

UGANDA / JUDGMENT

**Kaddu & 3 Others v The Commissioner Land
Registration & 9 Others & National Agricultural
Research
Organization v Akright Projects Limited & 8 Others
(Civil
Suit 154 of 2009) [2024] UGHCLD 295 (28 November 2024)
[2024] UGHCLD 295**

COURT

HC: Land Division (Uganda)

BEFORE

Zeija, PJ

CASE / FILE NUMBER

Civil Suit 154 of 2009

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND
DIVISION) CIVIL SUIT NO. 154 OF 2009**

1. KADDU GODFREY
2. SENTAMU SOLOMON
3. FREDDIE SSENGOBA

PLAINTIFFS

4. NANTUME ROSEMARY ::::::::::::::::::::::::::::::::::

VERSUS

- 1. THE COMMISSIONER LAND REGISTRATION
- 2. SAMUEL KAWESA (Holder of Letters of Probate of the Estate of the late Yafesi Walusimbi)
- 3. JAMES KISENYI
- 4. DAPHINE WALUSIMBI
- 5. OLGA NAKIMULI WALUSIMBI
- 6. RICHARD KIMEZE

- 7. PHEONA WALUSIMBI
- 8. AKRIGHT PROJECTS LIMITED
- 9. URBAN UTILITY CONSULTANTS LIMITED
- 10. IMAGE FINANCES LIMITED ::::::::::::::::::::

CONSOLIDATED WITH CIVIL SUIT NO. 211 OF 2012

NATIONAL AGRICULTURAL RESEARCH ORGANIZATION ::::::::::::::::::::

VERSUS

- 1. AKRIGHT PROJECTS LIMITED
- 2. URBAN UTILITY CONSULTANTS LIMITED
- 3. KADDU GODFREY
- 4. RICHARD KIMEZE WALUSIMBI
- 5. RICHARD KISENYI WALUSIMBI
- 6. DAPHINE WALUSIMBI
- 7. ALGA NAKIMULI WALUSIMBI
- 8. PHEONA WALUSIMBI
- DEFENDANTS 9. IMAGE FINANCES LIMITED ::::::::::

BEFORE: HON JUSTICE DR. FLAVIAN ZEIJA

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JUDGMENT

The plaint in Civil Suit No. 154 of 2009 was lodged in this honourable Court on the 26th May 2009. By way of a 2nd amended plaint, the plaintiffs therein are seeking against the defendants therein the following reliefs: A declaration that the suit land comprised in Busiro Block 260 Plot 8 Land at Senge in Wakiso district, measuring approximately 135.50 acres forms part of the estate of the late Yofasi Sekaiba; A declaration that the late Yafesi Walusimbi fraudulently transferred the suit land into his names and thus the same does not form part of his estate; A declaration that the 3rd to 7th defendants did not acquire any interest in the suit land as their predecessor in title (the late Yafesi Walusimbi) acquired the same fraudulently; a declaration that the 3rd to 7th defendants fraudulently sold and the 8th to 10th defendants fraudulently purchased the suit land; an order directing the 1st defendant to cancel and set aside any entries changing ownership and subdivision made on the suit land by the defendants and reinstating the same into the names of

Yofasi Sekaiba; a permanent injunction restraining the defendants, their agents or employees from dealing in the suit land by sale subdivision, transfer or otherwise; an order to evict the 8-10th defendants and costs of the suit.

The facts giving rise to the to the defendants cause of action are that the suit land described above forms part of the estate of the late Sekaiba Yofasi of which the 1st plaintiff is the administrator. The suit land used to form part of a big chunk of land comprised in MRV 148 Folio 12, FC No. 15129 registered in the names of Lukumbi Sekaiba, the 1st, 3rd and 4th plaintiffs' great grandfather and the 2nd plaintiff's grandfather in 1906.

When the system of titling mailo land changed from MRV to Block and Plot system of titling, MRV 148 Folio 12, FC No. 15129 became known as Busiro Block 260 Plots 8,9,27, 28 and 19 with the said plot numbers clearly marked on Plan H3322 of FC No. 15129. That upon the death of the late Lukumbi Sekaiba, the late Yofasi Sekaiba who was one of the children of the late Lukumbi Sekaiba who was the original registered proprietor inherited the suit land and was registered on the certificate of title of land comprised in Busiro Block 260 Plots 8,9,27, 28 and 19 on the 19th November 1941 under Instrument Number. 52891.

on the 3rd May 1952 Yofasi Sekaiba being the registered owner of Busiro Block 260 Plots 8,9,27,28 and 19 leased a piece of land comprised in the said Folio containing 135.50 acres delineated and edged with red on the plan H3322 of FC No. 15129 attached to the title and numbered 8 to the Governor of Uganda Protectorate for a term of 99 years running from the 1st December 1951. The lease registered on the encumbrance page of the original mailo title MRV 148 Folio 12, FC No. 15129 on the 3rd of May 1952 under instrument No. 106137 and a lease hold certificate of title was created comprised in LRV Volume 275 Folio 14. That the beneficiary of this lease was the Agricultural Department, now National Agricultural Research Organisation (NARO) as the successor in title that continues in occupancy of the land.

