

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
Coram: - Mwangusya, Mwondha, Mugamba JJSC, Nshimye,
Tumwesigye Ag. JJSC

CIVIL APPEAL NO. 12 OF 2017

EVARISTO MUGABI.....APPELLANT

VERSUS

ATTORNEY GENERAL.....RESPONDENT

(Appeal against the decision of the Court of Appeal of Uganda at Kampala before Kavuma DCJ, Buteera, Kiryabwire JJCA Civil Appeal No. 99 of 2011)

JUDGMENT OF MWONDHA, JSC

48

The appellant, dissatisfied with the judgment and decision of the Court of Appeal appealed to this Court on the following grounds:-

1. The learned Justices of the Court of Appeal erred when they failed to allow the appeal even after agreeing with the appellant on the mandatory nature and import of section 140(1) and (2) of the Registration of Titles Act
2. The learned Justices of the Court of Appeal misdirected themselves when they decided the appeal on grounds which were not argued by the respondent at the appeal hearing.
3. The learned Justices of Appeal erred when they held that the appellant had no cause of action against the respondent even after observing that the registrar of Titles acted strangely, negligently and recklessly when de-registering the appellant as proprietor of the suit property.
4. The learned trial Judge failed to properly evaluate the evidence though fraud could be discerned on close scrutiny of all the evidence adduced at the trial.

The appellant proposed to ask this Court to make the following orders:

1. This appeal be allowed
2. The judgment and orders of the Court of Appeal and High Court be set aside
3. The appellant be paid the current value of the suit property after valuation by a qualified valuation surveyor appointed by the registrar of this Court; or
4. The appellant be paid shs. 380 million with interest at 25% per annum since July 2005
5. Mesne profits of shs. 400,000 per month since July 2005
6. Costs of this appeal and in the lower courts
7. General, aggravated and/or punitive damages.

Background:-

The appellant was at all material times the registered proprietor of the land comprised in the Mailo Register known as Kibuga Block 29 Plot 112 situated just off Owen Road, Mulago Hill. The land was developed with two semi detached houses each with 4 bedrooms with all modern amenities and 2 boys' quarters. (Hereinafter referred to as the suit property). On the 16th day of August 2001, the appellant and one James Barya entered into a Money Borrowing agreement with one Mr. Ekemu Charles. Under the agreement, the appellant and James Barya obtained a loan of shs. 14,700,000/= (fourteen million seven hundred thousand Uganda shillings) from Ekemu Charles as required by the lender. As required by the lender, the appellant deposited his certificate of title together with blank signed transfer forms for the suit land with the lender as security for the repayment of the loan. On the 22nd October, 2001, the appellant lodged a caveat on the suit property to protect his legal interest and was registered on the original certificate of title (white page) Instrument No. KLA 229866. The said caveat prohibited the registration of any person as Transferee or Proprietor of land of any instrument affecting the said estate or interest until after notice of such registration was first given to him, the caveator. Subsequently, the appellant and

James Barya defaulted on the loan repayment and the land was sold by private treaty to one Wycliffe Birungi, without valuation as provided for under the agreement and without notice of removing the caveat. An initial valuation had put the value of the suit property at Ug. Shs. 60,000,000 but it was sold at Ug. Shs. 40,000,000/=. The Registrar of Titles after removing the caveat, the property was sold. The suit property was re-sold to Radio Paidha for Ug. Shs. 150,000,000/=. The appellant lodged a claim with the Registrar of Titles for compensation for failure to give notice under **Section 168 of the Registration of Titles Act, Cap 230**. The claim was declined by the Registrar of Titles whereupon the appellant sued the Attorney General of Uganda under vicarious liability in the High Court. The trial Court upheld the decision of the Registrar of Titles and the appellant appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and ordered each party to bear its own costs.

Representation:-

The appellant represented himself stating that his counsel Mr. Eric Kyasima was indisposed. Mr. Madette Geoffrey, State Attorney represented the respondent.

