveat is by applying to the Registrar for removal under Section 140 of the Registration of Titles Act.

30 On ground 1, the Court of Appeal held that the Commissioner had power to cancel a certificate of title that had been obtained by fraud. It held also that the provisions of **Section 91 (2) (e-f) of the Land Act** are broad to accommodate fraud as one of the circumstances over which a CLR can cancel a certificate of title. Furthermore, court held that the exercise of this power is not
35 contrary to the Registration of Titles Act (RTA).

5 On ground 2, the Court of Appeal held that the learned trial judge could not be faulted for refusing to consider vacating the caveat in question since the application was irregularly lodged. The appeal was dismissed with costs to the 1st respondent.

10 The appellants, being dissatisfied with the Court of Appeal decision appealed to this Court on the following grounds:

1. **The learned Justices of Appeal erred in law when they held that Section 91(e) and (f) of the Land Act includes fraud as a ground for cancellation of title by the 2nd respondent.**
- 15 2. **The learned Justices of Appeal erred in law when they held that Sections 59, 77, 176 and 177 of the RTA do not bar the Commissioner Land Registration when he/she is exercising powers under Section 91 of the Land Act.**
- 20 3. **The learned Justices of Appeal erred in law and fact when they upheld the title cancellation decision in the absence of fraud by the registered proprietor.**
- 25 4. **The learned Justices of Appeal erred in law when they failed to properly re-evaluate the evidence on record.**
- 30 5. **The learned Justices of Appeal erred in law and fact when they held that the appointment of an attorney for the 1st respondent was fraudulent.**
- 35 6. **The learned Justices of Appeal erred in law and fact when they held that the appellant's special certificate of title was issued in error.**
7. **The learned Justices of Appeal erred in law when they declined to consider arguments from both parties relating**

5 **to the requirements for a hearing of affected parties before
cancellation of title.**

The appellants prayed that the appeal be allowed and the decisions of the courts below be set aside.

10 **Ground 1**

Appellants' submission

The appellants' counsel argued grounds 1, 2, 6 and 7 separately and grounds 3, 4 and 5 together.

15 Under ground 1, counsel faulted the learned justices' interpretation of the words "illegally" or "wrongfully" in Section 91(2) (e)-(f) of the Land Act. Counsel contended that the Justices of Appeal erred in holding that the word "illegality" includes fraud as a ground upon which a Commissioner can cancel a certificate of title.

20 Counsel argued that illegality and fraud are different concepts. That the 2nd respondent is not a court of judicature under **Article 129** of the **Constitution** and cannot therefore purport to adjudicate allegations of fraud. In addition, that if the words illegally or wrongfully are stretched to include fraud, a scenario where the Commissioner will sit to adjudicate over his or her own matter will
25 be created. Counsel explained that this would be contrary to the rules of natural justice. In support of this argument, counsel relied on the authority of **John Ken Lukyamuzi vs. AG & Electoral Commission**¹ wherein this Court in considering the investigating and the prosecuting role of the Inspector General of Government
30 (IGG) *inter alia* held that, "*it would not be in the interest of promoting proper administration of justice in this country to allow a situation where power of investigation, prosecution and adjudication are combined in one institution. It would not be proper to have a division*

¹ Supreme Court Constitutional Appeal No.2 of 2007.

5 conducting adjudication in respect of the cases investigated by the same institution.”

The appellants prayed that this Court finds that the Commissioner cannot handle fraud as a ground for cancellation of a certificate of title.

10 **1st Respondent’s reply**

The 1st respondent’s counsel on the other hand argued grounds 6,1,2,4 and 7 separately while grounds 3 and 5 were argued together.

15 Regarding the 1st ground, the 1st respondent’s counsel agreed with the learned Justices of Appeal that the interpretation of the words illegally or wrongfully covers fraud. Counsel referred to **Osborne’s Concise Law Dictionary**² which defines fraud as the obtaining of material advantage by unfair or wrongful means.

