

UGANDA / JUDGMENT

# Kagara and 3 Others v Atamba and 11 Others (Civil Suit 149 of 2022)

## [2024] UGHC 481 (14 June 2024)

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COURT  
High Court of Uganda

BEFORE  
Byaruhanga Rugyema, J

CASE / FILE NUMBER  
Civil Suit 149 of 2022

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### THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT HOIMA CIVIL SUIT NO. 149 OF 2022 (Formerly Masindi High Court Civil Suit No.31 of 2021)

- 1. KAGARA STEPHEN
- 2. NKURANGA EZEKIEL
- 3. TWINE GODFREY
- 4. BABIIHA B. JOHN:.....PLAINTIFFS

### VERSUS

- 1. ATAMBA WILSON
- 2. BIRUNGI CATHERINE
- 3. TWINE SARI
- 4. BAMWESIGYE CRYTON
- 5. RUTARYA KHAN
- 6. NDAHURA WILLIAM GAFAYO
- 7. RWANSANDE MONICA
- 8. SSALI DAVID
- 9. MWESIGYE WILLIAM
- 10. AMANYA GEORGE

- 11. HOIMA DISTRICT LAND BOARD
- 12. THE COMMISSIONER LAND REGISTRATION:.....DEFENDANTS

**\*Before: Justice Byaruhanga Jesse Rugyema\***

#### JUDGMENT

- [1] The Plaintiffs brought this suit against the defendants for inter alia, recovery of unregistered land comprised in **Block 2, plot 99, 100 & 101 at Nyawaiga-Amabanga, Buhaguzi, Hoima** for declarations and orders;
- a) That the 6th -10th defendants are trespassers on the suit land.
- b) The 1st -5 th defendants obtained the certificate of title for the suit land fraudulently.
- c) That the transfer and/or conveyance of the suit land by the 1st – 5 th defendants was null and void having been executed illegally, fraudulently and unlawfully to defeat the plaintiffs' unregistered interest.
- d) That the transfer and/or conveyance of the suit land to the 6th -10th defendants from the 1st – 5 th defendants were null and void having been procured unlawfully and fraudulently.
- e) Cancellation of the 6th – 10th defendants' certificate of title comprised in **Block 2, plot 99,100 & 101 at Nyawaiga –Amabanga**.
- [2] It is the plaintiffs' case that they are lawful owners of unregistered land measuring **approximately 927 acres comprised in Block 2, Plot 99, 100 & 101 at Nyawaiga-Amabanga** located at **Nyanfuka-Hohwa village, Kabwoya sub county, now Kikuube district**. That the **1 st and 2nd plaintiffs** jointly purchased a portion of the suit land from a one **Olema James** and **Elias Bin-Khalili** on 12/7/2002 while the **3 rd and 4th plaintiffs** acquired vacant land adjacent portions of the suit land around the same time. That upon acquisition of the suit land, the plaintiffs began utilizing the land by way of grazing their cattle and establishment of their homes.
- [3] That the **1 st – 5 th defendants** without any colour of right or scintilla fraudulently colluded with the **11th & 12th defendants** and acquired a certificate of land title under **FRV HQT 264, Folio 17, Block (Road) 2, plots 99, 100 & 101 at Nyawaiga-Amabanga** capturing the land belonging to the plaintiffs. That the **1 st -5 th defendants** later fraudulently transferred the title to the 6th – 10th defendants who knew about the plaintiffs' occupation and utilization of the suit land.
- [4] The plaintiffs contend that the **6 th – 10th defendants** don't qualify to be bonafide purchasers for value of the suit land without notice of fraud and therefore, they did not acquire good title. That the defendants obtained title, registration of the suit land and transfer through fraud and as a result, the plaintiffs were unlawfully deprived of their right to the suit land.

