

3. As against the Respondent No. 2, the appellant contended in his plaint that it had committed acts of trespass on the suit land, and had acted fraudulently with the Respondent No. 1 to deprive the appellant of the suit land. The appellant sought as against the Respondent No. 2 a declaration that the appellant was the lawful owner of a kibanja in dispute, and a permanent injunction restraining it from entering or taking possession of the kibanja in question.
4. The Respondent No. 1 did not enter an appearance or a defence in the court below and the trial proceeded in its absence. The Respondent No. 2 opposed the action in the court below, and in its defence asserted that the Respondent No. 1 had never owned the suit land at any one time. At all material times one Grace Wilson Kalemba Lumala who was the registered proprietor thereof had owned this land. In 1996 the said Lumala had sold his interest in the suit land to the Respondent No.2 who continued with development of the suit property.
5. The Appellant produced four witnesses and the Respondent No.1 produced three witnesses in support of their respective cases. The learned trial magistrate in a carefully written judgement evaluated the evidence adduced in support of each agreed issue and arrived at the conclusion that the suit property had previously been owned by Grace Lumala who had transferred his interest to the Respondent No.2. The appellant, the trial magistrate concluded, had not acquired any interest in the suit property, as the Respondent No.1, from whom it claimed title, had no title to pass on. The relationship between the Respondent No. 1 and Grace Lumala had been that of mortgager and mortgagee.
6. The appellant set forth 7 grounds of appeal. At the hearing of the appeal, learned counsel for the appellant, Mr. Wilfred Niwagaba, told court that he would argue grounds 1, 3 & 4 together, and grounds 2 & 5 jointly. I will set out grounds 1, 3 & 4 first.
7. “1. The learned Trial Magistrate erred in law and fact in finding that by 5th July 1996 and by the end of December 1996, Grace Wilson Kalemba Lumala was the rightful owner of

the suit land, and thereby arrived at a wrong decision, occasioning a miscarriage of justice.”

8. “3. That the learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record and thereby arrived at wrong decision occasioning a miscarriage of justice.”
9. “4. That the Learned Trial Magistrate erred in law and fact in finding that the First defendant could not pass on any good title to the Plaintiff, and thereby arrived at a wrong decision, occasioning a miscarriage of justice.”
10. Mr. Niwagaba Wilfred, learned counsel for the appellant, submitted that the said grounds related to ownership of the suit property. As at the 5th July 1996 the trial court erroneously found that this property belonged to Lumala, while in the evidence, according to Exhibit P9, it belonged to the Respondent No. 1. He submitted that the trial court never reviewed the evidence of the plaintiff on this matter and did not give any reasons for disregarding it. The evidence of PW 1 and PW2 clearly showed that the Respondent No. 1 was the owner of the suit property at the material time in its unregistered form. He further submitted that the contradictions between the testimony of DW1 and DW2, as to how and when DW1 came to know DW2, show that the Respondent No.1 sold the land in dispute to Respondent No.2.
11. Mr. Niwagaba argued that the role of Mr. Lumala was only to sign a recommendation for he was the person in whose names the expired title was held. Mr. Niwagaba referred to exhibit P8, which was a transfer form signed by DW2 in favour of Respondent No.1 dated in 1992. The testimony DW3 confirms that the local council officials recognised the Respondent No. 1 as the owner of the land in dispute. The learned trial Magistrate ignored evidence of possession by the Respondent No.1 between 1992 and 1996. As the Respondent No.1 had not entered a defence, it must be taken that it had admitted the allegations set out against it in the claim. Counsel referred to the decision of British Tutorial College 1965 EA 323 in support of this submission. [I was unable to trace this decision at the citation provided.]

12. Arguing grounds 1 and 5, Mr. Niwagaba submitted that the trial magistrate basically relied on lease extensions on the question of acquisition of good title. This was contrary to the “Ebyaffe Statute”. The reliance on these extensions was wrong, as the extensions were contrary to the law. In addition extensions to leases do not extend the title. He submitted that this court should find that the doctrine of proprietary estoppel applicable in favour of Respondent No.1 as against Lumala, Finally Mr. Niwagaba submitted that the trial magistrate failed to appreciate that a conflict of equities existed that had to resolve in favour of the appellant. He prayed that the appeal be allowed, the decision of the lower of the court set aside, and the appellant declared the proprietor of the land in dispute.
13. Mr. Joseph Balikuddembe, learned counsel for the Respondent No.2, opposed the appeal. He submitted that grounds 1 to 5 all revolve around 2 crucial issues. Firstly whether Grace Wilson Lumala, DW2, was the rightful owner of the suit land at all material times, particularly between 5th July 1996 and December 1996. Secondly whether Grace Lumala passed on good title to Respondent No.2. He submitted that on the evidence before the trial court all these two issues would have to be answered in the affirmative.
14. Mr. Balikuddembe referred to the testimony of PW3, Robert Ngobi, who was a registrar of titles. He testified that it was Lumala who had a registrable interest in the land, after the extension of his lease over the suit land. The appellant bought from the defendant No.1 who was not the registered proprietor, and whose name did not appear at all on the certificate of title. DW2, Lumala, had a mortgaged the suit land to Serugo to secure a loan. After he repaid the loan Serugo returned the certificate of title to the Lumala. In addition Respondent No.2 was the party in possession of the suit land, and had in fact carried out some developments, as stated in his testimony. Mr. Balikuddembe prayed that this appeal be dismissed.
15. It is the duty of this court, as first appellate court to review for itself the evidence on record afresh, and determine whether in light of the grounds of appeal, the evidence below supports the conclusions of the trial court, bearing in mind though, that it is the