Appellant's submissions:-

Ground 1:-

Mr. Mugabi, the appellant submitted that when the Court of Appeal found that the Registrar breached his duty and failed to discharge his obligation of giving notice to the appellant as the caveator to the suit property, it would have been sufficient to hold the Registrar liable for compensation. He stated that the purported transfer was more than 3 years old, the witness signatures on the money borrowing agreement and the transfer were different and that the names too were different. He said there was no mortgage as described under the Registration of Titles Act. He further submitted that the consent to transfer was neither signed by the purported transferor nor his Advocate. He argued that for those reasons, the Registrar ought to have

rejected the transfer. As a result of failure on the part of the Registrar, the appellant lost the suit property, for which, he should be compensated. He argued that there was fraud when the suit property was sold for forty million shillings (40,000,000/=) when earliest he had been led to believe that the property would be sold for Ug. Shs. 60,000,000/= (Uganda shillings sixty million only).

Ground 2:-

It was counsel's submission on the above ground that the learned Justices misdirected themselves when they decided the appeal on grounds which were not argued by the respondent. He argued that the Court of Appeal was wrong to rely on section 59, 92 and 14 of the Registration of Titles Act yet the trial Judge never made mention of those sections in his judgment. He said the sections were never pleaded by the respondent's counsel. He faulted the Court for misdirecting itself when it unilaterally introduced the principle of **in pari-delicto** yet the same was never pleaded and the appellant was not given a chance to address Court on it. JS

Ground 3:-

The appellant faulted the Court of Appeal for finding that he had no cause of action against the respondent yet the same Court had found that the Registrar of Titles had acted strangely, negligently and recklessly when deregistering the appellant as owner of the suit property. He argued further that these are torts which are actionable in law and Sections 186, 191 and 193 of the Registration of Titles Act give the appellant the right to sue.

Ground 4:-

The appellant faulted the Court of Appeal for failing to properly re-evaluate the evidence. He stated that the evidence showed that the Registrar had illegally removed the appellant's caveat and this was the crux of the appellant's suit, and the respondent offered no valid defence to the appellant's claim.

Respondent's submissions:-

Mr. Madette, State Attorney for the respondent submitted that the Court of Appeal properly re-evaluated the evidence on record and arrived at the right decision.

He submitted that the Court of Appeal properly directed itself and examined the exhibits of acknowledgement of receipt of various amounts of money being proceeds of sale by the appellant and found that the appellant had sold the suit land and that is the information which the Registrar of Titles based himself on to find that the appellant had ceased to have any caveatable interest on the suit property which deserved protection.

He further submitted that the learned Justices of the Court of Appeal addressed their minds to the question whether the appellant can fault the Registrar for breach of duty when the appellant was a party to the same transaction. They concluded that when the parties to a legal controversy are **in pari delicto**, neither can obtain affirmative reliefs from the Court since both are at equal fault or of equal guilt. 28

Mr. Madette denied that the learned Justices of the Court of Appeal misdirected themselves when they decided the appeal on grounds not argued by the respondent at the appeal hearing. He submitted that the duty of a first appellate Court is to review the evidence of the trial Court, scrutinize that evidence and make its own conclusions. In respect of sections 14, 59 and 92 of the Registration of Titles Act, Cap 230, Counsel submitted that the appellant brought the suit contending that provisions of the Registration of Titles Act, Cap 230 had been infringed. He argued that all relevant provisions of the Registration of Titles Act whether referred to or not needed to be brought into context by the Court. He added that given a generous and purposive interpretation by the Court, it could determine whether or not any breach or inconsistency had occurred with regard to the Registration of Titles Act.

He supported the Court of Appeal decision and argued that the learned Justices of the Court of Appeal were alive to the evidence on record showing that the appellant had indeed sold the land, at the same time he was seeking compensation for deprivation of the same. He invited court to find that the appellant did not have any valid claim against the respondent and thus no cause of action against the Registrar of Titles having removed the caveat and consequently was sold to Wycliffe Birungi. He supported the Court of Appeal decision that there was no sufficient evidence to establish fraud or meet the requisite standard of proof. He added that fraud did not appear to be attributable to the respondent by registering the transfer.

Appellant's submissions in rejoinder:-

In rejoinder, the appellant submitted that, had the learned Justices of the Court of Appeal properly re-evaluated the evidence, they would have found that the appellant did not sell the suit property. He said that the sale agreement was not made by the appellant and that the buyer and court broker did not disclose the sale agreement until the buyer thought he had paid the whole sale price. He added that the sale price was concealed by the buyer and the Court broker otherwise the appellant would have willingly removed the caveat at the value of sixty million shillings. He submitted that the buyer, Charles Ekemu, Julius Okoboi and the court broker conspired with officials from the Land Office to defraud him.