Ground 2

20 **Appellants’ submission**

Counsel agreed with the learned Justices of Appeal that **Section 91 of the Land Act** cannot override the **RTA**. That however, under Section 177 of the RTA, it is only the High Court which can direct cancellation of a certificate of title. That therefore, the
25 Commissioner cannot purport to override the RTA by giving himself powers to adjudicate allegations of fraud. Such powers are a preserve of the High Court.

1st Respondent’s reply

30 The respondent adopted the learned Justices of Appeal’s position to the effect that the RTA deals with the law in relation to the office of Titles and management of the register of titles. This gives effect to one of the objectives of the Land Act relating to issues of title. The

² 8th edition, page 152.

5 **RTA** was therefore not alien to the Land Act. It is a necessary component in the tools available for management, processing and administration of interests in land.

Counsel relied on the authority of **Edward Rurangaranga vs. Mbarara Municipal Council**³ where this Court held that, “on the
10 face of it, it would appear that the Registrar of Titles (now Commissioner) has power to cancel a certificate of title fraudulently or wrongfully obtained.”

Grounds 3, 4 and 5

The appellants’ main contention under these grounds is that there
15 is no evidence on record which proved fraud. That fraud could not be proved by mere affidavit evidence.

1st Respondent’s reply

For the 1st respondent counsel submitted that fraud was proved by
the affidavit evidence of John Bosco Gakibayo who testified that
20 John Muwonge who purportedly granted powers of attorney to sale the suit land to M/S Nabagesera & Co. Advocates has never been a director of the 1st respondent.

Ground 6

Appellants’ Submission

25 Under this ground, the appellants’ counsel faulted the learned Justices of Appeal for finding that the special certificate of title was issued in error without scrutinizing the evidence on record.
Therefore, the holding of the Court of Appeal that the person who granted powers of attorney to the 1st respondent’s director who later
30 transferred title to the appellants amounted to fraud was erroneous. That there is no evidence or suggestion that the appellants were party to any alleged fraud or were made aware of it.

³ Supreme Court Civil Appeal No. 10 of 1996.

LTE

5 **1st respondent's reply**

The 1st respondent submitted that the Court of Appeal properly appraised the evidence and came to the correct finding and conclusion that the special certificate of title was issued in error. That the affidavit evidence of Mr. Robert Opio (a Senior Registrar of Titles), stated that he had issued the special certificate of title to the appellants in error upon being made to believe that the duplicate certificate of title was lost whereas not.

Therefore, counsel prays that this ground fails and the Court of Appeal finding that the special certificate was issued in error be upheld.

Ground 7

Appellants' submission

Counsel faulted the learned Justices of Appeal for denying him an opportunity to be heard on the issue that the Registrar of Titles did not grant them a hearing before cancellation of their title.

1st Respondent's reply

On the other hand, counsel for the respondent contends the learned justices rightly declined to consider the appellants' submission because it was never raised as a ground in their Memorandum of Appeal. In support of this submission, counsel relied on **Rule 102 (a)** of the **Court of Appeal Rules** which provides that: "*At the hearing of the appeal in court, no party shall without the leave of court, argue that the decision of the High Court should be reversed or varied except on a ground specified in the Memorandum of Appeal.*"

Without prejudice to the above, the 1st respondent's counsel also submits that the Registrar of Titles issued a notice to the appellants inviting them to submit any objections to the cancellation which proved that the appellants were given an opportunity to be heard.

LIE

- 5 (b) contains a misdescription of land or boundaries;
(c) contains an entry or endorsement made in error;
(d) contains an illegal endorsement;
(e) is illegally or wrongfully obtained; or
10 (f) is illegally or wrongfully retained,

call for the duplicate certificate of title or instrument
for cancellation, or correction or delivery to the
proper party. (My emphasis)

15 Basing themselves on **Edward Rurangaranga vs. Mbarara
Municipal Council and Others (supra)**, a decision of this
Court, the Justices of the Court of Appeal held that *the
Registrar has powers to cancel a certificate of title for a host of
reasons including fraud under Section 91 of the Land Act.*