- [5] The **1 st -5 th and 12th Defendants** were duly served with summons to file a defence but they refused and or failed to file their respective defences.
- [6] **The 6 th – 10th Defendants** on their part denied the plaintiffs' claims and contended that the suit land has never belonged to the Plaintiffs. The suit land was public land available for allocation by the **11th Defendant** to the **1 st - 5 th Defendants** at the time when they applied and it was allocated to them. Further that the 1st and 2nd Plaintiffs applied for the neighbouring land comprised in **LRV 3779 Folio 14, plot 56 Buhaguzi,Block 2 at Hohwa for 203 ha, and LRV 3779 Folio 2 Buhaguzi Block 2 Plot 43 at Hohwa for 193 ha.** of which they respectively acquired certificates of titles which land is different from the suit land.
- [7] That in 2016, the **6 th - 10th Defendants** came together and made a resolution that they should look for land for livestock farming. Thereafter, the **6 th -10th Defendants** bought the suit land from the **1 st – 5 th Defendants** who were in occupation and owned the land. That thereafter, the **6 th – 10th Defendants** took possession of the suit land, utilized it for grazing of cattle until 2020 when the **6 th – 10 Defendants** wanted to open boundaries, the plaintiffs put up resistance claiming ownership of the land. That the **plaintiffs** entered and took possession thereby denying the **6 th – 10th defendants** access to the same.
- [8] The defendants contended that at the time of purchase of the suit land, it was in the possession of the **1 st – 5 th Defendants** and the plaintiffs were also in possession of their respective pieces of land neighbouring the suit land. That therefore, they are bonafide purchasers for value without any knowledge of any 3rd party claims or occupation of the same.
- [9] As regards the 11th defendant, it contended that the **1 st – 5 th defendants** applied and were granted a lease offer in respect of the suit land. That its decision to issue title to the **1 st – 5 th defendants** was based on the findings in the survey report at the time conducted by the **1 st -5 th defendants** for **Block 2, plots 99, 100 & 101 land at Nyawaiga-Amabanga, Kabwoya sub county, Hoima District measuring 497 ha.**
- [10] That the **1 st – 5 th defendants** further applied for conversion of the suit land from leasehold to freehold tenure on the 8/3/2007, based on the recommendations and the findings of the Area land committee which were to the effect that the suit land was free from any dispute and it was held customarily for cattle grazing. The same was therefore converted from customary tenure to freehold tenure as of 16th day of July, 2007. Thereafter, upon purchase of the suit land from the **1 st -5 th defendants**, the **6 th -10th defendants** transferred the land into their names.
- [11] The **6 th - 10th defendants** counter claimed the suit land as their registered property and sought a declaration that they are bonafide purchasers for value without notice of fraud, an eviction order, a permanent injunction, general damages and costs of the suit.

## Issues for determination

- [12] The parties agreed to the following issues for determination in their Joint Scheduling memorandum filed in this court on October 18, 2023.
- i. Whether the suit land belongs to the Plaintiffs.
- ii. Whether the certificate of title for land comprised in FRV HQT 264 FOLIO 17 BLOCK (Road) 2, Plots 99,100 and 101 was procured fraudulently.
- iii. Whether the 6th -10th Defendants validly purchased the suit land from the 1st -5 th Defendants.
- iv. Whether the Defendants/Counter Claimants are bonafide purchasers of the suit land for value without notice of fraud.
- v. What remedies are available to the parties.

## Counsel Legal representation

[13] The Plaintiffs were represented by **Mr. Kasangaki Simon** of M/s Kasangaki & Co. Advocates, Masindi, **Mr. Mwebaza Christopher** of M/s Mwebaza & Co. Advocates, Hoima and **Mr. Tumwine Cohen** of M/s Mugabi Godfrey Advocates & Solicitors, Kampala. The 6th -10th Defendants were represented by **Mr. Baryabanza Aaron** of M/s Baryabanza & Co. Advocates, Hoima and **Mr. Twesigye Nicholas** of M/s Twesigye & Co. Advocates, Kampala. Submissions were filed by the counsel for consideration in the determination of this suit.

## The burden and standard of proof

- [14] In all civil matters, the onus rests on the Plaintiff who must adduce evidence to prove his or her case on the balance of probabilities if he or she is to obtain the relief sought. Refer to **Sections 101-103 of the Evidence Act, Cap.43**. See: Lord Denning in *\*Miller versus Minister of Pensions (1947)2 ALL ER 372 at page 373\** and **Lugazi \*Progressive School & Another Vs. Serunjogi & Others [2001-2005] 2\* HCB\*12.\***
- [15] In the instant case, the burden of proof lies on the Plaintiffs to prove on the balance of probabilities that they are the lawful owners of the suit land and the Counter claimants to prove the counter claim. As observed earlier, the **1 st -5 th** and **12th Defendants** did not file a defence. The Plaintiffs prayed for and were granted leave to proceed ex parte against them since they did not file a defence despite having been duly served with summons to file one. Failure to file a defence raises a presumption or constructive admission, of the claim made in the plaint and the story told by the plaintiff, in absence of a defence to contradict it, must be accepted as the truth, See *\*Sylvan Kakugu Tumwesigye Vs. Trans Sahara International General Trading LLC HCCA No. 95 of 2005.\**

- [16] For the holding that failure to file a defence raises a presumption of admission of the claim in the plaint and must be accepted as the truth is however subject to the plaintiffs' evidence being assailed as inherently incredible or possibly untrue. Therefore, whether a suit proceeds *\*ex parte\** or not, the burden on the Plaintiff to

prove his/her case on the balance of probabilities remains. Where fraud is pleaded as it was in this case, the fraud must be positively and strictly proved. See Karokora J, in **Yoswa Kityo V Eriya Kaddu [1982] HCB 58**.