- That there is no separate mailo land title that was created in respect of Plot 8. The plaintiffs contend that the said Yafesi Walusimbi fraudulently and in connivance with the office of the
- 1st defendant caused the creation of a separate certificate of title for Busiro Block 260 plot 8 in 1962 and registered Yafesi Walusimbi as the owner thereof using an instrument KLA34226 which is the same instrument number used for land comprised in Busiro Block 260 plot 34 to cheat and defeat the interests of Yofasi Sekaiba and subsequently the plaintiffs of the suit land.

The plaintiffs further assert that the 2nd to 9th defendants being administrators and or beneficiaries of the estate of the late Yafesi Walusimbi in collusion with the 1st defendant's officials in the Mailo Land Registry tampered with land records relating to the suit land with intent to fraudulently deprive the estate of the late Yofasi Sekaiba of the suit land and that all defendants acquired interests fraudulently.

In defence, the 1st defendant denied all allegations of fraud. The 1st defendant contends that the suit land as comprised in Busiro Block 8 was part and parcel of the land formerly comprised in Mailo Register Volume 148 Folio 8 which came out of final Certificate No. 15129 and was originally in the names of Lukumbi Sekayiba. The records in custody of the Commissioner Land Registration reveal that the late Yofasi Sekaiba acquired land comprised in Mailo Register 148 Folio 8 from Lukumbi Sekayiba by virtue of a Succession Certificate. The records further reveal that he transferred several parcels out of the said land to different persons including the land plan "8" measuring approximately 135.50 acres which he leased to the Governor of the Uganda Protectorate for a period of 99 years with effect from 1st December 1951, which was registered as an encumbrance on the Mailo Register Volume 148 folio 8 on the 3rd day of May 1952 under instrument No. 106137 and a leasehold certificate of title comprised in leasehold register volume 274 folio 14.

The 1st defendant contends that the land comprised in mailo Register Volume 148 Folio 8 was brought on the Block and Plot Register (New Register) as Busiro Block 260 Plots 8,9,19, 27 and 28. That Yokasi Sekaiba transferred his mailo interest in the land comprised in Busiro Block 260 Plot 8 together with the encumbrances thereon to Yafeesi Walusimbi who was registered thereon on the 30th of January 1962 under instrument No. KLA34226 and a separate certificate of title thereof was legally created and registered in the names of Yafeesi Walusimbi who acquired the same subject to the lease of the Governor.

In their defence, the 2nd-7th defendants denied all allegations in the plaint. They averred that the land comprised in Busiro Block 260 plot 8 land at Senge belonged to the late Yafesi Walusimbi who was legally registered and who upon his death bequeathed the same under a will to 3rd-7th defendants for which the 2nd defendant and others got registered as executors under instrument KLA138245 on the 11th November 1989 and who further transferred the same to the 3rd-7th defendants on the 2nd march 1990 under instrument No. 139643. The late Yofasi Sekaiba never contested registration of Yafesi Walusimbi and the lessee thereto (now

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NARO) also never questioned the title of Yafesi Walusimbi. All transactions entered into by the holder of their powers of attorney were legally entered into.

In their defence, the 8 and 9th defendants denied all allegations of fraud. They contend that they transacted with the 10th defendant bona fide and without notice of the alleged fraud against their co-defendants. They contended that the suit land wa\$ obtained by the 9th defendant bona fide who appointed the 8th defendant to develop the suit land as Walusimbi Housing Estate but they were frustrated by the actions of NARO but which was evicted on the basis of a Court order for failing to pay rent for 33 years.

In its defence, the 10th defendant contends that it's a bona fide purchaser of 20 acres of the suit land for value and without notice of any alleged fraud for a consideration of UGX • 600,000,000= from the 8th defendant. At the time of purchase, although the title had not yet been transferred to the 8th defendant from the previous proprietors but his interest and physical possession of the suit was recognized by previous proprietors and never contested.

On May 21, 2012, National Agricultural Research Organisation (NARO) filed Civil Suit No. 211 of 2012 against the defendants listed herein on the first page. Civil Suit No. 211 of 2012 was consolidated with civil suit No. 154 of 2009 since the parties and the subject matter are substantially the same.

