

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(LAND DIVISION)
CIVIL SUIT No. 213 OF 2013

JOHN KASULE PLAINTIFF

VERSUS

1. MUWONGE MOSES

2. SEWANYANA SOLOMON:..... DEFENDANTS

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

JUDGMENT

The Plaintiff has brought this suit against the Defendants, jointly and severally, alleging fraud against them with regard to land comprised in Kyadondo Block 34 Plot 332, Mutundwe (herein after, the suit land) now registered in the names of the Defendants. The suit seeks a declaration that the suit land forms part of the estate of the late Antonio Kafumbe Ssali Lwanga, cancellation of the Defendants' names from the proprietorship of the suit land, and registration of the Plaintiff thereon as the administrator of the estate of the late Antonio Kafumbe Ssali Lwanga. It also seeks orders for general damages, and costs of the suit. The Defendants did not file any defence to the suit although, on the evidence before Court, they were duly served with the summons to do so. The suit thus proceeded ex-parte.

The issues framed for determination were as follows: –

- (1). Whether the Defendants acquired the suit land through fraud.
- (2). What remedies are available to the Plaintiff?

Issue No. 1. Whether the Defendants acquired the suit land through fraud.

Although there is no rebuttal of the Plaintiff's evidence, which logically leads to the presumption that the Plaintiff's claim has been admitted, nonetheless, this remains a mere presumption. As was held by the Court of Appeal in *C.A.C.A. No. 34 of 1999 –The Management Committee of*

Rubaga Girls School vs. Dr. Bwogi Kanyerezi [1999] KARL 587, the Plaintiff 's evidence must be found to prove his case to the standard required by law. In his witness statement made on oath, the Plaintiff stated that his late father Antonio Kafumbe Ssali Lwanga never sold the suit land to the Defendants; but had instead sold to them the neighbouring Plot No. 333 as is evidenced by the sale agreement exhibited as 'P1'.

His further evidence is that his late father had rented out the suit land to a school, and was up to his dying day collecting rent from the school. In the light of this, and in the absence of evidence in rebuttal, the strong inference anyone would make is that the late did not sell the suit land to the Defendants. If it were otherwise, then the late Antonio Kafumbe Ssali Lwanga would not have continued to collect rent from the school until his death. Thus, the balance of probability weighs heavily in favour of the Plaintiff in his contention that the Defendants got themselves registered as proprietors of the suit land through fraud. It follows that upon the death of the Plaintiff's father, the suit land rightly formed part of his estate.

Issue No. 2. What remedies are available to the Plaintiffs?

The Defendants fraudulently registered themselves as proprietors of the suit land; hence, I have to order for the recovery of the suit land from them pursuant to the provisions of section 176 (c) of the Registration of Titles Act. In consequence, I have to order the Registrar of Titles to cancel their names from the certificate of title to the suit land, and substitute therefor that of the Plaintiff as the administrator of the estate of the previous proprietor. The Plaintiff is also entitled to an award of general damages for having suffered deprivation of the suit land owing to the fraud perpetrated by the Defendants; but because he retained possession of the land, I consider the sum of U. shs. 5,000,000/= (Five million only) sufficient to atone for the inconvenience he has suffered owing to the fraud.

In the premises, I allow the suit and make the following declarations and orders: –

- (1). The Defendants fraudulently caused themselves to be registered as proprietors of the suit land comprised in Kyadondo Block 34 Plot 332, Mutundwe.
- (2). The suit land comprises part of the estate of the late Antonio Kafumbe Ssali Lwanga, now being administered by the Plaintiff.

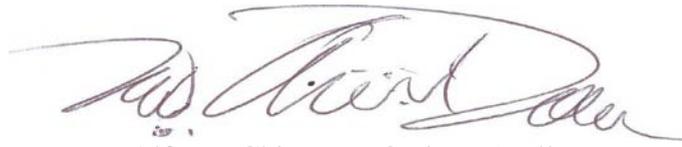
(3). The Registrar of Titles is hereby ordered to forthwith cancel the names of the Defendants from the certificate of title to the suit land; and substitute therefor that of the Plaintiff as the administrator of the estate of the previous registered proprietor.

(4). The Defendants shall pay the Plaintiffs the sum of U. shs. 5,000,000/= (Five million only) as general damages for the inconvenience suffered.

(5). A permanent injunction hereby issues restraining the Defendants from making any claim to the suit land adverse to that of the Plaintiffs.

(6). The Defendants shall pay the Plaintiff's costs of the suit.

(7). The monetary awards herein shall each attract interest at the rate of 6% per annum from the date of this judgment until payment in full.



Alfonse Chigamoy Owiny – Dollo
JUDGE

01 – 12 – 2014