

UGANDA / JUDGMENT

Kyarimpa Beatrice v Mukama Alex (Civil Suit 698 of 2021) [2025] UGHCLD 125 (10 July 2025) [2025] UGHCLD 125

COURT

HC: Land Division (Uganda)

BEFORE

Bernard Namanya, J

CASE / FILE NUMBER

Civil Suit 698 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA [LAND DIVISION]

CIVIL SUIT NO. HCT-00-LD-CS-0698-2021

KYARIMPA BEATRICE:..... PLAINTIFF

VERSUS

MUKAMA ALEX:..... DEFENDANT

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction

1. The plaintiff and the defendant lived together between 2006 and 2018. They were not legally married but during this time, they got two children. On 29th September 2008, the plaintiff and the defendant jointly purchased land measuring 0.102 Hectares which came to be known as Busiro Block 275 Plot 931 Land at Gombe, Wakiso District upon issuance of a certificate of title in 2011. They paid Ushs 19,000,000 for the land. The certificate of title for the suit property was later registered in the name of the plaintiff as the sole owner, which is challenged by the defendant as having been done fraudulently. In this suit, the plaintiff seeks declarations and orders that she is the lawful owner of the suit property and that the

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defendant is a trespasser. The plaintiff claims that the defendant forcefully evicted her from the suit property in the year 2018 and is currently living thereon to her exclusion, which prompted her to file the instant suit.

2. The defendant filed his defence and counterclaim denying liability on the basis that he is a lawful occupant of the suit property as a joint owner, having purchased the same together with the plaintiff. He denied having forcefully evicted the plaintiff and claimed she abandoned the home which prompted him to report the matter to police. He pleaded fraud on the part of the plaintiff in registering herself as the sole owner and counterclaimed for orders for cancellation of the certificate of title and that he be jointly registered with the plaintiff as a joint owner of the suit property among others.

Representation

3. The plaintiff was represented by Advocate Beinomugisha Charles while the defendant was represented by Advocate Tumwesigye Wycliff.

The plaintiff's evidence

- 4. The plaintiff produced one witness to prove her case, PW1 (Kyarimpa Beatrice), and adduced the following documents:
- i) Exh. P1-A bounced cheque from Masterlinks Uganda Ltd.
- ii) Exh. P2-A copy of the plaintiff's identity card.
- iii) Exh. P3-A copy of the plaintiff's salary pay slip.

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- iv) Exh. P4-Letter of recommendation for a salary loan.
- v) Exh. P5-Sale agreement dated 29/09/2008.
- vi) Exh. P6-A loan application to DFCU by the 1st defendant.
- vii) Exh. P7-A copy of the plaintiff's member statement with Shimoni Cooperatives Savings & Credit Society Ltd.
- viii) Exh. P8-A copy of the certificate of title.
- ix) Exh. P9-Notice of intention to sue.
- x) Exh. P11-A copy of the site lay out for the house.
- xi) Exh. P12-Affidavit in Rejoinder in MA No. 1604/2021.

- 5. PW1 (Kyarimpa Beatrice) testified that she got to know the defendant in 2003, cohabited with him and had two children. That in 2008, she purchased the suit property at a cost of Shs 19,000,000 using her salary savings and loan. That at the time of purchase of the suit property, the defendant had no income, and she solely used her salary savings and obtained a loan to acquire the property, however out of courtesy she agreed to have the agreement in both their names. That in the year 2009, she obtained a loan facility from DFCU Bank and started construction of a residential house on the suit property. That she further obtained loans from Shimoni SACCO Ltd to complete the construction of the residential house. That during the time of construction, the defendant used to supervise the construction and purchase building materials using money given to him by the plaintiff and the defendant did not make any contributions towards the construction of the residential house.

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That in 2018, the defendant forcefully evicted her and her children from the residential house. That she then decided to register the suit property in her names since she had covered all purchase and construction costs. That she has on several occasions requested the defendant to vacate the suit property to no avail. That she has been living in rented spaces with her children since 2018.

The defendant's evidence

- 6. The defendant produced three witnesses to prove his case: DW1 (Mukama Alex), DW2 (Birungi Jemimah) and DW3 (Serwanja Isufu). The defendant adduced evidence of the following documents:
 - i) Exh. D1-A copy of the defendant's certificate of service.
 - ii) Exh. D2-A police Ref No. SD Ref 13/24/12/18 (disappearance).
 - iii) Exh. D3-Police letter dated 18/10/2021 to land office.
 - iv) Exh. D4-Salary review letters from Techno Brain (U) Ltd.
 - v) Exh. D5-Barclays Bank loan of Shs 21m.
 - vi) Exh. D6-Gombe LC1 letter of introduction.
 - vii) Exh. D7-Electricity bills in the name of the defendant.
 - viii) Exh. D8-NWSC bills in the names of the defendant.
 - ix) Exh. D9-Land office search statement.
 - x) Exh. D10-Police letter summoning the plaintiff.
 - xi) Exh. D11-Statutory Declaration in support of a caveat.
 - xii) Exh. D12-LC1 chairman letter introducing the defendant.