trial court, which had the opportunity to observe the witnesses testify in open court.

16. The appellant called four witnesses. The first witness was the appellant himself. He states that he purchased the suit land from the defendant No. 1 at a price of shs.55,000,000.OO. The purchase agreement was handled by Lwere and Company Advocates and executed on the 1 July 1996. He did not look at the agreement under which the defendant No. 1 had bought the land. He was aware that Lumala was the registered proprietor of the suit land. Serugo was the managing director of defendant No. 1. Serugo promised to introduce him to the Local council officials of the area but he did not do so. Serugo did not introduce him to Buganda Land Board, either, who are the controlling authorities. He did not know Lumala personally and had left it to his lawyers to investigate the title to the land.

17. PW2 was Moses Lwanyaga an advocate with Lwere and Company Advocates. He testified that his firm was instructed by defendant No. 1, through Serugo to draw a resolution related to sale of land. In his own words, he continued to testify, “1 ascertained the ownership of the land by a letter from LC1 Official of Muwanga Zone confirming the sale between the former owner Lumala and the 1st Defendant. After seeing this, I had no doubt that the 1st Defendant was the rightful owner. The land referred to being Kibanja land, I could not conduct a search in the Land Office. Mr. Lumala is not personally known to me. I would be very much surprised if told that Lumala was the owner of the land. At the time of making the resolution I knew the land belonged to Kabaka Buganda Land Board Victoria Hardware was the owner of the Kibanja on the disputed land. 1st Defendant was the legal owner of the Kibanja.”

18. The appellant instructed Lwere and Company Advocates to obtain a transfer of land into his names at the Buganda Land Board who requested for an introduction from the local council officials of the area in which the land was situate. A letter of introduction was not obtained from the local council officials. Further approach to the Buganda Land Board

revealed that the defendant No.2 had already applied for a lease of the land in question.

19. PW3 was Robert Ngobi, a Registrar of Titles with the Office of Titles. He testified that Grace Wilson Kalemba Lumala was the registered proprietor of the suit land for a term of three years from 1st November 1990. The lease was extended for another term of three years by the Town Clerk, Kampala City Council with effect from the 1st November 1993. The lessor should have used to this extension to obtain a new title. He stated that Kampala City Council was the controlling authority at the time but he was unable to tell from the title in question that this land had been taken over by the Buganda Land Board. In his opinion an unregistered interest in land is not customary interest.

20. PW4 was Samuel Mugalu Kigozi, an Assistant Land Officer with Buganda Land Board who testified that the suit land came under the jurisdiction of the Buganda Land Board on the 31 July 1993. There have been three applications for leases to the suit land. The first one was by a one Sebagala who had bought from Serugo but Sebagala withdrew from pursuing this application. The other two applications are those by the appellant and defendant No.2.

21. Defendant No.2 called three witnesses. DWI was Expedito Mpanga, Managing Director of Defendant No.2. He testified that he knew one Grace Wilson Kalemba Lumala who sold to him a piece of land with an unfinished building at Katwe. This was plot 878. A sale agreement was executed before an Advocate in Masaka whereby defendant No.2 purchased the said land for shs.55,000,000.00 Lumala surrendered the documents he had relating to this land. This occurred in November 1996. Mr. Lumala introduced the witness to the local council one officials in Katwe. The Local Council officials wrote to the Buganda Land Board introducing the defendant No.2

22. One month after purchase defendant no2. employed its own askari for the plot and started construction works. Defendant No.2 built what he called go-downs and at the time of

giving testimony construction was at second floor level. DW1 claimed that so far shs. 280,000,000.00 had already been spent on developing the said plot of land.

23. DW1 denied any knowledge of the interest of defendant No.1 in the suit land though he knows the company deals in the same line of business. When Lumala introduced DW1 to the local council officials he was told to bring Serugo because Serugo had an interest in the suit land. Serugo did not tell him that the land was owned by defendant No.1. Serugo did not sell the suit land to him on behalf of defendant No.1. Serugo told the witness that the company did not own the land in question. He wrote a letter to that effect to Buganda Land Board. DW1 only dealt with Lumala in purchasing the land.

