

UGANDA / JUDGMENT

Lutaaya v Nabwegamu & 3 Others (Civil Appeal 16 of 2024) [2025] UGHC 153 (21 March 2025)

[2025] UGHC 153

COURT

High Court of Uganda

BEFORE

Karemani Jamson K, J

CASE / FILE NUMBER

Civil Appeal 16 of 2024

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA****LAND CIVIL APPEAL NO.0016 OF 2024****(FORMERLY MUBENDE CIVIL APPEAL NO. 010 OF 2022)****(ARISING FROM KIBOGA CIVIL SUIT NO. 025 OF 2012)****LUTAAYA MUBARAKA :.....:****VERSUS****1. NABWEGAMU EVELYN****(Administrator of the estate of the****late Mwesige Godfrey)****2. NABWEGAMU EVELYN****}.....:RESPONDENTS****3. REGISTRAR OF TITLES**

4. ADMINISTRATORS OF THE ESTATE OF

THE LATE KAMANYIRE (Mugenyi Patrick,
Kagoro Stephen, Khinju Christine and Kobugabe Edith)

BEFORE: HON. MR JUSTICE KAREMANI JAMSON. K

JUDGMENT

Introduction.

Lutaya Mubarak (herein after referred to as the appellant in this matter) was the plaintiff in the lower court while the Nabwegamu Evelyn, The Registrar of Titles and Kagoro Stephen, Khiniu Christine and Kobugabe Edith (The administrators of the estate of late Kamanyire)

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(herein after referred to as respondents) were the defendants. The appellant sued the respondents jointly and severally seeking several orders which included a declaration that the \$1^{st}\$, \$2^{nd}\$ and \$4^{th}\$ respondents obtained the suit property fraudulently, a declaration that land comprised in block 655 plots 635 and 628 which is the suit land was surveyed and curved off land comprised in block 655 plot 618, which originally formed part of plot 520 that belonged to the appellant, an order of a permanent injunction restraining the respondent and their agents from acts of trespass upon the land, an award of general damages, mesne profits, an eviction order, vacant possession and costs of the suit.

Background.

The appellant filed the original suit against the respondents in the lower court and averred that on \$9/12/2003\$, he bought the suit land comprised in Kiboga block 655 plot 141 from a one Elisa Kabali Wamala. That the said Elisa Kabali procured two subdivisions on the land that gave rise to Singo block 655 plot 520. That upon purchase, the said Elisa signed transfer forms in his favour and also handed to him a duplicate certificate of title. That before he could get registered as proprietor, the said Elisa Kabali fraudulently obtained a special certificate of title in respect of the same suit land and caused various sub-divisions. That before the said sub-divisions could be registered, the appellant lodged a caveat on plot 520 which halted the whole process of obtaining certificates of title for the newly created plots. That one Richard Byaruhanga, Kizito Sekajugo and Nakiyingi Esther who that had purchased interests in the subdivided suit land approached the appellant requesting for a vacation of the caveat. That a memorandum of understanding was entered into between the appellant and the said persons in which the said person paid the appellant and were able to obtain their respective certificates of title. That later on the respondents fraudulently connived with the Registrar of Titles to subdivide the suit land and backdated the transactions to appear to have been before the appellant's caveat was lodged.

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Nanensio Begumisa and three Others V Eric Tiberaga, SCCA 17 of 2000; [2004] KALR \$236\$ thus:

"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."

This court therefore is enjoined to weigh the evidence and draw its own inferences and conclusions in order to come to its own decision on the issues of fact as well as of law and remembering to make due allowance for the fact that it has neither seen nor heard the witnesses. The appellate court is confined to the evidence on record. See also; Alule Richard V Agwe Dominc HCCA No. 032 of 2014.

Appellant's submissions.

Ground 1

Counsel for the appellant, in support of ground 1, submitted that the trial magistrate came to a wrong conclusion that there is no indication that any of the defendants acted fraudulently in any way. That the 1st respondent was a witness to the memorandum of understanding dated \$16/6/2008\$ which dealt with the claims and various interests of people on land comprised in Singo block 655 plot 520. That the 1st respondent conceded that the disputed plots 627 and 628 came from plot 520 which initially belonged to the appellant and he also conceded that he did not bring it to the attention of the appellant. That the 4th respondent was not party to the memorandum of understanding but with the help of the 1st respondent, a staff surveyor he managed to fraudulently curve off plots 627 and 628 which are in dispute.

That by the time the caveat was lodged, no other certificate of title had been curved off from land comprised in block 655 plot 520 but the Registrar of Titles in connivance with the rest of the respondents and went ahead to issue late Kamanyire's title by backdating the date of issuance. Counsel cited the case of Fredrick Zabwe V Orient bank ltd and ors SCCA No. 04 of 2006 on the meaning of fraud.

