

UGANDA / JUDGMENT

Sajabi v Wamala and Another (Civil Appeal No. 72 of 1955) [1950] EACA 71 (1 January 1950)

[1950] EACA 71

COURT

East African Court of Appeal

BEFORE

Bacon, JA, Briggs (Acting Vice-President), Worley, P

CASE / FILE NUMBER

Civil Appeal No. 72 of 1955

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H. M. COURT OF APPEAL FOR EASTERN AFRICA

Before SIR NEWNHAM WORLEY (President), BRIGGS (Acting Vice-President) and BACON, Justice of Appeal

YOSIYA SAJABI, Appellant (Original Plaintiff) v WAMALA and ANOTHER, Respondents (Original Defendants)

(1) MUSA UMAR AMRELIWALLA and (2) MATIA WAMALA, Respondents (Original Defendants)

Civil Appeal No. 72 of 1955

(Appeal from the decision of H. M. High Court of Uganda—Sir John Griffin, C. J.)

Sale of land by mortgagee—Whether sale by private treaty without notice permissible—Whether suspicion of collusion arises—Subsequent sale—Remedies—Uganda Rules of Court—Advocates Remuneration and Taxation of Costs, Laws of Uganda, 1951, Vol. VI, p. 555—Registration of Titles Ordinance (Cap. 123 of the Laws of Uganda, 1951) section 115 to 117.

A mortgagee of land disposed of it by private treaty and without notice, purporting to act under section 117 of the Registration of Titles Ordinance. The contract for the sale was made at a figure of Sh. 60,000, but the transfer was made with a stated consideration of Sh. 63,000. The circumstances indicated that the purchaser knew that no notice under section 115 of the Ordinance had been given and that another purchaser was willing to pay a substantially higher price. The facts are fully set out in the judgment. The appellant sued the respondent in the High Court, alleging that the sale was unlawful, fraudulent and collusive and claimed damages. The trial Judge dismissed the claim against the second respondent holding that no fraud or collusion had been proved against him. He held that the first respondent had sold unlawfully in that no lawful notice of sale had been given and awarded Sh. 5,000 as damages. The plaintiff and the first

respondent appealed.

Held (21-1-56).—(1) Although a mortgagee who sells the mortgaged premises is not a trustee for the mortgagor, he must sell in good faith and at a reasonable price. A sale by private treaty is not unlawful but is extremely unusual and will, if conducted in secret, attract suspicion.

- (2) If a proposing purchaser can see from an inspection of the Register of Titles that it is highly unlikely that lawful notice could have been given under section 115, he may still be protected by section 117 if he has not acted collusively, but suspicion of collusion is inevitable.
- (3) In the instant case collusion between mortgagee and purchaser was established and both were liable in damages as the land had subsequently been sold to innocent third parties who had registered titles.
- (4) Quaere.—Whether notice under section 115 of intention to sell given by a registered mortgagee will enure to the benefit of a transferee of the mortgage so as to enable the transferee to sell under section 117.

Appeal allowed with costs. Judgment and decree of the High Court set aside.
Judgment entered for the appellant against both respondents (1) for a declaration that the mortgage debt was discharged. (2) for Sh. 120,000 damages. (3) for costs of the suit.

No cases.

Russell for appellant.

Troughton for first respondent. Korde for second respondent.

