

UGANDA / JUDGMENT

Dumba v Wagaba & 3 Others

(Civil Suit 723 of 2018) [2024]

UGHCLD 284 (28 November 2024)

[2024] UGHCLD 284

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Suit 723 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO. 723 OF 2018

DUMBA NATHAN..... \$\mathsf{S}\$

VERSUS

- 1. WAGABA MULAGWE
- 2. NAKYOBÉ MARGARET
- 3. NAJJUKA SCOVIA
- 4. HIROME SULAIMANI..... 10

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

Introduction:

In this present suit the plaintiff seeks a declaration that he is the rightful owner of the suit land and that the defendants are trespassers; a declaration 15 that the 1-3rd defendants breached the contract of sale of land; that the defendants acts and omissions amount to fraud; that the 4th defendant's acts and omissions amount to trespass to land; an order for specific performance against the 1st-3rd defendants; an order directing the 1st-3rd defendants to hand over the land title of the suit land to the plaintiff; an order for permanent 20 injunction; general, punitive and exemplary damages.

Background to the case:

HCCS No. 2121 of 2016 formerly HCCS No. 496 of 2014 of the closed Nakawa High Court Circuit, was filed between the 1-3rd defendants as

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plaintiffs, against the 4th defendant as 2nd defendant in that suit and one Hajji Musa Bisaso (as the 1st defendant).

It was the plaintiff's claim that he had purchased 50 decimals of land comprised on block 374 ptot 747 at Buloba Kasero Vlllage' Woklso

5 dlstrict from the 1-3^d defendants at Ugx20,000,000/= which he paid in instalments.

As per the terms of the agreement of sale, upon completion of all pal'ments the 1-3rd defendants were required to hand over the title to him to curve off his part but that up to now they have refused to do so' Instead they went ahead and made various subdivisions to the land, to the detriment of the plaintiff'

That on different occasions he requested them to hand over the title as agreed but they willfully neglected and refused to do so, and connived with the 4^e defendant to encroach on part of his land which he had purchased from the 1- 3,^d defendants.

That the 4^e defendant who bought the neighboring plot ignored the boundary marks and fenced off the suit land without the plaintiffs consent and/or approval. 15

According to him therefore, the 1-3.^d defendants committed breach of contract while the 4^s defendant committed fraud and trespass'

²⁰ Defence bu the 7-3'd de fendo,nts:

The 1 3.d defendants on their part filed a joint defence claiming that the plaintiff and one Hajji Bisaso had connived and iraudulently grabbed their land and that the sale agreement between the plaintiff and Musa Bisaso was void'

25 Among the particulars of fraud raised against the plaintiff therefore was that he allegedlybought1.5acresfromBisasobutprocessedatitlefortwoacres;and also occupied land in excess of 35 decimais'

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That he bought the land with full knowledge that the defendants had a dispute with Hajji Bisaso relating to that land and during the time when the matter was already before court.

Accordingly, the plaintiff had no claim against them and was therefore not entitled to any of the remedies sought'

De nce bu the 4rh defendant:

The 4t defendant in his statement of defence stated that the plaint did not discloseanyreasonablecauseofactionagainsthim;thathislandiscomprised in plot 3692 and, nol plot 747 as claimed by the plaintiff'

Furthermore,thattthesuitlandhadbeenasubjectofanearlierSuitwhichwas heard interparty and concluded by a competent court which passed a judgment in rem, declaring that the suit belonged to the 4fr defendant' 10

Thattheplaintiffwasthereforeclaimingandderivingownershipfromthel-3rd defendants whom court had already declared were not the actual owners

15 thereof.

Thatnotwithstandingthathewasaneighborwhohadacquiredinterestinthe suit land in 2010, a period of two years before the alleged purchase by the ptaintiff, he was made neither a party nor a witness to the said transaction'

The alleged encroachment was neither substantiated nor was a deed print availed as proof of the alleged encroachment' He relied on two memoranda of understanding (MOU) dated 29n November, 2010 by which he acquired one acre from the 1-3'd defendants.