In the amended plaint in Civil Suit No. 211 of 2012, NARO seeks reliefs to wit; a permanent injunction restraining the defendants by themselves, servants or agents from claiming, selling, occupying or otherwise dealing with the suit land for the remaining lease period; a cancellation of all subsequent sale agreements of portions/plots or the entire suit land to the 1st and 2nd defendants and others, special damages, general damages, costs of the suits and interests on the decretal sum.

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The alleged facts giving arise to the cause of action by NARO are that NARO has been in total possession of the land comprised in Block 260 Plot 8 land at Senge, Wakiso district by virtue of a lease agreement entered into by the late Sekayiba Yofasi in 1952 with the then Governor of Uganda. The lease was registered on 1st December 1952 under the instrument No. 106137.

The beneficiary of the said lease agreement was the Agricultural Department now NARO as the successor in title that continues in occupancy. The plaintiff has been in actual possession of the suit land at all times enjoying quiet possession.

However, on the 28th, 29th of December 2011 and on the 2nd January 2012, agents of the 1st and 2nd defendants descended onto the land destroying all their plant and research materials that were under a multimillion dollar World project of the International Centre for Agriculture (CIAT).

- It was later discovered that they were wrongly evicted by the 1st and 2nd defendants as a result of a consent judgment entered vide civil suit no. 154 of 2009 in Godfrey Kaddu vs. the Registrar of Titles and 8 others of which the plaintiff was never notified about. The said consent was later set aside by the consent of the parties therein. The plaintiff avers that it suffered special damages of UGX. 1,258,603,916 (one billion two hundred fifty-eight million six hundred three thousand nine hundred sixteen) and UGX, 30,000,000=.

The 1st defendant in civil suit No. 211 of 2012 denies the allegations by NARO and avers that NARO has never been a lessee of the Mailo owner thereof, is a trespasser and has no locus to sue any of the defendants.

The 2nd defendant's defence in civil suit No. 211 of 2012 is substantially similar to that of the 1st defendant therein. The 2nd defendant further avers that there was lawfully reentry on the suit land by the lessors and denies any alleged loss by the plaintiff. The 2nd defendant counterclaimed against NARO for UGX 9,595,333,000= being special damages for a housing project frustrated by the plaintiff, court fees of UGX. 9,695,500= and legal costs of UGX. 100,000,000=.

The 3rd defendant acknowledges the lease claimed by the plaintiff and contends he never cancelled the same. He avers he entered a genuine consent with other defendants in respect of his land where his interest are still recognized. The 3rd defendant counterclaimed for unpaid arrears of annual ground rent by NARO with interest at commercial rate. The 3rd defendant avers that the plaintiff has never paid for its annual ground rent for the lease.

The 4th -8th defendants in civil suit No. 211 of 2012, deny the allegations by the plaintiff. They aver that the plaintiff breached its duty to pay ground rent for which reentry was done and they repossessed the suit land. They deny all allegations by the plaintiff.

The 9th defendant in civil suit No. 211 of 2012 avers that it's a bona fide purchaser of 20 acres of the suit land for value and without notice, from the 1st defendant who was in physical possession of the land. The 9th defendant filed a counterclaim against plaintiff for an order of compensation of 20 acres, general damages for the loss of business, aggravated damages, interests and costs. The 9th defendant alleges that upon purchase of 20 acres of the suit land from the 1st defendant, the plaintiff laid claims on its land, lodged a caveat emptor and led to losses of its housing estate for which it seeks those reliefs.

Issues for determination.

Five issues were raised for determination to wit;

1. Whether or not the 3rd to 7th defendants in Civil Suit No. 154 of 2009 fraudulently acquired the Certificate of Title for land comprised in Busiro Block 260 Plot 8 land at Senge in Wakiso district measuring approximately 50 acres?

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- 2. Whether the 3rd to 7th defendants fraudulently sold the suit land to the 8th and 9th defendants and whether the 8th and 9th defendants fraudulently acquired the suit land vide Civil Suit No. 154 of 2009?
- 3. Whether the 8th and 9th defendants fraudulently sold and the 10th defendant fraudulently acquired the suit land vide Civil Suit No. 154 of 2009?
- 4. Whether eviction of NARO from the suit land was unlawful?
- 5. What reliefs are available to the parties.