BRIGGS, Acting Vice-President.—This was an appeal and cross-appeal from a decree of the High Court of Uganda. From 1947 onwards the appellant borrowed various sums of money from the first respondent and executed three registered mortgages, dated respectively 19th December, 1947, 23rd March, 1948, and 29th September, 1948, over his *mailo* land nearly one acre in extent at Namirembe as security for the loans. On 29th June, 1950, the first respondent executed a discharge of these three mortgages and on 30th June, 1950, a new mortgage of the same land was executed by the appellant to secure the sum of Sh. 45,000 with interest at 24 per cent per annum with monthly rests. The discharge and this fourth mortgage were duly registered on 3rd July, 1950. It is common ground that no additional moneys were lent at the time of the execution of the fourth mortgage. The Sh. 45,000 represented principal, interest and charges due on the earlier loans and mortgages. In the proceedings in the High Court, in which the appellant was plaintiff, he attempted to show that less than Sh. 45,000 had been due on 30th June, 1950, and to reopen the transactions antecedent to the fourth mortgage. This attempt failed, the High Court finding that the sum of Sh. 45,000 represented a genuine settlement of accounts of the earlier transactions. The grounds of appeal to this Court included an objection to this finding, but at the hearing counsel did not argue this aspect of the appeal and it must fail. Accordingly the facts now in issue begin with the execution of the fourth mortgage.

On 16th October, 1950, the first respondent executed a transfer of the fourth mortgage to the Pioneer General Assurance Society Limited in consideration of the sum of Sh. 24,000 and the transfer was duly registered on 26th October, 1950. On 16th October, 1950, the first respondent and the Pioneer Company also executed a document incapable of registration providing that the transfer of mortgage was by way of security for a loan, i.e. that the transaction as between themselves was one of sub-mortgage. This could not of course affect the legal title to the mortgage as shown by the register.

The appellant very soon defaulted in payment both of interest and instalments of principal, and on 4th April, 1952, the Pioneer Company as transferee of the mortgage gave, or purported to give, through its solicitors notice under section 115 (then 114) of the Registration of Titles Ordinance of intention to sell the mortgaged premises. I refer later to further matters arising out of this notice. On 17th November, 1952, the Pioneer Company retransferred the fourth mortgage to the first respondent by duly registered transfer; but before this, on 22nd September, 1952, the first respondent's solicitors sent on his behalf a notice of intention to sell the mortgaged premises to recover a sum of Sh. 62,558/38 then alleged to be due to the first respondent on the fourth mortgage. Soon after this notice the appellant's solicitors wrote contending that any sale would in the circumstances be illegal, threatening proceedings and asking for an account. The first respondent's solicitors replied in effect that any proceedings would be defended. The appellant says, and there is no reason to disbelieve him, that he expected that the first respondent would sell, if at all, by public auction, and it is probable that if such a sale had been advertised he would at once have applied for an injunction. The first respondent, however, on or about 25th October, 1952, agreed to sell as mortgagee the mortgaged premises to the second respondent by private treaty, and in pursuance of this agreement the land was transferred to him on 21st November, 1952. Our copies do not show the date of registration, but the transfer was duly registered soon afterwards. Since then there have been certain other registered transactions in favour of innocent third parties.

The appellant sued the two respondents in the High Court of Uganda alleging that the sale to the second respondent was unlawful, fraudulent and collusive and claiming damages. There was also a claim to reopen the accounts of the first three mortgages, but this, as I have said, is no longer material. The first respondent defended and counter-claimed for the sum of Sh. 2,736/37 being the balance alleged to be due on the fourth mortgage after giving credit for the alleged sale consideration of Sh. 63,000. The second respondent merely denied fraud or collusion and relied on his statutory protection. The learned Chief Justice held that no fraud or collusion was proved against the second respondent and dismissed the action as against him with costs. He held that the first respondent had sold unlawfully. in that no lawful notice of sale had been given, and was therefore liable in damages. He assessed the damages at Sh. 5,000. He dismissed the counter-claim and gave no costs of the action as against the first respondent. The appellant appeals against the whole decision on the ground that the damages are inadequate and ought to have been given against both respondents with costs. The first respondent cross-appeals against that part of the decision which awarded damages. on the ground that the sale was lawful, and asks that the suit be dismissed with costs.