In the 2'd M. O. U dated 4n September,20l2, the 1-3rd defendants made an agreement adding 40 decimals to the 1 acre making a total of 1'40 acres' both portions acquired prior to the alleged acquisition by the plaintiff'

The 4e defendant in addition claimed that the plaintiffs actions were marred with fraud aird illegalities and therefore his hands were not clean'

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That on 27n April,2014 tlje defendants having failed to surrender to him 1'40 acres to him renegotiated with him and agreed to surrender to him 1 acre and his title which the 4e defendant accepted'

5 According to him, the plaintiff never carried out due diligence to establish the true ownership of the suit land; never opened boundaries to establish exact available land; never inquired from neighbours as to whether there were other claimants. Furthermore, that the 1-3'd defendants connived with the plaintiff purporting to hand over vacant land which had already been sold to the 4tr' defendant.

In his wSD, the 4ft defendant also raised a preliminary point of objection claiming that this court had earlier properly heard the matter interparty and decreed that the suit land belonged to him, a claim which the plaintiff however refuted. 10

He therefore prayed that the suit be struck out; and in the alternative the proceedings be stayed pending the determination of the appeal against the decision which was lodged by the 1-3.d defendants uide" GACA No. 53/2020

(At the time of writing this judgment however, the appeal had already been heard and concluded).

Representation:

The plaintiff was represente d by M/s sangua, wabuire & co. Adrtocates. The 1-3'd defendants were represented by M/s Katdbarua Herbert & Co' Adaocates,while the 4n defendant was represented by M/s Mukilbi & Kgegune Aduocates. 20

Issues.'

defendants. 7) Whether the plaintilJ has a cause of actlon o'go:lrr'st tle

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- 2) Whether the suit land was a subject matter in dispute in HCCS No. 2121 of 2016, (formerly HCCS No. 496 of 2014), between the \$1^{\text{st}}\$ -3rd defendant as plaintiffs and \$4^{\text{th}}\$ defendant as \$2^{\text{nd}}\$ defendant.
- 3) Whether there was a contract of sale of the suit land between the plaintiff and \$1^{\text{st}}\$ - \$3^{\text{rd}}\$ defendants.
- 4) Whether there is breach of contract of sale of the suit land by the \$1^{\text{st}}\$ - \$3^{\text{rd}}\$ defendants.
- 5) Whether the plaintiff is the rightful owner of the suit land and the defendants trespassers.
- 6) Whether the defendants' acts and/omissions amount to fraud.

- 7) What remedies are available to the parties.

Issue No. 1: Whether the plaintiff has a cause of action against the defendants. 20

And

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Issue No. 2: Whether the suit land was a subject matter in dispute in HCCS No. 2121 of 2016 (formerly HCCS No. 496 of 2014) between the 1st defendant as plaintiffs and 4th defendant as 2nd defendant.

Consideration of the issues: 25

The law:

Order 7 rule 11 (a) of the Civil Procedure Rules provides for the rejection of a plaint where the statement of claim in the suit fails to disclose a cause of action.

and

A cause of action is said to be disclosed where three essential elements are pleaded that is: existence of the plaintiff's right; violation of that right, and the defendant's liability for that violation. (Refer also to: Auto Garage vs Motokov (No. 3) [1971] E. A. 514, at 519). (Ref. also to :Mulindwa Birimumaso vs

Government Central Purchasing Corporation C. A. C. A. No. 3 of 2002; 5 Ismail Serugo vs Kampala City Council & Anor. – Supreme Court Constitutional Appeal No. 2 of 1998

The question whether a plaint discloses a cause of action must be determined upon perusal of the plaint with its attachments. Kebirungi vs Road Trainers

Ltd & 2 others [2008] HCB. 10

> The defendants in this suit in their separate defences claimed that the plaint did not disclose a cause of action against them.

In addition to that objection, the 4th defendant contended that the suit land had been a subject matter of the dispute in an earlier suit: HCCS No. 2121 of

2016, (formerly HCCS No. 496 of 2014), between the 1st-3rd defendant as 15 plaintiffs and 4th defendant as the 2nd defendant. According to them therefore, this matter was res judicata.

Under that doctrine, no court can try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue

in a former suit between the same parties or between parties under whom they claim, litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by that court.

The doctrine which is embodied in section 7 of Civil Procedure Act is a fundamental one: there must be an end to litigation. It is also expressed in the 25 well-known maxim: *nemo debet bis vexari pro una et eadem causa*, that is, no one should be vexed twice for the same cause.

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The test as to whether or not a suit is barred by *res judicata* appears to be that the plaintiff in the second suit is trying to bring before court in another way and in the form of a new cause of action a transaction which has already been put before a court of competent jurisdiction in earlier proceedings, and which

has been adjudicated upon.