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- 7. DW1 (Mukama Alex) testified that he and the plaintiff purchased the suit land in 2005 at Shs 19,000,000. That upon completion of the purchase price, the registered proprietor signed the transfer and mutation forms to enable them effectively transfer the suit land into their names. That he and the plaintiff constructed a residential house on the suit land and around 23rd December 2018, the plaintiff vacated the premises on her own accord, taking with her the sale agreement, land title and transfer forms. That the plaintiff later transferred the title in her sole names without his consent. That he sought the services of Uganda Police and lodged a caveat on the suit property to safeguard it from being transferred to third parties. That the actions of the plaintiff are tainted with illegality and fraud and are a violation of the joint tenancy rules to which she is strictly liable for the same.
- 8. DW2 (Birungi Jemimah) testified that through a broker, she was contacted by Alex Mukama who expressed his interest to purchase the suit property. That he returned for further negotiations with the plaintiff, and they agreed to a purchase price of Shs 19,000,000. That their lawyer drafted a sale agreement which showed that the land was jointly purchased by both the plaintiff and the defendant, but it did not indicate how much each of them had contributed towards the purchase of the land. That 7 years later, upon

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completion of their payment, she signed transfer forms by only indicating her name and signature.

- 9. DW3 (Sserwanja Isufu) testified that he is the one who supplied Alex Mukama with bricks, sand and stones and his money was always paid in person. In cross-examination he stated that in 2008, he never used to issue receipts to clients. That he received money from the defendant, but he did not know the source of the money. In re-examination, he stated that the business of supply of bricks does not issue receipts ordinarily.

Issues for determination by the court

- 10. The issues for determination by the court are:
- i). Whether the suit property was jointly acquired by the parties.
- ii). Whether the plaintiff fraudulently registered herself as a sole proprietor for the suit land.
- iii). What remedies are available to the parties?

Issue No.1: Whether the suit property was jointly acquired by the parties

- 11. Counsel for the plaintiff submitted that although the agreement for purchase of the suit property indicates that it was acquired by both parties, the plaintiff solely financed the acquisition of the suit property and construction of the residential house. According to the plaintiff, she obtained a loan from DFCU Bank and Shimoni

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SACCO Limited and also supplemented with her salary savings to construct the residential house.

- 12. On the other hand, counsel for the defendant submitted that there is ample evidence to prove that the suit property was jointly purchased by both the plaintiff and the defendant, and the residential house was constructed between 2006 and 2018 when the two were living together as a couple in the house.
- 13. To begin with, there is ample evidence to prove that the land was purchased by both the plaintiff and the defendant. The sale agreement for the suit property (Exh. P5) indicates that both the defendant and the plaintiff jointly purchased the land on the 29th September 2008.
- 14. The only contention is, after acquiring the land, between the plaintiff and the defendant; who financed the construction of the residential house? In her evidence, the plaintiff gave evidence that she cohabited with the defendant between 2006 and 2018. While the plaintiff claims that she solely financed the construction of the house, the defendant disagrees. The defendant adduced the evidence of DW3 (Sserwanja Isufu) who stated that he supplied building materials to the defendant for construction of the house.
- 15. From the evidence adduced by the parties, it is not possible to tell with certainty whether it is plaintiff or the defendant that financed

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Issue No. 2: Whether the plaintiff fraudulently registered herself as a sole proprietor for the suit land

- 16. In his counterclaim, the defendant alleged that the plaintiff fraudulently registered the suit property in her sole name excluding him, and yet he was a joint purchaser and owner of the suit property. The statement of search issued by the land office dated 16th November 2020 (Exh. D9) confirms that the suit property is registered in the name of the plaintiff, having become the sole registered owner on 17th December 2018 under Instrument Number WAK-00203065. In her evidence, the plaintiff stated that she stopped living on the suit property around December 2018.
- 17. The defendant (counter claimant) asserted that the plaintiff was fraudulently registered as owner of the suit property; he bears the burden of proof, and this being a fraud case, the standard of proof is

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heavier; it is beyond a mere balance of probabilities. See *Kampala Bottlers Ltd v. Damanico (U) Ltd*, Supreme Court Civil Appeal No.22 of 1992 (coram: S. W. W. Wambuzi, C. J., A. Oder, J. S. C., H. Platt, J. S. C).

18. In *Fredrick J. K. Zaabwe v. Orient Bank Ltd & 5 others*, SCCA No. 04 of 2006 (coram: Tsekooko, Karokora, Mulenga, Kanyeihamba & Katureebe, JJ. SC), fraud was defined as:

> "An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture...means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated, dissembling, and any unfair

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way by which another is cheated...It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture..."