### Consideration of the issues

- [17] Counsel for the parties addressed issues 1 and 4 separately, 2 and 3 together. I will adopt the same order in this judgment.

### Issue I: Whether the suit land belongs to the Plaintiffs.

- [18] The Plaintiffs claimed to be owners of the suit land and counsel for the plaintiffs submitted that the 1st & 2nd plaintiffs jointly bought land measuring **approximately 1783 acres** neighbouring the 4th plaintiff, a one **Kawere George, Frank Rutaama and Kabwoya Game Reserve** when they executed an agreement of purchase of the land with the sellers; **Olema & Bin Khalili** which was witnessed by the L. C1 chairman & others. That the 3rd plaintiff acquired his land measuring **approximately 273 acres** adjacent to the 1st & 2nd plaintiffs by way of first occupation in 2002 and formalized his interest therein with the approvals from locals, the L. C1 chairperson and Area land committee authorities. The same apply to the 4th plaintiff who acquired **approximately 1500 acres** also adjacent to the 1st & 2nd plaintiffs. That upon acquisition, the plaintiffs began utilizing their land including the suit land measuring **approximately 927 acres** by way of grazing cattle and building to establish their homes. That the plaintiffs processed 4 certificates of title on the land they acquired and left some land pending application for titling. It is this untitled land that is in dispute.
- [19] Counsel submitted further that the **1st – 5th Defendants** on the other hand, fraudulently procured the suit freehold certificate of title for **497 ha.** which included the plaintiffs' occupied pieces of land without their knowledge and or permission. The **1st - 5th Defendants** encompassed the plaintiffs' unregistered land measuring approximately 927 acres which was later transferred to the **6th – 10th Defendants**. That the defendants dealt in the suit land well knowing it belonged to and was occupied the plaintiffs who had been and are still in possession thereof.
- [20] Counsel for the **6th -10th Defendants** on their part submitted that the suit land has never belonged to the plaintiffs. That it was public land available for allocation by the 11th Defendant to the 1st – 5th Defendants. That the **1st -5th Defendants**

availed to the **6 th -10th Defendants** documentary evidence of ownership and other documents related to the suit land and upon confirmation from the Area land committee and the chairman L. C1, **Olema James**, they bought the suit land from the 1st – 5 th defendants and later transferred it into their names.

[21] To prove ownership of the suit land, the Plaintiffs adduced evidence that the 1st and 2nd Plaintiffs bought the suit land from **Olema James** and **Elias Bin Khalil** starting from 2001 and 2002 when they occupied their land including the suit land up to the 12th day of July 2002 when they executed an agreement for purchase of land (**P. Exh.1**). The 3rd & 4th Plaintiffs acquired his land measuring approximately 273 acres and 1500 acres respectively adjacent to the 1st and 2nd Plaintiffs' land by way of first occupation in 2002 and formalized their interests therein with the approvals from locals, the L. C1 and Area Land Committee authorities. The Plaintiffs led evidence that they are in exclusive possession of the suit land which they have developed with their homes and servants' houses for herdsman. They utilize the suit land for grazing and cultivation of seasonal crops. Counsel for the Plaintiffs quite rightly submitted that the evidence of long use of the suit land by the Plaintiffs themselves and previously their sellers and/or predecessors in title well establish their customary claim of ownership of the suit land. In the case of *\*Marko Matovu and 2 others vs. Mohammed Sseviiri\**

*\*and 2 others\**, *\*SCCA No\*. 7 \*of 1998,\** the appellants who were pastoralists in that case established their customary ownership of land by evidence of construction of wells and clearing land for cultivation.

- [22] I do however, note that from the pleadings, the Plaintiffs did not plead that they acquired or were occupying the suit land by customary tenure. The 1st and 2nd plaintiffs nevertheless adduced evidence that they purchased and acquired the suit land from the original customary owners and the 3rd & 4th plaintiffs acquired their respective portions of the suit land by occupation which they later formalized with local authorities. The plaintiffs led further evidence that the Defendants are not in possession of the suit land and have no developments thereon.
- [23] On the other hand, the Defendants adduced evidence of 4 witnesses. None of them led evidence to prove how the **1 st -5 th Defendants** acquired the suit land under customary tenure which they sought to convert into a freehold registered interest. The claim that 1st – 5 th Defendants could have purchased the land from the inhabitants has no tangible evidence to support it. The Defendants therefore, failed to establish how the 1st -5 th Defendants acquired the suit land. It was not shown when and from whom the 1st -5 th Defendants acquired the suit land or the

developments they had on the suit land. The Defendants could therefore not rebut the evidence of the Plaintiffs that they lawfully acquired the suit land between **2001-2002** and utilized it from the time of acquisition throughout **2016** when the **6 th - 10th Defendants** allegedly bought the same from the **1 st -5 th Defendants** in the absence of the Plaintiffs.

