

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – LD – NO. 018 OF 2020

ANDREW BAZALIRWAKI ::::::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS

- 1. YOWANA KIIZA**
- 2. ASUMAN BUMALI**
- 3. THE COMMISSIONER LAND REGISTRATION ::::::: DEFEDANTS**

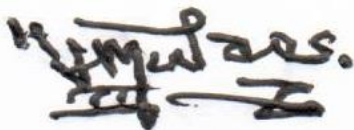
JUDGEMENT

BEFORE: HON. JUSTICE VINCENT WAGONA

Introduction:

The plaintiff brought this suit against the defendants jointly and severally for orders and declarations:

- 1. That the disputed land partly comprised in Bunyangabu Block 76, Plot 3 and converging the entire land comprised in Block 76 plot 7 land at Rubalika belongs to the plaintiff.**
- 2. A declaration that the 1st defendant is a trespasser on the plaintiff's land.**
- 3. A declaration that the 1st and 2nd defendants fraudulently procured the survey and registration of Bunyangabo Block 76, Plot 3 by including their names on the certificate of title.**
- 4. An order for cancellation of the certificate of title for Bunyangabo Block 76, Plot 3.**



5. An order for eviction against the 1st defendant from the plaintiff's land.

6. General damages

7. An order for permanent injunction against the defendants, their agents or anybody claiming title under them from conducting any transaction and activities on the disputed land and or doing any other act on the suit land.

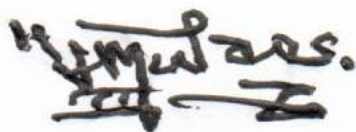
8. Mesne profits.

9. Costs of the suit and interests on general damages and costs.

The case of the Plaintiffs:

In 1967 the plaintiff and his friend, Musa Bumali (deceased) acquired land which was vacant and without any claim. They later divided the land into two and shared it. In or around 1980, the plaintiff who is illiterate requested his son, the 1st defendant to assist him secure the services of a surveyor to survey his land and process the certificate of title in the plaintiff's names. In the process, Musa Bumali also requested the 1st defendant to help him do the same for his separate land. In this regard, the 1st defendant brought several documents where the illiterate plaintiff appended his signature.

In 2020 the plaintiff was surprised to receive a letter from the 1st defendant requesting that the land be subdivided into four equal parts in respect of the people indicated on the title namely, the plaintiff, 1st and 2nd defendants and Musa Bumali. A search with the land registry established that the land had been registered in the names of said four people. In a meeting called by the plaintiff, the 1st defendant

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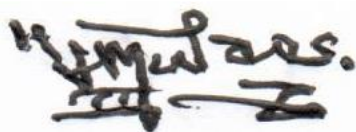
apologized for his acts. Following the meeting, the 1st defendant embarked on letting his cows into the gardens of maize and other seasonal crops belonging to the plaintiff's tenants on the disputed land. He on several occasions trespassed on the suit land and assaulted the plaintiff's tenants.

The 1st defendant misled the illiterate plaintiff into signing documents resulting in the registration of the land under the four people on the title. The title for land comprised in Block 76, plot 3 which is registered in the names of four people was fraudulently obtained. The 1st defendant had made false representations that the land belonged to four people who had equal shares whereas not. The acts of the defendants amounted to fraud and trespass.

The case of the Defendants:

The plaintiff is the biological father of the 1st defendant. The plaintiff and the late Musa Bumali, father to the 2nd defendant settled on the suit land in 1969 after the Rwenzururu war to graze cattle thereon while the 1st and 2nd defendants were teenagers.

It was the choice of the 4 co-owners to register the suit land in their names. At the time of survey and titling of the suit land, it was used by all 4 co-owners. When the certificate of title was produced, the duplicate certificate of title was kept by the late Musa Bumali. The suit land was later divided with the plaintiff and the 1st defendant on one side but with no boundaries to separate them since they were father and son while the late Musa Bumali and the 2nd defendant also occupied another side. The

A handwritten signature in black ink, appearing to read 'Musa Bumali', with a horizontal line drawn underneath it.

land was used as a cattle farm for grazing. When the plaintiff's cattle substantially reduced due to theft, the plaintiff decided to rent out the land for cultivation by tenants which forced the 1st defendant to paddock about 15 to 20 acres and established his own cattle farm. The 1st defendant never trespassed on the suit land. The 1st defendant is not in possession of land in Block 76 plot 7 and he claims no interest therein. His interest is in Block 76 Plot 3.

The plaintiff was at all material times aware that the suit land was registered into the names of four people. The plaintiff after receipt of a letter from the 1st defendant's counsel seeking quiet possession of his part of the suit land and to restrain the plaintiff's tenants, the plaintiff went ahead and tore down the plaintiff's house for herdsmen as well as the cattle shed. The plaintiff's agents also cut his fence and drove out some cattle prompting the 1st defendant to open up a criminal case.

The 1st defendant included a counter claim against the plaintiff and the 1st and 2nd defendant seeking orders that; a declaration that he is a co-owner of the suit land and entitled to a share thereof, consequential orders directing the 3rd counter defendant/defendant to mutate land comprised in Block 76, Plot 3 at Kabarole Bunyangabu to grant a separate title in equal share to the 1st defendant, an order evicting the plaintiff/1st counter defendant from the counter claimant's share of the suit land, a permanent injunction, general damages and costs of the suit.

Issues:

The following issues were framed for trial:

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1. Who owns the suit land?

