

UGANDA / JUDGMENT

Nabirye & 6 Others v Kyobe & 2 Others (Civil Suit 2054 of 2016) [2024] UGHCLD 202 (6 August 2024)

[2024] UGHCLD 202

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Civil Suit 2054 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT No. 2054 OF 2016

1. NABIRYE JANEPHER KASUDHA

- 2. LUBWAGUZI TIBESIGWA
- 3. MAWERERE DAVID
- 4. NAMUKOYE SOLOMON
- 5. MUKAMA DAVID
- 6. MAISO PAUL
- 7. LUKUNGU PETER ::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

1. KYOBE MBAYITA 2. RAYMOND ABAASA 3. EDWARD GRACE
MUTIBWA ::::::::::::::: DEFENDANTS

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA JUDGEMENT

Introduction;

1. The plaintiffs bring this suit against the defendants jointly and severally seeking declarations and orders inter alia; a declaration that the plaintiffs are the lawful owners of the suit land, a declaration that the 3rd defendant is a trespasser on the suit land, a declaration that the 3rd defendant illegally and fraudulently occupied the suit land, cancellation of the 3rd defendant's title and

all persons claiming under him, mesne profits, an eviction order against the 3rd defendant, permanent injunction, a vesting order of the suit land into the names of the plaintiffs, an order compelling the 1st defendant to execute all necessary documentation to transfer the suit land into the plaintiff's names, general damages, interest and costs of the suit.

Background;

- 2. The plaintiffs in 2001 bought Land situated on Block 230 Plot 1170 Kamuli A, in Kiira Town Council, Wakiso district from the 1st defendant at a price of ugshs 4,600,000 (Ugandan shillings four million six hundred thousand Ugandan shillings) while it was under mutation. The 1st defendant promised to execute transfer forms in favor of the plaintiffs upon completion of the mutation/subdivision process.
- 3. The plaintiffs did take possession of the land by planting season crops over time, in 2010 the plaintiffs decided to construct a residential house on the suit land and started construction thereon and while the construction was on going, the 2nd defendant raised allegations of the land belonging to him through his lawyers, this surprised the plaintiffs who did some inquiries

only to realize that instead of the 1st defendant subdividing the land to issue them their title, he had tried to sell the land to another person(2nd defendant).

- 4. The matter was referred to the local leaders and a meeting between the plaintiffs and 1st and 2nd defendants was convened wherein the 1st defendant admitted to selling the land to the 2nd defendant in error and did agree in the meeting to refund the 2nd defendant's money although the 2nd defendant declined to sign on the attendance list and the minutes of the meeting.
- 5. The 2nd defendant being aware that it was the plaintiffs in possession of the suit land, sold the land to the 3rd defendant.

- 6. The plaintiffs pleaded the following particulars of fraud against the defendants briefly;
- i) The 1st defendant selling the suit land to the plaintiffs and then to the 2nd defendant.
- ii) The 1st defendant refusing to avail the plaintiffs with transfer forms and the mutation forms as earlier agreed.
- iii) The 2nd defendant purchasing the suit land from the 1st defendant having known of the plaintiffs' interest in the suit

land in the meeting between the plaintiffs and the 1st defendant.

- iv) The 2nd defendant purchasing the suit land from the 1st defendant without conducting due diligence.
- v) The 2nd defendant selling the suit land to the 3rd defendant having known of the plaintiff's interest in the suit land in the various meetings between the plaintiffs and the 1st defendant.
- vi) The 3rd defendant purchasing the suit land from the 2nd defendant without conducting due diligence.

Plaintiffs' evidence

- 7. The plaintiffs led evidence by witness statements and they were cross examined. The plaintiffs' case was opened on 5th /12/2023 with the 1st plaintiff's testimony (PW1) where she stated in her witness statement that one Sunday of December 2000, she was on a family tour with her husband, Mr kasudha Fredrick Kisaka formerly working with Uganda commercial bank and all the children.
- 8. That while on the way back, they saw a sign post- "plots for sale" placed near the fence of Mr. Kyobe Erifazi Mbayita of 0701499381/0701031398, we stopped our vehicle immediately

and made some inquiries from the people around to find out who the owner of the plots was and we were told that the owner of the fence was the seller of the plots but at the moment he had gone to kyaliwajala village and we were advised to come back another day.

- 9. That after two days, on a Wednesday, I requested two sons of my brother and sister in laws, kasudha Tafero and Isabirye Daniel currently senior school teachers to go and check if the owner of the plots had come as my children by then were still young.
- 10. That Kasudha Tefero and Isabirye Daniel came back with good news that the owner is selling the land, if you want it all you negotiate and buy or you can buy a plot all depends on your cash/money. I went to the suit land with my husband to see knowing very well that we are going to buy big land but he said he did not have money.

- 11. That I went back to the 1st defendant with my brother the late Mugenyi Richard to negotiate for a plot as he had also failed to get one person to buy the whole land and they had started cutting it into plots, upon checking out the land and discussing with the 1st defendant, he told me that since he has my telephone number he will inform me immediately they are done demarcating the plots

and he also showed me the copy of the land title(PeX1) to prove that he is the owner of the land as comprised in Block 230 Plot 1170 then.