[24] **David Ssali** (8th defendant/DW1) testified during cross examination as follows: \*We purchased 1230 acres at 500,000,000/=.....\*

> \*The vendors never gave us any record concerning themselves or that the land was theirs but they had a title. The chairman at the time was called **Olema James**.\*

\*The chairman did not sign on the agreement because we drafted it here in town. We never asked for their (vendors) identities.\*

Then further, he stated thus:

\*"There is no document regarding this land that was ever endorsed by the L. C1 chairman. None of the neighbours signed on the land forms. I only see the signature of **Byaruhanga John** (4th plaintiff). The rest of the neighbours, none signed...."

\*It is because the agreement was drafted in town.\*

During cross examination by **Mr. Mwebaza**, he stated thus; \*We never opened the boundaries of this land before purchase The neighbours had fenced off their respective portions.\*

[25] As regards the signatures of **Byaruhanga John Babiiha** (4 th plaintiff), on one of the land forms, he denies it. During further cross examination by **Mr. Mwebaza**, **DW1** gave mixed evidence on this fact thus:

> \*"Though **Byaruhanga John**'s name appeared on the land form documents, he never signed. He signed on one of the documents, he did not sign on the sketch.\*"

The disputed signature attributed to **Byaruhanga John Babiiha** appeared on one of the suit land forms (**D. Exh.1**). From the above evidence, this court is convinced that actually the 4th plaintiff did not sign any of the documents related to the suit land. This is fortified by the evidence of **Mirya Sulaiman** (DW2) who claimed that he is among those who participated in showing the Plaintiffs the respective boundaries of land that was allocated to them, and that the agreement was executed at the L. C 1 chairman's office, Hohwa village and it was prepared by the chairman. That the vice chairman **Elias Khalili** (PW6) witnessed it and signed on it. Lastly, that the agreement was handwritten. It is clear from the record that **DW2** is a liar.

The agreement the 6th – 10th defendants rely on (**D. Exh. No.4**) which he claim to had witnessed is not handwritten. It does not have either his endorsement or that of the L. C1 chairperson, **Olema James** whom he claimed to be the one who drafted it. **Ssali** (DW1) on the other hand, stated that the purchase agreement for the suit land between the **6 th -10th Defendants** and the **1 st -5 th Defendants** was drafted in town before a lawyer.

- [26] The agreement of purchase by the Counter claimants (DE4) is therefore a very suspicious document as a result of the above conflicting evidence regarding where it was executed and whether it was endorsed by any of the L. C officials. As a result, I find that the agreement could not pass a valid interest in the suit land to the Counter claimants.

- [27] It was the Plaintiffs' further contention that this court takes into account that there were several witnesses from Hohwa village and from the local authority (LC) of Hohwa present when the 1st and 2nd Plaintiffs purchased the land in dispute in 2001-2002. See \*John Okalebo v. Eluluma & Another [1978] HCB 200\* for the legal position that transactions in customary land must be done formally and any transfer of land must be done through local authorities and agreement witnessed by members of the clan to which the vendor belongs or residents.
- [28] I find that the procedure of purchase of the suit land by the 1st and 2nd Plaintiffs met the criteria for purchase of customary land. The process was public, transparent and involved the neighbours, L. Cs and residents. On the contrary, the purchase of the suit by the 6th -10th Defendants was not public, did not involve neighbours and L. Cs. It is true that the L. Cs did not witness **Exh. DE4**. Neither were any of them present when the transaction it evidenced took place. This whittles down the probative value of **DE4** in support of the counter claimants' claim of legitimate acquisition of the suit land.
- [29] In this case, the plaintiffs having established that they purchased and occupied their respective portions of land of which parts, they have acquired certificates of title and the other part (suit portion of land) was pending titling, the burden of proof shifted to the defendants to prove that they indeed purchased land from the **1 st – 5 th defendants** which the **1 st – 5 th defendants** legally acquired as available land from the **11th defendant**. The Defendants in this case failed to discharge the burden. They appear to have purchased land from "ghosts" whose identity and location is unknown and the agreement of purchase itself is suspicious. They could not therefore have a better title than the plaintiffs. The 1st issue is in the premises found in the affirmative. The suit land is found to have belonged to the plaintiffs.