2. Whether the 1st and 2nd defendants were fraudulently registered as co-owners of the suit land with the plaintiff and Musa Bumali.

3. Whether the 1st defendant's title to the suit land is indefeasible.

4. What remedies are available to the parties?

Representation and Hearing:

Mr. Mugisa Richard Rwakatoke appeared for the plaintiff/counter defendant while *Mr. Mugabe Robert* appeared for the 1st defendant/counter claimant. The parties filed written submissions which I have considered.

Witnesses:

The plaintiff relied on the evidence of seven witnesses that is; **Kamara Gerald (PW1)**, **Topista Matama, (PW2)**, **Tereza Bumali (PW3)**, **Byarugaba Elias, (PW4)**, **Bazalirwaki Gorreti (PW5)**, **Mugisa Adolf (PW6)**, **Matte Stephen (PW7)** and **Byarufu Steven (PW8)**. The 1st defendant relied on evidence of three witnesses that is **Kiiza John Bazalirwaki (DW1)**, **Manige Godfrey Kahwa (DW2)** and **Bumali Juma (DW3)** who testified at Locus.

Burden of Proof and Standard of Proof:

The plaintiff bears the burden to prove his/her claim on the balance of probabilities. Section 101 of the Evidence Act is to the effect that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts

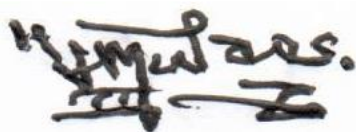


which he or she asserts must prove that those facts exist. (See also *Kamo Enterprises Ltd Vs. Krytalline Salt Limited, SCCA No. 8 of 2018*).

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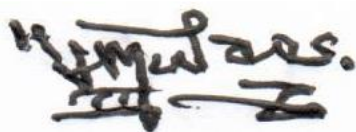
RESOLUTION:

6 **PW1 (Kamara Gerald)** (attorney of the plaintiff) testified that the plaintiff and his
friend Musa Bumali (deceased) had acquired land which forms part of the suit land
and they started grazing cattle thereon together with their families. Later, the plaintiff
9 and the late Musa Bumali shared their land into two parts. They planted boundaries
of Uruyenje, Emitoma, Emiko trees and barbed wire and the 2 families started
grazing separately. At the time of sharing, the 1st defendant was about 14 years and
12 the 2nd defendant was about 9 years. Later the plaintiff and Musa Bumali bought
more land and added on what they previously shared. The land that the plaintiff
bought after sharing was the biggest portion and the 1st defendant never contributed
15 to the acquisition of the same. There is no way the plaintiff and the late Musa Bumali
could acquire land with the 1st and 2nd defendants who were minors under the care
of their parents. The plaintiff and Musa Bumali were illiterate and could not
18 understand the English language or read and write. They depended on the 1st
defendant to assist in matters that involved reading. The plaintiff trusted the 1st
defendant and asked him to title the land in his names Andrea Bazalirwaki. This was
21 also known to the late Musa Bumali. The 1st defendant was also to process a separate
title for the late Musa Bumali since he was also illiterate. The plaintiff got to know
that the title to the suit land was in the names of four people when he was served
24 with a letters from Mugabe- Luleti & Co. Advocates (*PE1*) and upon conducting a
search (*PE2*). On 15th June 2020, a meeting was organized at the home of the



plaintiff where the 1st defendant knelt down and apologized for all his mistakes. It was resolved in the said meeting that the 1st defendant was to handover all titles to the plaintiff. The plaintiff was surprised that after the meeting, the 1st defendant started attacking the plaintiff's tenants on the land. The late Musa Bumali died intestate and his estate was shared and each beneficiary occupies his share and some beneficiaries long sold their shares. In cross examination PW1 stated that dispute is about plot 3 and 7. Plot 7 is about 10.5 acres, part of which was sold by the plaintiff. The 1st defendant only lays claim on plot 3.

PW2 (Topista Matama Bazalirwaki) the wife of the plaintiff corroborated the evidence of PW1. PW2 testified that she witnessed the sharing of the land between the plaintiff and the late Musa Bumali. After sharing, each family kept using their own land. At the time the two shared the land, the 1st defendant was about 14 years and the 2nd defendant was about 9 years. Musa Bumali was illiterate and most times depended on the 1st defendant. Most of the land was bought after the sharing. When the plaintiff wanted to have his land surveyed, he involved the 1st defendant to look for surveyors and process the title in his names. Upon informing the late Musa Bumali, he also requested the 1st defendant to survey his land and secure a title for him. PW2 used to see the 1st defendant bring documents to the plaintiff to be used in the titling process. All the plaintiff's certificates of title were in custody of the 1st defendant. The plaintiff only handed over the same at police after a complaint by the plaintiff. PW2 got to know that the title was in the names of four people after the plaintiff was served with a letter from Mugabe – Luleti & Co. Advocates. It was confirmed after a search by the plaintiff that the title was in the names of Andrea Bazalirwaki, Musa Bumali, Yowana Kiiza and Asuman Bumali. The suit land is for



the plaintiff. In cross examination PW2 stated that the suit land is plot 3. The 1st defendant is not occupying the land. The plaintiff was using the same to graze cattle and now he had no cattle and was renting it out.