Representation

The plaintiff in Civil Suit No. 154/2009/3rd defendant in Civil suit no. 211 of 2012 was represented by M/s Mukibi & Kyeyune & Co. Advocates. The plaintiff in Civil Suit No. 211 of 2012 was represented by M/s Munanura-Mugabi & Co. Advocates. The 2nd, 3rd, 4th, 6th and 7th defendants in Civil Suit No. 154/2009/4th, 5th, 6th, & 8th defendants in Civil Suit No. 211 of 2012 were represented by M/s Hilal & Co. Advocates. The 8th and 9th defendants in Civil Suit No. 154/2009/1st and 2nd defendants in Civil suit no. 211 of 2012 were represented by M/s Okello-Oryem & Co. Advocates whereas the 10th defendant in Civil Suit No. 154/2009/9th defendant in Civil suit no. 211 of 2012 was represented by M/s Gad & Co. Advocates. All counsel filed written submissions which I will not reproduce but rather refer to, where applicable.

Resolution of issues

issues 1, 2, 3 and 4

I will resolve issues 1, 2, 3 and 4 concurrently, to wit;

- 1. Whether or not the 3rd to 7th defendants in Civil Suit No. 154 of 2009 fraudulently acquired the Certificate of Title for land comprised in Busiro Block 260 Plot 8 land at Senge in Wakiso district measuring approximately 135.50 acres?
- 2. Whether the 3rd to 7th defendants fraudulently sold the suit land to the 8th and 9th defendants and whether the 8th and 9th defendants fraudulently acquired the suit land vide Civil Suit No. 154 of 2009?
- 3. Whether the 8th and 9th defendants fraudulently sold and the 10th defendant fraudulently acquired the suit land vide Civil Suit No. 154 of 2009?
- 4. Whether eviction of NARO from the suit land was unlawful?

Looking at the evidence on court record, Exhbp1 is a grant of Letters of Administration by Court to Kaddu Godfrey (PW1) in respect of the estate of the late Yofasi Sekaiba. Exhbp2 is a leasehold Certificate of Title for land comprised in LRV 275 Folio 14, MRV 148 Folio 12. Senge Estate, Busiro, Mengo measuring Approximately 135.50 acres. This land is what now comprises the suit land in both the consolidated suits. Exhbp2 indicates the lessee as His Excellence the Governor of the Uganda Protectorate who was registered under Instrument No. 106137 on 1st December 1951, for a lease of 99 years. Unless there is/was a lawful termination, the date of expiry of this lease is 1st December 2050.

Furthermore, Exhbp8 indicates LRV 275 Folio 14, MRV 148 Folio 12, land at Senge Estate, " Busiro, Menge measuring Approximately 135.50 acres was converted from MRV to Block system of titling thereby becoming Busiro Block 260 Plots 8,9,27, 28 and 19. It is plot 8 thereof which is in dispute in both consolidated suits.

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Additionally, Exhbp3 is the lease agreement executed between the late Yofasi Sekaiba and His Excellency the Governor of the Uganda Protectorate on 3rd May 1952. The land the subject of the lease is LRV 275 Folio 14, MRV 148 Folio 12, Senge Estate, Busiro, Menge measuring Approximately 135.50. According to the evidence of PW1, PW2 and PW3, this land has always been in possession of NARO. This is corroborated by DW4 who testified that he found PW2 (former Director of NARO) on the ground where he carried out the impugned execution/eviction. Indeed, when I visited locus on 2nd July 2024, I was able to see on the suit land a water pump house, freshly demolished farm store of NARO. PW2 testified in chief that the title was registered in the names of His Excellency the Governor of the Uganda Protectorate under the Ministry of Agriculture for which NARO is the successor in title. I believe PW2. There is uncontested evidence on court record of Exhbp8 which indicates that the said lease in favour of the Governor was registered under Instrument No. 106137 in 1952.

In contrast, DW5 testified that the suit land belonged to their deceased father Yafesi Walusimbi and upon his death, it was transferred by will to his executors who also transferred the suit land to the 3rd, 4th, 5th, 6th and 7th defendants in civil suit No. 154/2009.

From the foregoing evaluation of the exhibit evidence on court record, it is clear how the suit land moved from Yofasi Sekaiba to the Governor of the Uganda Protectorate by way of a lease. However, there is no evidence to show how the same plot 8 came to be owned by the late Yafesi Walusimbi. During cross examination DWS testified that the certificate of title of the suit land was registered in the names of their deceased father on January 30th 1962. He further testified in cross examination that he has never seen an agreement of sale or instrument of transfer from Yofasi Sekaiba to Yafesi Walusimbi. This is corroborated by DW4 who is a Senior Registrar of Titles who also testified during cross examination that the office of the Commissioner Land Registration does not have such a transfer instrument in their records because it got lost or cannot be found. I do not believe this evidence. The reason why there exists no agreement or instrument of transfer is because there is none.