## **Issue 2: Whether the certificate of title for land comprised in FRV HQT 264 FOLIO 17 BLOCK (Road) 2, Plots 99,100 and 101 was procured fraudulently.**

- [30] Counsel for the Plaintiffs submitted that the **suit certificate of title was procured fraudulently**. It is trite law that fraud should be specifically pleaded and proved. When a claim is based on fraud it must be specifically so stated in the pleading, setting out particulars of the alleged fraud, and those particulars must be strictly proved. However, what is required is for the pleading to explicitly disclose the facts which, if proved strictly, would constitute fraud, See \*Tifu Lukwago Vs Samwiri Mudde Kizza & Another Civil Appeal No. 13 of 1996 (SC)\*.

- [31] Fraud in land transactions has been defined to include dishonest dealing in land, sharp practice intended to deprive a person of an interest in land, or procuring the registration of a title in order to defeat an unregistered interest, \*See Kampala Bottlers Ltd vs Damanico Ltd Civil Appeal No. 22 of 1992 (SC), Kampala District Land Board & Anor vs National Housing & Construction Corporation Civil Appeal No. 2 of 2004 (SC) and David Sejjaaka Nalima Vs Rebecca Musoke, Civil Appeal No.2 of 1985 [1986] UGSC 12.\*
- [32] In the instant case, the Plaintiffs' contention is that the procedure for acquisition of the impugned certificate of title was flawed. The title for land comprised in **FRV HQT 264 Folio 14 Buhaguzi Block 2 plots 99,100 and 101 at Nyawaga and Amabanga measuring approximately 497.68 hectares** was fraudulently procured. The Plaintiffs asserted that the 1st -5 th Defendants obtained title, registered and transferred the suit land through fraud to the 6th -10th Defendants. The Plaintiffs particularized fraud in the plaint and led evidence to prove the particulars of fraud in the acquisition of the 1st -10th Defendants' certificate of title. This court is in agreement with the submission of counsel for the Plaintiffs that fraud must be strictly pleaded and proved. The standard of proof is above a balance of probability but not beyond reasonable doubt, See \*Yakobo M. N. Senkungu & 4 others Vs Cresensio Mukasa SCCA No 17 of 2014\*.
- [33] The following particulars of fraud were pointed out to court as proved by the Plaintiffs to the required standard. The Plaintiffs' counsel submitted that the 1 st - 5 th Defendants who were not residents of the area registered the suit land without the knowledge and involvement of the local authorities, neighbours and the Plaintiffs which constitutes an act of fraud. On record, all the Plaintiffs' witnesses testified that the 1 st -5 th Defendants who first applied for the suit land were not

residents of **Hohwa village** where the suit land is located. Even the LCI chairperson (PW5) did not know them to have been his residents in the village. The application forms received in evidence as **DE1** submitted by the 1st -5 th Defendants to acquire a freehold certificate of title over the suit land did not bear the **signatures of the Plaintiffs who are neighbours** to the suit land and the **LCI executive committee of Hohwa village** where the suit land is located. No list of attendance endorsed by the Plaintiffs and the LCI executive committee of Hohwa village at the time of inspection of the suit land by the Area Land Committee or survey of the suit land was tendered in court by the Counter Claimants. The evidence of the Plaintiffs on this aspect of fraud by the defendants was not challenged in cross examination. Counsel for the Plaintiffs contended that it is now settled law that where a party fails to challenge evidence that evidence, is accepted as true, \*Habre International Co. Ltd. Vs. Ebrahim Alarakhia Kassam & Others,\* **Civil Appeal No.4 of 1999 (S. C), (unreported), at pp. 108-9.** I therefore uphold the submission of counsel for the Plaintiffs that the suit certificate of title was procured without the Plaintiffs' knowledge, the approval of neighbours and LCI executive committee of Hohwa Village. This was conduct pointing to fraudulent acquisition of the suit certificate of title.