> The plea of *res judicata* applies not only to the points upon which the first court was actually required to adjudicate, but to every point which properly belongs to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time.

(*Maniraguha Gashumba vs Sam*

Nkundiye, CA Civil Appeal NO. 23 of 2005). 10

It therefore entails three essential elements, that is, there was a former suit between the same parties or their privies; the matter was heard and finally determined by the court on its merits; and the matter was heard and determined by a court of competent jurisdiction.

Consideration of the issues: 15

It is not in dispute that the defendants in this suit filed an earlier suit as administrators of the estate of the late Obadiah Sembajjwe, formerly HCCS No. 496 of 2014 at Nakawa High Court.

The subject land comprised in **plot 147** which was later subdivided into **plots 3691-3693** is also the same as in this suit. This court also took note of the fact that the plaintiffs' action in that case, similar to the present case, was based on trespass and fraud alleged to have been committed by the defendants, one of whom was also party to this suit.

Based on the said allegations, the said administrators in the earlier suit had

sought for the cancellation of the subdivisions of title for **plot 147** and prayed to have the same reverted into the names of Ssembajjwe Obadiah, which prayer the court however rejected.

(*Julang*)

In the present case, the plaintiff who was not a party to that suit therefore relying on a sale agreement dated 7th November, 2012 tendered in court as **PExh 1a/b**, between him and the said administrators, (the 1-3rd defendants in this suit) claimed to have purchased from them land measuring 50 decimals

which he had paid for in instalments. \$ S

That the 4th defendant encroached on his land by 25 decimals. According to him and contrary to what the 4th defendant wanted court to believe therefore, the subject matter in the earlier suit was not the same in this present case.

What the court had decreed was one acre of land. This is the land which the 1-3rd defendant had sold to the 4th defendant. The encroachment by the 4th 10 defendant was 25 decimals, in excess of that land to which he was entitled. He accordingly maintained that he had a cause of action against the 4th defendant just as he did with the 1-3rd defendants with whom they connived to deprive him of the land.

In the present suit, he therefore seeks among others, a declaration that he is the 15 rightful owner of the said land on which the 4th defendant was a trespasser.

In his evidence he relied on several documents pertaining to the transactions signed between him and 1-3rd defendants (PExh 1a/b, PExh 2, PExh 3 and **PExh 4**) to prove that the entire sum had been paid in instalments.

In **PExh 4a/b**, the said defendants had undertaken to hand over the title for the 20 50 decimals upon completion of the payment of the full sum; and had allowed him to use the land he bought. He therefore also requested this court to order the \$1st -3rd defendants to hand over to him the certificate of title for the same.

The 1-3rd defendants in their defence contended among others, that the plaintiff and one Hajji Musa Bisaso had connived and fraudulently grabbed their land. 25 That the plaintiff therefore had no claim against them; that the suit was frivolous and vexatious and did not disclose any cause of action against them and therefore the plaintiff was not entitled to any remedies as sought.

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On his part, the 4^e defendant also sought to move court to strike out arrrdf or dismiss the suit as it had already heard the matter interpartes and that court had already decreed the suit land to him'

That he had acquired one acre from the 1-3^d defendants under an arrangement reached between them on 29^e October 2010' A sum of Ugx 20,000,000/= was paid by him to facilitate them in securing letters of administration for their late father, sestate. In consideration, one acre was to be paid out of the plot 747,1 and at Buloba'

He further averred in his WSD that in September, 2012, the said administrators approached him again requesting for more money as they wanted to acquire a certificate of title. This was before they could hand over the 1 acre to him'

They entered into another MOU on 4th September' 2012 where after he advanced another sum of Ugx 72,000,000/=, paid in consideration for an extra 40 decimals, which land was curved out of the share of Umar Wasswa'

the 3rd plaintiff in the first suit. 15

The 4th defendant discovered later that the title was not in their father's names but in the names of the 1st and 2nd defendants, who had been the 1st defendant in that suit.

The record indicates that the said discovery had prompted the 4th defendant to cause the arrest of the administrators who gave testimony in the first suit to the effect that Bisaso had fraudulently got registered on the title'

It was the 4th defendant's defence in both suits that on 5th November, 2012, the said administrators and Bisaso, the 1st defendant in the first suit, as advised by the office of Administrator General, had entered into an MOU under which

Bisaso surrendered 3.5 acres out of the total area of 5 acres to the administrators of Ssembajje. 25

In another MOU entered into on 12th December, 2012 the administrators acknowledged having surrendered and relinquished their interest from 1 acre out of the 3.5\$ acres.

