

UGANDA / JUDGMENT

Namugwanya v Ssendagala (Civil Suit 694 of 2018) [2025] UGHCLD 45 (7 March 2025)

[2025] UGHCLD 45

COURT

HC: Land Division (Uganda)

BEFORE

Busingye, J

CASE / FILE NUMBER

Civil Suit 694 of 2018

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 0694 OF 2018

SARAH NAMUGWANYA ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

AMON SSENDAGALA ::::::::::::::::::::::::::::::::::: DEFENDANT

Before: Hon. Lady Justice Immaculate Busingye Byaruhanga

JUDGMENT

The plaintiff brought this suit against the defendant with a claim of trespass on land comprised in Kyadondo Block 131 Plot 80 at Nakakololo (hereinafter referred to as

20 the 'suit land'). The plaintiff sought for orders including a permanent injunction restraining the defendant and anybody claiming an interest therein from trespassing on the suit land, general damages and costs of the suit.

On the other hand, the defendant denied the plaintiff's claim and counterclaimed against the plaintiff and a one Ntanda Israel on allegations of fraud as follows;

- 25 a) The defendant contended that he is a son and beneficiary to the estate of the Late Yubu Sentamu who was at all material was the owner of the suit land measuring approximately 17 acres.

- b) That the late Yubu Sentamu purchased the suit land in 1967 from the late Paul Nsubuga and immediately took possession of the same, after which the latter 30 executed transfer forms to the former, however the transfer forms and certificate of title were destroyed during the bush war of 1980 to 1986.

- 5 c) That the late Nsubuga died during the said war which made it difficult for the defendant's late father to obtain a special certificate.
- d) That the defendant's late father constructed a house and cultivated various crops and trees on the suit land and the said home is still on the suit land.
- e) That the late Yubu Sentamu (defendant's deceased father) approached the 2nd
- 10 counter-defendant Israel Ntanda, an administrator of the Late Nsubuga's estate who validated the former's purchase of the suit land and by agreement dated 25th April 1994, promised to transfer the suit land into the late the defendant's late father's names.
- f) That the defendant's late father died before the 2nd counter-defendant finalized 15 the transfer as agreed.
- g) That on 7th September 2008, the defendant and other beneficiaries of the estate of the late Yubu Sentamu entered into another agreement with Israel Ntanda wherein it was agreed that the former would surrender 7 (seven) acres to Israel in consideration for processing of a certificate of title for the 10 (ten) acres of 20 the remaining kibanja comprised in the suit land.
- h) That after taking possession of the 7 acres, the 2nd counter-defendant only processed a certificate of title for 4 (four) acres and refused to give the counterclaimant a title for the remaining 6 (six) acres and instead proceeded to sell the remaining part to third parties including the plaintiff/ 1 st counter-25 defendant.
- i) That the plaintiff/ 1st counter-defendant bought the defendant's land from Israel Ntanda well knowing that the defendant was in possession of the same.
- j) The defendant as the counterclaimant sought inter alia, the following orders:
 - i) A declaration that the suit land belongs to the counterclaimant.
 - ii) An order specific performance compelling the 2nd 30 defendant to the counterclaim to transfer and surrender six acres of the suit land to the

Page 2 of 22

- counterclaimant as per memorandum of understanding dated 7th 5 September 2008.

- iii) A declaration that the 1st counter-defendant's purchase of the suit land was fraudulent and illegal.
- iv) An order for cancellation of the entries of the plaintiff as the registered 10 proprietor of the suit land.
- v) Alternately, surrender another piece of land within the vicinity or to the least recompense the counterclaimant to the extent of the current market value of the land.
- vi) An order of permanent injunction restraining the counter-defendants to 15 the counterclaim from further trespass, subdivision, transfer, alienating, dealing, selling and/ or in any way interfering with the counterclaimant's peaceful and quiet enjoyment of the suit land.
- vii) General damages for loss and inconvenience, mesne profits.
- viii) Costs of the counterclaim.

20 Counsel legal representation

The plaintiff was represented by **Bukesi Jasper** while the defendant was represented by **Tumusiime Judith**.

In the Joint Scheduling Memorandum filed in 26 th May 2022, the parties and their respective counsel agreed upon facts, documents and formulated issues for 25 determination as follows:

Agreed upon facts included the following:

1. That the plaintiff is the registered proprietor of land comprised in Kyadondo Block 131 plot 80 at Nakakololo which she acquired from Ntanda Israel.