- [34] Secondly, the **1 st - 5 th Defendants** applied for and inspected the suit land which was occupied and being utilized by the Plaintiffs without their notice. It is not disputed that the Plaintiffs have been in possession of the suit land since early 2000s. To date they are in possession of the suit land. They did not sign and/or approve of the process to title the suit land. It has been established in evidence that the Defendants procured a freehold certificate of title over the suit land to defeat the unregistered interest of the plaintiffs who were in occupation thereof. In *\*Grace Manjeri Nafula Vs Big. Gen. Elly Kayanja & Others HCCS No 138 of 2011\** which cited the case of *\*UP & TC Vs Abraham Katamba (1997) 5 KALR 103\** it was held that as the law now stands a person who purchases an estate which he knows to be in the possession and use of another than the vendor without carrying out the due inquiries from the person in occupation and use commits fraud.
- [35] In the premises, I find that the **6 th -10th Defendants** who purchased the suit land which was in the possession of the Plaintiffs without carrying out due inquiries from the plaintiffs who possessed the land committed fraud. As **DW1** admitted in evidence, him and his group knew the existence of the plaintiffs as being on the suit land and or as neighbours but they neither consulted them nor the local authorities about the status of the plaintiffs and the land they were to buy.
- [36] The **6 th -10th Defendants** transferred the suit land from the **1 st -5 th Defendants** without considering and inquiring on ground who was utilizing and occupying the said land. **PW1-PW6** who form the inhabitants and local leaders of the area where the suit land is located were consistent that they were not present and did not sign on the sale agreement executed by the **1st -10th defendants**. They were not contacted and/or made aware of the sale which they should have strongly opposed. This is corroborated by the sale agreement dated 9/11/2016 (**DE4**) which was not signed by any neighbour, LCI executive member or resident of Hohwa village. I agree with the submission of the Plaintiffs' counsel that the motive of exclusion of the Plaintiffs, neighbours, village residents and LCI executive committee was malafide, fraudulent and invalidates the sale. The alleged acts of **1st -5 th Defendants'** fraud are directly attributable to the **6th -10th Defendants**. The fraud committed during survey, sale and transfer of the suit land while in the possession of the Plaintiffs without their knowledge is attributable to the **6th -10th Defendants** who did not do due diligence. As admitted by **DW1** during cross examination, the **6 th -10th Defendants** did not open boundaries to establish what obtained on the ground and made the agreement for purchase of the suit land without involving neighbours, residents of the village, LCI executive committee of the village which is a mandatory requirement of the law which imposed on the buyers an obligation to make due inquiries not only on the land but also on the sellers. It is erroneous to claim as submitted by counsel for the **6 th -10th Defendants** that there is no legal requirement that necessitates presence and consent of neighbours and local council authorities on the sale agreements and transfers for the suit land.

- [37] For the proposition that due diligence extends to inquiring about the history of the land before purchase, see **Rogers Kalyegira Vs Ivan Rukundo Potts, HCCS No. 181 of 2019** where it was held,

\*"The definitions of due diligence..... go beyond mere search in the register and if given ordinary meaning, they extend to inquiring about the history of the land before purchase to establish whether after purchase one would obtain a marketable title. 'Failure by the defendant to inquire from persons owning land adjacent to the suit land to ascertain history and rightful ownership of the suit land amounts to fraud.'"

In addition, the Court of appeal in **Jennifer Nsubuga Vs Michael Mukundane & Anor, CACA No.208 of 2018**, it was made clear that though not in statute law, consultations with the leadership of the area where the land is located is very key in establishing that due diligence was carried out. Local leaders cannot be disregarded in any land transaction.

- [38] In the instant case, I find that failure by the **6 th -10th Defendants** to conduct an elaborate due diligence involving, but not limited to visiting the suit land, making inquiries from local council leaders, consulting persons owning land adjacent to the suit land in order to ascertain history and rightful ownership of the land amounted to fraud. A prudent buyer should make all necessary inquiries to safe guard his investment from fraudsters. Where a buyer omits to make necessary inquiries, he or she can only blame himself or herself for the resultant loss incurred.
- [39] In conclusion, I find that the **6 th -10th defendants'** basis that they are bonafide purchasers for value merely because they hold a certificate of title of the vendors, **1 st -5 th defendants** which they are welding around is not enough. In the words of Malaga, J. (as he then was) in **Republic Vs Minister for Transport and Communication & Ors, HCMA No.617 of 2003 [2006] 1KLR (E & L) 563** which were approved by the Supreme Court of Kenya in **Dina Management Ltd Vs County Gov't of Mombasa & 5 Ors [2023] KESC 30 (KLR)**;

\*"Courts should nullify titles by land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead the principle of indefeasibility of title deed....."

The **6 th – 10th Defendants** have not been able to show this court that they purchased the suit land from vendors who are in existence. The evidence on record point to the fact that the vendors are fictitious. The purchase agreement itself is suspicious. In short, there is no proof of purchase of the suit land the **6 th – 10th Defendants** claim. This court in agreement with the submission of counsel for the plaintiffs therefore find that the suit certificate of title for land comprised in **FRV HQT 264 Folio 14 Buhaguzi Block 2 plots 99,100 & 101 at Nyawaiga and Amabanga measuring approximately 497.68 hectares** was fraudulently procured and the same is impeached for fraud.