That they duly handed over to the 4th defendant the title for block 314, plot

3692, as per the MOU, which neither the 1-3rd defendants nor the plaintiff in 5 this case ever questioned. The 40 decimals were acquired later by him after the vendors requested him for an additional *Ugx 12,000,000/=*, which he regarded as consideration for the 40 decimals.

As correctly pointed out by the 4th defendant in his defence, the 1 acre and 40 decimals were acquired from the 1-3rd defendants prior to the plaintiff's purported acquisition of interest on 7th November, 2012.

The plaintiff never sought to join the earlier suit despite having had constructive knowledge that there was a dispute touching on the same land between the 1-3rd defendants and the defendants in the earlier suit.

In the decision of this court made on 13th March, 2019, court had this to say: 15

> \$Pw1\$ testified that their land was comprising 5 acres and they agreed to give Hirome 1 acre, 1st defendant 1.5 acres, Mutekanga 50 decimals, that they would give out 3 acres and remain with 2 acres and he discovered that the remaining two acres had been sold by the \$2^{nd}\$ defendant (sic!) to one Sembusi Mike.

.....since the plaintiffs have failed to prove any fraud in the subdivisions and transfer, I agree with counsel for the defendants that there is need for boundary opening to give effect to the party's agreement. (emphasis mine).

After exonerating the two defendants, Hajji Bisaso and the 4th defendant herein of allegations of fraud and trespass the court confirmed them as the rightful \$25\$ respective registered owners of **plots 3693 and 3692**, part of which the plaintiff now claims in this suit.

Verbou P10

Court's finding that no fraud had been committed was premised on the fact that certificate of title was never in the names of Obadiah Sembajjwe, a position which was duly confirmed by the Court of Appeal in its judgment on 10th March, 2022.

- As a party aggrieved by that decision, the plaintiff had an option which he $\$ \mathsf{S}$ never took up, to apply to be added as a party before or during the hearing of that suit, or apply for a review of that decision which handed over ownership of a significant part of what was originally **plot 147** to both defendants in that suit.
- The circumstances as highlighted above indicate clearly that court had already 10 made pronouncements which confirmed the 4th defendant as the rightful owner of **plot 3692** which he acquired from the \$1-3^{rd}\$ defendants.

Accordingly, and in response to the \$1^{st}\$ and \$2^{nd}\$ issues, not only therefore did the plaintiff fail to disclose a cause of action against the 4th defendant, but also

the matters concerning the allegations of trespass and fraud raised against him 15 as well as his rightful ownership of **plot 3692** were duly considered by court and therefore res judicata.

The plaintiff in bringing this action specifically against the 4th defendant, he was trying to bring before this court in another way and in the form of a new

cause of action a transaction which had already been put before a court of 20 competent jurisdiction in earlier proceedings, and which had been adjudicated upon.

<u>Issues No.3: Whether there was a contract of sale of the suit land</u> between the plaintiff and \$1^{st}\$ -3rd defendants.

And 25

> Issue No. 4: Whether there is breach of contract of sale of the suit land by the 1^{st} - 3^{rd} defendants.

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Section 9(1) of the Contracts Act defines a contract as an agreement made with free consent of parties with the capacity to contract, for lawful object, with the intention to be legally bound.

For a contract to be valid and legally enforceable, there must be capacity to contract, intention to contract, consensus ad idem; valuable consideration; S legality of purpose; and sufficient certainty of terms.

If in a given transaction any of these is missing it could as well be called something else. (Ebbzworltd Ltd & Anor vs Rutakirwa Civil Suit No. 398 of 2013\$).

The general principle is that when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms. (See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000).

Section 63 of the Contract Act is applicable where there is a valid contract, binding the two parties to its terms. The section entitles the party affected by the breach to obtain an order for specific performance of the promises made as against a party in breach.

The plaintiff in this case relied on **PExh 1a/b** . it was duly signed and endorsed by the plaintiff as the purchaser and the 1^{3rd} defendants as vendors on 7^{th} November, 2012.

The 1^{3rd} defendants who never turned up in court missed out the opportunity to substantiate their claim that the plaintiff having allegedly bought one and a half acres from ***Pw2***, Bisaso Musa occupied land in excess. They did not attach to their WSD any documentary proof to that effect.

