

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

CIVIL SUIT NO. 108 OF 2011

DAN KYOBE ::: PLAINTIFF

VERSUS

1. DANIEL G. B. KIBUUKA-MUSOKE
2. COMMISSIONER LAND REGISRATION } :::::::::::::: **DEFENDANTS**

Before: Hon. Mr. Justice J. W. Kwesiga

JUDGMENT

The Plaintiff sued both Defendants seeking a declaratory order that the caveats that the first Defendant lodged on the suit land was without reasonable cause and that the second Defendant wrongly/unlawfully registered the caveats. He sought order of cancellation of the caveats, General damages and costs of the suit.

(a) The Plaintiff averred that he purchased from the 1st Defendant land comprised in Kyadondo Block 248 Plots 206, 207, 213, 214 and 215 on 23rd November 2006.

(b) That subsequently the Plaintiff also purchased from the 1st Defendant Block 248 Plots 197, 198, 199, 200, 201, 202, 203, 211 and 212 on 21st December, 2006.

(i) That after paying the purchase price the seller handed over the Certificates of Title plus Transfer forms duly executed.

(ii) That the 1st Defendant lodged caveats on the suit land claiming that he never executed the Transfer forms. The Plaintiff, as a result of the caveats has failed to effect any dealings in this land, suffered loss of income and for this he pleaded for:-

(a) General damages.

(b) Removal of the caveats.

(c) Costs of the suit.

(d) A permanent injunction to stop the 1st Defendant or his agents from interfering with the quiet enjoyment of the suit property.

(a) The first Defendant denied the allegations and contended that he was entitled to lodge the caveats because the Plaintiff fraudulently acquired the Defendant's duplicate Titles and procured Transfer of the suit land into his names unlawfully, fraudulently, irregularly and unconscionably.

(b) He filed a Counter-claim seeking Court's declaration that:-

(i) The suit land was unlawfully and fraudulently acquired by the Plaintiff, transferred irregularly, fraudulently and unlawfully.

(ii) The Court orders cancellation of the transfers and reinstatement of first Defendant as the owner of the suit land.

IN ALTERNATIVE the first Defendant seeks full and adequate compensation by the Plaintiff.

The parties agreed on three issues for this Court to determine namely:-

1. Whether the Plaintiff unlawfully acquired the suit land Plots from the first Defendant.
2. Whether the registration of the suit land Plots in the Plaintiff's names was lawful and regular.
3. What remedies, if any, are available to the parties?

The Plaintiff testified that he bought Plots 206, 207, 213 and 214 at Shs.84,000,000/= on 23rd November, 2006. (See Agreement Exhibit) Agreement provided that the Plaintiff would return the land Titles and Transfer Forms if the 1st Defendant repaid Shs.84,000,000/= within 30 days after signing the Agreement.

The Agreement covered Plots 206, 207, 213, 214 and 215 of Block 48. (These are 5 Plots). It is stated that by 23rd November 2006 the 1st Defendant owed the Plaintiff, Shs.84,000,000/= which was converted into the purchase price from Clause 7 of the Agreement states:-

“The parties have agreed that this sale shall stand rescinded if within thirty (30) days after signature hereof, the Vendor repays the debt of Shs.84,000,000/= owed to the Purchaser in which case the Purchaser shall return the land Titles and Transfer forms. If the full repayment does not materialise on the due date, the sale shall take effect.”

My understanding of this provision is that the 1st Defendant initially did not receive Shs.84,000,000/= as a purchase price and he had the option to redeem the land by paying this sum back to the Plaintiff thirty (30) days later.

The Plaintiff submitted that it was a debt that was converted into a purchase price. That on execution of the Agreement the first Defendant handed over signed Transfer Forms and duplicate Certificates of Title. The Plaintiff further states that before expiry of 30 days in which the land was redeemable, the first Defendant offered him more land which he purchased namely; Plots 197, 198, 199, 200, 201, 202, 203, 211 and 212 at Shs.120,000,000/= on 21st December, 2006.

The first Defendant, gave evidence that he went to the Plaintiff to borrow money and the money Lending Agreements were disguised as Sale Agreements. The first Defendant testified as D.W.2. He told Court that he owned 22 Plots of half acre each.

In 2005 he returned into the country with personal effects including a car he used abroad and he urgently needed to borrow money to pay Customs taxes. He was introduced by Mr. Masiko to the Plaintiff. He needed Shs.70,000,000/=. The Plaintiff demanded for:-

(a) Security for the loan which he gave as 5 Plots of half acre each.