The appellant submitted that the purpose of a caveat is to protect interest in land until it is removed by the caveator, Court of law or effluxion of time.

Finally the appellant, prayed that the Court applies section 140(1) and (2) of the Registration of Titles Act and thereby administer substantive justice to the appellant who was deprived of his property in dubious circumstances.

Consideration of the appeal:-

This is a second appeal and the role of this Court, as a second appellate court was long settled in a host of cases. Among them is **Masembe Vs Sugar Corporation and Another, Civil Appeal No. 1 of 2000**, where it was held:

On second appeal, the Supreme Court was not required to re-evaluate the evidence in the same manner as a first appellate court would as doing so would create unnecessary uncertainty. It was sufficient to decide whether the first appellate Court on approaching its task has applied the relevant principles properly.

The case of **Kifamunte Henry Vs Uganda (1997) EA 72** held:

.....the first appellate court has a duty to review the evidence of the case and to re-consider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it...

JS

Ground 1:-

In the first ground of appeal, the appellant faulted the learned Justices of the Court of Appeal saying that they failed to allow the appeal after agreeing with the appellant that the import of section 140(1) and (2) of the Registration of Titles Act is that, it is mandatory.

Section 140(1) and (2) provides as follows:

- (1) Upon the receipt of such caveat the registrar shall notify the receipt to the person against whose application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest the caveat has been lodged; and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he or she thinks fit, summon the**

caveator to attend before the Court to show cause why the caveat should not be removed; and the Court may, upon proof that the caveator has been summoned, make such order in the premises either *exparte* or otherwise, and as to costs as to it seems fit.

(2) Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the registrar, every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of sixty days after notice given to the caveator that the proprietor has applied for the removal of the caveat

The above provisions deal with the process of removal of a caveat. It is the appellant's argument that when the Court of Appeal found that the Registrar breached his duty when he failed to discharge the obligation of giving notice to the appellant as the caveator to the suit property, it would have been sufficient to hold the Registrar liable for compensation. JL

It was clear in the judgment of the Court of Appeal while resolving a related ground which was ground 2, whether the Registrar of Titles had power to remove the appellant's caveat under S.168 of the RTA. The Court of Appeal stated:-

We find that the caveat lodged by the appellant in respect of the suit property, and duly registered at the land registry on or about the 20th of October 2001 was made in the capacity of registered proprietor holding legal interest in the suit property. Clearly, the intention of the above section is to prohibit registration of dealings on land while the caveat is still subsisting. In the caveat application was provided an address through which the appellant as a caveator could be notified in case of any changes to be occasioned on the title in relation to proprietorship. The interests of the appellant were thus protected by the caveat. Section 141 of the RTA directs that so long as any caveat remains in force, prohibits any registration or dealing, the Registrar shall not except in

accordance with some provision of the caveat or with the consent in writing of the caveator, enter in the Register book any change in the proprietorship of or any transfer or other instrument purporting to transfer or otherwise deal with or affect the estate or interest in respect to which that caveat is lodged. The above provision is meant to continue the life of the caveat until it is legally removed and to prevent any entries on the register during the life of the caveat....it is our considered opinion that the wording and purpose of sections 145 and 168 of the RTA appear to be the crux of the 2nd ground of appeal.

As noted earlier, Part VII of the RTA governs caveats lodged under S.139 and their removal in our opinion is also provided for within the same part.

Be that as it may, it is strange that the Registrar could go ahead and register the transfer form and consent to transfer forms (Exhibit 13a, b, 14a, b) presented by Wycliffe Birungi without any notice whatsoever to the caveator (appellant). It would have been prudent of the Registrar to notify the caveator of the looming transfer and summon him to advance sufficient reasons why his caveat should not be removed, keeping in mind that as registered proprietor, the appellant's interest superseded that of Wycliffe Birungi which was at best, equitable as a purchaser of the suit property. Having regard to section 59 of the RTA, the appellant whose names appeared on the certificate of title was conclusive evidence of ownership at this point. Even if the registrar were to find the caveator's reasons to be sufficient, he would have ably discharged that statutory duty.