Although DW5 testified that his late father Yafesi Walusimbi acquired the suit land from Yofasi Sekaiba, both D82 and Exhbp10 which are copies of the certificate of title registered in the name of Yafesi Walusimbi under instrument No. KLA34226 on the 30th January 1962 contradicts this evidence. This is because, if that was the case then the title should show that the suit land moved from Yofasi Sekaiba to Yafesi Walusimbi. However, to the contrary, the title shows Yafesi Walusimbi as the 1st registered proprietor of the suit land. This contradiction juxtaposed with absence of any evidence of an agreement of sale or transfer instrument is better evidence that there was no transfer of the suit land to Yafesi Walusimbi by Yofasi

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Sekaiba. From the title alluded, Yafesi Walusimbi is not a transferee but a first registered proprietor thereof. In any case, having acquired the land, it would have been prudent for him to inform the Lessee that he was its new lessor and would have demanded rent in compliance of the terms of the lease.

Counsel for 2nd-7th defendants submitted that given that both the transferor and the transferee are dead, the unavailability of a sale agreement or instrument of transfer should not be the basis of impeachment of the title but credence must be accorded to the register as discussed in their submissions. I disagree with Counsel for the 2nd-7th defendants in Civil Suit No. 154/2009/4th, 5th, 6th & 8th defendants in Civil Suit No. 211/2012. Absence of proof of how the land was transferred to their client's predecessor in title is not a minor issue to sweep under the carpet. In the suit at hand, this is the core issue. I have already indicated above that title exhibited both as D82 and ExhbP10 show Yafesi Walusimbi as the first registered proprietor thereto. He is not a transferee thereto as counsel would want this court to believe. There is not any slight iota of tangible evidence on how the suit land moved from Sekaiba to Walusimbi. Even if court was to ignore absence of an agreement or instrument of transfer, this court cannot ignore the fact that there is no evidence that was adduced of any witness to attest to any form of transaction leading to transfer of the suit land from Sekaiba to Walusimbi. When I visited locus in quo, it was apparent that the 2nd-7th defendants in Civil Suit No. 154/2009 (who are also the 4th, 5th, 6th & 8th defendants in Civil Suit No. 211/2012) or their predecessors in title have never been in possession of the suit land. Evidence on ground was apparent that it was NARO on the suit land apart from clearly new structures constructed by purchasers who bought pieces of the suit land from some of the defendants. Indeed, in order to destroy evidence that NARO was in possession of the suit land, the defendants or any of them or their agents with graders destroyed buildings of NARO on the suit land like the store among others. Freshly grading vehicle tyres were all over, various clearly fresh deposits of debris from recently demolished NARO buildings were seen in the lower swamp area of the suit land where they had been hidden in the hope that I was not going to inspect the whole land but unfortunate for them, I did. Everyone could see that the foundations of the buildings for NARO freshly demolished in preparations for locus visit, were foundations of buildings constructed long ago. In fact, our locus meeting was held at a place where the farm house of NARO was standing before demolition. The old remains of the building were fresh and apparent.

Counsel for the 2nd-7th defendants in Civil Suit No. 154/2009/4th, 5th, 6th & 8th defendants in Civil Suit No. 211/2012 cited my decision in Prince Kalembera & Anor vs. Kabaka of Buganda & 3 others CivI Suit No. 535 of 2017 where I stated thus "I have noted of late a resurgence of claims by grandchildren of many deceased persons, many of whom allege fraud when in actual fact the alleged fraudsters are sometimes dead. The resurgence is caused by the ever limited resource called land that cannot

expand as population surges. The value of the land has increased greatly and it is attracting all sorts of claims in court. To circumvent the limitation period, fraud is always invoked as a cover for machinations to dispose land from rightful owners. Court should stand up to stem this fraud guised in the name of the law to stem fraud". Although the cited dictum is right, it not applicable in the case

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at hand. It was intended to cover circumstances where there is clear evidence of transfer of land by predecessors of a claimant. It was not intended as a cover for clearly questionable transactions like in the circumstances at hand.

In any case the existence of more than one title on the same piece of land is an incident of fraud that should not be missed (see: St. Mark Educational Centre limited vs Makerere University[14] CACA No. 40 of 1997). This fraud is usually committed within the land registry which is mandated to issue duplicate certificates of title. In most cases, the Land Registries while acting on forged documents submitted by the clients may erroneously issue more than one title on the same piece of land. Unfortunately, such fraud may not be detected unless the true owner raises a complaint with the land office. In other cases, which are undoubtedly common, fraudsters deal with unscrupulous people in the offices responsible for land registration thereby obtaining overlapping titles with a view of defrauding registered proprietors of their interests. This is the common cause of double titling looking at the number of disputes determined at High Court level.