(b) Interest at 20%.

(c) That the sums he signed for had in-built interest of 20% that was calculated in advance. He explained that 20% of Shs.70,000,000/= became Shs.14,000,000/= which was added to Shs.70,000,000/= which he required that became Shs.84,000,000/= that he was supposed to pay within the 30 days provided for in the Agreement.

He clarified that at the time he signed the Agreement he did not get Shs.84,000,000/= stated in the Agreement. It took him two to three months to be paid the money. It was paid to him not at once and he made several visits to the Plaintiff's Advocates to receive money which made him desperate and frustrated and he developed a feeling that something was going wrong.

On 21st December, 2006 he was made to sign an Agreement to signify that he had been fully paid Shs.84M/=.

(a) That on 26th, February 2007 he received Shs.40,000,000/= and Shs.2,000,000/= was payable on 27th February, 2007. (See P.5). He explained that this was money that was supposed to have been paid in December 2006.

(b) That the Agreement at the Chambers of Mukwatanise & Co. Advocates was supposed to be acknowledgement of the second and final Shs.42,000,000/= which he received.

He testified he was not given opportunity to read through the Agreement and he was not given a copy of the Agreement.

He told Court that the Plaintiff Mr. Kyobe subsequently called him to his office at 6th Street, Industrial Area; he told him that he had not properly signed the Agreement and showed him where to sign. He clearly stated he did not receive any payment under the Agreement signed before Mukwatanise & Co. Advocates as the Agreement states.

Under cross-examination he maintained that the transaction between him and the Plaintiff was for lending him and not a sale and that he did not receive Shs.84,000,000/= when he signed. That he was led to Mukwatanise to sign for

the balance of Shs.42,000,000/= which he received and not to sign any other Agreement for sale of his other properties/Plots.

While answering Court's question he confirmed that the only payment he received was as follows:-

(1) On 21st December 2006 he received 58,000,000/=.

(2) On 26th February 2006 he received 40,000,000/=

Total 98,000,000/=

That the two figures included a consolidation of 20% per month interest. That these were the only payments that he received on these dates. The Plaintiff's Advocate as given opportunity cross-examine the 1st Defendant on these facts and he clearly said he had no question on this. I believe this to be the truth and uncontested mode of payment in this controversial transaction.

P.W.I Daniel Kyobe gave evidence over this transaction whose substance is that:-

- (i) That he bought all the suit land under Agreements drawn by two Advocates.
- (ii) That the 1st Defendant gave him a Transfer form for each Plot.
- (iii) That he retained one (1) original Transfer form and submitted the rest of the original Transfer forms to the Registrar of Titles to effect transfers of the several individual Plots.
- (iv) That he later discovered the 1st Defendant had filed caveats on the Plots.

- (v) That from 2006 the 1st Defendant had not been in contact with him.
- (vi) That 1st Defendant owed him Shs.84M/= at the time of execution of P.1.
- (vii) Under cross-examination he stated:-

“At the execution we did not agree on the price, the understanding was that if he got a higher price he would sell and return my money,

I did not get any other document at this stage. The original Transfer forms and the copy of the Passport and the Certificate of Title... I filled the Transfer form myself... I have no explanation as to why there is no consideration.”

He further told Court the following:-

- I do not know whether carbon copies were used to transfer the land.
- I have no explanation why my signature was not witnessed.

- The transfer was witnessed by Mr. Mukwatabuse, we signed at the same time. We were both before Mukwatanise.

The evidence of P.W.1 and D.W.2 the conflicting parties in this suit must be evaluated together with the evidence of D.W.1 Mr. Ezati Samuel a handwriting expert to depict the evidential value of the crucial documental exhibits received from the parties. D.W.1 told Court that he is a forensic examiner of questioned document. From his brief background and qualifications on record plus the fact that he has testified before me as an expert witness in other cases in the circuits I have presided over in both civil and criminal jurisdictions, I take notice of his expertise.

The important part of his evidence is that he examined the several Transfer forms that the Plaintiff used to effect change of ownership of suit Plots from the names of the first Defendant to the names of the Plaintiff. He made the following material findings:-

- (a) The signatures of the Vendor and witness Arthur Mukwatanise Advocate were electronically transferred to the documents (the several Transfer forms.) That the signature of the Vendor (1st Defendant) were not made directly on the form). That the signatures of the Vendor and witness were super imposed on Q1 to Q4.
- (b) A genuine signature of the specimen provided was copied and pasted on these documents.