PW3 (Tereza Bumali) the wife of the late Musa Bumali also corroborated the evidence of PW1 and PW2. PW3 testified that land was acquired by the plaintiff and the late Musa in 1967 and later shared and each family used theirs. The plaintiff was illiterate who could not read and write English and most times depended on the 1st defendant. At the time the land was acquired, the 1st and 2nd defendants were still young. After sharing, the plaintiff acquired more land. Since the sharing, the plaintiff used his land; the 1st defendant had never used the same. The plaintiff informed Musa Bumali about his plan to survey his portion of the land and obtains a land title with the assistance of the 1st defendant. Musa Bumali also requested the 1st defendant to help him survey his and secure a title for him since he was also illiterate. The plaintiff informed her that Kiiza had gone to process the land title. PW3 saw the 1st defendant bring documents for the plaintiff to sign. In the meeting of 15th June 2020, the 1st defendant apologized for his acts and asked for forgiveness from the plaintiff and it was resolved that he hands over the titles. She was surprised that after the meeting, the 1st defendant started attacking tenants of the plaintiff on the suit land. The family of Musa Bumali shared their land and the 1st defendant had never claimed any land from them or the plaintiff but he come afterwards to disorganize them.

PW4 (Byarugaba Elias) corroborated the evidence of the rest. PW4 testified that in 1974, his father started working as a cattle keeper for the plaintiff. PW4 got to know that the plaintiff and Musa Bumali had separated their land and the one in dispute belonged to the plaintiff. The plaintiff bought more land from neighbors. By the year



2000, the plaintiff had several tenants on part of the disputed land while the rest was used for grazing. PW4 got to know that the title to the suit land was in the names of four people when he attended the meeting on 15th June 2020 at the home of the plaintiff. In the meeting the 1st defendant knelt down and apologized for his mistakes. It was resolved that the 1st defendant surrenders all titles to the plaintiff and have the names of other persons removed from the title. After the meeting, PW4 thought the issues was settled only to be surprised when the 1st defendant started chasing the plaintiff's tenants from the suit land.

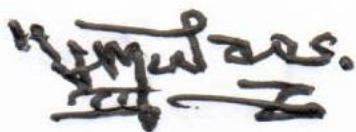
PW5 (Bazalirwaki Goreret) a sister to the 1st defendant supported the rest of the plaintiff's witnesses and emphasized that the plaintiff was an illiterate and the suit land belonged to the plaintiff. The plaintiff had trusted the 1st defendant who processed and kept all titles for him. The 1st defendant on different occasions brought documents to the plaintiff to sign which were in English and the plaintiff would just sign believing that whatever the 1st defendant was doing was in the interests of the plaintiff. PW5 was surprised to learn that Musa Bumali was on the same title yet they had shared the land. PW5 got knowledge that the title was registered in the names of four people after service of a letter from Mugabe – Luleti & Co. Advocates which was confirmed upon a search. PW5 attended a meeting where the 1st defendant apologized to the plaintiff for his actions and asked for forgiveness. It was resolved in the said meeting that the 1st defendant hands over the titles. The land of Musa Bumali was already sub-divided and some had since been sold. PW5 was surprised that Musa Bumali was on the title yet they had shared.



PW6 (Mugisa Adolf) corroborated the testimonies of PW1 to PW5. PW6 stated that by the time he became of age, the plaintiff and Musa Bumali were grazing together but they later shared the land. As a neighbor he knew the boundaries separating the land of Musa Bumali and that of the plaintiff. The 1st defendant was still young and staying with his father the plaintiff. On 15th June 2020 when a meeting was called, PW6 got to know that the suit land was registered in the names of four people but all along he knew the land was for the plaintiff and part of it for Musa Bumali In the said meeting, the 1st defendant apologized for his actions. In cross examination PW6 stated that he was present when land was divided. The 1st defendant does not use the suit land; it belongs to the plaintiff.


PW7 (Matte Stephen Austin) a surveyor testified that he was instructed by the plaintiff to open boundaries for Block 7, Plot 7 and part of Plot 3 of the same block. He found that the 1st defendant had trespassed on 29.5 hectares and 72.89 hectare of aforementioned land respectively. The plaintiff called for a meeting on 15th June 2020 during which the 1st defendant knelt down before his father and apologized for his mistakes. It was resolved in the said meeting that the 1st defendant was to surrender all certificates of title in respect of his father's land including certificate of title for the suit land to have the names of the other people who were fraudulently included removed. PW7 was surprised to hear that the 1st defendant changed and started attacking tenants of his father on the land. In cross examination

PW8 (Byarugu Steven) corroborated the testimony of the other witnesses. PW8 got to know the plaintiff and Musa Bumali when they were both grazing cattle on the land. PW8 owned land which is part of the disputed land which he sold to the



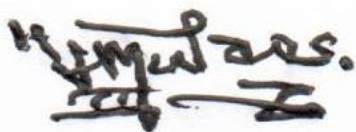
plaintiff. The plaintiff started buying off his neighbors. To the best of his knowledge, the disputed land had for a long time been occupied by the plaintiff on one part and the family of the late Musa Bumali occupying the other part. Third parties have since acquired interests from the beneficiaries of the estate of the late Musa Bumali for over 20 years. In 2020 the 1st defendant started chasing away the tenants of the plaintiff and grazing in the gardens of the tenants. Court should grant the orders sought and have the certificates cancelled and the estate of the late Musa Bumali retains its share and the plaintiff retains his. The 1st defendant is merely devising means to cheat the plaintiff and take advantage of his illiteracy.