20 I note that in **Edward Rurangaranga** this Court based its
decision on the provisions of Section 69 of the RTA and *inter
alia* held that, *though Section 56 of the RTA provides that a
registered proprietor named in the certificate of title is
conclusively the owner of the property, Section 69 of the same
Act provides for those instances such as the present one where
25 the Registrar of Titles may upon proof of fraud or mistake,
cancel such certificate ...*

Indeed Section 69 of the RTA cap 205 provided as follows:

30 "In case it appears to the satisfaction of the Registrar that any
certificate of title or instrument has been issued in error or contains
any misdescription of land or of boundaries, or that any entry or
endorsement has been made in error on any certificate of title or
instrument, or that any certificate of title, instrument, entry or
endorsement has been fraudulently or wrongfully obtained, or that
35 any certificate of title or instrument is fraudulently or wrongfully
retained, he may by writing require the person to whom such
document has been so issued or by whom it has been so obtained or

5 *is retained to deliver up the same for the purpose of being cancelled or corrected or given to the proper party.” (My emphasis)*

However, it must be noted that **Section 41(c)** of the **Land (Amendment) Act of 2004** repealed Section 69 of the RTA. Furthermore, Section 37 of the Land (Amendment) Act of 2004
10 introduced the current **Section 91 (2)** of the **Land Act** which provides grounds under which the Commissioner can cancel a certificate of title as enumerated above.

I note that save for fraud, all the other grounds on which the Commissioner could base a decision to cancel a certificate of title
15 under Section 69 of the RTA were imported into Section 91 of the Land Act to wit: certificates of title issued in error, endorsements made in error, endorsements obtained or retained wrongfully and certificates bearing misdescription of land or boundaries.

I am inclined to believe that the absence of fraud in the “new”
20 provision was deliberate. It therefore follows that the enactors of the **Land Amendment Act of 2004** took away the authority of the Commissioner to cancel a certificate of title on the basis of fraud **without referring the matter to a court**. The Commissioner’s action is rightly limited to actions for ‘errors’ or ‘illegalities’ that do
25 not require the rigors of a full trial where fraud would be established before a title is impeached. The Commissioner who may exercise quasi-judicial powers would not have the capacity to hear a matter involving fraud and make findings without calling evidence including cross-examination of the witnesses alleging fraud.
30 Consequently, the power to cancel certificates of title where fraud is alleged is vested in the High Court. Indeed **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 made by the High Court. An aggrieved party complaining of fraud should straightaway
35 file a suit for adjudication on the issue.

5 In the instant case, the Commissioner cancelled the appellants' special certificate of title on 7th October 2008. This was after the Land Amendment Act had come into force. The Commissioner would therefore have had no power to cancel the certificate of title on the basis of fraud. Consequently, the learned Justices of Appeal
10 erred in law when they based their reasoning and decision on the case of **Edward Rurangaranga (supra)**, an authority which expounded a statutory provision (Section 69 RTA) which was no longer law at the time the matter before us came before the Learned Justices.

15 I must also emphasise that the decision of the legislature to omit fraud in **Section 91(2)** of the **Land Act** is in line with the well-known judicial principle that allegations of fraud are so serious in nature that they require to be specifically pleaded and strictly proved before a court of law. And because of its gravity, even in a
20 civil matter, the standard of proof is above a mere balance of probabilities though not necessarily beyond reasonable doubt. Indeed it has also been held that even a court of law is not at liberty to come to a finding that fraud has been proved by implication where fraud has not been framed as an issue for determination by
25 the court. **(A.K Detergents vs. G.M. Combined (U) Ltd)**⁴

I note further that in arriving at the decision that the Commissioner has powers to cancel a certificate of title for fraud, the Court of Appeal specifically stated that: "*this provision [Section 91 (2)] does not exclude fraud which easily lies in (e) and (f). In any case illegally or wrongfully obtained or retained is much broader than fraud.*"
30

As already mentioned in this judgment, Section 91 (2) (e) and (f) provide that a Commissioner can cancel a certificate of title if it is **illegally or wrongfully** obtained or retained.

⁴ KALR [1999] 563.

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5 Whercas I have no doubt in my mind that fraud is not authorized by law and is therefore an illegality, fraud is a very specific type of illegality.