After a thorough evaluation of the evidence on Court record, I'm convinced by the evidence adduced by the plaintiffs in both consolidated suits that the suit land moved from Sekaiba to Walusimbi through fraud. Fraud attributable to the transferee can be actual, imputed or constructive. Fraud must be attributable either directly or by necessary implication, that is, 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. (see: Wambuzi CJ as he then was in Kampala Bottlers Limited v Damanico (U) Limited CA No 22 of 1992). A person becomes privy to a fraudulent transaction either by being an active participant in its perpetration by action or omission, or when having acquired knowledge of its perpetration by others or third parties, knowingly and willfully seeks to take benefit from it. (See: Agandru v Etoma Civil Suit No. 0007 Of 2011).

It is worth emphasizing that where there are a series of subsequent transfers, for the title of the incumbent registered proprietor to be impeachable, the fraud of the previous proprietors must be brought home to him/her. A fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him/her or his/her agents. (see: David Sekajia Nalima vs. Rebecca Musoke Supreme Court Civil Appeal No 12/1985 (Unreported))

Fraud is an exception to the indefeasibility of title. Once fraud is proven before courts of law, the transferee's title would be cancelled. Fraud is such a grotesque monster that the courts should hound it wherever it rears its head and wherever it seeks to take cover behind any legislation. Fraud unravels everything and vitiates all transactions. (See: *Fam International Limited and Ahmad Farah versus Mohamed El Faith* [1994] KALR 307)

From the foregoing evaluation of evidence, there is no iota of evidence whatsoever on how the suit land was transferred from Yofasi Sekaiba to Yafesi Walusimbi. In the absence of a sale agreement, instrument of transfer, oral testimony from a witness to the alleged

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transaction, if any, that happened between Yofasi Sekaiba to Yafesi Walusimbi the only reasonable inference for reasons given herein, is that registration of Yafesi Walusimbi on the suit land was through fraud. Consequently, his title is hereby impeached. Thus, the suit land does not belong to his estate. It belongs to the estate of Yofasi Sekaiba. Accordingly, the 2nd -7th defendants in Civil Suit No. 154/2009 (who are also 4th, 5th, 6th & 8th defendants in Civil Suit No. 211/2012) were wrongfully registered thereon, and their respective titles are hereby impeached.

The next question now to be answered is whether the 8th, 9th and 10th defendants in Civil Suit No. 154/2009 (who are the 1st, 2nd and 9th defendants) in Civil Suit No. 211 of 2012 acquired any good title/interest in the suit land? The answer is a resounding "No". This is because, firstly none of the 2nd -7th defendants in Civil Suit No. 154/2009 (4th, 5th, 6th & 8th defendants in Civil Suit No. 211/2012) or their agents had a good title/interest in the suit land to pass over to anyone including the 8th, 9th and 10th. Secondly, none of the 8th, 9th and 10th is a bona fide purchaser for value without notice of the fraud. It is now trite that lands are not vegetables which are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only of the land but also of the owner before purchase. (see: *Sir John Bageire vs. Ausi Matovu CACA No.07 of 1996*, at page 26). Therefore, it is now settled that when purchasing land, the buyers should investigate the land, investigate the seller, establish the land's status, identify the people who are in occupation, and identify the plot number. A buyer is also bound by any equities that parties in occupation of the land may have if he/she purchases an estate that they know or ought to know is occupied by someone other than the vendor. When this court visited locust in quo, it was clear that the suit land was in possession of NARO who had agricultural projects thereon of seedlings and plants. They also had on the suit land building structures like the store and water pump house. Some of these structures had been freshly demolished and debris thereon deposited in the swampy area within the suit land. Clearly this is not conduct of a bona fide purchaser. Besides, if the mentioned defendants had intended to carryout due diligence, they should have known that the suit land was in possession of NARO as a leasee under Uganda Land Commission. This court takes judicial notice that lands owned by Government Institutions are registered in the name of

the Uganda Land Commission. Such institutions have a right to institute suits against any trespasser to protect their beneficial interests. Consequently, for the reasons herein given in the entire judgment, it was wrong for any of the defendants to evict NARO from the suit land.

Issue 5:

What reliefs are available to the parties.