The forensic Report was admitted as exhibit DE.1.

- (c) He examined the 'original' in Land Registry and not photocopies, the certified copies are copies of what he examined. See exhibits D4 a to D4 J. This, in my view, ruled out the possibility of original Transfer form per Plot having been tendered to the Registrar by the Plaintiff.

I have examined these Transfer forms for Plots 197, 198, 199, 200, 201, 202, 203, 206, 207, 212. (Ten Plots) and the following evidence has been derived.

- (i) The signatures the Vendor and the witness were electronically pasted on these Transfer Forms.

- (ii) The name of the Plaintiff and his signature as the Plaintiff were directly written and the details were filled by him.
- (iii) The Plaintiff/Purchaser's signature was not witnessed throughout the Transfer forms used to change ownership of the suit Plots.
- (iv) On all these Transfer forms he never stated the consideration for the Transfer.
- (v) Particulars of the Vendor/Transferor were never put in the form as required by the Transfer form.

I have considered the above features with the evidence given on Oath by the Plaintiff specifically that he is the one who filled the transfer forms and therefore any omission or fraudulent entry that appears on the Transfer form is his total responsibility. His evidence is that the 1st Defendant signed a Transfer form for each Plot. He further testified that he has in his possession one original Transfer form. He specifically stated and I quote him:

"I filled the Transfer form myself. He signed the original Transfer for each Plot... I have no explanation as to why there is no consideration.

He stated in evidence in Chief:

"He gave me Transfer forms per Plot. I used the same Transfer forms to transfer the land."

D.W.3 SSENKONJO NOAH a Registrar of Titles stated that Plots 197, 198, 200 and 2012 were illegally transferred using scanned Transfer forms.

The evidence of D.W.3 and D.W.2 materially show that P.W.1 Dan Kyobe was not truthful when he stated on Oath that the 1st Defendant gave him duly signed Transfer forms for each Plot and that he used these forms to transfer the suit land. I have found D.w.1 Ezati more believable. He scientifically examined the questioned Transfer forms and established that the 1st Defendant's signature was electronically super imposed on the place that was meant to be signed by the Vendor and these forms were used to effect the transfer.

In my view Dan Kyobe deliberately told lies to cover up fraudulent transfer of the suit land. The Plaintiff kept in his custody the single blank Transfer form Exhibit P.4. Why did he not use this form? Why did he retain it? This in my view constitutes circumstantial evidence in proof that this is the form he scanned and in a crude, dishonest manner filled in particulars of the several Plots that he transferred in his own favour. The above process attributed to the Plaintiff is forgery because he altered the original document by filling in false information to pass as having been signed by the 1st Defendant as a matter of the several Transfer forms now under examination.

Fraud against the Plaintiff was specifically pleaded and particularised in paragraph 4 and 6 of the Written Statement of Defence and Counter-claim. (I need not reproduce these elements of fraud here).

Fraud was well defined and settled by the Supreme Court of Uganda in Fredrick J. K. Zaabwe Vs Orient Bank Ltd. and Others. Civil Appeal No. 04 of 2006 where Hon. Justice Bart Katureebe quoted the definition of fraud in Black's LAW DICTIONARY 6th Edition, Pg. 660 as:-

“Intentional perversion of truth for the 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... 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 suggestions or by suppression of truth..."

The above definition of fraud adequately covers the elements fraud that the counterclaimant pleaded against the Plaintiff namely;

"dishonest, illegal and intentional acquisition of original Land Titles for Plots 197, 198, 199, 200, 201, 203, 211 and 2012."

The Counter-claimant pleaded that the Plaintiff dishonestly, unlawfully, irregularly and knowingly used forged Transfer forms purporting to be transfers by the first Defendant, presenting the said transfer to the Registrar of Lands fraudulently presenting the said forged forms to unlawfully and irregularly procure the irregular registration of the Plots in the Plaintiff's names whereas the first Defendant had never signed the Transfer forms in favour of the Plaintiff.

I am satisfied that the evidence already discussed above proves on the balance of probabilities that the Plaintiff acted illegally, irregularly and fraudulently by forging and presenting the several Transfer forms to the prejudice of the first Defendant.

Hon. Wambuzi C. J. as he then was, stated in the case of KAMPALA BOTTLERS LTD Vs DAMANICO (U) LTD. C.A. 22/92 the following:-

“... Fraud must be attributable to the transferee. I must add here that it must be attributed either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.”