5 Issues for determination

- 1. Whether the plaintiff is the lawful owner of the land comprised in Kyadondo Block 131 plot 80 at Nakakololo.
- 2. Whether the defendant has a valid counterclaim against the plaintiff.
- 3. Remedies available to the parties.

10 Witness evidence

The parties also agreed to adduce evidence from several witness. The plaintiff adduced evidence from four witnesses Sarah Namugwanya (**Pw1**), Sunday Mukasa (**Pw2**), Allen Nakintu (**Pw3**), and Muyimbwa Fred (**Pw4**) while the defendant adduced evidence from three witnesses Ssendagala Amon (**Dw1**), Kabanda John

15 (Dw2), and Shaban Lukyamuzi (Dw3).

Documentary evidence

The parties also relied on documentary evidence which was marked and exhibited. The plaintiff relies on the following documents;

1. Certificate of title of land comprised in Kyadondo Block 131 Plot 80 at

20 *Nakalolo marked PExh.1.*

- *2. Memorandum of understanding between the children of Yubu Sentamu & Israel Ntanda dated 7/9/2008 marked PExh.2(a) and (b)*
- *3. An acknowledgment of a certificate of title marked PExh.3 (a) and (b)*
- *4. Copy of a kibanja surrender agreement between Nakayima Ferista and*
25 *Ntanda Israel dated 26/5/2009 marked PExh.4 (a) and (b)*
- *5. A copy of the land sale agreement between Israel Ntanda and the plaintiff dated 26/5/2009 marked PExh.5*
- *6. Copy of Judgment in Criminal Case N. 413 of 2014 marked PExh.6*
- *7. Order of Criminal Case No. 302 of 2014 marked PExh.7*
- 30 On the other hand, the defendant relies on the following documents:
 - *1. Agreement dated 25th April 1994 marked DExh.1(a) and (b)*
 - *2. Acknowledgment dated 3/12/1995 marked DExh.2 (a) and (b)*

3. Receipt for ground rent dated 25th 5 *June 1968 marked DExh.3*

Locus visit

On 22nd November 2024, while in the attendance of Counsel for the plaintiff and the defendant, the plaintiff, and the defendant, Court visited locus in quo pursuant to **Practice Direction No. 1 of 2007** which stipulates that courts handling land matters

10 should as so far as possible, *interest themselves in physically visiting properties under dispute before pronouncing themselves on the proprietary rights of the parties.*

Burden and standard of proof in Civil Cases

Section 101(1) and (2) of the Evidence Act Cap.8 (Revised) Laws of Uganda,

15 "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he or she asserts must prove that those facts exist."

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Section 102 of the Evidence Act goes on to provide

20 that;

"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and Section 103 provides that "the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is* 25 *provided by any law that proof of that fact shall lie on any particular person"

These principles have been reiterated in so many judicial precedents where it has been decided that in civil matters just like the instant case, the burden of proof rests on whoever asserts a fact and the standard of proof is on a balance of probabilities.

30 (See *Jovelyn Barugahare versus Attorney General SCCA No. 28 of 1993*)

Background of the suit

In a letter dated 25th April 1994, the 2 nd 5 counter-defendant Israel Ntanda wrote to the Late Yubu Sentamu (the defendant's late father) acknowledging that the latter purchased a kibanja measuring approximately 17 acres and 1 decimal from Paul Nsubuga, Israel Ntanda's late father. (**DExh.1 (a) and (b).**

On 3rd December 1995, the late Yubu Sentamu paid Mr. Ntanda UGX 24,000 10 (Uganda shillings twenty-four thousand) leaving a balance of UGX 26,000 (Uganda shillings twenty-six thousand) (**DExh.2 (a) and (b).**

On 7th September 2008, the children of the late Yubu Sentamu including the defendant/ counterclaimant entered into a memorandum of understanding with the heir of Paul Nsubuga (Israel Ntanda) wherein it was agreed that that the beneficiaries

15 of the Late Yubu Sentamu would surrender 7 acres of their kibanja to Israel Ntanda in turn for the registration of the remaining 10 acres and issuance of a certificate of title for the same (**PExh.2).**