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Further, counsel submitted that the 1st respondent participated in fraud at all levels and therefore he purchased the suit land from the 4th respondents, administrators of the estate of the late Kamanyire in bad faith and therefore cannot hide under the principle of bona fide purchaser. Counsel cited the case of Hajji Nasser Katende V Vathalidas Halidas on elements of bona fide purchaser.

Ground 2.

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Counsel submitted that the administrators of the estate of the late Kamanyire fraudulently obtained the certificate of title for the land comprised in Singo block 655 plot 627 and 628 on the caveated piece of land block 655 plot 520. That whereas the title was backdated, they could not transfer a good title to the \$1^{st}\$ and \$2^{nd}\$ respondents who bought well knowing of the prevailing interests of the appellant on the suit land.

Ground 3.

Counsel submitted that the trial magistrate failed to consider the fact that the 1st respondent had knowledge of the existing claims on the suit land before the purchase because he was one of the witnesses of the memorandum of understanding dated \$16/6/2008\$ before he bought the suit land. That the trial magistrate failed to critically analyze that the acts of the 1st respondent in sub-dividing plot 520 to get plots 627 and 628 without inquiring on the whereabouts of the mother title which was in itself an act of dishonesty.

\$1^{st}\$, \$2^{nd}\$ and \$4^{th}\$ respondents' submissions.

Ground 1

Counsel submitted that the allegations by the appellant were fanciful allegations not backed by any evidence and that the alleged fraud is completely unfounded. That the late Mwesigye Godfrey (DW1) in his testimony, clearly stated that the late Kabali Wamala obtained a special certificate of title and carried out a number of transactions and at the meeting of 16/6/2008. it is when Kabali Wamala gave the appellant the said special certificate which the appellant still holds to date and that there was no fraud by the administrators of Kamanyire Julius in passing title to the \$1^{st}\$ and \$2^{nd}\$ respondents.

Grounds 2 and 3

Counsel submitted that on page 6 paragraph 5 of the judgment the trial magistrate rightly found that the 1st respondent's title and ownership was not obtained fraudulently because it was clearly stated in evidence that the \$1^{st}\$ respondent bought from the \$4^{th}\$ respondents who lawfully bought land from the late Kabali Wamala.

Consideration of the appeal.

I have carefully studied the trial court's judgment, the record of proceedings and considered the respective counsel's submissions, the law and authorities cited. From the grounds of appeal as framed, the major issue is:

"That the trial magistrate did not properly evaluate the evidence and hence came to a wrong decision."

Therefore, I will handle all the three grounds of appeal together since they are related to each other in the context cited above.

The 1st issue framed at the trial was whether the defendants obtained the suit land through fraud.

The trial magistrate in his judgment found that there was no indication that any of the respondents acted fraudulently in any way and concluded that since Kamanyire bought the suit land in 1997 and the appellant bought in 2003, Kamanyire had a better title

I will therefore exercise the duty of this court as an appellate court by subjecting the entire evidence to a fresh scrutiny in resolving the grounds of appeal.

The evidence adduced by the appellant at the trial was to the effect that he bought part of the land comprised in Singo Block 655 Plot 141 land at Kiboga in 2003 measuring 5 acres from Late Erisa Wamala Kabali who was the registered owner at the time. That Plot 520 Block 655 for the land bought which measured 5 acres was created out of plot 141 with a duplicate certificate of title which was handed over to him with necessary transfer forms signed in 2008. That he did not carry out the transfer of the same land immediately.

The appellant contends that by 2007 the late Erisa Wamala Kabali had fraudulently obtained a special certificate of title for plot 520 and subdivided the plot 520 into plot 593 that later became plot 595 and further to plot 618.

That upon discovering these fraudulent acts of late Eric Wamala Kabali he lodged a caveat on the same title in 2008.

That the appellant was later approached by some other individuals who included Richard Byaruhanga, Kizito Sekajugo and Nakiyingi Esther who had purchased part of the land and wanted to transfer their parts. That he entered a memorandum of understanding with the above parties to the effect that they should be allowed to get certificates for the land they had purchased. That it was allegedly witnessed by the late Mwesigye Godfrey the 1st defendant/respondent. That the caveats thereon were lifted to enable the transfers.

The 1st and 2nd respondents contended that they purchased the land comprised in Block 655 Plot 628 from the registered proprietors i.e. the administrators of the estate of the late Julius Kamanyire on 15/09/2009. That the late Kamanyire Julius had bought the same land in 1997. They denied any fraud on their part.