In the instant case the Plaintiff admitted being responsible for filling the questionable Transfer forms, he uttered the forged forms for registration of the suit land in his names. I have no doubt that he is guilty of the fraudulent acts. The illegality committed or attributed to the Plaintiff are so clear that this Court cannot ignore them or sanction them.

In LAZARUS ESTATE LTD Vs PEASLEY (1956) QB 702 at page 712, Lord Denning stated:-

“No Court in this land will allow a person to keep an advantage which he obtained by fraud. No Judgment of the Court, order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unveils everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved but once it is proved it vitiates Judgments, contracts and all transactions whatsoever.”

In Uganda the same position was settled by the Supreme Court of Uganda in MAKULA INTERNATIONAL Vs His Eminence Cardinal Nsubuga [1982] HCB 12. That:

“A Court of Law cannot sanction what is illegal and illegality once brought to the attention of Court, override all questions of pleading including any admissions made thereon.”

In view of the above evidential evaluation and the authorities the appropriate remedies available is to order cancellation of the Transfer of the several Titles constituting the suit land. This settles the second issue of whether the registration of the suit land Plots in the names of the Plaintiff was regular and lawful.

Whether the Plaintiff lawfully acquired the suit land from the first Defendant or not.

To determine this issue it is important to establish the intention of the parties when they met and signed the first Agreement and how they conducted their transactions to the point of disagreement.

M/S Muwema & Mugerwa Advocates for the Plaintiff submitted that the Plaintiff bought land from the first Defendant on 23rd November, 2006. This land comprised of Kyadondo Block 248 Plot 206, 207, 213 and 214 at Shs.84,000,000/=. That at the time the 1st Defendant owed the Plaintiff this sum and it was converted into the purchase price. This is the Plaintiff case and he seeks this Court to find first and foremost as a fact that as of 23rd November, 2006 the 1st Defendant owed the Plaintiff Shs.84,000,000/=.

The 1st Defendant, on the other hand stated that the Agreement of 23rd November, 2006 was meant to be an Agreement of lending him shs.70,000,000/= for a period of 30 days at an interest rate of 20% p.m. whose product became the Shs.84,000,000/= that was disguised as the consideration.

Both parties have referred to Clause 7 of the Agreement Exhibit P.1 which in my view must be interpreted in light of the rest of the oral evidence and circumstances surrounding this controversy.

- (i) The preamble of this Agreement states that the Defendant owed the Plaintiff Shs.84M/=. Clause 2 states that the purchase price has been paid to the Vendor in the sum 84M/= as a full purchase price.
- (ii) Clause 7 provides the Vendor had the option to pay back the Shs.84M/= and the Purchaser (Plaintiff) would return the Land Title.
- (iii) The Plaintiff (P.W.1) in evidence in-chief does not give evidence on how the Shs.84M/= became owing before 23rd November, 2006. On contrary he states that he first met the 1st Defendant when he came to his office with brokers seeking to sell the suit land.
- (iv) In contradiction under cross-examination he states *“I was approached by the Defendant that he had just come from USA he needed to sell the land he needed money. He owed me money at the time we executed the Agreement (P.1). He owed me Shs.84M/=.”*

There is no evidence that they had met or had dealings before the 1st Defendant returned from USA or before they met when the first Defendant was desperately raising money to clear his personal effect from Customs. The circumstances surrounding this meeting and transaction clearly show that they did not know each other before, they had no transaction prior to this Agreement and I find the first Defendant’s evidence more credible in this particular point that his mission was for borrowing money from the Plaintiff. This, in my view, is inferable from the provisions of Clause 7 of the Agreement. There is unchallenged evidence of the 1st Defendant that actually the Shs.84M/= was never paid at

once but at two different times namely on 21st December 2006 and 26th February 2007. 1st Defendant testified that he became desperate, he walked to the Chambers of Muwema & Mugerwa Advocates for the Plaintiff to sign for the money which was not available. He was led to the Chambers of Mukwatanise & Co. Advocates where he was made to sign a document which he was not given opportunity to read which he was made to understand it was acknowledgment of the second payment of part of the Shs.84,000,000/=.