On 26th May 2009, the children of the late Yubu Sentamu including the counterclaimant/ defendant acknowledged receipt of a title deed from Ntanda Israel, 20 however the former disagreed with the contents of the said title as it did not reflect the position in PExh.2 (**PExh.3 (a) and (b).** In the same year, a one Nakayima Felista returned her kibanja to the 2nd counter defendant Israel Ntanda (**PExh. 4 (a) and (b)** and subsequently on the very day Ntanda Israel

entered into an agreement for sell and purchase of land comprised in Kyadondo Block 131 Plot 80 at Nakakololo (suit

25 land) with the plaintiff for a consideration of UGX 12,000,000 (Uganda Shillings twelve million) (PExh.5) and the latter was subsequently registered on the certificate of title on 12th June 2009 at 4:32pm under Instrument Number no. KLA418453 (PExh.1).

5 In 2014, the defendant was charged and convicted with criminal trespass and malicious damage on complaint by the plaintiff in Criminal Case No. 413 of 2014 (PExh.7 and PExh.6).

Resolution of issues

1. Issue No.1: Whether the plaintiff is the lawful owner of the land 10 comprised in Kyadondo Block 131 plot 80 at Nakakololo.

In submitting on this issue, counsel framed a sub issue under **Order 15 rule 1 of the Civil Procedure Rule** in regards to "**whether the defendant is a trespasser on the suit land**". It is counsel for the plaintiff's submission that the plaintiff is the registered proprietor of the suit land and as such has a certificate of title (PExh.1)

15 which is conclusive evidence of ownership under **Section 59 of the Registration of Titles Act**.

Counsel for the plaintiff argued that the defendant unlawfully and forcefully entered the suit land belonging to the plaintiff in 2014 and cut down her trees which prompted criminal proceedings in Criminal Case No. 413 of 2014 wherein the 20 defendant was convicted with criminal trespass and malicious damage to property. Counsel for the plaintiff concluded his submission on this issue in the affirmative. Counsel cited several cases including **Katerega John versus Bamwiite Emmanuel HCCS No. 573 of 2020**, **OJwang versus Wilson Bagonza CACA No. 25 of 2020** among others.

25 On the other hand, counsel for the defendant submitted that upon purchasing and occupying the suit land, the plaintiff was aware of the defendant's interest in the suit land. Counsel for the defendant further argued that it was the plaintiff's duty to verify the defendant's claim and have the same settled before purchase, failure of which

5 rendered the plaintiff's title a nullity hence the plaintiff cannot claim to be a bonafide purchaser for value.

Counsel for the defendant further argued that during the locus in quo visit, the plaintiff confirmed that she owned another piece of land next to the suit land and as such the same serves as proof that the plaintiff was aware of the defendant's interest 10 and ongoing wrangles between the defendant and Israel Ntanda about the suit land

and yet chose to acquire a titled interest in the suit land marred by fraud.

In further argument, counsel for the defendant submitted that the defendant has at all material times been in possession of the suit land having derived an interest in the same from his late father Yubu Sentamu. Following the foregoing submissions, 15 counsel for the defendant submitted that the defendant is a lawful occupant of the

suit land. Counsel cited the authorities of **Nabanoba Desiranta & Anor versus Kayiwa Joseph & Anor HCCS No. 496 of 2005**, **Amratlah Purshottam & anor versus Gian Singh Bhambra HCCS No. 289 of 2010**.

Determination

- 20 It is the plaintiff's contention that she purchased the suit land comprised in Kyadondo Block 131 Plot 8o land at Nakakololo on 26th May 2009 from Israel Ntanda (PEXh.5). The plaintiff's claim against the defendant is trespass on the suit land. In determining this issue, I shall adopt the sub issue raised counsel for the plaintiff which is "**whether the defendant is a trespasser on the suit land**".
- 25 The concept of trespass to land has been defined and discussed in a plethora of cases among them is **Justine E M N Lutaaya versus Sterling; Civil Eng. Appeal No.11 of 2002***;^{*} wherein the Supreme Court held that^{*,*}

5 ^{*}"Trespass to land occurs when a person makes an unauthorized entry upon another's land and thereby interfering with another's person lawful possession of the land".^{*}

It is trite that the gist of an action for trespass to land is violation of possession, and not a challenge to title. Trespass to land is premised upon interference with 10 possession to land. In the case of **Adrabo Stanley versus Madira Jimmy HCCS**