Black's Law Dictionary define illegality and fraud as follows:

Illegality is:

- 10 (i) **an act that is not authorized by law.**
(ii) **The state of not being legally authorized.**
(iii) **The state or condition of being unlawful.**⁵

15 **Fraud is the concealment or false representation through a statement or conduct that injures another who relies on it in acting.**⁶

Not every illegality is rooted in fraud. Some unauthorized actions may be a result of ignorance of the law. I am aware that the Land Act restricts and in fact prohibits certain transfers of land. For example Section 39 prohibits the sale of land on which a person
20 ordinarily resides with his or her spouse and from which they derive their sustenance without the prior written consent of the spouse. Such transfer is not legally authorized, it is illegal. However one cannot say that every sale which violates this provision is fraudulent. It may have been out of ignorance of the law rather than
25 that a false representation was made that spousal consent had been obtained whereas not. The Commissioner would cancel the certificate of title issued in such circumstances, not because of fraud but because the consent of the spouse was not obtained prior to the transfer. Indeed Section 39 (4) provides that where a
30 transaction is entered into by a purchaser in good faith and for value without notice that the seller had not obtained the consent of

⁵ Black's Law Dictionary, 9th edition, page 185.

⁶ Ibid, 17 (c) page 731.

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5 a spouse, although the transaction would be void, the purchaser would be entitled to a refund of the money paid.

Another example of a restriction on land transactions is Section 40 of the Land Act which prohibits the grant of a lease exceeding 99 years to a noncitizen. It follows that a purported transfer of a free
10 hold title to a noncitizen would be illegal/not authorized by law. It cannot however be said that every such transaction would necessarily be fraudulent. The transfer may have been made in ignorance of the law. The Commissioner would cancel the transfer because the transaction would be placing land in the hands of a
15 noncitizen for a period exceeding that authorized by the law. Not every illegality is imbued with fraud. And therefore Section 91 (2) would empower the Commissioner to cancel certificates issued on the basis of such legal errors. These examples clearly show that in the context of the Land Act, fraud is an illegality handled differently
20 from other examples of unauthorized action.

I have already belaboured the fact that courts have developed specific and stringent rules for dealing with fraud - even when it is pleaded in a civil suit. And I have also pointed out that the Land Amendment Act dropped fraud from the list of grounds on which a
25 cancellation of a certificate of title by the Commissioner could be based.

I therefore respectfully disagree with the Court of Appeal's interpretation that the word illegality in Section 91 (2) of the Land Act covers fraud.

30 I hold that the Court of Appeal erred in interpreting the word illegality to include fraud as a ground for cancellation of a certificate of title by the Commissioner.

Accordingly, Ground 1 succeeds.

Having held that the Commissioner does not have power to cancel a certificate of title premised on fraud, the question which follows is: *what was the basis of cancellation of the special certificate of title by the Commissioner in the matter before us?*

- 10 The appellant contends that since the 1st respondent alleged that the power of attorney was forged, it inferred fraud. That consequently, the Commissioner did not have power to cancel the certificate. The respondent on the other hand contends that the premise for cancellation was because the special certificate was
15 issued in error.

The events which led to the cancellation of the appellants' certificate of title are recorded in the Statutory Declaration of Mr. Robert Opio, a senior Registrar of Titles in the Kampala mailo office between the period of 1992 and 2004. He stated that:

- 20 *On 7th March 1997, an application of a special certificate of title was lodged on the basis of a power of attorney No.851 of 1997 by Nabagesera & co. Advocates and the donee (Agnes Nantamu) to transfer land in favour of Magdalen Scott Nambi. That subsequently, he was shown an original duplicate certificate of title indicating that*
25 *the 1st respondent (M/S Owalla's Home Investment Trust (E.A) Ltd) was the registered proprietor of the property in issue. Furthermore, that he was shown minutes dated 23rd December 2001 in which the area Local council confirmed that the land belongs to M/S Owalla's Home Investment Trust (E.A) Ltd. That as a result, the special*
30 *certificate of title he issued together with the registered transfer to Magdalen Scott Nambi were in error.*

From the above, it is clear that the reason for the cancellation of the appellant's certificate was that it was issued in error and not on the basis of allegations of fraud. As stipulated in **Section 91 (2) (e) (i)**

5 of the **Land Act**, the Commissioner is empowered to cancel a certificate of title issued in error.