The plaintiffs in Civil Suit No. 154 of 2009 sought for the following reliefs. A declaration that the suit land comprised in Busiro Block 260 Plot 8 Land at Senge in Wakiso district, measuring approximately 135.50 acres forms part of the estate of the late Yofasi Sekaiba; A declaration that the late Yafesi Walysimbi fraudulently transferred the suit land into his names and thus

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the same does not form part of his estate; A declaration that the 3rd to 7th defendants did not acquire any interest in the suit land as their predecessor in title (The late Yafesi Walusimbi) " acquired the same fraudulently; a declaration that the 3rd to 7th defendants fraudulently sold and the 8th to 1 Qth defendants fraudulently purchased the suit land; an order directing the 1st defendant to cancel and set aside any entries changing ownership and subdivision made on the suit land by the defendants and reinstating the same into the names of Yofasi Sekaiba; ^a permanent injunction restraining the defendants, their agents or employees from dealing in the suit land by sale, subdivision, transfer or otherwise; an order to eyict the 8-10th defendants and costs of the suit. Having been successful for the reasons already given hereinabove, the plaintiffs in civil suit No. 154 of 2009 are entitled to all the prayers sought and they are accordingly granted.

In civil suit No. 211 of 2012, the plaintiffs sought reliefs to wit; a permanent injunction restraining the defendants by themselves, servants or agents from claiming, selling, occupying or otherwise dealing with the suit land for the remaining lease period; a cancellation of all subsequent sale agreements of portions/plots or the entire suit land to the 1st and 2~d defendants and others, special damages of UGX. 1,258,603,916= and UGX 30,000,000= general damages, costs of the suits and interests on the decretal sum.

Special damages as defined in the case of **Mugabi John v Attorn·ey General C. S No. 133 of 2002** as those damages that relate to past loss calculable at the date of trial and encompass past expenses and loss of earning which arise out of special circumstances of ^a particular case. The law relating to special damages is settled. **W. M Kyambadde v MPIGI District Administration [1984] HCB** held that the guiding principle is that special damages must be specifically pleaded and strictly proved. EXh. P28 and EXh. P29 fall below the standard required. The report is not proof of alleged expenses or losses actually incurred. The plaintiff in civil suit No. 211 of 2012 has failed to prove the alleged special damages and the prayer for the same is hereby declined.

Concerning the prayer by the plaintiff in civil suit No. 211 of 2012 for general damages. General damages are losses which flow naturally from the defendant's act. Therefore, general damages are damages which the law implies and presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result, or the necessary result of the wrong complained of. The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. As already indicated above, there was evidence of massive destruction of the plaintiffs properties when this court visited locus. These included buildings, seedlings and growing plants. The defendants also acknowledge to have evicted the plaintiff from the suit land. This caused the plaintiff inconvenience and embarrassment. This court finds the sums of UGX. 500,000,000= (Five hundred million shillings) as adequate compensation.

In a nut shell, having succeeded in the suit, the plaintiff in Civil Suit No. 211 of 2011 is therefore, entitled to all the reliefs sought save for special damages that have not been proved to the required standard .

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In Civil Suit No. 211 of 2012, the 2nd, 3rd and 9th defendants filed counterclaims. The 2nd defendant in Civil Suit No. 211 of 2012 counterclaimed against NARO for UGX 9,595,333,000= being special damages for a housing project allegedly frustrated by NARO, court fees of UGX. 9,695,500= and legal costs of UGX. 100,000,000=. This counterclaim is not sustainable against the plaintiff. The counterclaimants remedies, if any, lay against those who sold the suit land to them, wrongly.

The 3rd defendant in Civil Suit No. 211 of 2012 counterclaimed for unpaid arrears of annual ground rent by NARO with interest at commercial rate. The 3rd defendant avers that the plaintiff has never paid for its annual ground rent for the lease. Indeed, there was no cogent evidence adduced by NARO on payment of its rent obligations since entering the lease agreement. The plaintiff is therefore liable to pay rent arrears from the last time such rent was ever paid. It is apparent that due to the current disputes on the land, it would not be clear on who would be paid rent. The prayer for rent arrears at commercial rate is declined. ,n any case NARO, the legal holder of the lease on the disputed land is not a business entity. This counterclaim succeeds in view of unpaid rent. Therefore, plaintiff in Civil Suit No. 211 of 2012 is here by ordered to pay all unpaid rent arrears in terms of the lease agreement to the 3rd defendant in Civil Suit No. 211 of 2012.

The 9th defendant in Civil Suit No. 211 of 2012 counterclaimed against NARO for an order of compensation for 20 acres, general damages for the loss of business, aggravated damages, interests and costs. The 9th defendant alleges that upon purchase of 20 acres of the suit land from the 1st defendant, the plaintiff laid claims on its land, lodged a caveat emptor and led to loss of its housing estate for which it seeks those reliefs. This counterclaim is also not sustainable against the NARO. The counterclaimants remedies, if any, lay against those who sold the suit land wrongly.