This is corroborated by the Plaintiff that the first Defendant was paid the money or first owed Shs.42,000,000/= and was paid Shs.42,000,000/= later. All this considered together I find on balance of probabilities that the 1st Defendant did not owe the Plaintiff Shs.84,000,000/= at the time of execution of the Agreement and the money was not paid to the 1st Defendant at the time of signing and therefore no money was owed to the Plaintiff until it was paid as stated by the first Defendant namely; Shs.58,000,000 on 21st December 2006 and Shs.40,000,000/= on 26th February 2007 which two figures had 20% inbuilt interest. This is unchallenged evidence of the 1st Defendant. He was never cross-examined on it and I found it believable.

I have examined the Plaintiff's exhibits and the dates of transactions are inconsistent with the Plaintiff's evidence supporting the contention that it was a sale.

- (i) Exhibit P.1 states that the consideration was money owed before 23rd November 2006.
- (ii) P.5 (a) shows that payment was on 21st December 2006 and 42,000,000/= was payable on 30th December, 2006.

- (iii) P.5 (b) shows that on 30th December, 2006 Shs.42M/= was not paid. It shows that Shs.40,000,000/= was paid on 26th February 2007 and Shs.2,000,000/= was payable on 27th February, 2007.
- (iv) P.2 shows that it was signed on 21st December, 2006 and that Shs.120,000,000/= was paid by the Plaintiff to the 1st Defendant and that this was for purchase of extra Plots.

Those exhibits (Plaintiff's exhibits) have been weighed with the Plaintiff's evidence on Oath that the 1st Defendant came to sell to him extra land for Shs.120,000,000/=. Exhibits P.5 (a) and P.5 (b) show that between 23rd November 2006 and 27th February 2007, the Plaintiff had not succeeded in paying the money agreed in the first Agreement. Therefore it is not believable that he paid Shs.120,000,000/= for more land on 21st December, 2006 before he finished paying the first debt. This makes the 1st Defendant's evidence that when he appeared before Arthur Mukwatanise he was signing for the money he had not received on the first Agreement. This is corroborated by the fact that P.5 (a) was a payment on the same date 21st December, 2006, which the 1st Defendant said was his first payment and that Mr. Arthur Mukwatanise did not give him opportunity to read.

P.W.I the Plaintiff told Court the following:

“The transfer was witnessed by Mr. Mukwatanise. I was not aware that my signature was supposed to be witnessed. We signed at the same time. We were both before Mr. Mukwatanise.”

This was a pack of lies given on Oath. None of the witnesses states that the Plaintiff attended the meeting in Mukwanise's offices.”

It is already found and held that Mukwatanise's signature on the Transfer forms was on a form that had the 1st Defendant's signature that had been copied and pasted on the said forms electronically. To say that the Plaintiff and 1st Defendant signed at the same time before Mr. Mukwatanise is an obvious lie intended to portray that the alleged signing of Transfer forms was proof that this was a conveyance transaction. For the reasons given above this is falsification and this evidence is rejected as lies.

P.W.3 Masiko Godfrey, Martin Senyange P.W.4 have been found not helpful to the Plaintiff's case. They do not have knowledge of the negotiations and clearly all they were interested with was a Commission which they got. They had no other clear interest and as brokers the role they played was connecting the parties and receiving the money. Masiko Geoffrey told lies that Shs.84,000,000/= was paid at the offices of Muwema & Mugerwa Advocates and a balance was paid at Mukwatanise's office and that he did not know how much was paid at Mukwatanise's office and yet he stated that he witnessed the Agreement.

Save for the provisions in the second Agreement which I have examined above in relation to the first Agreement and the rest of the evidence, no single witness gives evidence to show that Shs.120,000,000/= was paid to the 1st Defendant. This payment was denied right from the pleadings and testimony of the Defendant and the Plaintiff had the evidential burden to prove that there was such a payment. I have found that whereas the 1st Agreement at execution stated that Shs.84M/= had been paid, it was proved that payment was at a later stage and took a period as the Plaintiff paid it in instalments.

It was necessary for the Plaintiff to produce a witness that witnessed the paying of this money. I agree with the submissions of Mr. James Muwawu for the 1st

Defendant that Mr. Mukwatanise was such an essential witness who was omitted by the Plaintiff. In my view where such an important witness that would, from the proceedings, have been essential to prove this fact is omitted, then it creates a presumption that if he had been called he would have given a story not favourable to the party that chose not to call him.