Accordingly, I answer grounds 3, 4, 5 and 6 in the negative and hold that they should fail.

10 **Issue (iv)**

I will now address the issue arising out of ground 7, whether or not the Commissioner followed the proper procedure prior to the cancellation of the certificate of title.

15 The appellants contend that the Justices of Appeal failed to address this issue. That the Commissioner did not grant them a hearing before cancelling their title. The 1st respondent argued that the Justices of Appeal could not be faulted because the issue was not raised in the Memorandum of Appeal.

20 **Rule 102** of the **Court of Appeal Rules** prohibits parties from raising a new ground or argument on appeal save with leave of Court. The Rule provides that:

25 **No party shall, without the leave of the Court, argue that the decision of Court of Appeal should be reversed or varied except on a ground specified in the Memorandum of Appeal or in a notice of cross-appeal, or support the decision of the Court of Appeal on any ground not relied on by that Court or specified in a notice given under Rule 88 of these Rules.**

30 On the basis of the above provision, the Court of Appeal cannot be faulted for not addressing the issue which was not raised as a ground in the Memorandum of Appeal. However, since the issue of not being given an opportunity to be heard touches upon the cornerstones of natural justice, I will exercise the inherent powers of court and address the issue.

5 The procedure and process of cancellation of a certificate of title issued in error is provided for in **Section 91 (8) and (9) of the Land Act**. The Section provides as follows:

(8) In the exercise of any powers under this Section, the registrar shall-

10 **(a) give not less than twenty-one days' notice in the prescribed form to any party likely to be affected by any decision made under this Section.**

15 **(b) Provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given;**

(c) Conduct any such hearing in accordance with the rules of natural justice but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a Court of law;

20 **(d) Give reasons for any decision that he or she may make.**

(9) The registrar shall communicate his or her decision in writing to the parties and the committee.

25 It is on record that on 6th January 2006, the Commissioner issued a notice of intention to cancel the appellants' special certificate of title and called upon them to submit any objections to the cancellation.

30 On 20th January 2006, the appellants through their lawyers, M/S Nambale, Nerima & Co. Advocates, responded to the Commissioner's notice. They informed the Commissioner that he had no powers to cancel their certificate of title and that the matter was before the High Court vide HCCS No.7 of 2003. Indeed, the appellants' response is on record marked annexure B.

5 However, it is also on record that on 16th January 2008, HCCS No.7 of 2003 was dismissed for want of prosecution.

Subsequently, on 7th October 2008, the Commissioner by way of letter (marked annexures E1 and E2) communicated to the appellants that since she had not received a response on the earlier notice sent on 6th January 2006, the appellants' special certificate of title had been cancelled and the register amended. This, as already indicated above was not correct since the appellants had responded to the Commissioner's notice of intention to cancel the special certificate of title.

15 On 21st October 2008, the appellants through their lawyers raised objections to the cancellation before the Commissioner through a letter. The appellants' lawyers indicated that the 1st respondent's lawyers had acted unprofessionally by instituting proceedings before the Commissioner yet there was a pending suit in the High Court.

Following the complaints raised by the appellants' lawyers, the Commissioner on 15th December 2008 wrote to the appellants as well as the 1st respondent inviting them for a hearing scheduled to take place on 6th January 2009 at 8:15 a.m in the Ministry of Lands, Housing and Urban Development boardroom.

The record does not indicate what transpired on the date the hearing was scheduled.

30 However, on 10th March 2009, the appellants' lawyers filed in the High Court, Miscellaneous Cause No.81 of 2008, to restrain the Commissioner from cancelling the special certificate of title. This application was unsuccessful and was dismissed by Justice Akiiki Kiiza on 26th May 2009.

From the above facts, it is clear that although the Commissioner erred in stating that she had not received a

5 - response to her 6th January 2006 communication from the appellants, subsequently (on 15th December 2008), both parties were invited for a hearing. However, the appellants instead chose to file a suit in the High Court on 10th March 2009.