No. 24 of 2013, the Hon. Justice Stephen Mubiru stated that;

"^{*}Trespass is an unlawful interference with possession of property. It is an invasion of the interest in the exclusive possession of land, as by entry upon it. It is an invasion affecting an interest in the exclusive^{*} 15 ^{*}possession of property."^{*}

> ^{*}The cause of action for trespass is designed to protect possessory, not necessarily ownership, interests in land from unlawful interference. Therefore, only one whose right to possession has been violated may technically maintain an action for trespass."^{*}

20 The possession in question ought to be actual or constructive and the plaintiff must demonstrate his or her exclusive possession and control of the land.

In the case of **Sheikh Muhammed Lubowa versus Kitara Enterprises Ltd C. A. C. A No. 4 of 1987**, the Court of Appeal laid out the conditions to be satisfied in order to successfully prove trespass to land. These include;

- 25 *i. That the disputed land belonged to the plaintiff*
- *ii. That the defendant entered upon the disputed land*
- *iii. That the entry was unlawful or that the defendant had no claim of right or interest in the disputed land.*

That the disputed land belongs to the plaintiff

30 It is the plaintiff's contention that she purchased the suit land from Israel Ntanda (PEXh.6) who purchased the same from a one Nakayima Felista (PEXh.4 (a) and (b)). During cross examination, it was the plaintiff's testimony that she conducted

5 inquiries from the Local Council 1 (LC1) Chairperson regarding the ownership of the suit land before purchasing the same from Israel Ntanda.

The said LC.1 Chairperson Muyimbwa Fred who testified as Pw4 corroborated the plaintiff's testimony by stating during cross examination that it is Israel Ntanda who introduced the plaintiff to him. Pw4 further testified that the plaintiff bought land 10 which previously belonged to Nakayima who sold back her kibanja to Israel Ntanda after being compensated. This evidence is in tandem with the evidence of Pw3 who testified that she was the paternal aunt to Nakayima and was very much aware that Nakayima was utilizing the suit land and later on she was compensated by Israel Ntanda in respect of the suit land and Israel Ntanda eventually sold to the plaintiff.

15 Pw3 stated in cross examination that Nakayima's father was her brother who bought a kibanja on the suit land from Yubu Ssentamu and further told court that her brother was called Ssebalamu and that is how Nakayima inherited the kibanja on the suit land. The defendant who testified as Dw1 told court that Nakayima used to cultivate the suit land but was not aware that she was compensated by Israel Ntanda. This 20 evidence shows that the defendant was aware that Nakayima had previously had equitable interests in the suit land.

It should be noted that Pw4 told court that the children of Yubu Ssentamu had had got 6 acres in respect of the suit land and they even sold two acres before acquiring the certificate of title. Pw4 testified that the children of Yubu Ssentamu got four 25 acres with a title from Israel Ntanda since they had sold two acres before acquiring title. This corroborates the evidence contained in PEXh.2 which is a memorandum of understanding between the children of the late Yubu Ssentamu and Israel Ntanda as heir of Paul Nsubuga where by Israel Ntanda was to get seven acres and Ssentamu's children were to take ten acres. The defednat sined on that exhibit as 30

number 1 (one). According to the evidence of Pw4, Israel Ntanda had decided to

- 5 compensate bibanja holders on his late father's land and this explains the evidence of Pw3 who told court that Nakayima was compensated by Israel Ntanda and the land she was utilizing was sold to the plaintiff by Israel Ntanda. According to the observations made by court during the locus visit, the suit land which was at point E, was being utilized by the plaintiff and the defendant told court that his residential 10 house was neighbouring the suit land. The plaintiff was in occupation of the suit land according to the locus visit observations. The plaintiff had planted bananas on the suit land and the defendant told court at locus in quo that the crops on the suit land belonged to the plaintiff and that he was not using the suit land though he kept saying that the suit land was his.
- 15 I have also observed that transactions under **PExh.3** (acknowledgment of the certificate of title by the children of the Late Yubu), **PExh.4** (return of the kibanja by Nakayima Felista to Israel Ntanda) and **PExh.5** (sale agreement between the plaintiff and Israel Ntanda (2nd counter-defendant) were all executed on the same day being 26th May 2009.
- 20 On the other hand, it was the defendant's contention that the suit land is inclusive of a bigger portion of land having been purchased by his late father Yubu Ssentamu in 1967 as per paragraph 3 of the defendant's witness statement. I have critically studied **DExh. 1(b)** which is a letter authored by Israel Ntanda, the heir to the late Paul Nsubuga and addressed to Yubu Ssentamu, wherein the Israel Ntanda confirmed 25 the fact that Yubu Ssentamu had purchased 17 acres and 1 decimal from Ntanda's
- late father Paul Nsubuga in 1968. It is not in contention that the defendant is a biological son of the late Yubu Ssentamu.

