

UGANDA / JUDGMENT

Kiggundu v Katekyeza & Another
(Civil Suit 34 of 2024) [2025]
UGHC 159 (21 February 2025)
[2025] UGHC 159

COURT
High Court of Uganda

BEFORE
Karemani Jamson K, J

CASE / FILE NUMBER
Civil Suit 34 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA

LAND CASE NO.0034-2024

(FORMERLY MUBENDE LD-CS NO.050 OF 2020)

KIGGUNDU STEPHEN

(Administrator of the estate of the

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Kafeero Duncan Tabaliiko)

VERSUS

1. MOSES KATEKYEZA

2. THE COMMISSIONER LAND REGISTRATION}

BEFORE: HON. MR JUSTICE KAREMANI JAMSON, K

JUDGMENT

Introduction.

Kiggundu Stephen (hereinafter referred to as the plaintiff) brought this suit against Moses Katekyeza and the Commissioner Land Registration (hereinafter referred to as the defendants) seeking the following;

- a) A declaration that the 1st defendant was fraudulently registered on the suit land comprised in Singo Block 548 Plot 11 land at Lwentenga Mubende.
- b) An order for cancellation of the 1st defendant's title in the suit land.
- c) An order compelling the 2nd defendant to register the name of the plaintiff on the suit land as administrator of the estate of the late Kafeero Duncan Tabaliiko.
- d) A permanent injunction restraining the defendants, their agents or servants or anyone claiming under them from dealing in the suit property.
- e) A declaration that the 1st defendant is a trespasser on the suit land.

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- f) An order of vacant possession and eviction.
- g) General damages and costs of the suit.

Background.

The brief facts of the case are that the plaintiff is a son and administrator of the estate of the late Kafeero Duncan Tabaliiko (herein after referred to as the deceased). That the said deceased owned the land comprised in singo block 548 plot 11 at Lwentanga (hereinafter referred to as the suit land). That the said deceased died without selling the same piece of land to anyone. However, the suit land has since been fraudulently transferred from the deceased to one Joseph Kizito, then to a one John Kamya and subsequently to the 1st defendant. That the said transfers were affected by the 2nd defendant Commissioner for Land Registration.

In his written statement of defence, the 1st defendant averred that he has interest and owns the land comprised in LRV 2310 Folio 13 Singo block 548 plot 11 at Lwentenga having purchased the same from a one John Kamya. That the 1st defendant did not know Kafeero Tabaliiko nor Joseph Kizito. It is further that the suit land has been subject to litigation ever since he acquired it. He prayed that the matter be dismissed with costs.

The 2nd defendant was served with summons but filed no written statement of defence.

Whereas the 1st defendant filed his written statements of defence, efforts to serve him with the hearing notices proved futile. The court ordered for substituted service which was effected through Bukedde newspaper but he did not appear court.

This court was satisfied with service on the defendants and ordered that the matter proceeds ex parte against the defendants.

Representation.

The plaintiff was represented Mr. Albert Collins Kyeyune of M/S Mukiibi & Kyeyune Advocates.

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Issues for determination

- 1. Whether the land in dispute forms part of the estate of the late Kafeero Duncan Tabaliiko.
- 2. Whether the 1st defendant was fraudulently registered as a proprietor of the land in dispute by the 2nd defendant.
- 3. Whether the 1st defendant is a trespasser on the suit land.
- 4. What are the remedies available to the parties?

Burden and standard of proof

The legal burden of proof in civil matters lies upon that person who would fail if no evidence was given at all on either side. See: Section 102 of the Evidence Act cap 8.

In this case the burden lies on the plaintiff to prove their case against the defendant. The standard of proof in civil matters is on a balance of probabilities. See: Sebuliba V Cooperative Bank Ltd (1982) HCB 129, Nsubuga V Kavuma (1978) HCB 307

Evidence of the plaintiff.