10 I hold that the appellants cannot turn around and complain that they were not given an opportunity to be heard.

I therefore come to the conclusion that ground 7 lacks merit.

15 **Conclusion and orders**

Out of the 7 grounds in the Memorandum of Appeal, the appeal would succeed on only one ground to wit that the learned Justices of Appeal erred in holding that the Commissioner has power to cancel a certificate of title on the basis of fraud.

20 Nevertheless, having come to the conclusion that the Commissioner rightly cancelled the appellants' special certificate of title for having been issued in error and not on the basis of fraud, it follows that the 1st respondent's certificate of title remains valid.

Accordingly, I would dismiss this appeal.

25

Costs

I would order that costs of this appeal and in the court below be granted to the 1st respondent.

30

5 - Dated at Kampala this 25th day of April..... 2019.

.....*L. Tibatemwa*.....
PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT

10

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 15 OF 2017

HILDA NAMUSOKE:.....APPELLANT

VERSUS

OWALLA'S HOME INVESTMENT TRUST (E.A) LTD:.....RESPONDENT

THE JUDGMENT OF MUGAMBA, JSC

I had the advantage of reading in draft the judgment prepared by my sister **Prof. Tibatemwa Ekirikubinza, JSC.**

I concur with the judgment and the orders she proposes. I have nothing to add.

Given at Kampala this^{25th}.....day of^{April}.....2019.

.....
Paul K. Mugamba
JUSTICE OF THE SUPREME COURT

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

**[CORAM: MWONDHA, TIBATEMWA, MUGAMBA, JJSC,
NSHIMYE, TUMWESIGYE AG.JSC,]**

CIVIL APPEAL NO.15 OF 2017

BETWEEN

1. HILDA WILSON NAMUSOKE
2. VINCENT KIWANUKA
3. BARBARA LUFF
4. KENETH LUBEGA
The late Nambi Magdalene Scott }APPELLANTS

AND

1. OWALLA'S HOME INVESTMENT TRUST (E.A) LTD } :RESPONDENTS
2. COMMISSIONER LAND REGISTRATION

*[Appeal arising from the judgment and orders of the Court of Appeal at
Kampala in Civil Appeal No. 72 of 2009 before Hon Justices: Buteera,
Engonda Ntende, Obura, JJA dated 4th July, 2017]*

JUDGMENT OF A.S. NSHIMYE, A.G JSC.

I have had the benefit of reading in draft the lead judgment of my sister Hon Justice Prof. Tibatemwa Ekirikubinza JSC.

I agree with her reasoning and the way she has resolved the 7 grounds of appeal. To me, the novel point of law that emerges from her conclusion is that the Commissioner of Land Registration has no powers to cancel a certificate of

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: MWONDHA, TIBATEMWA-EKIRIKUBINZA, MUGAMBA, JJ.SC;
NSHIMYE, TUMWESIGYE, AG. JJ.SC)

CIVIL APPEAL NO: 15 OF 2017

BETWEEN

1. HILDA WILSON NAMUSOKE
2. VICENT KIWANUKA
3. BARBARA LUFF
4. KENNETH LUBEGA

As Administrators of the Estate of the late Nambi
Magdalene Scoff

: : : : : APPELLANTS

AND

OWALLA'S HOME INVESTMENT
TRUST (e.a) LTD
COMMISSIONER LAND REGISTRATON

: : : : : RESPONDENTS

[An appeal from the Judgment and orders of the Court of Appeal at Kampala (Buteera, Egonda-Ntende, Obura, JJA) dated 4th July, 2017 in Civil Appeal No. 72 of 2009]

JUDGMENT OF TUMWESIGYE, AG. JSC

I have had the benefit of reading in draft the judgment of my learned sister, Justice Prof Lilian Tibatemwa-Ekirikubinza, JSC, and I agree with her conclusion and orders she has proposed.

Dated at Kampala this^{25th}.....day of*April*.....2018



Jotham Tumwesigye
JUSTICE OF THE SUPREME COURT