We therefore find that the Registrar of Titles breached this duty and failed to discharge the obligation of giving notice to the appellant as the caveator to the suit property.

There is no argument that technically the Registrar breached the statutory duty to give notice to the appellant (caveator) but it has to be pointed out that, breaching of statutory duty per se cannot be isolated from the facts and evidence surrounding the case.

As it is seen from the background of this appeal already reproduced in this judgment, the appellant was the registered owner of the suit property. He entered into money Borrowing agreement with Mr. Ekemu Charles to loan him shs. 14,700,000/= for a one James Barya.

The Borrowing agreement had the following terms among other things:-

- (3) That the appellant who was the borrower deposits a post dated cheque of the loaned amount (shs. 14,700,000) upon signing the agreement. The agreement was signed on 16/08/2001
- (4) That upon default, the lender shall together with the borrower cause the property to be valued and thereafter sold at the prevailing market value for which the lender shall deduct his money and remit the balance if any to the borrower
- (5) No transfer of the land shall be effected except upon default by the borrower and following sale as agreed upon in the agreement.
- (6) The borrower to pay back the loaned amount upon expiration of two calendar months counting from 13th August 2001
- (7) The borrower to deposit with the lender land title for the suit property Plot 112, Block 29 Mengo together with signed transfer forms as security for the loan upon the signing of this agreement.

The issue that comes out of the above is whether the appellant defaulted or not.

In his evidence at the High Court, he stated that he signed blank transfer forms. However, the agreement is clear as stated herein paragraph 7 that he signed transfer forms as security for the loan payment and it was on that basis that the agreement of sale was executed. Again, according to paragraph 6 of the borrowing agreement, if he defaulted repaying within two calendar months, it meant that the sale would ensue.

There is evidence undisputed on the record that he received some money from the sale, which was in line with the Borrowing agreement in paragraph 4 as above stated. I do not accept the appellant's submission that the sale price was concealed by the buyer and the court broker. A diligent person ought to have ascertained the price at which the property was sold and then know how much there was in balance so that he takes what he understands. The commencing of a suit against the respondent was merely an afterthought and was not in good faith. He intended to sell and he sold the suit property. ✱

In conclusion, I find no reason to fault the Court of Appeal. This ground fails.

Ground 2:-

The second ground faulted the learned Justices of the Court of Appeal for misdirecting themselves by deciding the appeal on grounds which were not argued by the respondent on appeal. The appellant submitted that the Court of Appeal introduced the principle of **in pari delicto** which was never pleaded and the appellant never had a chance to address Court on it.

I had the opportunity to peruse the record of appeal which included all proceedings and pleadings at the High Court. I found that the principle of **in pari delcito** was never pleaded by the defence. There was no evidence that the trial Judge made any

finding on it either. It was not therefore one of the issues on which the High Court made a decision.

It goes without saying that by invoking the principle, the right of fair hearing as embodied in Article 44(c) of the Constitution was infringed. The provision reads:

Notwithstanding anything in this Constitution, there shall be no derogation for the enjoyment of the following rights and freedoms:-

a).....

b).....

c) The right to fair hearing

d)....

✍

The learned Justices relied on various authorities of persuasive nature like **Scott Vs Brown (1892) 2 QB 724** and **Taylor Vs Chestor (1869) LR4 QB 309**. In the latter case, the plaintiff deposited with the defendant the half of a 50L bank note by way of pledge to secure the payment of money due from the plaintiff to the defendant. The debt was contracted for wine and supper supplied to the plaintiff by the defendant in a brothel kept by her. When the plaintiff brought an action to recover the half of a 50L bank note, the defendant firstly pleaded illegality which was not done in the instant case. Secondly, the Taylor case facts related on illegal or immoral contract founded on the principles of public policy and yet in the instant case, the appellant had lodged a caveat which the Registrar of Titles vacated without notice to him. The vacation of the caveat was illegal.

These cases, I hasten to state, are not applicable to the facts of this case. But even if they are applicable which is not the case, they are distinguishable in that, there was no illegal contract in the instant case. Parties agreed and the appellant deposited his title as security plus the post dated cheque. But most

importantly, the matter in issue was not pleaded by the respondent and it was never considered by the High Court.