Issues 2-3:

**Whether the 6th -10th Defendants validly purchased the suit land from the 1st -5 th Defendants.**

**Whether the Defendants/Counter Claimants are bonafide purchasers of the suit land for value without notice of fraud.**

- [40] The above issues have been settled by the foregoing discussion and settlement of the 1st issue. Suffice to only add that at the locus in quo on 1.3.2024, the 6 th -10th Defendants showed court land which is outside the suit land. This land had a Kraal. The Plaintiffs showed court the land they occupied with their livestock, seasonal crops and houses. The Defendants had no developments on the suit land. The 3rd Plaintiff's land was separated by a deep valley from the undisputed land of the Defendants located at an opposite separate hill. The findings of this court at the locus in quo resonated well with the Plaintiffs' account of ownership of the suit land.
- [41] The Counter claimants also asserted that at the time of the alleged purchase of part of the suit land by the 1st and 2nd Plaintiffs allegedly from **Olema James and Bin Khalili Elias in 2001-2002** the two had no capacity to sell the suit and that the 1 st and 2nd Plaintiffs purchased air. The Counter Claimants contended that the Local Council Authority had no authority to donate or give the suit land to the 3rd and 4th Plaintiffs because the suit land was public land which never belonged to the local council authorities of the area.
- [42] It was pointed out to this court that this is a case of imposter fraud. The **1 st -5 th Defendants** are fictitious people whose identity is not known, whereabouts, homes, work places or any known address are all cast into oblivion. The Defendants' witnesses could not tell where the sellers came from, stay, were born, their homes, workplaces, telephone contacts, their friends, parents or any point of contact. It was alleged that they all vanished into thin air immediately upon sale of the suit land. It is not plausible that the **1 st -5 th Defendants** who are people alleged to have legitimately acquired the suit land in Hohwa village, were settled thereon for some time as alleged by the Defendants or purchased the land from the inhabitants, would all of a sudden completely get lost without a trace after this magical sale. This court is inclined to agree with the submission of joint counsel for the Plaintiffs that the **1 st -5 th Defendants** were consummate fraudsters and concocted imposters by the **6 th -10th Defendants**. The **1 st -5 th Defendants** were not available nor did they lead evidence to show how they acquired the suit land which they purported to title, sale and transfer to the **6 th -10th Defendants**. The defendants could not therefore secure a better title than the **3 rd & 4th plaintiffs** who first occupied their respective portions of the suit land with the knowledge and permission of the local authorities or the **1 st & 2 nd plaintiffs** who lawfully purchased their respective portions of land from **Olema James and Bin Khalil**. The plaintiffs in this case were neither offered nor donated land by the L. Cs. The available evidence is to the effect that they occupied and or purchased their

respective portions of the suit land with the knowledge and consent of the inhabitants and local authorities.

- [43] The Defendants recognize the Plaintiffs as neighbours to the suit land who they found in the area. It was not a legal requirement of the law as submitted by counsel for the Counter claimants for the PW5 and PW6 to seek the consent from **Hoima District Land Board** before sale of the suit land to PW1 and PW2. The cases of **Kisseka Saka vs. Seventh Day Adventist Church SCCA NO.8 OF 1993**, and **Buwule M VS. Asumani Mugenyi CACA NO. 24 of 2010** \*in which it was held that any transfer of Kibanja or customary holding without giving notice to the prescribed authority as registered owner renders such transfer void\* were applicable to the pre 1995 constitution of the republic of Uganda era. Such consents are no longer necessary requirements following the promulgation of the new constitutional regime in 1995 and enactment of the 1998 Land Act Cap 227.
- [44] In the premises, I find the 2nd & 3rd issues in the negative. There was no valid purchase of the suit land by the **6 th – 10th Defendants** from the **1 st -5 th defendants**. The **6 th – 10th Defendants/Counter claimants** are not bonafide purchasers of the suit land for value without notice of fraud. The **6 th -10th Defendants' Counter claim** is therefore in the premises found to be devoid of any merit and it is accordingly dismissed with costs.

#### Issue 5: What are the remedies available to the parties.

[45] The Plaintiffs sought various remedies in the plaint;

##### (a)Declarations

Having found that the Plaintiffs adduced evidence to prove ownership of the suit land, a declaration doth issue that the suit land belongs to the Plaintiffs. The **1 st – 5 th Defendants** obtained the certificate of title of the suit land comprised in **Buhaguzi Block 2, plots 99, 100 & 101 at Nyawaiga-Amabanga, Kabwoya sub county, Hoima (current Kikuube) District** fraudulently and the purported transfer of the land to the 6th – 10th Defendants is therefore null and void.