The evidence as a whole shows that there was no freedom of contract when the 1st Defendant executed these two documents. I will start with the second Agreement (P.2). He found the Agreement made, he was asked to sign and he was not allowed by Mr. Mukwatanise to read through. He was led to Mukwatanise to sign for the balance of money he expected under the first Agreement (P.1). I have considered the evidence that this man of advanced age, had just returned into the country, he was desperate to save his personal properties including a car from Customs Bond. It calls for no further evidence that he must have been under pressure. This coupled with the tedious trips to offices of Muwema & Mugerwa & Advocates to collect the money after signing the Agreement that alleged he had received or previously owed Shs.84,000,000/= which I have found he had not received and the Plaintiff had taken 4/5 Certificates of Title, was capable of overweighing on his mind and I believe he did not have a free mind when he signed before Mr. Mukwatanise who did not allow him opportunity to read what he was signing.

The evidential value of P.1 and P.2 must be evaluated with the evidence in the case as a whole as I have done in discussing the second issue which covered falsification of Transfer deeds and presenting for Transfer of Titles, the original owner's copies are said to have disappeared from the 1st Defendant's possession under unclear circumstances.

Having held that the transfer of the Titles was clothed in illegalities and fraudulent in nature, and having held that the first Agreement (P.1) was a

lender's Agreement that was disguised as a Sale Agreement and that the second Agreement (P.2) was signed by the first Defendant, then the registered proprietor of the suit Plot in belief that he was signed for the balance pursuant to the first Agreement (P.1).

My answer to the 1st issue is that there was no valid and no lawful acquisition of the suit Plots by the Plaintiff. I have considered the fact that the Plaintiff admits that just one Plot, Plot 207 was transferred to his own son at a consideration of Shs.42,000,000/=. David Martin Kibuuka Kyobe, the registered proprietor was not party to the suit. However the Plaintiff in self-contradiction in the same breath told Court that his son did not pay for the Plot. In my view this is another transaction that is part of the series of Mr. Kyobe's acts of fraudulent transaction disguising ownership into his sons' names who did not, since there is no evidence in proof thereof, pay any valuable consideration for this land to which Mr. Kyobe had no valid Title. This transaction has been successfully impeached and shall be subject to the same remedies befitting Plots 197, 198, 199, 200, 201, 202 and 203 of Kyadondo Block 248.

REMEDIES

- (a) The Plaintiff's case is hereby wholly dismissed with costs to the 1st Defendant because the 1st Defendant justifiably lodged caveats on the suit Plots for the detailed reasons in this Judgment.
- (b) Judgment is granted to the Counter-claimant against the Plaintiff and I declare that the 1st Defendant is the lawful owner of all the suit Plots.
- (c) It is ordered that the Names of DANIEL GEORGE KIBBUKA MUSOKE shall be restored as the registered proprietor of the suit Plots.

(d) General damages:

The 1st Defendant testified that the suit land was an investment and a savings for his retirement. I agree that through the Plaintiff's illegal transaction of transferring to himself the property that was meant to be security for money he lent the 1st Defendant he acted illegally, fraudulently and deprived the 1st Defendant of his property.

The Plaintiff has subjected the Defendant to a protracted litigation which was preceded by a lot of inconveniences and mental anxiety. I have considered that in a case of Fredrick Zaabwe Vs Orient Bank (Supra) the Supreme Court awarded Shs.200,000,000/= as aggravated damages.

In the instant case more land Titles and more land was taken to the prejudice of the 1st Defendant than was the case of Fredrick Zaabwe which was decided in 2007. I have considered that it is seven years since the cited award for similar wrong, it therefore serves as a good guideline. In my view this case calls for a higher award due to the extent of the deprivation and the great deal of suffering caused to the 1st Defendant/Counter-claimant. I have considered that the Plaintiff took advantage over a man of advanced age of 80 plus years who was in need of a loan. The Plaintiff told a lot of lies to cover up his illegal actions. This considered together justify an award of aggravated Damages and in my view Shs.300,000,000/= (three hundred million) would be a fair compensation as aggravated damages and I award it.

Costs: The Counter- claimant is entitled to costs for the Plaintiff's Civil Suit hereby dismissed and the Count-claim that is found for the 1st Defendant.

The awarded Decretal sums shall attract interest at 6% per annum from the date of this Judgment until payment in full.

Dated at Kampala this 25th day of August, 2014.

J. W. KWESIGA
JUDGE

In the presence of:

Mr. Kagoro Friday for the Plaintiff.

Mr. James Muwawu for the 1st Defendant.

Both the Plaintiff and 1st Defendant are present.

Mr. S. Magala – Court Clerk.

J. W. KWESIGA
JUDGE