I have also observed in **PExh.2 (b)** wherein it was agreed that the late Yubu Ssentamu's children would surrender 7 acres to Israel Ntanda as the landlord in 30 return for 10 acres of titled land. However, it was the defendant's contention in his

defence and counterclaim that Israel Ntanda (2nd 5 counter-defendant) only 4 acres of land were titled leaving a balance of six acres, four of which were sold to the plaintiff by the 2nd counter-defendant.

During cross-examination, it was the Pw3 (Allen Nakintu) 's evidence that her late brother Falasio Ssebalamu purchased a kibanja from Yubu Ssentamu and upon the 10 Ssebalamu's demise the same was inherited by his daughter Felista Nakayima, who subsequently returned the said kibanja to Israel Ntanda (**PExh.4 (b)**).

It was the testimony of the defendant/ Dw1 that he was born on the suit land and that at all material time, he has always been in occupation of the suit land which was using for farming. Pw4 who is also the L. C.1 chairperson of the jurisdiction of the

15 suit land, told court that before his demise, Yubu Ssentamu the late father of the defendant was farming on the 17 acres with other squatters until his demise. This was stated during the re-examination of Pw4. I have also observed that according to **DExh.3** the late Yubu Ssentamu was paying ground rent.

A lawful and bonafide occupant's interest is loosely translated to mean a 'kibanja'

20 interest in Uganda's Torren system. **Section 29 of the Land Act as amended** gives the meaning of a lawful and bonafide occupant of land as follows;

(1)'Lawful occupant' means;

- *a) A person occupying land by virtue of the repealed;*
- *i. Busuulu and Envujjo law of 1928;*
- 25 *ii. Toro Landlord of 1937;*
- *iii. Ankole Landlord and Tenant Law 1937;*
- *b) A person who entered the land with the consent of the registered owner and includes a purchaser; or*
- *c) A person who had occupied land as a customary tenant but whose* 30 *tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title*

- 5 During the locus in quo proceedings, court observed that the defendant does not reside on the suit land since his home is located on the plot neighboring suit land located at plot 79 as was equally confirmed in **PExh.3** while the suit land is comprised in plot 80. In addition, during the locus visit, court observed that there are squatters on the suit land who are recognized by the plaintiff as the registered 10 proprietor and Pw3 told court at locus that the space occupied by the said squatters
- equally belonged to Israel Ntanda's father and she bought the said space as part of the four acres but she left the said squatters to keep on one acre. This was on the lower side of the suit land. This indicates that the plaintiff bought the suit land after conducting due diligence. She found squatters on part of the land she bought and
- 15 recognized them and has not even attempted to evict them. There is no evidence that the defendant was in charge of the suit land at the time when the plaintiff bought the same. According to the evidence of Pw4 the seller introduced the buyer to the LC1 Chairman and if there had been a dispute on the suit land, the plaintiff would have known so.
- 20 In light of the above, I am convinced that the suit land currently registered in the plaintiff's names belongs to the plaintiff.

That the defendant entered upon the disputed land

During cross examination, the defendant testified that he is no longer in occupation of the suit land as he was evicted by the plaintiff who started occupying the same 25 while he was serving his prison sentence. Similarly, during re-examination, the plaintiff contended that she is in occupation of the suit land. However, it should be noted that according to exhibits PE7 and PE8, the defendant was convicted of criminal trespass on the plaintiff's land. This proves that the defendant entered upon the disputed land.