The 3rd defendant/respondent denied acting fraudulently.

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The 4th defendant/respondent contended that the late Kamanyire Julius bought the land comprised in Block 655 plot 141 from the late Erisa Ssebowa Kabali Wamala on 20/11/1997. Thought the certificate of title shows that Kamanyire got registered on the certificate of title for land comprised in Block 655 plot 628 on \$24/01/2008\$ and the administrators of his estate were registered on \$27.10.2009\$.

It was the appellant's contention that the \$1^{st}\$ and \$2^{nd}\$ respondents got registered on the title through fraud having obtained title from late Kamanyire Julius who had as well fraudulently got registered on the title.

Section 59 of Registration of Titles Act (RTA) cap 240 provides that a certificate of title is conclusive evidence of title.

Section 160 of RTA provides protection for the registered proprietors except in certain situations.

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It provides as follows;

"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—

- c) the case of a person deprived of any land by fraud as against the person registered as 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:"

Section 165 RTA further provides;

"Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he or she is registered as proprietor any purchaser bona fide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he or she claims was registered as proprietor through fraud or error or has derived from or through a person registered as proprietor through fraud or error; and this applies whether the fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever."

See also: Kushaba Ronald V Commissioner Land Registration and Anor SCCA No. 004 of 2023

The above sections protect a registered person or a person claiming interests to land as a bona fide purchaser for value from a transferor who could have been fraudulently registered.

In the instant case the \$1^{st}\$ and the \$2^{nd}\$ defendants claim that they bought the suit land without any knowledge of fraud on the part of the vendor.

The court of appeal in *Hajji Nasser Katende V Vathalidas Haridas & co. Ltd*, Civil appeal no. 84 of 2003 (unreported) stated that a bona fide purchaser for value without notice must hold a certificate of title, which title was acquired in good faith, the title was acquired for

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value, the title was acquired without notice of any fraud and that the bona fide purchaser was not party to any fraud.

In this case it was the evidence of PW1 Lutaya Mubarak the appellant on page 12 of the record of proceedings that he first bought one acre of land in 1997 and later on 9/12/2003 he bought another 4 acres from a one Erisa Kabali Wamala. That the land was comprised in block 655 plot 141. That at that time the title was in the names of Yosam Wamala the father of Erisa Kabali Wamala. The witness further adduced evidence to show that upon purchasing the land, he helped the said Erisa Kabali Wamala with money to transfer the title into Erisa Kabali Wamala upon which the said Erisa Kabali Wamala handed to the appellant the duplicate title and transfer forms.

The appellant's case is based on fraud by the respondents.

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 was unchallenged evidence of the appellant at the trial that the vendor who was the registered proprietor of the suit land Erisa Kabali Wamala handed the duplicate certificate of title and transfer forms for the land comprised in plot 520 block 655 at the time. He did not affect the transfer of the same land into his name. That the vendor later obtained a special certificate of title upon alleging that the original certificate had gotten lost yet he knew that he had given the same to the appellant. He subdivided the land to create plots 627 and 628.

It is my firm position that this vendor by applying for and obtaining a special certificate of title when he knew that the duplicate certificate of title existed and he had himself voluntarily handed it to the appellant he was acting fraudulently. He created plots 627 and 628 fraudulently.

The next issue is whether the late Mwesigye Godfrey and Nabwegamu Evelyn the 1st and 2nd respondents fraudulently acquired their certificate of title for plot 628 registered in their name.

The late Mwesigye Godfrey and Nabwegamu Evelyn got registered on the certificate of title Plot 628 Block 655 land at Kiboga on 27/10/2009. This was the land previously registered in the names of Mugenyi, Patrick Kagoro, Stephen Kahinju Christine and Kobugabe Edith as administrators of the estate of late Kamanyire Julius. The administrators of the estate of late Kamanyire Julius were

registered on the same certificate of title on \$27/10/2009\$ the same day the buyers were registered. As for the late kamanyire Julius he was registered on the same certificate of title on 24/01/2008 the same day the late Erisa Sebowa Kabali Wamala was also registered.

The appellant Mubarak Mbuga was registered on plot 637 Block 655 Land at Kiboga on the \$24/06/2008\$. He had lodged a caveat on the same on \$08/04/2008\$ and removed the same on \$24/06/2008\$. It was transferred to him from the name of Erisa Ssebowa Kabali Wamala.