The plaintiff led evidence of one witness Kiggundu Stephen (PW1) who stated that he is the son and administrator of the estate of the late Kafeero Duncan Tabaliiko who died on 14/4/1998. That the deceased jointly owned the land with a one Ibrahim Mukiibi having been registered as proprietors on 7/10/1994. That the said joint tenancy was severed in 1995 leaving the deceased as the only sole proprietor. That by the time the deceased died, he had not transferred the suit land to anyone. That the signature of the deceased on the transfer forms to Joseph Kizito was forged as the same differs from the signature of the deceased on the lease agreement and transfer forms signed between Kafeero and Ibrahim. That the 1st defendant fraudulently procured non-existent persons that included Joseph Kizito and John Kamya and that the said transfers were made after the death of the plaintiff's father.

The witness presented the following exhibits.

- Exh P1- Letters of administration of the estate of the late Kafeero Duncan Tabaliiko \$i.\$
- ii. Exh. P2- search certificate dated \$4/11/2024\$
- Exh. P3 Death certificate of the late Kafeero Duncan Tabaliiko iii.

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Resolution of issues.

1. Whether the land in dispute forms part of the estate of the late Kafeero Duncan Tabaliiko.

In order for the plaintiff to prove that the suit land formed part of the estate of the late Kafeero, the plaintiff had to prove that the deceased owned the suit land before his death.

The plaintiff stated in his evidence that the suit land previously belonged to his late father. That the 1st defendant fraudulently had the land transferred to a one Joseph Kizito and then to a one John Kamya and subsequently to himself.

There was no evidence led to prove that the late Kafeero Duncan Tabaliiko owned the suit land since there is no certificate of title in his names was tendered in court. The plaintiff did not adduce any evidence to prove that the beneficiaries of the deceased were in possession of the land or that they have or have ever had any developments thereon to prove their possession.

The land being referred to in this case is registered land with a certificate of title. It therefore follows that all the allegations of the fraudulent transfers from the name of the late Kafeero Duncan Tibaliiko to the name of Joseph Kizito, to the name of John Kamya and lastly to the name of Moses Katekyeza required clear evidence probably of a copy of a certificate of title reflecting all these changes. This was not done.

The plaintiff only tendered in court a copy of letters of administration to prove that he was an administrator of the estate of the late Kafeero Ducncan Tabaliika and the copy of the search certificate to show that the land was currently registered in the name of the 1st defendant. The copy of letters of administration could not show whether the land in issue was ever listed among the properties of the deceased during the application for the letters. The evidence adduced fell short of the standard of proof, balance of probabilities that the deceased was ever registered as a proprietor of this land.

It is my considered position that before court can make a conclusion on ownership of a registered piece of land it is necessary that it looks at the copy of the certificate of title itself. This is necessary to help the court ascertain the current registered proprietor and all other

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previous proprietors if any. This can only be achieved through looking at the certificate of title itself and not being told about it. In this case this was not done. The certificate was not adduced in evidence.

I find that the plaintiff failed to prove that the suit land formed part of the estate of the late Kafeero Duncan Tabaliiko.

Issue no.1 is resolved in the negative.

2. Whether the \$1^{st}\$ defendant was fraudulently registered as a proprietor of the land in dispute by the \$2^{nd}\$ defendant.

Section 59 of the Registration of Titles Act cap 240 provides that a certificate of title is conclusive evidence and that the person named therein as the proprietor or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.

However, a certificate of title can be defeated or cancelled if it is found out that there was fraud in obtaining the same.

According to Section 161 of Registration of Titles Act, the High Court has power to order cancellation of a certificate of title on the ground of fraud among others.

Fraud is defined to include anything calculated to deceive whether by a single act or combination or suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture. It includes dishonest dealings in land or sharp practice to deprive a person of an interest in land. See: Fredrick Zaabwe V Orient Bank and 5 Others SCCA No. 04/2006; Kampala District Land Board and Another V Venancio Babweyaka and 3 Others Civil Appeal No. 02 Of 2007.