- 12. That after some time I received a call that the plots were ready and I went together with my late brother to choose which plot to take and most of the plots were set in such a way that they have their own enclosed roads, no plot was sharing a road with another apart from those which you branch from the main kyakulubya close which comes from Namugongo road.
- 13. That I chose the last plot down which was sharing a boundary with Mrs. walusimbi's land, it was set as a 50ftX80ft with a road measuring 21 ft enclosed with all priced at UGX 3,000,000 which I managed to make a part payment of UGX 2,000,000 on February 26th 2001 using partial salary arrears, I went back to the 1st defendant to add me another 50ft X 80 ft so as to make the size of the plot 100ft X 80Ft with a road enclosed within measuring 21 Ft and the 1st defendant told me you go back we shall call you after resetting it again.
- 14. That later, the 1st defendant called me and we negotiated the price where we came to the last price of UGX 4,600,000 for the

whole plot that is the earlier plot I had partly paid for and the new one that I wanted to buy, I had to pay a sum of ugshs 2,600,000 which included the past balance as well making the total sum paid to be UGX 4,600,000 on 25-November 2001 and we signed a sale agreement(PeX2) to that effect and the seller promised to sign for me transfer forms.

- 15. That upon completion of paying of the consideration, I immediately engaged a government surveyor (Mr. Babinge Patrick) who came to the land with the help of my son, Lubwaguzi Agi Tibesigwa (2nd plaintiff) under the guidance of the 1st defendant, the surveyor surveyed the land and produced a job jacket which was requested by the 1st defendant so that he signs the transfer forms as agreed.
- 16. That however all was in vain as numerous attempts were made to get the 1st defendant handover the documents he kept on hiding.
- 17. That as a single mother, I immediately cultivating food crops on this land to support my school going children who were studying from Kampala while I was in Masindi.

- 18. That after some time, the old man with whom the 1st defendant had demarcated the plots with called me and told me that the 1st defendant had started selling people's road reserves, I travelled from Masindi and arrived at his gate around 1pm but he refused to see me till 3:00pm and I told him why I had come and asked him that we go and I see my road because he had started tampering with, I warned him about the same as well.
- 19. That we started constructing a three-apartment building on this land after getting approvals (PEX3) from Kira Town Council Wakiso on the 30th of November 2010, we stopped the building at beam level since we ran out of funds.
- 20. That on the 21st December 2010, Kasekende, Kyeyune and Lutaaya advocates on behalf of Raymond abaasa (2nd defendant) wrote a letter (Pex4) to Mr. Ntambi the then LC1 Chairperson for Kamuli zone A, requesting for clarity on who the rightful owner of the suit land was, the LC1 Chairperson replied (PeX5) to the said letter on the 22nd December of 2010 clarifying that I, Nabirye Kasudha Janepher and my other 6 children are the rightful owners of the land.
- 21. That on the 24th December 2010, our lawyers then Tumwesigye Baigana and Co. Advocates replied (PEX7) on our behalf warning kasekende, kyeyune and lutaaya advocates against any further title processing and any other development/trespass on the land and our then lawyers lodged a caveat on the title to the said land, however the caveat was removed without our notice.
- 22. That the LC1 Committee convened an urgent meeting for my sons, I, 2nd defendant and 1st defendant where all parties attended and came to agreement that I and my 6 sons were the rightful owners of the suit land and the 1st defendant promised to refund the 2nd defendant's money and all minutes of the meeting (PEX6) were taken and confirmed on the 26th February 2013.
- 23. That to my surprise. On the 9th September 2013, the LC1 Chairperson of Kamuli A called me and informed me that some unknown people had broken down my building and cut down the crops to the ground and the chairperson informed me how the issue was now beyond his office and that I better report to Kira police station, I requested my two sons Mukama Daniel Kasudha and Lukungu peter Kasudha to immediately report the matter to police since I was in Masindi.
- 24. That a case was opened under SD REF 57/11/09/13 and a case of criminal trespass and malicious damage with the suspect unknown, during investigations, the police found a man (porter) by the names of Muwanga abdu whom they arrested to assist in investigating the case, he informed police that it was the 3rd defendant who gave him the casual work for his daily food, The police had to look for the 3rd defendant who was got between the 7th and 8th of October 2013.

- 25. PW2 testified that in the year 2009 in June, the plaintiff came to the office of the LC1 complaining that the 1st defendant sold her land but did not give her the transfer forms and testified that the 1st defendant agreed in writing during the council meeting that he was to refund the 2nd buyer the money and the plaintiff and her children would retain their land further it's the plaintiff in possession of the suit land at the moment.

Defendants evidence

26. The 1st defendant (DW1) in his witness statement testified that in the year 2000 around February, the 1st plaintiff having inspected his land at that time comprised in Mailo Register Kyadondo Block 230 Plot 1170 measuring 1.364 hectares at

Kamuli approached me with the offer to purchase 0.11 acres or equivalent 11 decimals of part of the land at the agreed consideration of ughs 3,000,000.