DW1 (Kiiza John Bazalirwaki) testified that the plaintiff was his father and co-owned on the suit land. He settled on the land with the plaintiff, the late Musa Bumali and the 2nd defendant in 1969. By then he was 16 years. They agreed to have the suit land surveyed and registered in their joint names. The title to the suit land was thus registered in the names of four people. The process of registration was done by agreement of all the 4 co-owners. DW1 never fraudulently included anyone on the title as alleged by the plaintiff. The plaintiff was at all material times aware of the status of the land and wrote several letters through his lawyers J. Musana & Co. Advocates. The plaintiff claimed ownership of the entire land in spite of the certificate of title indicating that it belonged to four people. The plaintiff's actions prompted the 1st defendant to write to the plaintiff a demand notice through his lawyers seeking quite possession and of his intention to bring surveyor and subdivide the land. After service of the letter, the plaintiff through his agents brought hooligans who demolished his house which he built for the herdsman as well as the cattle shed, demolished his fence and drove out his cattle and he later reported a case at police. DW1 has never occupied land comprised in Block 76 plot 7 nor trespassed



on the same. DW1 has never apologized to the plaintiff over any fraud as alleged but merely attended the meeting. In cross examination DW1 stated that he was born in 1953. His father had other children including Bernadette Tinkasimire, Restetuta Kiiza, Kahwa, Nsungwa Luse and others died. In 1966, when he was aged about 12 years, he was a part of a group with his father together with Musa Bumali and Asuman Bumali when the 4 of them went and acquired the land (Plot No. 3), which in 1969 was formally handed over to them by Toro Kingdom represented by Rev. Baguma a Chief. They were considered as a group to be given the land. They had come from the trading centre of Rwimi where they had lived where he was staying in his father's house and still in school at Rwibaale Primary School and his father was paying fees. In 1969 when the land was acquired other family members were not present. PE12, the title was in the names of four people. It was a lease of 49 years where all parties signed the lease agreement to get the title. On the disputed land, he uses a small part of 5 acres for grazing, and his son Kahwa John Manige uses 45 acres. They chased him from the said land in 2020. The plaintiff hires out the rest of the land to tenants. DW1's son Kahwa John Manige was originally in occupation of the whole 50 acres. It was the plaintiff who had given it to Kahwa John Manige who had come from Mwenge in 2016. When the dispute arose, in 2020 the plaintiff wanted Kahwa John Manige to leave the land. DW1 was forcefully sent out and his properties destroyed. DW1 claims 50 acres on the disputed land (plot 3). The whole land is 100 acres. He has never carried out any activity on plot 7 which borders the suit land (plot 3) belonging to 4 people who are registered on the title.

DW2 (Manige Godfrey Kaahwa) stated that he was always aware that the suit land was co-owned by his grandfather (plaintiff), late Musa Bumali and 1st and 2nd

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defendants. In 2015, the plaintiff asked him to leave Kyenjojo and occupy the suit land since it was one farm with that of his father, the 1st defendant. He occupied about 20-25 acres well knowing it was his father's portion having been told so by the plaintiff. He developed the said land with a farm until 15th July 2020 when the plaintiff together with the DPC Bunyangabu went to the suit land and drove his cows. In cross examination, he stated that he used the land for five years.

DW3 (Juma Bumali) stated that the plaintiff, his late father Musa Bumali, the 1st defendant as well as his brother the 2nd defendant are co-owners of the suit land. In or about 2006, the family of the late Musa Bumali sat and divided the land leaving the 2nd defendant with about 20 acres since he was co-owner thereon and the rest of 30 acres was shared. They agreed that when they finally survey the land they would get more since it had not been equally divided. On 17th July 2007, the plaintiff through his lawyer J. Musana & Co. Advocates wrote to his brother, the 2nd defendant demanding for the certificate of title indicating that he wanted to subdivide the land. Whereas the co-owners owned in equal share, the existing division on ground had been for the purpose of preventing their animals from crossing to people's gardens but was not a true reflection of the division in equal shares. On 29th August 2007, the plaintiff wrote to the land officer, Kabarole District in his own names and the name of Musa Bumali and the 1st and 2nd defendants seeking sub-division of the suit land and later on 7th November 2007 again his lawyer J. Musana & Co. Advocates wrote to the Registrar of titles Kampala distancing himself from the letter of 29th/08/2007 to the land officer on ground that he had been duped into signing it. In cross examination DW3 stated that the portion of his father on the suit



land was divided among the children without letters of administration. DW3 was heir of the late Musa Bumali and had to ensure that the land is divided equally.

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Evidence obtained at Locus:

6 **Kamara Gerald (PW1)** showed court the water stream which was a boundary between the 1st defendant and the plaintiff. He also showed land shared between the plaintiff and the late Musa Bumali. He showed the areas where the 1st defendant
9 trespassed which was marked as 'A'. He also showed the extra land that was subsequently acquired by the plaintiff after sharing. He showed the cattle dip on the land of the plaintiff marked 'C' and the maize and rice grown thereon marked 'B'.
12 He also showed the land for the late Musa Bumali which was occupied by his family. The said land had matooke plantation, rice and maize. Plot 7 marked 'A' was occupied by the plaintiff. The 1st defendant was only using the portion that had a
15 cattle dip and this was after he chased away the tenants. Kahwa initially had been grazing on the plaintiff's land. In cross examination he stated that the plaintiff showed him the land he acquired with the late Bumali. The plaintiff acquired the
18 additional land between 1976 up to 1990. For plot 7, the title was acquired in 1984. Part of plot 7 was sold by the plaintiff to Turyashaba. The first defendant occupies about two and half acres. In re-examination he stated that he sued the defendants to
21 have the title for plot 3 rectified.