From the above evidence that was adduced at the trial the plots are different. There are three plots; 627 628 and 637 both of block 655. The evidence adduced at the trial indicated that plots 627 and 628 were all created out plot 520. It was not brought out clearly as to how plot 637 was created. The trial magistrate on page 6 of the judgment found that the late Kamanyire had a prior title than the appellant saying that Kamanyire bought the land in 1997 while the appellant bought in 2003 and this seems to be the basis of his finding for the respondents. In short he concluded that the plot numbers were for the same piece of land which the late Kamanyire acquired before the appellant. He based on the time of purchase by each party.

DW2 Kagoro Stephen in his evidence in chief averred that in the year 2008, the late Kamanyire obtained the two certificates of title for plot 628 and 627. He also stated that the said two plots originated from plot 520.

Counsel for the appellant submitted that it is rather odd that the said Julius Kamanyire subdivided plot 520 to get the two plots 627 and 628 on \$24/1/2008\$, and yet it was the same plot 520 that the appellant had successfully lodged a caveat on \$8/4/2008\$.

From the above outlined dates and the evidence adduced at the trial, it is clear that the caveat was lodged on plot 637 on \$08/04/2008\$ and not plot 520 as portrayed. This can be confirmed from the entries on the certificate of title for plot 637. By \$08/04/2008\$ the transfer into late Kamanyire Julius' name of plot 628 had already been affected on \$24/01/2008\$. The caveat

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was lodged after a transfer had been effected. That caveat did not affect the transfer as it went to plot 637 only leaving plot 628 free for any transfers. The subsequent transfers of the same land into the name of late Kamanyire Julius and that of the administrators of his estate were not fraudulent. There was no caveat emptor to raise a red flag neither is there proof that they knew of any wrong doing by the vendor. After all the late Kamanyire Julius had bought the land in 1997 though he did not transfer it until 2008. The removal of the caveat meant that the land was now free and any transfer could not be inferred to be fraudulent unless proved SO.

The alleged backdating of the certificate of title for plots 627 and 628 by the respondents was not proved at all. It was only alleged by the appellant. Backdating a certificate of title is a serious act of fraud which may culminate into a criminal offence and therefore calls for serious evidence to prove it. Despite the standard not being to the level of beyond reasonable doubt it is above balance of probabilities. See the case of Kampala City Council & Anor. Versus James Bwogi & Sons Enterprises Ltd Court of Appeal Civil Appeal No.052 of 2009 (Unreported) where it was held

that fraud must be specifically pleaded and specifically proved.

In the instant case there was no evidence adduced to meet the standard set by the law. Plot 628 was later transferred into the names of the late Mwesigye Godfrey and Nabwegamu Evelyn by the administrators of late Kamanyire Julius.

The 1st respondent late Mwesigye Godfrey was the district surveyor who in his evidence confirmed that plots 627 and 628 were curved out of what used to be plot 520 which plot was initially caveated by the appellant. The earlier analysis by this court showed that plot 520 was never caveated by the appellant but instead it was plot 637 caveated.

In cross examination the DW2 Kagoro Stephen stated that the said plots of 627 and 628 were acquired in 1997 when the said Kamanyire bought the same land from Erisan Sebowa Kabali. This contradicted with his earlier evidence that the said plots were created in 2008. There is no evidence adduced to show that by 1997 the certificate of title for the land in issue was handed over late Kamanyire Julius upon purchase of the same land. He got registered thereon in 2008.

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The 1st respondent late Mwesigye Godfrey had been a witness to the memorandum of understanding when the appellant was lifting the caveat. He purchased after a year of removing the caveat. The caveat was removed on \$24/06/2008\$ and the late Mwesigye Godfrey purchased on \$27/10/2009\$. By lifting the caveat in 2008 the appellant had opened the line for any other subsequent transactions on the land. The caveat emptor was removed and any intending buyer could not be notified of any other persons' interests. The 1st and 2nd defendant committed no acts of fraud by buying and transferring into their names the land which had no encumbrances. The appellant by lifting the caveat and allowing transfers on the land he opened it all and it was not applying selectively. The \$1^{st}\$ and \$2^{nd}\$ respondents cannot therefore be faulted for buying the same land after one year of lifting the caveat by the appellant. They were not selectively barred.

Am inclined to state that all this situation emanated from the fact that the appellant did not affect transfer of the land he allegedly bought in 2003 and was handed with a certificate of title and transfer forms to do so. These documents were meant to help him complete the ownership transfer which he did not do until 2008 when other various transactions had started to take place. He was not vigilant. This needs to be discouraged to avoid such conflicts. In my own view the law should set timelines for such transfers beyond which it constitutes an offence.

I accordingly find that the trial magistrate properly evaluated the evidence adduced and came to a right decision.

The appeal has no merit and it is dismissed with costs.

I so order.

KAREMANI JAMSON. K

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