5 *That the entry was unlawful or that the defendant had no claim of right or interest in the disputed land*

It must be reiterated that when determining trespass action, it is vital that the plaintiff prove that he or she has been in possession of the suit land. In the case of **Kaggwa Michael versus Apire John HCCA No. 126 of 2019**, the Hon. Justice Stephen 10 Mubiru stated that;

"Possession confers a possessory title upon a holder of land and a recognizable enforceable right to exclude all others but persons with a better title. Possession of land is in itself a good title against anyone who cannot show a prior and therefore better right to possession (see* 15 *Asher v. Whitlock (1865) LR 1 QB 1). Possessory title is not based on a documentary title but on the exclusive occupation of the land (or receipt of rent from the land) for a period of time."*

I am persuaded by Justice Mubiru's findings in **Adrabo Stanley versus Madira**

Jimmy HCCS No. 24 of 2013, Justice Mubiru where he stated that,

20 "Trespass when pleaded as part of a suit for recovery of land, requires the plaintiff to prove either actual physical possession or constructive possession, usually through holding legal title.*

There must have been either an actual possession by the plaintiff at the time when the trespass was committed, either by himself or by his 25 *authorized representative, or a constructive possession with the lands unoccupied and no adverse possession. In essence, an action for recovery of land is founded on trespass involving a wrongful dispossession."*

In this case, the plaintiff holds the title to the suit land and therefore, has constructive

30 possession. In the premises, I find that the defendant trespassed on the suit land. In light of the aforementioned, I am convinced that the plaintiff is the lawful owner of land comprised in Kyadondo Block 131 Plot 80 Nakakololo.

Whether the defendant has a valid counterclaim against the plaintiff.

- 5 It is counsel for the plaintiff's submission that the defendant's counterclaim against the counter-defendant is fraud, which by law must strictly be proven on a standard beyond a balance of probabilities but not beyond reasonable doubt. Counsel cited the case of **Sebuliba versus Cooperative Bank Limited [1987] HCB 130**.
- Counsel further submitted that apart from claiming that the suit land formed part of 10 his late father's estate, the counterclaimant has failed to show under what circumstances he claims the portion of the suit land owned by the 1st counterdefendant. Furthermore, it was counsel for the plaintiff's submission that the suit land was originally owned by the late Falasco Ssebalamu who purchased the same from Yubu Sentamu (counterclaimant's late father), and upon his demise, the same 15 was being used by the late Falasco's daughter Nakayima Felista. In addition, counsel

submitted that on 26th May 2009, Nakayima Felista agreed to return the kibanja to the 2nd counter-defendant for a consideration of UGX 500,000 (Uganda Shillings five hundred thousand).

It was counsel for the plaintiff's conclusion that the plaintiff/ 1st counter-defendant's 20 purchase of the suit land was free of any registered or unregistered interest and as such obtained a good title.

On the other hand, counsel for the defendant/ counterclaimant submitted through agreements adduced and marked as **DExh.1, DExh.2, DExh.3 and PExh.2**, it is proof that the late Yubu Sentamu purchased the suit land from Paulo Nsubuga (father of the 2nd 25 counter-defendant).

It is counsel's argument that instead of transferring the suit land and the rest of the kibanja into Yubu Sentamu's names as agreed, the 2nd defendant fraudulently subdivided the kibanja and sold part of the same to the plaintiff. It is counsel for the defendant's submission that the defendant has always been in possession of the suit

5 land and has been farming on the same since his early childhood until December 2023 when he was forcefully evicted from the same by the plaintiff.

It is the defendant/ counterclaimant's claim that the plaintiff acquired the suit land fraudulently. It should always be noted that unlike in other civil matters where the standard of proof is beyond a balance of probabilities, in fraud civil cases like the

10 one at hand, the standard is slightly higher as has been decided in a plethora of cases including **Sebuliba versus Cooperative bank Limited [1987] HCB 130** *and **Kampala Bottlers Ltd versus Damanico (U) Ltd, SCCA No.22 of 1992***, where the Supreme Court noted that;

"*Fraud must be strictly proved, the burden being heavier than one on* 15 *balance of probabilities generally applied in civil matters*. It was further held that; *'The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage* 20 *of such act*."

In the case of **Kampala Bottlers Ltd versus Damanico (U) Ltd (ibid)**, Wambuzi CJ (as he then was) defined the term '**fraud**' as an act of dishonesty. However, a more expansive definition of the term fraud was made out in the case of **Fredrick *Zaabwe versus Orient Bank & Others SCCA No, 4 of 2006** as follows:*

25 *'"The intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives* 30 *and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.'"