- 27. That on the 26th February 2001, the 1st plaintiff made a part payment of ugshs 2,500,000 in the presence of her witnesses leaving a balance of ughs 500,000 to be paid within one month and time was of essence.
- 28. That without completing payment of the outstanding balance of ugshs 500,000, the 1st plaintiff again approached me with another offer of purchasing 0.074 hectares of part of the same land.
- 29. That at the time of executing the 2nd sales agreement of 25th 11 of 2001, the 1st plaintiff insisted that she wanted the names of her children namely the 2nd – 7TH plaintiffs to be included in the said sales agreement although they never paid a single coin for the said land and never signed the said agreement since they were never present at its execution.
- 30. That after the 2nd purchase the 1st plaintiff disappeared into oblivion for a period of 13 years and only resurfaced in September 2013 when she dragged me to Kiira police station on allegations of criminal trespass.
- 31. That during the 1st plaintiff unexplained 13-year absence, I was faced with financial challenges around the year of 2005, I sub divided Plot 1170 into 1249,1366,1471 and 1531 which I sold to various people over the years leaving the residue by balance Plot 1522 measuring approximately 33 decimals which I mortgaged to equity bank.
- 32. That having faced with hardships on how to pay off the mortgage, I was approached by the 2nd defendant sometime in march 2010 who offered to purchase Plot 1522 inclusive of paying off my loan with equity bank, subsequently on the 22nd march 2010, I sold Plot 1522 to the 2nd defendant at an agreed consideration of Ughs 13,000,000 free from any encumbrances and surrendered vacant possession of the land to him.
- 33. That Plot 1170 which the plaintiffs sued me for in this case after a period of 12 years that they want to recover no longer exists due to their contributory negligence and am willing to refund all the monies had and received by me from the plaintiff.

- 34. The 2nd defendant (DW2) in his testimony stated that he sold to the 3rd defendant Plot 1962 in 2013 yet the land in dispute is Plot 1170 and that at the time he was purchasing the land from the 1st

defendant, he visited the LC's though they never endorsed his agreements.

- 35. The 3rd defendant in his testimony testified that he doesn't know the plaintiffs and the 1st defendant, he only knew the 2nd defendant because he's the one who sold to him the land Block 230 Plot 1962.
- 36. That before purchasing the land, the 3rd defendant around 2013 visited the same land physically and there was nothing on it, he further conducted an oral verification from the ministry of lands and found that the land was not encumbered. Proceeded to pay the consideration and the 2nd defendant gave me vacant possession of the land and I got registered on the certificate of title.

Locus Proceedings;

- 37. On 5th /4/2024, Court visited Locus. Court established that the plaintiffs constructed a house on the suit land something the LC1 had knowledge of.
- 38. 1st defendant confirmed to have sold the same land to the plaintiff and then later to another person.
- 39. It was further observed that it was the plaintiff who was in possession of the suit land.

Representation;

40. At the hearing, the plaintiff was represented by Counsel Asuman Nyonyintono of M/S Signature Advocates while the 1st defendant was represented by Counsel Eric Kiingi of M/s Eric-Kiingi & Co. Advocates, the 2nd defendant was represented by Counsel Kaasa Emmanuel of M/s Kaganzi & Co. Advocates and 3rd defendant was represented by Counsel Joseph Luzige of M/s Luzige Lubega Kavuma & Co. Advocates. Parties proceeded by way of written submissions with the exception of the 1st defendant who did not file his submissions.

Issues for determination

- 41. The parties filed a joint scheduling memorandum, in which they agreed on the following issues;
- *i) Whether the suit is properly before this court?*
- *ii) Whether the plaintiffs' suit is barred by limitation?*
- *iii) Whether the 2nd – 7th plaintiffs have a cause of action against the defendants?*
- *iv) Whether the plaintiffs have a cause of action against the defendants?*

- *v) Whether the 2nd and 3rd defendants are bonafide purchasers and transferees?*
- *vi) Whether the 3rd defendant's certificate of title comprised in Mailo register Kyadondo Block 230 Plot 1962 was procured fraudulently?*
- vii) *What remedies are available to the parties?*

Parties combined issue 1 and 2, issue 3 and 4, issue 5 and 6 together then issue 7 independently.

Analysis and determination of the issues;

Issue 1 and 2; whether the suit is properly before this court and whether the plaintiff's suit is barred by limitation?

- 42. It is counsel for the plaintiffs' submission that the suit arises from fraudulent acts of the defendants which were carried out between 2010 and 2013, it is trite law that the limitation period only begins to run from the date when the cause of action arises and for fraud it starts to run from the date the plaintiff gets notice of the fraud.
- 43. Section 25 of the limitation Act expressly provides that;
- (a) the action is based upon the fraud of the defendant or his or her agent or of any person through whom he or she claims

or his or her agent; (b) the right of action is concealed by the fraud of any such person as is mentioned in paragraph (a) of this section; or (c) the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, or could with reasonable diligence have discovered it.

- 44. Counsel for the plaintiff submits that the plaintiff purchased the suit land in 2001 and the fraudulent actions took place between 2010 and 2013 where the plaintiffs filed the suit in 2014. Counsel for the 3rd defendant submitted that it is not true that the plaintiff got to know of the fraudulent acts in 2010 but rather in 2001 when the sales agreement was executed and the instant suit was filed in 2014 that's 14years later.
- 45. The limitation period should have been 12 years from the time when the plaintiff got to know of the fraud, and the plaintiffs got to know of the fraud in 2001 where in he filed the suit in 2014. It is therefore submission of counsel for the 3rd defendant that the instant suit is barred by limitation.