PW3 (Tereza Bumali) the wife of Musa Bumali stated that the land marked 'D' in
24 the sketch plan is occupied by her children and family. Each person had their own. The land was divided after the death of their father Musa Bumali who died in 1992.

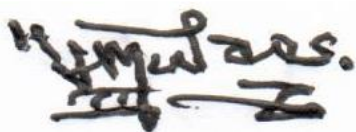
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The land is used for cultivation of rice, maize and banana plantation. The land was originally divided between Andrea Bazalirwaki and Musa Bumali as shown in the sketch plan. The 2nd defendant has his distinct portion about 20 acres within the land marked 'D' of Musa Bumali, which he acquired after the death of his father when the family sat and distributed the land of Musa Bumali.

PW8 (Byarugu Steven) stated that there was land later bought by the plaintiff that is now part of the titled suit land that the suit land.

DW1 (Yowana Kiiza) testified that his farm is the one drawn in red (B1) on the sketch being part of the suit land under the plaintiff's family. He occupied it from 1966 up to 2020. He was using the land for grazing till he was chased. Later they started using the land for gardening. The land subsequently acquired by the plaintiff was outside the title; It was 'E' (Plot 9) on the sketch. It was bought by Turyashuba O.C Prison. He also bought plot 7 on the sketch map. In cross examination he stated that in 1977 he had started using the land (B1) in the sketch map. He did not know what he would get after sharing the land equally. He may get more or less than the land in B1. He was not claiming the portion under Bumali but his portion under the title after sharing equally. He was chased out of B1 and the family was using the land. Plot 9 was bought by the plaintiff and he had no claim over the same. The land in B1 is the only one where he claimed an interest to be shared among the four people in the title excluding plots 7 and 9.

DW2 (Kahwa Maniege Godfrey) stated that he was occupying land within B1 that he had occupied with his father. They were driven out. The fence was destroyed. His

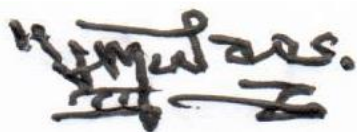


cows were pushed away. The houses for workers were destroyed. In cross examination he stated that it was his grandfather (plaintiff) who invited him from Kyenjojo and allowed him to be on the land. It was the plaintiff who allocated him where to operate from. Part of B1 was used by the plaintiff, his father (1st defendant) and himself. It was the plaintiff's family that chased him from the suit land.

Submissions for the Plaintiff:

PW1 to PW8 all testified that the suit land belonged to the plaintiff after sharing with the late Musa Bumali. PW7 tendered in court PEX 17 being the survey report indicating that the land the 1st defendant trespassed upon forms part of land registered in Block 76, Plot 7 at Rubalika and Block 76, Plot 3 at Bunyangabu. The 1st defendant took advantage of the plaintiff's illiteracy to fraudulently combine the plaintiff's land with that of the late Musa Bumali. Under Section 2 of the Illiterates Protection Act, the duty is imposed on the person who writes the name of an illiterate or who writes a document on behalf of the illiterate to prove that the illiterate understood the contents of the written document. Section 3 is to the further effect that such person must verify the document by writing his or her full name and address as the translator. (See also *Stanbic Bank Uganda Ltd v Ssenyonjo Moses & NakibuukaNusula, C.A.C.A No. 147 of 2015*).

The 1st defendant misrepresented to the plaintiff that he was assisting him to process a title for his portion in his names. Such misrepresentation amounts to fraud. The 1st defendant acted fraudulently in securing a title to the suit land. Fraud means an intentional perversion of the truth or a misrepresentation of facts or misleading

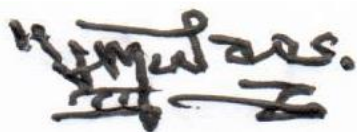


allegations intended to deceive another that that he shall act upon it for his legal injury *Frederick Zaabwe v Orient Bank, SCCA No. 4 of 2006*. The suit land belongs to the plaintiff and the 1st defendant trespassed on the same.

Submissions for the 1st Defendant:

The 1st defendant has no claim whatsoever over land comprised in Block 76, Plots 9, 6 and 7 registered in the names of the plaintiff. When court visited locus, there was no evidence of encroachment on the same. The land in dispute is plot 3 Block 76, land at KabaroleBunyangabu. The title to the said plot 3 (PE.12) was registered in the names of four people on 7th November 1986 as tenants in common in equal shares. The names of the four people were, Musa Bumali, Andrew Bazalirwaki (plaintiff), Asuman Bumlai (2nd defendant) and Yowana Kiiza (1st defendant). The lease agreement and other documents were signed by all 4 co-owners as such the land belongs to the four people on the title. This court should resolve the first issue in the affirmative. The plea as to illiteracy does not apply since the duty to explain the document was not for the 1st defendant but Uganda Land Commission. The facts in *Stanbic Bank Uganda Ltd v Ssenyonjo Moses & Anor, C.A.C.A No. 147 of 2015* are different from the facts in the current suit and thus not applicable.

The plaintiff failed to prove fraud as against the 1st defendant. PW1 admitted that the 1st defendant processed other titles in the names of the plaintiff save for the one in dispute. Had the 1st defendant intended to defraud the plaintiff of his land as submitted, why would he have registered it in the names of the four people and not in his name? The plaintiff was involved in the whole registration process and knew how to read English. The letters issued by J. Musana & Co. Advocates were on the



instructions of the plaintiff and reflect the correct status of the suit land. There is no fraud attributed to the 1st defendant.