In the case of **Makula International Limited Vs His Eminence Cardinal Nsubuga & Rev. Dr. Father Kyeyune Civil Appeal No. 4 of 1981**, the Court had occasion to pronounce itself on the circumstances under which the appellate Court may allow a party to argue a point he did not raise in the lower court and stated as follows:

In short, the test which emerges from these decisions and from the decisions quoted by counsel is that the Court of Appeal ought only to decide in favour of an appellant on a ground they put forward for the first time, if it be satisfied beyond doubt, first, that it had before it all the facts bearing upon the new contention as completely as would have been the case if controversy had arisen at the trial, and next, that no satisfactory explanation could have been offered, by those whose conduct is impugned if an opportunity for an explanation had been offered them in the witness box.

The Court while considering the new ground put forward by counsel in the Makula case (supra) went further and stated as follows:

If this point had been put forward in the lower court, no evidence would have been led or even required by the lower court to decide the point. The Judge would have relied on the submissions of counsel to decide it.

It follows therefore that even under the exceptional circumstances hi-lighted above, (which do not exist in this case) where a new point is allowed on appeal, parties must be given a chance to address Court on it. In this case, the parties were not given a chance to address Court on the new issue of in Pari delicto.

The parties at the trial framed four issues as follows:-

- (1) Whether the defendant acted fraudulently when he removed the plaintiff's caveat and registered the transfer of the suit land
- (2) Whether the fraudulent acts of a third party if at all any are established can be imputed upon the defendant
- (3) Whether the plaintiff's application for compensation was competent and maintainable
- (4) What remedies are available to the parties

In the case of **M/S Fang Min Vs Belex Tours & Travel Limited Consolidated with Civil Appeal No. 1 of 2014 between Crane Bank Limited and Belex Tours & Travel Limited Civil Appeal No.6 of 2013 (SCU)** the appellant raised the same ground as follows:-

The learned Justices of Appeal erred in law and in fact in introducing new unpleaded issues which did not form part of the issues at the trial nor in the memorandum of appeal fourteen (14) years after the sale of the suit property has been concluded outside the limitation period in law in which such matters could be raised.

The Court stated; **this Court has on several occasions emphasized the need for pleadings in civil proceedings to describe the respective cases for parties and to define the issues in dispute for resolution by the Court. In Interfreight Forwarders (U) Ltd Vs East Africa Development Bank, Civil Appeal No 33 of 1992 Oder JSC said, the system of pleading is necessary in litigation. It operates to define and deliver clarity and precision of the real matters in controversy between the parties upon which they can prepare and present the respective cases and upon which the Court will be called upon to adjudicate between them. It does serves the double purpose of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and when the Court will have to determine at the trial. See Buller & Leaks and Jacobs Precedents of pleading, 12th edn page 3. These issues are**

framed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not set up by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings.

In **Oriental Insurance Brokers Vs Transocean SCCA No. 55 of 1995**, it was held that where a Judge raises an issue while writing his judgment, **it is necessary to give opportunity to parties to address court, or adduce evidence on the amended issues before Judgement is delivered.**

In the case of Attorney General Vs Paul Ssemogerere and Zachary Olum Constitutional Appeal No. 3 of 2004(SC) Mulenga JSC stated as follows:- 48

It is a cardinal principle in our judicial process that in adjudicating a suit, the trial court must base its decision and orders on the pleadings and the issues contested before it. Founding a Court decision or relief on unpleaded matter or issues not properly placed before it for determination is an error in law.

Likewise on appeal, matters that were not raised and decided on in the trial court cannot be brought up as fresh matters. The Court would be wrong to base its decision on such matters that were not raised as issues and determined by the trial Court except upon fulfilling the circumstances as shown in the above authorities. I therefore concur with the cases cited above.

This ground succeeds.

Ground 3:-

This ground faulted the learned Justices of the Court of Appeal for holding that the appellant had no cause of action even after

finding that the Registrar of Titles acted strangely, recklessly and negligently when deregistering the proprietor of the suit property.