Analysis of the issues;

46. Fraud has been defined in the case of **Fredrick Zaabwe v Orient**

Bank Ltd & others SCCA No.4 of 2006 to mean "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 conduct by false or misleading allegations or by concealment of that which is intended to deceive another so that he shall act upon to his legal injury."

- 47. The limitation period of fraud as rightly stated by counsel for the plaintiff under section 25 of the limitation act is to the effect that the time starts to run from the date when the plaintiff got to know of the fraud between 2010-2013.
- 48. Referring to paragraphs 15,31,32,34,36,37,40,42,44 of PW1 where she stated she got to know of the fraud on the 21st day of December 2010 when the 2nd defendant's lawyers M/s Kasekende, Kyeyune and Lutaaya advocates then wrote a letter to the LC1 Chairperson of Kamuli zone requesting for clarity on who the rightful owner of the suit land was where in the LC1 chairperson replied to the said letter clarifying that the plaintiff through Tumwesigye Baigana and Co Advocates wrote a letter warning

them against any further title processing and any other developments or trespass on the suit land.

- 49. Further during cross examination of PW1 she stated that the disturbances started happening between 2010-2013 leading to the demolition of her residential house and the crops on the land.
 - 50. The same facts are supported by evidence of PW2 the area LC1 Chairperson where he states that the meeting to have the disputes over the suit land settled happened in 2013 as supported by the minutes to the said meeting (Pex10A and B).
 - 51. The perusal of DW1 witness statement under paragraph 15, where he stated that he sold Plot 1522 to the 2nd defendant at agreed consideration of UGX 13,000,000 and surrendered vacant possession of the said land to the 2nd defendant. This is the same time the plaintiff alleges to have noticed the fraud.
 - 52. It is the finding of this court that the plaintiffs got to know of the fraud between 2010-2013 as submitted by counsel for the plaintiffs and the instant suit was filed in 2014, that's a year after 2013.
53. Therefore, the instant suit is not barred by the law of limitation and the same is properly brought before this court, hence issues 1 and 2 are resolved in the affirmative.

Issue 3 and 4; whether 2nd – 7th plaintiffs have a cause of action against the defendants and whether the plaintiffs have a cause of action against the defendants.

- 54. It is the submission of counsel for the plaintiff that the plaintiff should have locus standi to file a suit and for a cause of action to exist the party should demonstrate that he enjoyed a right which was right was violated by the defendant.

- 55. Counsel relied on the decision in *Auto garage vs motokov* (1971) EA 514 where it was stated that *" I think the plaint may disclose a cause of action even though it omits some facts which the rules require it to contain and which must be pleaded before the plaintiff can succeed in the suit, what is important in considering whether the cause of action is revealed by the pleadings is the question as to what right has been violated in addition of course the plaintiff must appear as a person aggrieved by the violation of the right and it's the defendant who is liable. I would summarize the*

position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right that the right has been violated and the defendant is liable then in my opinion a cause of action has been disclosed and any omission or defect may be put right by amendment if on the other hand any of those essentials is missing, no cause of action has been shown and no amendment is permissible"

- 56. Counsel submits that the amended plaint under paragraph 5 clearly states how the plaintiffs purchased land and how the defendants violated their rights as owners of the land contrary to article 26 of the constitution of Uganda.
- 57. The 2nd-7th plaintiffs did not sign the sale agreement and this is a fact the 1st defendant relies on to challenge the plaintiff's locus, counsel for the plaintiffs further submits that No law bars a person from purchasing property for another person who can derive interest from such an agreement. The 1st defendant considering that he personally drafted the sales agreement and included the 2nd -7th plaintiffs as purchasers is stopped from denying their interest at this moment.
- 58. The evidence act under section 114 of the evidence act which states that *" when one person has by his or her declaration, act or omissions intentionally caused or permitted another person to believe a thing to be true and to act upon that belief neither he or she nor his or her representative shall be allowed in any suit or proceeding between himself or herself and that person or his or her representative to deny the truth of that thing"* The same position was upheld in the decision of **UNRA Vs Dott services limited and professional engineering consultants ltd** CA 0234 of 2021.
- 59. Counsel for the plaintiffs further submitted that the 1st plaintiff signed the purchase agreement on behalf of the 2nd – 7th plaintiffs and the 1st defendant is estopped from denying their locus and further the 1st defendant introduced the 2nd – 7th plaintiffs in the said sales agreements as purchasers even when they were absent 60. The 2nd and 3rd defendants tried to interfere with the possession of the plaintiffs and breached their rights when they purported to enter into transactions over the plaintiff's land which gives the plaintiffs the locus to file this suit.
- 61. Counsel for the 2nd defendant submits that the plaintiffs did not have any contractual arrangement with the 2nd defendant and the plaintiff's fraud against the 2nd defendant is not legally based. Counsel relied on the decision in **David Sejakka Nalima vs Rebecca Musoke** CA 12 of 1985 where it was stated that for fraud to succeed as a cause of action, it

must be attributable either to the registered purchaser or to its agents. This was the position of court in **Mudiima Issa and others vs Elly Kayanja and others** SCCA No.4 of 2006. In **Fredrick Zabwe vs Orient Bank and Ors** (supra) it was held that particulars of fraud must be strictly pleaded and that a bona fide purchaser for value cannot have his transfer defeated by fraud perse.