24. DW2 was Grace Wilson Kalemba Lumala the undisputed original owner of the suit land. He testified that he bought the land from the former owner and he obtained a lease from Kampala City Council, as it was public land. Initially the lease was for three years and a certificate of title was obtained. The lease was subsequently for another period of four years vide the Town Clerks exhibit D.3.

25. Serugo was an old personal friend who had lent the witness money sometime back with the suit property as security. On the witness paying back the money lent Serugo returned the certificate of title that he had deposited with him. Serugo also acted as his broker when he wanted to sell the land. In this regard Serugo introduced Eddie Sebaggala who initially had paid a deposit on the purchase of the suit land but failed to pay the balance and the agreement was annulled.

26. DW2, Grace Lumala, sold the land to defendant No.2 whose managing director was DW1. The price was shs.55,000,000.00. DW2 wrote, on 31st December 1996, to Buganda Land Board, the controlling authority, introducing defendant No.2 as the person to whom he had surrendered all his interest in the suit land. DW2 denied ever having sold the suit land to defendant No.1 or Mr. Serugo, its managing director. He denied any

knowledge of the letter written by local council officials to Buganda Land Board that alleged that he had sold the land to defendant No.1.

27. In cross-examination an application for consent to transfer and a transfer form were put to him. He admitted that they bear his signature. These forms relate to the suit land and were admitted as exhibit P8. The transfer form bears the date of 29th June 1992. It is not witnessed.

28. DW3 was Summy Iga, the chairman of Muwanga Zone, Katwe. He testified that they had written a letter to Buganda Land Board withdrawing their recommendation of Sebaggala after being advised by Serugo that he had failed to pay. In that letter they mention that the owner of the suit land was defendant No.1 because they were aware of the loan agreement between Serugo and Lumala. He did not recall the full contents of the loan agreement but it was the basis for their statement that defendant No.1 was the owner of the suit land. To his knowledge Lumala did not sell the suit land to defendant No.1. The local council recognised an interest of defendant No.1 by virtue of the loan agreement.

29. DW3 stated that Lumala introduced Mpanga as the new owner in 1996 and that is when he came to learn that Lumala had paid off Serugo's loan. His council then wrote a letter introducing defendant No.2 as the new owners of the suit land.

30. It would appear to be the case for the appellant that DW2, Lumala, some time prior to July 1996 sold the suit land to defendant No.1, who in turn, in July 1996 sold the suit land to the appellant. Defendant No.1 did not appear at the trial and a judgement in default that had been entered against it was set aside in the final judgement of the trial court. I say it "appears" to be the case for the plaintiff because on the testimony, save for exhibit 8 the transfer form together with the application for consent to transfer, no evidence was adduced to show that there was ever an agreement of sale for the suit land between Lumala and defendant No.1.

31. The transfer form is dated June 1992. It does not bear any price. Neither does it bear any witnesses. It was never presented for registration and in that form it could never have been accepted for registration as it is clearly incomplete. In the circumstances it cannot amount to proof of a sale of the suit land from Lumala to defendant No.1. In fact in the testimony of PW1 and PW2 no effort was made to investigate the alleged sale of the suit land between Lumala and defendant No.1. There is Exhibit D.9, the letter written by local council officials to Buganda Land Board that withdraws the council's recommendation of Sebagala for a land title. It requests the board to cancel the ownership of Sebagala as the true owner was defendant No.1 in light of the agreement between Lumala and defendant nol, which the council officials had witnessed. The agreement referred to was not attached to the exhibit. The letter is signed among others by DW3.
32. DW3 in his testimony stated that the basis for the council's holding that defendant No.1 had an ownership interest in the suit land was the loan advanced to Lumala by Serugo. Lumala in his testimony states that he had mortgaged the suit land to Serugo in respect of the loan advanced to him, and that he had subsequently paid off the loan. In turn Serugo had returned his certificate of title.
33. The appellant in the court below failed, in my view, to trace his root of title to Lumala who was the holder of, initially, a registered interest, and later an unregistered interest in the suit land. The appellant failed to establish as he was obliged to do in order to succeed on his claim that Lumala had sold the suit land to defendant No.1 before defendant No.1 sold the same to him. On the evidence before the trial court the appellant had clearly not taken any interest in investigating title beyond the person who sold to him, who had no proof of title, customary or otherwise, to the suit land.
34. In the premises I would dismiss all the grounds of appeal with costs here and in the court below. I would let the judgement of the lower court stand.

Dated, Signed and Delivered at Kampala this 5th day of September 2002.

FMS Egonda-Ntende

Judge