They could not deny that they received from the plaintiff, the entire purchase price of ***Ugx 20,000,000/=** for land measuring 50 decimals which the plaintiff had paid in instalments. (Ref: PExh 1, PExh 2, PExh 3, PExh 4.).

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Having acknowledged receipt of the final balance of the consideration from the plaintiff, as per **PExh 4a/b** they were accordingly estopped from denying the commitment they made to hand over the certificate of title to the plaintiff as per that commitment.

In response to issues No. 3 and 4 therefore, the said agreement between the S plaintiff and the 1^{3rd} defendants thus created binding relations between the two sides.

The 1^{3rd} defendants accordingly committed a breach of the contract which entitled the plaintiff to an order for specific performance.

Liability of the plaintiff as against the 4th defendant: \$10\$

The 4th defendant (who did not file a counter claim) however pointed out some elements of fraud, citing connivance between the plaintiff and the 1-3rd defendants and purporting to hand over vacant possession to the plaintiff on part of the land already owned and sold to him (4th defendant).

In the WSD filed by him, it was averred that the plaintiff who had full knowledge 15 of the 4th defendant's prior interest in the suit land, purchased the land without opening boundaries and establishing the availability of the area he set out to buy.

Furthermore, that he did not inquire from his neighbours (including the 4th defendant himself) as to whether there were other persons with conflicting 20 interest on the land. That the plaintiff further claimed to have bought 50 decimals, yet the 4th defendant had already acquired interest before him.

In his reply, the plaintiff while refuting the claim that the issues arising in this suit had already been dealt with in an earlier suit, claimed to have bought land adjacent to that of the 4th defendant, land which was encroached on by 25

25 decimals exceeding the one acre he rightfully bought.

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This issue has already been largely dealt with by this court in Issues No' 1 and 2.

Sufficient to add the emphasis here on the principle of due diligence which has been widely discussed in several cases by this court'

As laid down in Jennifer Nsubuga versus Micheo; Mukundo:ne' Civil Appeal No, 208 of 2078, a due diligence investigation would seek to cross check or confirm the vendor's claim by inquiring of independent persons knowledgeable about the land or that which could otherwise shed light on the bonafides of the intended land Purchase.

Investigations must be directed at persons that are independent of the beneficiaries of the transaction in question, with a view to ascertaining the authenticity of the title sought to be conveyed. of necessity that would exempt routine, contractual inquiries made of the seller to establish his/her title to property. 10

The evidence however presented to court in this case fell short of the above' proving that no due diligence was ever conducted by the plaintiff before purchasing the 50 decimals. 15

court also therefore faults the 1-3^d defendants for having initially entered into ^asale transaction with the 4th defendant for the land in dispute and less than two months later, also entered into another transaction with the plaintiff without

disclosing to him the earlier interest duly acquired by the 4th defendant. Had due diligence been conducted by the plaintiff that information could have reached him through other sources. 20

Without a prior survey over land which was a subject of a dispute at that time' the 1-3rd defendants went ahead to subdivide plot 3697, creating new titles in

their names when the case they filed was still in court, yet (rather absurd)' the prayers sought in their suit included cancellation of the titles including theirs, and have them reverted in the names of Obadiah Ssembajjwe' 25

Asevidence of his feeble attempts at due diligence, the plaintiff presented to court several search certificates which were however obtained six years after the deal between him and the 1-3rd defendants had been concluded'

5 PExh T, is a search Statement for plot 5606 in the name of Nelson Gumoyesige' He got registered on the title on 26th April, 2018' Other plots 5607 and ⁵⁶⁰⁸ LPDxh 8 and PExh 9, respectively) were both registered in the names of Edward Mulangwe Wagaba on 26th April, 2018 while plot 5609 was registered in the joint names of Edward Mulangwe Wagaba, the 1st defendant and Margaret Nakyobe, the 2nd defendant on 3rd August, 2017 '

Plot 5617 (PExh 6), a certificate of title measuring 0'8380 hectares was presented to court by the plaintiff as the remaining portion of land' It was registered in the joint names of the 1st and 2nd defendants on 4th January' 2017 during the time when the suit was pending' 10

Plot 3697 (PExh 11) under which all these plots were created had been registered under the joint names of the two defendants on 4th January' 2017 ' the very same date on which plot 5617 itself was registered in the names of the two joint owners. No area schedule was availed in court to show how these subdivisions had been made. 15

Deduced from the evidence of Nabisubi Saha Bisaso' PwS' the plaintiff's claim fails under plot 3697 (PExh 11), it therefore confirms the fact that the plaintiff had nothing to do with the land already acquired and pronounced by court as lawfully belonging to the 4th defendant' 20

Boundary opening is one of the key indicators of due diligence' Not only did both plaintiff and 1-3rd defendants therefore fail to present a survey report before

selling the land to the plaintiff, they are also faulted for failing to execute the orders and decrees pronounced by this court in its earlier judgment, by which the survey was to be conducted.