In the instant case, the plaintiff is the registered proprietor of the suit land. It is a well noted principle of law in Uganda that a certificate of title is conclusive proof of

5 ownership (**Section 59 of the Registration of Titles Act**), save for in cases of fraud (**Section 176 (c) of the Registration of Titles Act**). This introduces the principle of indefeasibility of title except on grounds of fraud. **Section 64 (1) of the Registration of Titles** provides:

"Notwithstanding the existence in any other person of any estate or 10 *interest, whether derived by grant or otherwise, which but for this Act, might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the land or estate or interest in land subject to such encumbrances as are notified on the folium of the* 15 *Register book constituted by the certificate of title, but absolutely free from all other encumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that by wrong description of parcels or boundaries is included in the certificate* 20 *of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or derived from or through such a purchaser."*

In the case of ***Lagen Majorie versus James Okot Okumu HCCA No. 074 of 2016**,*

Justice Mubiru noted that;

25 *'"A title may be vitiated by fraud, error or illegality manifesting itself at any stage of the whole process leading to and including the final registration and issuance of title. Illegality in the transaction voids the title irrespective of the fact that the transferee may not be at fault.*"

His Lordship further stated that:

30 i*n seeking cancellation of title on account of fraud in the transaction, the alleged fraud must be attributable to the transferee. It must be brought home to the person whose registered title is impeached or to his or her agents."*

It is now trite law that any intended purchaser of land must conduct thorough 35 investigations or as is commonly referred to due diligence to rule out any third party existing equitable or legal interests prior to the intended purchase. This principle was

5 enunciated in *Sir John Bagaire versus Arsi CACA No. 7 of 1997*, where Okello J commented that, "*Land is not vegetables, properties bought from unknown sellers are valuable properties, buyers are expected to make investigations not only of the land but also of the sellers before purchase."*

This issue introduces the principle of notice which may either be actual or 10 constructive. It trite that fraud must be imputed directly on the defendant. In the case of **Draza Moses versus Abdul Salim & Anor H. C. C. S No. 16 of 2013**, Justice Stephen Mubiru stated that,

"*Notice includes actual or constructive notice of such facts as would have been discovered if all usual and proper inquiries were made of the* 15 *vendor's title, interests and encumbrances affecting the land. Within the system of land registration, one is not required to search the root of title to ensure that there is a good root. However, it is practice, and perhaps incumbent on a potential purchaser, that the usual checks for "hidden" encumbrances be made."*

20 Actual notice was defined by the Supreme Court of this land in the case of **Grace Asaba versus Grace Kagaiga SCCA No. 14 of 2014** wherein it was stated that:

"*... A person has actual notice of all facts of which he has (or has had) actual knowledge whichever way that knowledge was acquired. A purchaser would be able to plead absence of notice only if he/ she* 25 *had made all usual and proper inquiries, and had still found nothing to indicate existence of equitable interest."*

On the other hand, **constructive notice** was defined in the case of **Hunt v Luck (1901)1 Ch 45**, wherein **Farwell J** said;

"*Constructive notice is the knowledge which the courts impute to a* 30 *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*

5 *willfully abstaining from inquiry to avoid notice."* (Also see **Yudaya Namazzi & ors versus James Ndiwalana HCCS No. 301 of 2018**)

In the case of **Senkungu & 4 ors versus Mukama SCCA No. 17 of 2014** at page 10, it was held that;

"A purchaser has constructive notice of fraud if he had actual notice 10 *that there were some encumbrances and a proper inquiry would have revealed what it was and has refrained whether deliberately or carelessly from making those inquiries which a prudent purchaser would have made."*

During cross examination, the plaintiff testified that she inspected the suit land 15 before purchasing the same. The plaintiff further evidence of Pw4 who testified that Israel Ntanda introduced the plaintiff to him as the person who had bought the suit land that previously belonged to Nakayima. It should be noted that the counter claimant did not disown exhibit PExh2. The said exhibit as explained above is a memorandum of understanding between the children of the late Yubu Ssentamu and