Analysis by court;

- 62. I concur with the authorities referred to by counsel for the plaintiffs as regards to what amount to a cause of action in law.
- 63. The plaintiffs in their amended plaint under paragraph 5 clearly state how the cause of action under which the instant suit is based is fraud and they proceed to particularize the fraud against the 3 defendants, as follows;
 - i) The 1st defendant selling the suit land to the plaintiffs and then to the 2nd defendant.
 - ii) The 1st defendant refusing to avail the plaintiffs with transfer forms and the mutation forms as earlier agreed.
 - iii) The 2nd defendant purchasing the suit land from the 1st defendant having known of the plaintiffs' interest in the suit land in the meeting between the plaintiffs and the 1st defendant.
 - iv) The 2nd defendant purchasing the suit land from the 1st defendant without conducting due diligence.
 - v) The 2nd defendant selling the suit land to the 3rd defendant having known of the plaintiffs' interest in the suit land in the various meetings between the plaintiffs and the 1st defendant.
 - vi) The 3rd defendant purchasing the suit land from the 2nd defendant without conducting due diligence.
- 64. The perusal of the body of the sales agreement dated 25th November 2001 indicates the 2nd – 7th plaintiffs as purchasers though they did not sign on the said agreement, the plaintiff avers that the 1st defendant entered into the said agreement with the notice of the 2nd – 7th plaintiffs indicated as purchasers' who then

came back later and denied the said parties that they do not have the locus to bring a suit to protect the land that was subject to the said sale agreement.

- 65. It appears to me that the 1st defendant by his act of drafting the said sales agreement and being party to the same where he indicated the 2nd – 7th plaintiffs as purchasers in the same sales agreement, why then come back later and plead that the 2nd – 7th plaintiffs were not party to the said transaction and denying them locus in the instant suit where the same land that was the subject to the sales agreement is the same land in dispute before court.

- 66. The evidence Act under section 114 is to the effect that "When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or

his or her representative, to deny the truth of that thing".

- 67. An estoppel by conduct arises where one person (the representor) induces another (the representee) to adopt and act upon an assumption of fact or an assumption as to the future conduct of the representor *(See; Opio William vs Odida Justine*

CA 27 of 2019 before Justice Stephen Mubiru).

- 68. At common law, the estoppel prevents the representor from denying the truth of the assumption in litigation between the parties, so the rights of the parties are determined by reference to the assumed state of affairs. If a person, either by words or by conduct, has intimated that he or she consents to an act which has been done, and that he or she will offer no opposition to it.
- 69. In order to support an estoppel by conduct, the representation (assumption) must be representation of an existing fact, a promise or representation of intention to do something being insufficient for that purpose*. (see; Yorkshire insurance co.*

vs craine(1922)2 AC 541 at page 553)

- 70. In the instant suit, the 1st defendant indicated it in the body of the agreement how the 2nd – 7th plaintiffs were purchasers and the 1st plaintiff signed on behalf of the 2nd – 7th plaintiffs then why deny their locus at a later stage.
- 71. I find that the 1st defendant is estopped by his conduct in law to allege that the 2nd – 7th plaintiffs do not have locus to bring the instant suit just because they did not sign on the sales agreement.
- 72. Therefore, I find that the 2nd -7th plaintiffs have a cause of action against the 1st defendant. estopped to deny the fact that the 2nd – 7th plaintiffs were not party to the sale yet he indicated in the sales agreement that the said parties were purchasers of the suit land.
- 73. Counsel for the 2nd defendant submitted that the plaintiffs do not have a cause of action against the 2nd and 3rd defendants because the plaintiffs do not have any contractual arrangement with the 2nd and 3rd defendants and the fact that the 2nd and 3rd defendants purchased different plots from what the plaintiffs claim.
- 74. Counsel for the 2nd defendant further goes ahead to decline the contents of the letter from the 2nd defendant's lawyers then Kasekende, Kyeyune and Lutaaya Advocates that it was manufactured by the counsel for the plaintiffs to make his case.