Before I take leave of this matter, at the locus, the Managing Director for Akrights Projects and Urban Utilities showed me some houses about four in number and claimed that he had built and sold some. houses to some individuals. If that be the case, they remain his responsibility to compensate them for failure of consideration. They cannot be a responsibility of NARO or the Late Sekaiba's Estate.

In the end result, in view of the ,ove-de-liberations, judgment is entered in both consolidated suits in following terms; ,: Y, ···".:":,

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- 1. A declaration doth issue that the suit land comprised in Busiro Block 260 Plot 8 Land at Senge in Wakiso district, measuring approximately 135.50 acres is part of the estate of the late Yofasi Sekaiba.
- 2. A declaration doth issue that the late Yafesi Walusimbi fraudulently transferred the Suit land into his names and thus the same does not form part of his estate.
- 3. A declaration doth issue that none of the \$2^{nd}\$, \$3^{rd}\$, \$4^{th}\$, \$5^{th}\$, \$6^{th}\$ and \$7^{th}\$ defendants in Civil Suit No. 154/2009 or 4th, 5th/sup>,6th&8th defendants in Civil Suit No. 211/2012 acquired any interest in the suit land as their predecessor in title (the late Yafesi Walusimbi) acquired the same fraudulently.
- 4. Declaration doth issue that the \$3^{rd}\$, \$4^{th}\$, \$5^{th}\$ \$6^{th}\$ and \$7^{th}\$ defendants in Civil Suit No. 154/2009/4th, 5th, 6th&8th defendants in Civil Suit No. 211/2012 fraudulently sold and the \$8^{th}\$, \$9^{th}\$ and \$10^{th}\$ defendants in Civil Suit No. 154/2009/1st, \$2^{nd}\$ and \$9^{th}\$ defendants in Civil Suit No. 211/2012 fraudulently purchased the suit land.
- 5. An order doth issue directing the 1st defendant in Civil Suit No. 154/2009 to cancel and set aside any entries changing ownership and subdivision made on the suit land by any of the defendants or their agents or assignees in both consolidated suits and reinstating the same into the names of Yofasi Sekaiba or the plaintiff in Civil Suit No. 154/2009/3rd defendants in Civil-Suit No. 211/2012 who is the legal representative of the estate of the late Yofasi Sekaiba.

- 6. A permanent injunction doth issue restraining the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th & 10th defendants in Civil Suit No. 154/2009 and the 1st, 2nd, 4th, 5th, 6th, 7th, 8th and 9th defendants in Civil Stat No. 211/2012 or their agents or employees from dealing in the suit land by sale, subdivision, transfer or otherwise.
- 7. An order doth issue to evict the 8th, 9th and 10th defendants in Civil Suit No. 154/2009 and \$1st, \$2nd and \$9th defendants in Civil Suit No. 211 of 2012 and all their agents/successors/assignees in title/interest from the suit land.
- 8. The Counterclaims of the 2nd, 3rd and 9th defendants in Civil Suit No. 211/2012 are each dismissed, respectively, with costs to the plaintiff in Civil Suit No. 211/2012 in respect of each counterclaim to be paid separately by each of the defendants referred to in this specific order.
- 9. A permanent injunction doth issue restraining the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th & 10th defendants in Civil Suit No. 154/2009 and the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th defendants in Civil Suit No. 211/2012 by themselves, their servants or agents from claiming, selling, occupying or otherwise dealing with the suit land for the remaining lease period for the plaintiff's lease in Civil Suit No. 211 of 2012.
- 10. An order doth issue for cancellation of all subsequent titles, sale agreements of portions/plots on any part of the suit land by any of the defendants in both consolidated suits or any of their successors/assignees in title which affect the lease/interests of NARO.
- 11. The plaintiff in Civil Suit No. 211 of 2012 is awarded general damages of UGX. 500.000,000= (Five hundred million shillings) payable jointly and severally by the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th & 10th defendants in Civil Suit No. 154/2009 and the 1st, 2nd, 4th, 5th, 6th, 7th, 8th and 9th defendants in Civil Suit No. 211/2012 with interest at Court rate from the date of this judgment till full payment.
- 12. The Costs of the suit in Civil Suit No. 154/2009 are awarded to the plaintiff.
- 13. The Costs of the suit in Civil Suit No. 211/2012 are awarded to the plaintiff.

B day of Dosculser Dated at Kampala, this ... 2024 Flavian Zeija (PhD)
PRINCIPAL JUDGE

\$14\$

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