- Israel Ntanda (2nd 20 counter defendant). It was attached to the counter claimant's trial bundle as C and marked as the 1st counter defendant's exhibit PExh2. In the said exhibit, the children of Yubu Ssentamu agreed to give Israel Ntanda seven acres and they were to take ten acres. This was following the letter by Israel Ntanda (DExh1) whereby Israel Ntanda asked the Yubu Ssentamu to use the lawful meand to acquire
- 25 the land which had been sold by Paul Nsubuga (Israel Ntanda's father) to Yubu Ssentamu. The evidence of the memorandum of understanding was adduced by the plaintiff which shows that before she purchased the suit land, she was aware that seven acres out of seventeen had returned to the heir of the previous owner. In addition, it was the evidence of Pw3 that the plaintiff purchased land which was 30 previously used by Nakayima. Dw1, told court that he knew Nakayima as someone who cultivated the suit land. During cross examination, the defendant (Dw1) told court that the plaintiff is claiming part of the seventeen acres.
- 5 The above evidence shows that the plaintiff conducted due diligence before purchasing the suit land and that is how she was introduced to the L. C. I Chairman of Nakakolola and came to be in possession of exhibit PE2 showing that the children of Yubu Ssentamu had allowed Israel Ntanda to take seven careen from the suit land. The defendant told court during cross examination that Israel Ntanda processed for
- 10 them a title with four acres. This corroborates the evidence of the memorandum of understanding which is equally in possession of the plaintiff.

Following the guidance of the above-mentioned authorities, due diligence is conducted prior to purchase and not after the same. Furthermore, it was the plaintiff's evidence that prior to the purchase of the suit land, she already owned a neighbouring

15 plot of land to the suit land. It is the plaintiff's claim that the she owns plot 80 and the defendant stays on plot 79 and this evidence is not challenged. during the locus in quo proceedings, court observed that the suit land formed part of the 17 acres originally owned by Yubu Ssentamu and by virtue of the memorandum of understanding evidenced as **PExh.2**, the defendant and the rest of the estate of the 20 late Yubu Ssentamu were entitled to 10 acres of titled land.

It is my finding that the plaintiff conducted a physical search or a registry search (per evidence of Pw2) prior to the execution of **PExh.5** and this is proof that the plaintiff conducted due diligence on the suit land before purchasing the same and is not guilty of fraud. In the premises, I find that the defendant does not have a valid counterclaim 25 against the plaintiff.

Remedies

General damages

- 5 The award of general damages is premised on the doctrine of *'restitutio in integrum'** which means that the aggrieved party has to be restored as nearly as possible to a position he or she would have been in had the injury complained of not occurred. *(See *Amazima (U) Ltd versus Mahdi* (HCCS NO. 453 of 2016).* In **Edward Emmanuel versus Spenco Services Limited** HCCS No.22 of 2015, the Hon.
- 10 Justice Stephen Mubiru stated that damages are designed to compensate for an established loss and not to provide a gratuitous benefit to an aggrieved party.

In addition, in the case of **Luzinda v. Ssekamatte & 3 Ors** (Civil suit -2017/366 [2020] UGHCCD 20 (13 March 2020), *this court held that as far as damages are concerned, it is trite law that general damages be awarded in the discretion of court.*

15 *Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued because of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions*.

Following the guidance of the above-mentioned authorities as well as the 20 inconvenience occasioned to the plaintiff following the counter claimant's unlawful trespass on the suit land, I hereby award the plaintiff general damages of UGX 5,000,000.

Costs

Section 27(2) of the Civil Procedure Act Cap 71 provides that costs shall be at the 25 discretion of the court and shall follow the event unless for good reasons court directs otherwise.

It is trite that cost "shall follow the event"; which means that the successful party, shall be entitled to costs. Therefore, as the successful party herein, the plaintiff is entitled to the same.

- 5 In conclusion, I order as follows;
- 1. The suit land comprised in Block 131 plot 80 at Nakakololo Busukuma Wakiso District belongs to the plaintiff.
- 2. An award of general damages to tune of UGX 5,000,000 doth issue to the plaintiff against the defendant/counter claimant.
- 10 3. A permanent injunction doth issue restraining the defendant, his agents, servants and successors from trespassing, subdividing, transferring, dealing or any other form of alienation of the suit land.
- 4. Costs of the suit are awarded to the plaintiff.

I SO ORDER.

Judgment delivered via ECCMIS this 7th 15 day of March, 2025.

Immaculate Busingye Byaruhanga Judge

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Prepared on 12 October 2026 · Esheria