- 75. PW1 in her testimony stated that the 2nd defendant is someone who came to the meeting that was held by the LC1 and the 1st defendant does not deny the presence of the 2nd defendant in the meeting. That's how the plaintiff came to know of the 2nd defendant.
- 76. Further the fact that the land in dispute as observed during locus proceedings, it's the plaintiffs in possession of the same land, the same plaintiffs bring this suit to protect their interest in the said land, that's the same land the 2nd defendant allegedly sold to the 3rd defendant something that is depriving the plaintiffs quiet possession of the land.
- 77. All the above facts justify as to why the plaintiffs brought this suit against the 2nd and 3rd defendants as well, there need not be a contractual arrangement between the parties for there to exist a cause of action between the parties.
- 78. As to the fact that the land the 2nd and 3rd defendant purchased had different plot numbers from the land the plaintiff claims in the instant suit, this is a fact that was addresses by the plaintiff in her testimony where she stated that the 1st defendant was in the process of mutation and even promised the plaintiffs a certificate of title upon mutation, this justifies the difference in plot numbers since at the time the 2nd and 3rd defendants purchased the same land, it was already mutated and the plot numbers had since changed.
- 79. During the locus visit the court observed that the land the 2nd and 3rd defendants allegedly bought is the same land the plaintiffs claim and it's the plaintiffs in possession of the same.
- 80. Therefore, I am not persuaded by counsel for the 2nd defendant's assertions that the plaintiffs do not have a cause of action against the 2nd and 3rd defendants because of the difference in plot numbers.
- 81. As to whether the letter from Kasekende, Kyeyune and Lutaaya Advocates the 2nd defendant's lawyers by then was forged or not, the reading of the body of the said headed letter says *"that our client is in the process of acquiring a land title to the portion of the land that he bought from the above described registered proprietor"* the letter indicates how Kasekende, Kyeyune and Lutaaya Advocates were acting on behalf of the 2nd defendant, counsel for the 2nd defendant did not adduce any evidence to the contrary as to how the said letter was fabricated or manufactured by counsel for the plaintiffs.
- 82. Any person with the basic knowledge of the law would wonder how a prominent law firm writes a letter on a headed paper of the same firm, start the letter with the phrase "we act for and behalf

of Raymond Abaasa (2nd defendant) herein referred to as our client....." with full details of the entire transaction when and how it took place between the 1st and 2nd defendant and take note of the constructions on the suit land that belonged to the plaintiff without instructions. Counsel for the 2nd defendant ought to have adduced credible evidence to the contrary other than just mere manufacturing of the case allegations against counsel for the plaintiffs.

- 83. I take note how it has become a developing tendency of counsel in personal conduct of cases before courts of law to personally attack their fellow learned colleagues over baseless allegations to satisfy in order to satisfy their client's interests. As learned colleagues who fully appreciate the beauty in practicing law, should refrain themselves from personally attacking their fellow, such acts are barbaric and not morally and ethically right.
- 84. I find that the plaintiffs have a cause of action against the defendants in the instant suit, therefore issues 3 and 4 are answered in the affirmative.

Issues 5 and 6; whether the 2nd and 3rd defendants are bonafide purchasers and transferees?
And whether the 3rd defendant's

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certificate of title comprised in Mailo Register Kyadondo Block 230 Plot 1962 was procured fraudulently?

- 85. Counsel for the plaintiffs submitted that the 3rd defendant is the registered proprietor on the certificate of title to the suit land having purchased the same from the 2nd defendant, however the said certificate of title was procure fraudulently, further the certificate of title for a bonafide purchaser for value without notice is the exception to the principle of indefeasibility of a certificate of title due to fraud as stated in the decision of **David Sejjaka Nalima**

VS Rebecca Musoke SCCA 12 OF 1992.

- 86. Counsel for the plaintiffs submitted that the principle of bonafide purchaser for value is applicable if the party had no notice of the fraud, the 3rd defendant himself admitted that he learnt of the existence of the uniport on the suit land and a current house but took no step to either complain, remove the said structures nor even inquire as to who owned the said structures.
- 87. One is considered a bonafide purchaser in good faith if he or she buys the property without notice that some other person has a right to or interest in such property for valuable consideration and one who buys a property with knowledge of facts which should put

him or her upon inquiry or investigation as to a possible defect in the title of the seller acts in bad faith and the equitable claim is defeated by malafides.

- 88. Counsel for the plaintiff further submits that the 2nd and 3rd defendants would have had notice of the defect had they acted with that measure of precaution which may reasonably be required of a prudent person. Constructive notice applies when a purchaser knows facts which made it imperative to seek an explanation because in the absence of an explanation it was obvious that the transaction was probably improper.

- 89. During the locus visit PW1 did show court the slab of the demolished house which was broken down and the current residential house which belongs to the plaintiff as well as the uniport and maize plantations, had the 2nd and 3rd defendants taken necessary steps in inquiring about the suit land, they would have discovered that indeed the plaintiffs were in possession of the suit land and the same parties cannot claim protection under the doctrine of bonafide purchaser for value without notice of the fraud.
- 90. In reply counsel for the 2nd defendant submitted that a bonafide purchaser is one who acquires property without actual or constructive notice of any defects in title as stated in the decision

of Lwanga vs Registrar of Titles of 1977.