It is trite law that fraud must be strictly proved. The standard of proof for fraud is higher than the ordinary civil suits but does not go beyond reasonable doubt. See the case of Shaban Mukasa & Anor V Lamba Enterprises Ltd & Anor CS No.287 of 2021 (unreported)

In my own view land fraud means involving deceitful or dishonest practices related to buying, selling, or transfer of land or real estate. This can include various illegal activities such as

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falsifying documents, misrepresenting property values, misrepresenting description, misrepresentation of ownership or using coercion or bribery to gain ownership unlawfully.

I will now proceed to examine the acts of fraud alleged in paragraph 6 of the plaint in this matter and find out whether the defendants actually committed these acts or not or whether they were aware of their commission.

In the instant case the particulars of fraud alleged in paragraph 6 of the plaint are as follows:

- i. Transferring and registering the suit property in the name of Joseph Kizito a fictitious person who does not exist and then swiftly to Kamya John.
- ii. Transferring and registering the suit property from the names of Joseph Kizito into the names of Kamya John on the same day within a difference of 5 minutes.
- iii. Transferring and dealing in the deceased's property after his death without letters of administration.
- iv. Forging the deceased's signature.
- v. Forging a transaction with the deceased.

In his evidence, the plaintiff contended that fraud could be seen from the fact that the signature of the deceased on the transfer forms differed from the signature of the deceased on the lease agreement and transfer forms signed between the deceased and Ibrahim Kafero.

It is my view that where fraud involving forgery is concerned, proof must be practical by proving how forgery complained about was committed and how it was orchestrated. It cannot be demonstrated without physical exhibition of the forged document.

The plaintiff in this case did not present evidence of the transfer forms allegedly signed by the deceased in transfer of the title to Ibrahim. The transfer forms allegedly signed by the deceased for transfer to Joseph Kizito's name were equally not presented in court as an exhibit.

Even if these transfer forms were tendered in court, this court would still have fallen short of the expertise to differentiate the said signatures on them.

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The plaintiff also sought to rely on the fact that the transfer from Joseph Kizito to John Kamya on the certificate of title took place within 5 minutes which connotes fraud. This court was not given a chance to look at these forms.

Section 160 of the Registration of Titles Act provides,

"No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases---

(a)

(b)

- (c) the case of a person deprived of any land by fraud as against the person registered proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;"

See: Isaac George Munaabi V Albert Sebudde and Anor HCCS NO. 1293 OF 1997.

In this case, no evidence was adduced by the plaintiff to prove that there was fraud in the transfers complained about.

Despite the fact that the defendants did not adduce any evidence, this being a matter involving fraud and forgery at that, its standard of proof is above the balance of probabilities but below the proof beyond reasonable doubt. This burden was not satisfied by the plaintiff.

A certificate of title can only be defeated on grounds of fraud which has not been proved in the current case. I find that the plaintiff has not proved that the 1st defendant was fraudulently registered on the suit land title by the 2nd defendant.

Issue no.2 is answered in the negative.

3. Whether the 1st defendant is a trespasser on the suit land.

The Supreme Court while defining trespass as per the case of **Justine E. M. N Lutaaya V Stirling** Civil Eng. Civ. Appeal No. 11 of 2002, held that trespass to land occurs when a

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person makes an unauthorized entry upon another's land and thereby interfering with another person's lawful possession of the land.

In **Sheik Muhammed Lubowa V Kitara Enterprises Ltd C. A No.4 of 1987**, the Court of Appeal noted that;

"in order to prove the alleged trespass, it was incumbent on the appellant to prove that the disputed land belonged to him, that the respondent had entered upon that land and that the entry was unlawful in that it was made without permission."

I have already found that the plaintiff did not prove that the suit land formed part of the estate of the late Kafeero Duncan Tabaliiko from where he claims interests. The plaintiff did not bradduce any evidence to show that he or the beneficiaries of the estate of the deceased are in possession of the suit land. There was no proof an unauthorized entry onto the land in issue by of the 1st defendant. Trespass was not proved.

Issue no.3 is resolved in the negative.

4. What are the remedies available to the parties?

Having resolved all the issues in the negative, this suit stand dismissed with no orders to costs since the matter proceeded ex parte.

I so order.

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KAREMANI JAMSON. K JUDGE \$21/2/2025\$

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