When the learned Justices of Appeal found that the Registrar breached his statutory duty of giving notice to the caveator about the transfer forms transferring the suit property to Wycliffe Birungi, it naturally followed that the appellant had a cause of action against the respondent in vicarious liability. Instead, they diverted from the subject and introduced a different question of "Whether the appellant as a caveator sold the suit property"

They upheld the trial Judge's judgment basing on the evidence of DW1 (Wycliffe Birungi) and believed that the appellant sold the suit property. And that this was the information the Registrar based on to remove the caveat and assumed that the appellant no longer had any caveatable interest. The appellant who was PW1 in his testimony at the High Court hearing stated;

It was agreed that I was to surrender a blank but signed transfer forms of the suit property, which is Annexure G to the plaint. Except the name on top and my signature on the transfer forms there was nothing, it was blank. The transfer forms did not have the application for consent to transfer as it is normally done... as a precaution; I lodged a caveat on the suit property, a copy which is annexure "A" to the plaint. The caveat was forbidding the registration of any person as transferee or proprietor any instrument affecting the suit property until such notice of such registration is first given to me. I thought all was well, until December 2007 when I went to the office of Sam Okiling. I found Okiling absent but there was a young lawyer Patrick Okecha...after sometime, I was informed that the suit property had been sold to one Wycliffe Birungi by a Court Broker called Julius Okoboi. Then I went to Mr. Birungi who gave me a copy of the sale agreement. I found that the transfer form was dated 19/07/2002 but was registered on 25/07/2005....by any stretch of imagination, the Registrar who recorded the entry should not have removed my caveat without notice and

transferred the property contrary to section 141(1) of the RTA which is a statutory injunction without notice to me....the Registrar just crossed out my caveat in the title and endorsed that, it is the caveator vending whereas not...there is no instrument number removing the caveat. The other caveats of Ekemu, Birungi were removed by an instrument number...

According to the facts and evidence as already stated before, the appellant had no cause of action against the respondent, and so could not seek any remedies whether compensation or otherwise under the Registration of Titles Act.

S. 178 of the RTA provides for compensation of a party deprived of land. It provides:

(178) Compensation of party deprived of land.

Any person deprived of land or of any estate or interest in land in consequence of fraud or through the bringing of the land under the operation of this Act or by the registration of any other person as proprietor of the land, estate or interest or in consequence of any error or misdescription in any registered certificate of title or in any entry or memorial in the Register Book may bring and prosecute an action for the recovery of damages against the person upon whose application the land was brought under the operation of this Act, or the erroneous registration was made, or who acquired title to the estate or interest through the fraud, error or misdescription; but—


- 1. except in the case of fraud or of error occasioned by any omission, misrepresentation or misdescription in the application of the person to bring such land under the operation of this Act or to be registered as proprietor of the land, estate or interest or in any instrument signed by him or her, that person shall upon a transfer of the land bona fide for value cease to be liable for the payment of any damage which but for the transfer might have been recovered from him or her under the provisions herein contained; and in the last-mentioned**

case, and also in case the person against whom the action for damages is directed to be brought as aforesaid is dead or has been adjudged bankrupt or cannot be found within the jurisdiction of the High Court, then and in any such case such damages with costs of action may be recovered from the Government; and

2. In estimating the damages the value of all buildings and other improvements erected or made subsequently to the deprivation shall be excluded.

As discussed in ground one, considering the facts and evidence together with the law that the provision cannot be applied in favour of the appellant. I find no merit in this ground and it fails too.

Ground 4:-

This ground was to the effect that the learned trial Judge failed to properly evaluate the evidence though fraud could be discerned on close scrutiny out of all evidence adduced at the trial. 

I find this ground mixed up between the learned Justices of the Court of Appeal and the learned trial Judge of the High Court. The appellant submitted that, the evidence showed that the Registrar had illegally removed the caveat and this was the crux of the appellant's suit. He submitted further that the respondent offered no valid defence to the appellant's claim.

Counsel for the respondent submitted that the learned Justices of the Court of Appeal were alive to the evidence on record showing that the appellant had indeed sold the land in the same breath seeking compensation for deprivation of the same. Counsel for the respondent did not specifically submit on this ground.

Be that as it may, according to the record, fraud was specifically pleaded, but it was not specifically proved. Fraud cannot be proved by discerning on close scrutiny of all evidence adduced. In

the case of **Frederick Zaabwe Vs Orient Bank and 2 others** **SCCA No.4 of 2006**, Justice Katureebe, JSC (as he then was) held:

In my view, an allegation of fraud needs to be fully and carefully inquired into. It is for that reason in my view that in Farm International Ltd, Ahmed Farah Vs Mohamed Hamid Farih Civil Appeal No. 16 of 1993, the Supreme Court cited the principle as follows: No court will allow a person to keep an advantage which he has obtained by fraud. Fraud unravels everything, the Court is careful not to find fraud unless it is distinctly pleaded and proved. But once proved, it vitiates contracts, judgments and all transactions whatsoever.