- 91. For a purchaser to successfully rely on the doctrine of bonafide purchaser for value without notice as was held in the case of **Hannington Njuki vs William Nyanzi Civil Suit No.434 of 1996** must prove that;
 - a. he holds a certificate of title
 - b. purchased the property in good faith
 - c. he had no knowledge of the fraud
 - d. he purchased for valuable consideration
 - e. the vendors had apparent title
 - f. he purchased without notice of any fraud
 - g. he was not party to the fraud
- 92. Counsel for the 2nd defendant further submits that the 2nd defendant in paragraph 4 of his written statement of defence says that he is the registered proprietor of the suit land which he acquired through a purchase from the 1st defendant at a consideration of ugshs 13,000,000 as per the sales agreement

(DEX4) dated the 22nd march 2010. Further the 2nd defendant before purchasing the said land conducted a search at the land registry to ascertain who the registered proprietor of the land was, a search report was issued as evidenced under DE1 which report indicated that the 1st defendant was the rightful registered proprietor of the suit land at that time.
- 93. The 2nd defendant engaged services of Geo surveyors to carry out a survey and ascertain the exact piece of land and proceeded to carry out physical inspection of the land and found no one was in possession at that time.

- 94. Counsel for the 2nd defendant submitted that the inconsistencies and contradictions in the plaintiff's evidence show that they are trying to put up events that did not exist at the time when the 2nd defendant purchased the land in good faith and there was no way the 2nd defendant would have taken notice of the plaintiffs' interest in the suit land
- 95. Counsel for the 3rd defendant submitted that his client duly paid consideration for the suit land after carrying out due diligence and there is no way he could have taken part in the fraud and taken

notice of the plaintiff's interest, he further relied on the decision in *Lwanga vs registrar of titles*(supra)

Analysis of the issues;

96. I take note of the authorities referred to by counsel as to who is a bonafide purchaser for value without notice.
97. A person is considered a purchaser in good faith if he or she buys the property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property.
98. It connotes an honest intention to abstain from taking undue advantage of another. Good faith consists in the buyer's belief that the person from whom the buyer purchased the land was the owner and could convey title. Good faith, while it is always to be presumed in the absence of proof to the contrary, requires a well-founded belief that the person from whom title was received was himself or herself the owner of the land, with the right to convey it.
99. Parties cannot seek refuge under the doctrine of bonafide purchaser for value if they and notice of any existing prior interest in the same property, According to Cheshire and Burns in their book

Modern Law of Real Property, 16th Edition page 60; constructive notice is generally taken to include two different things: (a) the notice which is implied when a purchaser omits to investigate the vendor's title properly or to make reasonable inquiries as to the deeds or facts which come to his knowledge; (b) the notice which is imputed to a purchaser by reason of the fact that his solicitor or other legal agent has actual or implied notice of some fact.

100. I will draw reference to the decision in *In *Hunt v. Luck (1901) 1 Ch 45** the court considered the nature of constructive notice. Farwell J said: "Constructive notice is the knowledge which the courts impute to a person upon presumption so strong of the existence of the knowledge that it cannot be allowed to be rebutted, either from his knowing something which ought to have put him on further enquiry or from willfully abstaining from inquiry to avoid notice."*

101. Constructive notice applies if a purchaser knows facts which made "it imperative to seek an explanation, because in the absence of an explanation it was obvious that the transaction was probably improper, when it is proved that such a purchaser acquired knowledge of circumstances which would put an honest and

reasonable man on inquiry and yet he did not undertake the necessary inquiries, such a purchaser cannot claim to have bought in good faith. 102. The ascertainment of good faith, or lack of it, and the determination of whether due diligence and prudence were exercised or not, are questions of fact which require evidence. The burden of proof to establish the status of a purchaser in good faith lies upon the one who asserts it. This **onus probandi** cannot be discharged by mere invocation of the legal presumption of good faith*. (see; *Obina Vs Okumu and ors* CA No.042 of 2018 before Justice Stephen Mubiru).*

103. It is the submission of counsel for the plaintiffs that the 1st defendant selling the land and receiving money for land that was unavailable for sale to another person was fraudulent.
104. The supreme court of Uganda in *Molly Turinawe and Ors vs Engineer Ephraim Turinawe and Anor* SCCA No.10 of 2018 referring to the decision of the same court in *Ismail Jaffer Allibhai and 2 ors vs Nandlal Harjivan Karia and anor* where court held that on completion of a contract of sale of immovable property, property passes to the purchaser and the vendor holds it as a trustee for the purchaser and the legal title remains with

the vendor until transfer is affected. The equitable title which passes to the purchaser is considered to be superior to the vendor's legal title which is extinguished on payment of the purchase price by the purchaser. The law on real property by *Re Megarry and Wade* quoted pg 582 as follows; "(a) The purchaser as owner; If the purchaser is potentially entitled to equitable remedy of specific performance, he obtains an immediate equitable interest in the property contracted to be sold for he is or soon will be, in a position to call for it specifically. It does not matter that the date for completion, when the purchaser may pay money and take possession, has not yet arrived, equity looks upon that as done which ought to be done, and from the date of contract the purchaser becomes owner in the eyes of equity (he cannot, of course, become owner at law until the land is conveyed to him by deed). This equitable ownership is as has been seen, a proprietary interest, enforceable against third parties, though it must be registered to protect it against purchasers.

- (b) The vendor as trustee:

As between the parties to it, the contract creates a relationship of trustee and beneficiary: the vendor is said to be trustee for the

purchaser and the purchaser to be beneficial owner. The vendor must therefore manage and preserve the property with the same care as is required of any other trustee, until it is finally handed over to the purchaser.