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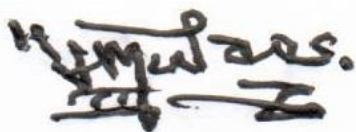
Under Section 64, the estate of a registered proprietor is paramount except in the case of fraud. Similarly under Section 176 provides a registered proprietor is protected against ejectment except in certain cases where a person has been deprived of any land by fraud by the registered proprietor (*Kampala District Land Board & Anor v Venansio Babweyaka & others, Civil Appeal No. 2 of 2007*). A person registered through fraud is one ‘who becomes registered proprietor through fraudulent act by him or to which he or which he is a party or with full knowledge of fraud’ (*Musisi v Grindlays Bank (U0 Ltd & others [1983] HCB 39.*). “*The transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of it. In other words, it has to be established by evidence that the registered proprietor gained registration through participation in fraud. The standard of proof is higher than a preponderance of probability*” (*Kampala Bottlers Ltd v Damanico C.A.C.A. No. 11 of 1992*). The evidence on record does not show that the 1st defendant did any actions during registration of the said land which would be considered fraudulent. There is no fraud on the part of the 1st defendant. Further that there is no evidence that the 1st defendant is the one who caused the registration of co-owners.

21

CONSIDERATION BY COURT:

24 I will consider issues 1, 2 and 3 jointly:

1. Who owns the suit land?

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2. Whether the 1st and 2nd defendants were fraudulently registered as co-owners of the suit land with the plaintiff and Musa Bumali.


3. Whether the 1st defendant's title to the suit land is indefeasible.

(a) Plot 7, Block 76 at Rubalika, Bunyangabu.

It was the plaintiff's case that he is the owner of Block 76, Plot 7 land at Rubalika and part of LRV 1507, Folio 6, Bunyangabo, Block 76, Plot 3 (suit land). That the 1st defendant trespassed on the plaintiff's land by fencing off part of the same which was in possession of the plaintiff's tenants but was later resisted by the plaintiff and his tenants. The 1st defendant in his written statement of defense denied having any interest in land comprised in Plot 7 Block 76 at Rubalika.

Trespass to land as a tort arises when a person makes an unauthorized entry upon land and thereby interferes or portends to interfere with another's lawful possession of the land. (See: **Justine EMN Lutaaya Vs. Sterling Civil Engineering Company, SCCA No. 11 of 2002**). PW1 stated that the plaintiff was the owner and registered proprietor of land comprised in Plot 7 Block 76 at Rubalika. He did not in his evidence detail the acts of trespass committed by the 1st defendant on the said land that constitute trespass. In cross examination he admitted that the title was in the names of the plaintiff who had sold part of the said land. The title for the said plot was actually not even exhibited.

All the remaining witnesses of the plaintiff from PW2 to PW8 did not adduce any evidence of the alleged trespass by the 1st defendant on plot 7. Their evidence largely



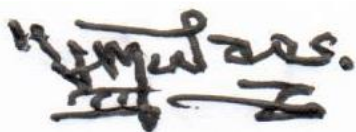
concerned plot 3 Block 76. DW1 in his evidence in court and at locus stated that he had no interest in plot 7. That his interest was in land comprised in plot 3, Block 76 Bunyangabu.

Therefore, there is no dispute over ownership of the said plot. The plaintiff's claim regarding trespass on plot 7 fails. The said plot is in not in dispute. It is the property of the plaintiff.

(b) Plot 3, Block 76 at Kabarole Bunyangabu:

Section 59 of The Registration of Titles Act, guarantees that a title deed is conclusive evidence of ownership of registered land described in the title. A title deed is indefeasible, indestructible or cannot be made invalid save for specific reasons listed in sections 64, 77, 136 and 176 of the registration of Titles Act, which essentially relate to fraud or illegality committed in procuring the registration. In the absence of fraud on the part of a transferee, or some other statutory ground of exception, a registered owner of land holds an indefeasible title. (See: **Kyenjojo District Local Government v Sunday Clovis, HCT – 01 – CV – CS – No. 032 of 2010**).


In the absence of fraud or illegality attributed to the registered proprietor, a person who is registered as proprietor has a right to the land described in the title, good against the world, immune from attack by adverse claim to the land or interest in respect of which he or she is registered. (Justice Stephen Mubiru in ***Loum Kennedy Vs. Obwoma Charles, Civil Suit No. 021 of 2016 at pages 4 and 5***). In ***John Katarikawe v. William Katwiremu & A' nor [1977] HCB 187***, it was held, *inter alia*, that the provisions of ***Section 61 (now S.59) RTA*** are clear that once a person is registered as proprietor of land, his title is indefeasible except for fraud.

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A similar position was taken in *Olinda De Souza v. Kasamali Manji* [1962] EA 756 that in absence of fraud possession a certificate of title by a registered proprietor is conclusive evidence of ownership of the land and the registered proprietor has indefeasible title against the whole world.

In the case of *Fredrick J. K Zaabwe v. Orient Bank & 5 O' rs*, S.C.C.A.No. 4 of 2006 (at page 28 of the lead judgment) Justice Katureebe JSC, relied on the definition of fraud in *Black's Law Dictionary*, (6th Ed) page 660 which states as follows;

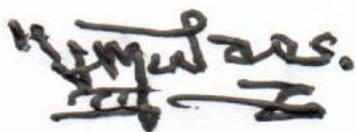
“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture... A generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or by suppression of truth and includes all surprise, trick, cunning dissembling and any unfair way by which another is cheated. “Bad faith” and fraud are synonymous and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness etc. As distinguished from

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negligence, it is always positive intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo by speech, or by silence by word of mouth or by look or gesture”.