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The plaintiff even after filing this suit could have taken the trouble to at least prove his interest on the land by causing the opening of the boundaries of the suit land. He never did.

All these transactions on the subdivisions **plot 3691** as already observed, were made during the pendency of the earlier suit which the 1-3rd defendants themselves had filed, when they were trying to secure an order of cancellation against that very plot as well as **plots 3692 and 3693**.

As pointed out already, the unchallenged evidence of **Pw3** however, read together with the earlier ruling of this court ruled out any possibility that the plaintiff's interest was on **plot 3692**, the land owned by the 4th defendant.

With all these dubious transactions directly attributed to them, it comes as hardly any surprise therefore that the 1-3rd defendants were not in court to defend themselves against any of the above.

In conclusion:

- 1. The plaintiff had no cause of action against the 4th defendant. Thus by 15 filing this suit against him without conducting due diligence to ascertain the nature of his claim, the plaintiff's claim against the 4th defendant was vexatious.
- 2. The 4th defendant therefore suffered a grievance, having already been 20 pronounced as owner of another plot, which the plaintiff had no valid interest in. The reverse position assumed by court was that the 4th defendant had a cause of action against the plaintiff.
- 3. The plaintiff shares the blame for the confusion he created for himself and 25 others in the transaction between him and the 1-3rd defendants; and for his failure to ensure that all due diligence was conducted before committing his funds to the transaction.

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- 4. It is also the view held by this court that the plaintiff's claim ought to have been a separate action against the 1-3rd defendants that ought not to have involved the 4th defendant, whose interest in the land had already been determined by court.
- 5. The plaintiff's failure to conduct sufficient inquiries on the land should not however be interpreted as absolving the 1-3rd defendant from the commitments they made in the sale agreement with the plaintiff, since in any case they did not deny having received money as consideration for the 50 decimals.
- 6. Their action of filing a suit for cancellation of titles while at the same time subdividing the land to create other titles when the matter was still in court, and ignoring their commitment to the plaintiff in an agreement which they were not forced to sign were not acts of good faith.

- In response therefore to issue No. 6, fraud was committed by the 1-3rd defendants against the plaintiff when they failed to disclose the fact that the 4th defendant had acquired interest in plot 147.

The plaintiff therefore had a cause of action against them, also based on their refusal/failure to hand over to him a certificate of title for the land which he bought from them, based on trust. That land constituted part of the since then subdivided *plot 3691*.

The above findings therefore also sufficiently address **issue No. 5**.

In the premises, the plaintiff's action fails against the 4th defendant but succeeds against the 1-3rd defendants in the following terms:

1. The plaintiff is entitled to a transfer of the land he purchased from the 1-3rd defendants on \$7th November, 2012 measuring 50 decimals.

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- 2. The 1- 3rd defendants breached the contract of sale of land between them and the plaintiff and he is therefore entitled to an order for specific performance;
- 3. The administrators of the estate of the late Ssembajjwe shall hand over transfer forms and a title to the plaintiff within a period of 30 days, from the date of delivery of this judgment;
- 4. Issues related to the ownership of plots 3692 and 3693, and the alleged fraud and trespass committed by the 4th defendant were already concluded matters in an earlier suit which was upheld by the Court of Appeal and as such, the doctrine of res judicata operates to bar the plaintiff from raising them again in this suit;
- 5. General damages of Ugx 30,000,000/= shall be paid to the plaintiff by the 1-3rd defendants.
- 6. General damages of Ugx 30,000,000/= shall be paid by the plaintiff to the 4th defendant.

\$5\$

- 7. Interest of 15% p.a to be paid in respect of orders 6 and 7 above.
- 8. Costs awarded to the 4th defendant, to be paid by the plaintiff.
- 9. Costs awarded to the plaintiff, to be paid by the 1-3rd defendants. 25

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nae Rugadya Alexandra nko

Judge

28th November, 2024 30

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