105. In the instant case the 1st defendant and plaintiffs transacted over the suit land where the 1st defendant surrendered possession to the plaintiff, he could not proceed to sell the same land to the 2nd defendant since in equity he became a trustee for the purchaser of the land sold and the beneficial ownership passes to the purchaser, the 1st defendant could not pass title of the same land since the plaintiffs had purchased the same.
106. It is also a fact during cross examination of DW3 that he never visited the area LC1 before purchasing the said land he deliberately chose not to inquire about the physical status of the suit land. The same party cannot seek legal protection under the doctrine of bonafide purchaser for value without notice.
107. Further the 3rd defendant admitted that he learnt of the existence of a uniport on the suit land and the current house but he never labored to find out the owner of the said structures before purchasing the land. These are facts that would have pushed a reasonable person to conduct further inquiries about the land before purchasing the same land. Had the 3rd defendant taken all the necessary steps to carry out the necessary due diligences as to who owned the uniport on the suit land, he would have found out that it was the plaintiffs who owned the same.
108. When a subsequent purchaser has actual knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in the vendor or of sufficient facts to induce a reasonably prudent person to inquire into the status of the title of the property in litigation his or her mere refusal to believe that such defect exists or willful closing of his or her eyes to the possibility of the existence of a defect in the vendor title will not make the purchaser an innocent purchaser for value.
109. I take note that the 2nd and 3rd defendant's sales agreement included a clause of introducing the buyer to the area local council committee as the legitimate owner, however the same was not done by the parties.
110. Parties who desire to purchase land should take note of all the necessary due diligence supposed to be conducted by a purchaser before entering into a land transaction, the aspect of blind offers in purchasing land won't be entertained by courts, land disputes in Uganda today are on a very high toll due the increasing number of land grabbers and fraudsters.
111. Be that as it may, it is to the finding of this court that the 1st defendant could not pass the land that was not available for sale to the 2nd defendant and the title of the 2nd defendant could not in any way take priority over the plaintiff's interest and the 3rd defendant cannot be offered protection under the doctrine of bonafide purchaser for value without notice as per the facts at hand.
112. Therefore issues 5 and 6 are answered in the affirmative

Issue 7; what remedies are available to the parties?

113. Counsel for the plaintiffs prayed for the following orders from court; a) declaration that the plaintiffs are the lawful owners of the suit land, b) a declaration that the 2nd and 3rd defendants illegally and fraudulently occupied the suit land, that the suit land be vested in the plaintiffs, mesne profits, an order compelling the 1st defendant to execute all necessary documentations to transfer the land into the plaintiffs names, vesting order of the suit land into the names of the

plaintiff, permanent injunction against the defendants, general damages and costs of the suit.

114. **General damages;** The law on general damages is that the damages are awarded at the discretion of the Court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. (**Hadley v Baxendale (1894)**)

9 Exch 341)

115. The decision in **Kampala District Land Board & George Mitala v Venansio Babweyana Civil Appeal No. 2 of 2007** is a well settled law on award of damages by a trial court. It is trite law that damages are the direct probable consequences of the act complained of.

116. The plaintiffs have been denied full usage of their land ever since the disputes over the same land started facing financial hardships, counsel for the plaintiff prayed for a sum of UGX 300,000,00 as general damages.

117. This court takes note of all the facts of the case and deems it appropriate to award the plaintiffs general damages of UGX 40,000,000 (forty million Ugandan shillings) at an interest rate of 10% from the date of this judgement until payment in full.

118. **Special damages;** the law on special damages is that they should be strictly pleaded by the party. Counsel for the plaintiffs in his amended plaint under paragraph 6, he specifically pleads the said damages to include the costs of construction materials, labor costs, costs for securing a structural plan, security at the site and miscellaneous totaling to a sum of UGX 90,000,000.

119. This honorable court is pleased to award a sum of Ugshs 15,000,000 (fifteen million Uganda shillings) as special damages to the plaintiffs.

120. **Costs of the suit;** Under Section 27 of the Civil Procedure Act, costs follow the event. The plaintiffs being the successful party in this case are entitled to costs of the suit.

121. For the foregoing reasons, I proceed to pronounce judgement and decree for the plaintiffs against the defendants' jointly and severally upon the terms that;

- i) A declaration that the plaintiffs are rightful owners of the suit land.

- ii) A declaration that the 3rd defendant's registration on the certificate of title to the suit property was tainted with fraud.
- iii) An order directing the commissioner land registration to cancel the 3rd defendant's names on the certificate of title for Kyadondo Block 230 Plot 1962 land at Kamuli.
- iv) A vesting order to the commissioner land registration to register the plaintiffs as the registered proprietor to the suit land comprised in Kyadondo Block 230 Plot 1962.
- v) General damages of Ughs 40,000,000(forty million Uganda shillings) awarded to the plaintiffs against the defendants jointly at an interest rate of 10% from the date of this judgement until payment in full.
- vi) Special damages of ugshs 15,000,000(fifteen million Ugandan shillings) awarded to the plaintiffs against the defendants jointly.
- vii) Costs of the suit awarded to the plaintiffs to be paid jointly and severally by the defendants.

I SO ORDER.

NALUZZE AISHA BATALA

JUDGE

h/08/2024

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