Katureebe JSC further noted that in seeking cancellation or rectification of the title on account of fraud in the transaction, the alleged fraud must be attributable to the transferee. It must be brought home to the person whose registered title is impeached or to his or her agents. The burden of pleading and proving that fraud lies on the person alleging it and the standard of proof is beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases (*see: also Sebuliba v. Cooperative bank Limited [1987] HCB 130 and M. Kibalya v. Kibalya [1994-95] HCB 80*).

The Hon. Justice Mubiru in *Loum Kennedy & Anor. Vs. Obwoma Charles, Civil Suit No. 021 of 2016* held that fraud within the context of transactions in land has been defined to include dishonest dealings in land or sharp practices to get advantage over another by false suggestion or by suppression of truth and to include all surprise, trick, cunning, disenabling and any unfair way by which another is cheated or it is intended to deprive a person of an interest in land, including an unregistered interest (*see: Kampala Bottlers Limited v. Damanico Limited, S.C. Civil Appeal No. 22 of 1992; Sejjaaka Nalima v. Rebecca Musoke, S. C. Civil Appeal No. 2 of 1985; and*

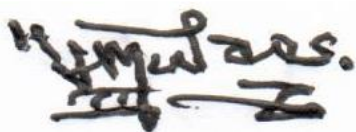
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Uganda Posts and Telecommunications v. A. K. P. M. Lutaaya S.C. Civil Appeal No. 36 of 1995).

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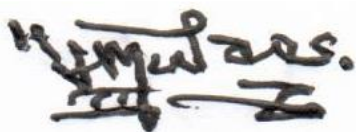
Further in ***Kampala Bottlers Ltd v. Daminico Ltd, S.C.C.A No. 22 of 1992***, Wambuzi, CJ (at page 5 of his judgment) quoting the trial judge on the definition of fraud stated that; ***“It is well established that fraud means actual fraud or some act of dishonesty.”*** The trial judge in that case had relied on the case of ***Waimiha Saw Milling Co. Ltd v. Waione Timber Co. Ltd (1926) A.C 101 at page 106***, quoting ***Lord Buchmaster*** that who observed that; ***“Now fraud implies some act of dishonesty.”***

12 It was the evidence of PW1 that the suit land partly belongs to the plaintiff who acquired the same by first occupancy with his friend, the late Musa Bumali in 1967 and started grazing cattle thereon. Subsequently, the plaintiff and the late Musa Bumali shared their land where each took his portion and planted boundary marks separating the two. Subsequently, the plaintiff purchased more land and added it on to the land previously shared with the late Musa Bumali. There is no way the plaintiff and his friend Musa Bumali could have acquired the suit land together with the 1st defendant and the 2nd defendant who were still minors. The plaintiff and his friend Musa Bumali were illiterates and they depended on the assistance of the 1st defendant to read and understand documents written in English. The plaintiff and Musa Bumali trusted the 1st defendant and they entrusted the 1st defendant with the responsibility of surveying their separate pieces of land (plaintiff’s and Musa Bumali’s) land and process for them their respective separate land titles in their names. In the course of this process, the 1st defendant from time to time brought various documents to the



plaintiff, who because he was illiterate, just signed in the belief that the 1st defendant was acting in his (plaintiff's) interests. Subsequently the 1st defendant had remained in custody of the processed land titles. The plaintiff was surprised to learn later that contrary to his expectations of getting separate land titles in their names, the 1st defendant had processed one land title for Plot 3, Block 76 at Kabarole Bunyangabu had included himself (1st defendant), the plaintiff Musa Bumali and Asuman Bumali as co-owners in the land title. That the defendant fraudulently processed a certificate of title in the names of four people and took advantage of the fact that the plaintiff and Musa Bumali were illiterate. The plaintiff then called for a meeting on 15th June 2020 during which the 1st defendant knelt down before his father and apologized for his mistakes. It was resolved in the said meeting that the 1st defendant was to surrender all certificates of title in respect of his father's land including certificates of titles for the disputed land to have the names of the other people who were fraudulently included removed. Among the documents attributed to the plaintiff was that on 29th August 2007, plaintiff wrote to the land officer, Kabarole District in his own names and the name of Musa Bumali and the 1st and 2nd defendants seeking sub-division of the suit land. Later on 7th November 2007 again his lawyer J. Musana & Co. Advocates wrote to the Registrar of titles Kampala distancing himself from the letter of 29th/08/2007 to the land officer on ground that he had duped into signing it.

The defendant on the hand other hand contended that he got the suit land together with his father as well the late Bumali and his son in 1966 and it was handed over in 1969. The land was acquired by purchase from the Tooro Kingdom and the chief handed over the land to all the four. The title was issued in the names of the four



people with full knowledge and consent of the plaintiff. The 1st defendant said that all the four people were involved in the titling process. The evidence of the 1st defendant regarding the ownership of the disputed plot 3 was inconsistent. He claimed the land measuring about 100 acres belonged to 4 people but says it had been divided into two parts between him and his father where the 1st defendant claimed about 50 acres. The 2nd defendant that the 1st plaintiff claimed was co-owner of the suit land did not testify and no credible independent evidence was presented on behalf of the said 2nd defendant to support his claim over the suit land. **PW3 (Tereza Bumali)** the wife of late Musa Bumali while at locus stated that the 2nd defendant has his distinct portion about 20 acres within the land marked 'D' of Musa Bumali.

