

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL SUIT NO. 138 OF 2010

JOHN KASULE ::: PLAINTIFF

VERSUS

1. SOLOMON SEWANYANA }
2. MOSES MUWONGE } ::: **DEFENDANTS**
3. REGISTRAR OF TITLES }

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff John Kasule filed this suit against the Defendants jointly and severally for cancellation of title of land comprised in Kyadondo Block 34 Plot 332 Land at Mutundwe, Kampala and compensation of the current value of land comprised in Kyadondo Block 24 Plot 333 and 334 at Mutundwe, Kampala. The Plaintiff also claimed general damages and mesne profits.

The brief background facts are that on 23rd May 1978 the Plaintiff's father Ssali Lwanga sold land comprised in Kyadondo Block 34 Plot 333 to the 1st and 2nd Defendants. The said Ssali handed over the mother title to the 1st and 2nd Defendants through their Advocate Musaala & Co. Advocates of P. O. Box 4804, Kampala for sub-division and issue of the duplicate certificate of title of the portion of land comprised in Kyadondo Block 34 Plot 332 at Mutundwe. The sub-division took long and by then the proprietor fell sick and eventually

died. However, the 1st and 2nd Defendants took advantage of the proprietor's ailment and transferred land in their names using the transfer form which was meant to transfer only Block 34 Plot 333 to them. The Plaintiff contended that when he applied for a search he discovered that Block 34 Plots 332 and 334 had been transferred into the names of the third party.

All efforts to serve the Defendants were futile which resulted in their being served by substituted services through the Monitor and Bukedde Newspapers. The Court accordingly ordered the matter to proceed exparte. The Plaintiff proceeded by way of his statement on oath followed by Written Submissions of his Counsel.

Three issues were framed for determination of this Court.

- (1) Whether there was a valid sale of land comprised in Kyadondo Block 34 Plots 332, 333 and 334 at Mutundwe to the Defendants.
- (2) Whether the 1st and 2nd Defendants fraudulently transferred the land comprised in Kyadondo Block 34 Plot 332 and 334 into their names.
- (3) Whether the Plaintiff is entitled to the remedies sought.

As far as the 1st issue is concerned, the sale agreement (**exhibit P₂**) is very clear. It states as follows:

- (i) The vender and the purchasers have agreed that the lawyers should process the duplicate certificate of titles of Block 34 Plot 332, 333, 334 and 335 and thereafter shall be called upon to sign the necessary document for the sold Plot No. 333.

- (ii) The vendor shall hand over duly signed transfer forms and duplicate certificate of title of Plot 333 to the purchasers after full payment is made from this office.

The above paragraph clearly shows that the intended land to be sold after the sub-division was Block 34 Plot 333 which was equivalent to 0.09 hectares (and not 0.25 as alleged by the Plaintiff). Hence the land sold was Block 34 Plot 333 and not Block 34 Plot 332 and 334.

Issue No. 2: Whether the 1st and 2nd Defendants fraudulently transferred the land comprised in Kyadondo Block 34 Plot 332 and 334 into their names.

The contention of the Plaintiff was that the proprietor sold Plot 333 as indicated in the sale agreement and not Plot 332 and 334. He contended further that the Defendants should have used different transfer forms but not the same one which was used to transfer Plot 333.

In **Musisi v Grindlays bank Limited (1983) HCB 39, Masika CJ** (as he then was) held that a person who becomes registered through fraudulent act by himself or to which he is a party or with full knowledge of fraud is not a bona fide purchaser.

In the instant case the said transfers were based on transfer form dated 27/9/1978. It was in respect of Block 34 Plot 332, 333 and 334. Both the vendor and the purchasers signed the same. It is not contended that the purchasers forged the vendor's signature. The major contention was that the purchasers should have used different transfer forms to effect the transfers. As contended by the 3rd Defendant, one transfer can be used to effect several

transfers. I cannot therefore infer fraud from the fact that the purchasers used only one form to do the transfers being contested. Moreover the signatures of the vendor on the said transfer had not been disproved. The Plaintiff alleged that the Defendants took advantage of the illness of the vendor and fraudulently transferred the suit land into their names. The alleged transaction took place in 1978. How did the Plaintiff know that the vendor was ill and yet he could not come out with a redress soon after the death of the deceased? Between 1978 and 2008 where was the Plaintiff before he got Letters of Administration and carried out a search to which revealed the alleged fraud which was done 30 years ago. From the nature of the case, I find it difficult to believe the evidence of the Plaintiff establishing fraud on the part of the Defendants. Moreover as indicated by Land Registry and affidavit of service, the land in question appears to have changed hands from the Defendants to different people who should have been made parties to this suit. In fact it is stated that there is a school sitting on the suit land whose ownership has not been attributed to the Defendants. For the above reasons, I find that the Plaintiffs have not proved on the balance of probabilities that the Defendants are guilty of fraud. The 2nd issue is accordingly answered in the negative.

Having held the 2nd issue in the negative it goes without saying that the Plaintiff is not entitled to the remedies sought. Subject to the limitation period the Plaintiff should address his grievances in respect of the suit property by bringing all the interested parties on board to enable the decision of the Court to

be of judicial consequence. The suit is accordingly dismissed with no orders as to costs.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

26/3/2012

27/3/2012

The Plaintiff in Court.

Counsel's representative in Court.

Judgment read in Chambers as in Open Court.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

27/3/2012

/gnm.