I concur with that view. JH

The appellant did not adduce evidence to prove fraud on part of the Registrar.

This ground fails.

In conclusion, since only one out of the 4 grounds has succeeded, the appeal is dismissed for lack of merit. Each party shall bear its own costs.

Dated at Kampala this.....^{9th} day of November.....2018.

Mwondha.....

Mwondha
JUSTICE OF THE SUPREME COURT

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

CORAM: MWANGUSYA, MWONDHA, MUGAMBA; JSC NSHIMYE,
TUMWESIGYE AG. JSC

CIVIL APPEAL NO. 12 OF 2017

EVARISTO MUGABI APPELLANT

VERSUS

ATTORNEY GENERAL RESPONDENT

JUDGMENT OF MUGAMBA JSC

I had the advantage of reading in draft the judgment prepared by my learned sister Mwendha JSC. I concur with the judgment and the orders she proposes. I have nothing to add.

Given at Kampala this day of ~~October~~ 2018

9th

November

Thurs.

9/11/2018

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

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

(CORAM: MWANGUSYA, MWONDHA, MUGAMBA, JJSC; NSHIMYE,
TUMWESIGYE, AG. JJSC

CIVIL APPEAL NO: 12 OF 2017

BETWEEN

EVARISTO MUGABI APPELLANT

AND

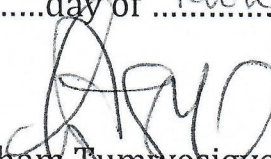
ATTORNEY GENERALRESPONDENT

[Appeal from the decision of the Court of Appeal (Kavuma, DCJ, Buteera and Kiryabwire JJCA) at Kampala in Civil Appeal No. 99 of 2011]

JUDGMENT OF TUMWESIGYE, AG. JSC

I have had the benefit of reading in draft the judgment of my learned sister, Hon. Justice Faith Mwendha, JSC, and I agree with it. I also agree with the orders she has proposed.

Dated at Kampala this^{9th}.....day of ^{November}.....2018


Jotham Tumwesigye

AG. JUSTICE OF THE SUPREME COURT

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

[CORAM: MWANGUSYA, MWONDHA, MUGAMBA, JJSC, NSHIMYE,
TUMWESIGYE, AG JJ.SC]

CIVIL APPEAL NO.12 OF 2017

BETWEEN

EVARISTO MUGABI:.....APPELLANT

AND

ATTORNEY GENERAL:..... RESPONDENT

*[Appeal from decision of Court of Appeal (Kavuma, DCJ, Buteera and Kiryabwir
JJA) at Kampala in Civil Appeal No.89 of 2011]*

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

I have had the benefit of reading in draft the judgment of my learned sister, Hon Justice Faith Mwendha, JSC and I agree with it. I also agree with the orders she has proposed.

Dated at Kampala, this ^{9th}----- day of ^{November}----- 2018


A.S. NSHIMYE

A.G.JUSTICE OF SUPREME COURT

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

Coram: (Mwangusya, Mwondha, Mugamba, JJ.S.C; Nshimye, Tumwesigye, Ag. JJSC)

CIVIL APPEAL NO.12 OF 2017

BETWEEN

EVARISTO MUGABI..... APPELLANT

VERSUS

ATTORNEY GENERAL RESPONDENT


(Appeal from the decision of the Court of Appeal at Kampala, Uganda (Kavuma, DCJ, Buteera and Kiryabwire JJA) in Civil Appeal No. 99 of 2011)

JUDGMENT OF ELDAD MWANGUSYA, JSC

I have had the benefit of reading in draft the judgment of my learned sister Hon. Justice Faith Mwondha, JSC and I agree with her reasoning and conclusion that there is no merit in the appeal which should fail.

As all the other members of Court agree, this appeal is dismissed with costs.

Dated at Kampala this^{9th}.....day of^{November}..... 2018


Mwangusya Eldad
JUSTICE OF THE SUPREME COURT