I found the evidence of the plaintiff more believable that he acquired land with his friend Musa Bumali which they later shared. There is no way the plaintiff and the late Musa Bumali could have acquired land with the 1st and 2nd defendants who were minors under the care of their parents. The plaintiff and Musa Bumali who was illiterate trusted and entrusted the 1st defendant with the responsibility to process their separate land titles and the 1st defendant took advantage of this trust to process the land title into 4 names including himself. I therefore agree with learned counsel for the plaintiff that the 1st defendant made false statements during the registration process that the land was owned by the four people whereas not. The 1st defendant's claim that he also acquired the land jointly with the plaintiff and the late Bumali was not credible. The 1st defendant paraded joint ownership during registration to defraud the plaintiff of his land. I am thus of the considered view that the title in issue was obtained by the 1st defendant through fraud and should be cancelled. Prior to the acts

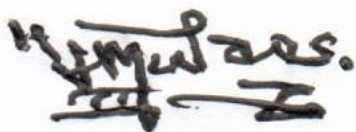


of the 1st defendant the 2 families of the plaintiff and Musa Bumali lived in peace whereby the land of the family of Musa Bumali measured 72.691 acres and the land of the family of the plaintiff measured 237.339 acres as shown on the sketch plan. The evidence is that the land of Musa Bumali was already distributed to his children including the 2nd Defendant who got his share. This status-quo must be maintained. To this extent therefore, I answer the issues 1, 2 and 3 in favour of the plaintiff.

Issue No. 4: What remedies are available to the parties?

Learned counsel for the plaintiff asked court to grant the orders that: a declaration that land partly comprised in plot 3, Block 76 Bunyangabu belongs to the plaintiff; a declaration that the 1st defendant is a trespasser on the plaintiff's land; an order that the 1st defendant fraudulently procured the survey and registration of the suit land into the names of four people; an order of cancellation of the title in Bunyangabu Block 76, Plot 3; an order for eviction against the 1st defendant from the plaintiff's land; general damages; and a permanent injunction against the 1st defendant and anyone claiming under him. Since the plaintiff's suit has succeeded as regards plot 3, Block 76 Bunyangabu, the said orders are hereby granted.

Learned counsel also asked for an award of general damages. That the 1st defendant's actions caused the plaintiff damages as such general damages should be awarded. He also prayed for costs. In reply, learned counsel for the 1st defendant contended that the plaintiff's suit had no merit as such general damages and costs ought not to be granted. It is trite law that "*general damages are such damages as the law presumes to be the natural or probable consequence of the Defendant's act and need not be specifically pleaded. It arises by inference of law, and need not, therefore, be proved by evidence, and may be averred generally*". According to the case of *Haji*

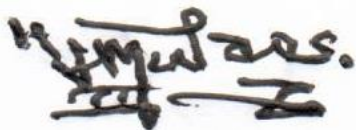


Asumani Mutekanga vs. Equator Growers Ltd (Supra) –5 “general damages in breach of contract are what a court may award if it cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man”. (See Kyadok Hardware Ltd v Kwik Building Contractors, Civil Suit No. 40 of 2014). Further that costs follow the event and a successful litigant should not be denied costs.

In this case, it is admitted by the 1st defendant that entered the suit land on the claim that he was an owner of the same whereas not. It is also evidence in P.E.6 that after the 1st defendant apologizing for his actions and seeking forgiveness from the plaintiff, he went ahead and did the contrary. It was his action of insisting that he was an owner of the suit land whereas no that led to the case at hand. I therefore consider an award of shs 20,000,000/= as general damages sufficient and thus grant the same. I also grant costs of the suit to the plaintiff against the 1st defendant.

The plaintiff suit succeeds only in respect of the claim regarding plot 3, Block 76 at Bunyangabu with the following orders and declarations:

- 1. The suit land partly comprised in plot 3, Block 76 Bunyangabu belongs to the plaintiff.**
- 2. The 1st and 2nd defendants were fraudulently registered as co-owners with the plaintiff and Musa Bumali in respect of land comprised in Plot 3, Block 76 Bunyangabu.**
- 3. An order doth issue for cancellation of the title in Bunyangabu Block 76, Plot 3.**
- 4. The status-quo that prevailed prior to the registration of the title in Bunyangabu Block 76, Plot 3 being that the family of Musa Bumali**



occupied 72.691 acres while the family of the plaintiff occupied 237.339 acres as shown on the sketch plan shall be maintained.

3 5. The 1st defendant is a trespasser on the suit land.

6 6. An order doth issue for the 1st defendant to vacate the suit land within one month from the date of delivery of this judgment, in default of which, an eviction order against the 1st defendant hereby issued shall be executed.

9 7. An order for permanent injunction doth issue against the 1st and 2nd defendants, their agents or any person claiming title under them from conducting any transaction and activities on the plaintiff's land.

12 8. The plaintiff is awarded general damages of shs 20,0000,000/= to be paid by the 1st defendant.

15 9. Interest is awarded on general damages at 20% per annum from the date of delivery of this judgment till payment in full.

18 10. The costs of the suit are awarded to the plaintiff.

It is so ordered.



18 Vincent Wagana
High Court Judge
FORTPORTAL

21 DATE: 5/04/2024