19. The circumstances under which the plaintiff became the sole registered owner of the suit property are very suspicious. The plaintiff was registered as the sole registered owner of the suit property on 17th December 2018. This was around the same time that she stopped living together with the defendant (counter claimant). According to the defendant, when the plaintiff departed the home after the failure of the relationship, she left with the land title and blank signed transfer forms that the seller hand handed over to the couple after purchase of the land. The seller of the land (Birungi Jemimah) gave evidence to the court. She testified as DW2 and stated as follows inter alia: "That I signed transfer forms for them by only putting my name Jemimah Birungi and signature. I did not write anything else on that paper." The plaintiff did not rebut the evidence of DW2. The undisputed evidence is that both the plaintiff and the defendant jointly purchased the suit property. Now,

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there is the unchallenged evidence that the seller (DW2) signed blank transfer forms and handed them over to the plaintiff and defendant. When the relationship between couple failed, the plaintiff moved out of the house with the land title and blank signed transfer forms. That was in December 2018. The plaintiff became registered owner on 17th December 2018. It is therefore

more probable than not, that the plaintiff filled in the transfer forms by inserting her name only and leaving out that of the defendant (counter claimant), and thereby ended up as the sole registered owner of the suit property thus effectively knocking out the defendant.

20. The actions of the plaintiff (Kyarimpa Beatrice) were deceitful and fraudulent, and fit within the parameters of fraud as defined by *Zaabwe v. Orient Bank* (supra). Accordingly, this court is satisfied that the plaintiff (Kyarimpa Beatrice) was fraudulently registered as the sole owner of the land and property comprised in Busiro Block 275 Plot 931 Land at Gombe under Instrument Number WAK 0203065 on 17.12.18 at 3:15pm.

Issue No. 3: What remedies are available to the parties?

21. The plaintiff claimed for several remedies including general and special damages. The cost of renting alternative accommodation is claimed as special damages. I am not satisfied that the plaintiff was forcefully evicted by the defendant from the house as claimed. I

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believe the evidence of the defendant that the plaintiff left the house after the failure of the relationship. The plaintiff thereafter engaged in fraudulent acts to get herself registered as the sole owner of the suit property to the detriment of the defendant. Based on this, the plaintiff is not entitled to general and special damages.

- 22. There is ample evidence that the suit property is owned by both the plaintiff and the defendant as tenants in common (equal ownership with no right of survivorship).
- 23. However, the issue of the sole ownership of the suit property on the certificate of title must be first addressed. Section 161 of the Registration of Titles Act (Cap. 240) provides for cancellation of a certificate of title obtained fraudulently. In the case of *Hilda Wilson Namusoke & 3 Others v. Owalla's Home Investment Trust (E. A) Ltd & Commissioner for Land Registration*, Supreme Court Civil Appeal No. 15 of 2017, the Supreme Court of Uganda (per Justice Prof. Tibatemwa-Ekirikubinza) held that: "Section 177 [now 161] of the RTA vests powers in the High Court to direct the Commissioner to effect any order of cancellation of a certificate of title...". Based on my finding that the plaintiff was fraudulently registered, her registration must be cancelled.
- 24. The defendant's counterclaim partially succeeds to the extent that both parties own the suit property as tenants in common. The

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challenge is that love relationship between plaintiff and the defendant is no more. The defendant is in occupation of the suit property while the plaintiff lives elsewhere in rented property. The only practical way forward is for the suit property to be sold after valuation by a registered valuation surveyor and the proceeds of the sale shared by both the plaintiff and the defendant in equal percentages (50 % : 50 %).

Order of the court

- 25. The court makes the following orders:
- 1). That the land comprised in Busiro Block 275 Plot 931 Land at Gombe is owned by both the plaintiff (Kyarimpa Beatrice) and the defendant (Mukama Alex) as tenants in common (equal ownership with no right of survivorship).
- 2). That the plaintiff (Kyarimpa Beatrice) was fraudulently registered as owner of the land and property comprised in Busiro Block 275 Plot 931 Land at Gombe under Instrument Number WAK 0203065 on 17.12.18 at 3:15pm.
- 3). That the Commissioner for Land Registration is directed to cancel the certificate of title in the name of the plaintiff (Kyarimpa Beatrice) for land and property comprised in Busiro Block 275 Plot 931 Land at Gombe under Instrument Number WAK 0203065 on 17.12.18 at 3:15pm.
- 4). That the Commissioner for Land Registration is directed to enter the plaintiff (Kyarimpa Beatrice) and the defendant

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(Mukama Alex) as registered owners of land and property comprised in Busiro Block 275 Plot 931 Land at Gombe measuring 0.102 Hectares as tenants in common (equal ownership with no right of survivorship).

- 5). That the Registrar of the court shall appoint a Valuation Surveyor registered by the Surveyors Registration Board established under the Surveyors Registration Act (Cap. 303). The registered Valuation Surveyor shall prepare a valuation report for the land and property comprised in Busiro Block 275 Plot 931 Land at Gombe measuring 0.102 Hectares.
- 6). That basing on the valuation report prepared by a registered Valuation Surveyor appointed by the Registrar of the court, the land and property comprised in Busiro Block 275 Plot 931 Land at Gombe shall be sold and the proceeds of the sale shall be shared by plaintiff (Kyarimpa Beatrice) and the defendant (Mukama Alex) at an equal percentage of 50 %.
- 7). That each party shall bear its own costs of the suit.

IT IS SO ORDERED

BERNARD NAMANYA

JUDGE 10th July 2025

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