##### (b)Order for cancellation of the certificate of title

[46] Having found that the **6 th -10th Defendants** were not bonafide purchasers for value without notice of the Plaintiffs' claim, the purchasers are guilty of the fraud orchestrated by the sellers. The Plaintiffs are entitled to the remedy of cancellation of the suit certificate of title for land comprised in **FRV HQT 264 Folio 14 Buhaguzi Block 2 plots 99,100 and 101 at Nyawaiga and Amabanga measuring approximately 497.68 hectares** on ground of having been procured fraudulently.

##### (c) General damages.

[47] It is trite law that general damages are the direct or probable consequence of the act complained of, See *\*Kampala District Land Board & Anor V Venancio Babweyana*, Civil Appeal No. 2 of 2003\*. Such consequence might be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering, as per *Kiryabwire J in \*Assist (U) Ltd V Italian Asphalt and Haulage Ltd & Anor HCCS No. 1291 of 1999\**, unreported, at page 35. The

Plaintiffs led evidence that they have been inconvenienced by the Defendants' act of interfering with the suit land. The suit certificate of title frustrated their process of acquisition of titles over their suit land causing them psychological torture. The counsel for the Plaintiffs prayed for a sum of Ushs 1,000,000,000/= (**One Billion Uganda Shillings only**) as general damages. I find this figure rather high. However, considering the design the Defendants employed to grab the plaintiffs' land, I consider a sum of Ushs 300,000,000/= (**Three Hundred Million Uganda Shillings only**) as appropriate general damages against the **6th – 10th defendants** jointly and severally. The **11th & 12th Defendants** are spared for the fact that they got involved in the suit transactions by virtue of their statutory mandates the process land transaction. They were in this case also duped by the **1st – 10th Defendants**.

### (d) Costs

[48] In the case of \*Jennifer Behange, Rwanyindo Aurelia Bagenzi V School Outfitters (U) Ltd CACA No.53 of 1999\*, it was held that a successful party is entitled to costs unless there are good reasons to deny such a party costs. In \*Mungecha V AG [1987] HCB 55\* Manyindo, J. held that under **S.26 (1) CPA (now S.27)** costs should follow the event unless Court orders otherwise. In the present instance, the Plaintiffs as the successful parties will have the costs of the suit for there is no reason to deny them such.

**(e) Interest**

[49] The Plaintiffs also prayed for interest. Interest is a discretionary remedy, see \*Harbutt's Plasticide Ltd -Vs- Wyne Tank & Pump Co. Ltd \[1970\] 1 QB 447.](<http://www.ulii.org/cgi-bin/LawCite?cit=%5b1970%5d%201%20QB%20447%5d>)\* In this case, I award the Plaintiffs interest at 24% p.a on the general damages from the date of judgment till payment in full.

- [50] For reasons wherefore, judgment is entered for the Plaintiffs against the Defendants in the following terms:
- a) A declaration doth issue that the Plaintiffs are the rightful owners of the suit land **measuring approximately 927 acres comprised in Block 2, Plot 99, 100 & 101 land at Nyawaiga- Amabanga** located at Nyanfuka- Hohwa village, Kabwoya Sub county, Hoima (current Kikuube) District and are entitled to quiet possession thereof.
- b) A declaration doth issue that the Defendants obtained the certificate of title in **Buhaguzi Block 2, Plots 99,100 & 101 at Nyawaiga- Amabanga village, Kabwoya Sub county, Hoima (current Kikuube) District** fraudulently and the purported sale and transfer of the land from the **1 st - 5 th** to the **6 th – 10th Defendants** is null and void.
- c) The certificate of title for land comprised in **FRV HQT 264 Folio 14 Buhaguzi Block 2, plots 99,100 and 101 at Nyawaiga and Amabanga measuring approximately 497.68 hectares**, registered in the name of the **6 th -10th Defendants** and/or Counter claimants is accordingly cancelled having been procured through fraud

- d) A permanent injunction doth issue restraining the Defendants and/or their agents from unlawfully interfering with the Plaintiffs use and quiet enjoyment of the suit land.
- e) The Plaintiffs be awarded general damages of **Ushs 300,000,000/= (Three Hundred Million Uganda Shillings only)** payable jointly and severally by the 6 th -10th Defendants.
- f) The 6 th – 10th Counter claimants' claim is dismissed with costs.
- g) The Plaintiffs are awarded costs of the suit.
- h) The Plaintiffs are awarded interest at 24% per annum on general damages from the date of judgment till payment in full.

I so order.

**Dated at Hoima this 14th day of June, 2024.**

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**Byaruhanga Jesse Rugyema**

**JUDGE.**

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