The provisions of section 117 of the Registration of Titles Ordinance which allow a mortgagee to sell the mortgaged premises by private treaty and protect a purchaser from him against the consequences of previous irregularities seem to me to be singularly inappropriate to the needs of this country. If the power to sell were only by public auction, it might be reasonable to dispense with an order of Court, since the sale would normally be advertised and in ordinary cases the mortgagor would have sufficient notice of it to enable him to obtain an injunction if there had been any impropriety. But the law as it stands apparently makes it possible for a mortgagee who has given notice of sale, the validity of which is to his knowledge in dispute, to complete the sale and effect registration in favour of the purchaser in secret, and without the mortgagor having any knowledge of what is being done. If there is collusion in the purchaser, his own title will of course be impeachable, but in any such case the rights of the mortgagor may be defeated by a further transaction in favour of an innocent third party. We are told by the chief clerk of a prominent firm of local practitioners that in over thirty years' experience he has known only one or two cases of mortgagees having sold by private treaty, and he could not give particulars of even one such sale from memory. This seems to me to indicate that local practitioners themselves recognize that the practice is eminently undesirable and may lead to subsequent difficulties. This attitude would in my view be no more than one would expect of prudent and fairminded members of the Bar. But the extreme rarity of these transactions in practice does not in my view diminish, indeed it emphasizes, the urgent need for amendment of the law. There may well be an occasional case where a sale by private treaty would best serve the legitimate interests of the mortgagee without unfairly prejudicing the mortgagor. I would suggest that to meet such a case the amended section might permit sale by private treaty with leave of the Court, to be obtained on application with notice to the mortgagor. I leave open the wider question whether in a country such as this it may not be desirable that every mortgagee's sale should be conducted under the Court's supervision.

The English rule that, although a mortgagee in selling is not a trustee for the mortgagor, he must sell in good faith and at a reasonable price, applies in Uganda. It obviously requires that a mortgagee must not take a lower price than he knows to be obtainable. It also, I think, leads to the conclusion that, if the mortgagee acts in secret and conceals what he is doing from the mortgagor, he may expose himself to some suspicion of not having acted in good faith. This suspicion must at least be increased if the mortgagee sells in secret with knowledge that the validity of his notice of sale is challenged on grounds not *prima facie* unreasonable. I have dealt first with those considerations because they affect and largely determine the view which I take of this appeal.

I deal next with the question whether lawful notice of intention to sell was given in this case by or on behalf of the mortgagee. This does not only involve the validity of the first respondent's own notice dated 22nd September, 1952. He also sought to argue that the notice given on 4th April, 1952, by the Pioneer General Assurance Society Ltd., which was then entitled to the benefit of the mortgage as registered transferee, was a valid notice of sale, the benefit of which enured to the first respondent when the mortgage was retransferred to him on the register on 17th November, 1952. This point was never pleaded or taken in the High Court, I express no opinion on the

general point of law involved for the following reasons. On receiving the notice of 4th April, the appellant promptly sued the Pioneer Company (Civil Case No. 374 of 1952) and obtained an injunction against sale. Later the suit was settled on terms that the Pioneer Company should not sell the land, and should pay the plaintiff's costs. I think the effect of this settlement was that the notice of 4th April must be taken to have been annulled or withdrawn for all purposes. In view of this we declined to hear counsel on the question whether a mortgagee's notice of intention to sell will ordinarily enure to the benefit of a transferee of the mortgage. As regards the first respondent's own notice of 22nd September, 1952, he was not the registered mortgagee when it was given, so prima facie he could have no right to give it and it was invalid. His counsel sought to argue that the words "the mortgagee or his transferees" in section 115 of the Registration of Titles Ordinance mean that the original mortgagee can always give a valid notice of sale, even if he has ceased to be entitled to the benefit of the mortgage and a transferee is entitled thereto. Such a construction is quite impossible. The words "or his transferees" are inserted to make it clear that the rights to give notice of intention to sell, and thereafter to sell, in case of default, are not merely rights personal to the original mortgagor, but pass with the general benefit of the mortgage to a transferee on a registered transfer thereof. I am satisfied that the notice of 22nd September, 1952, was invalid, and I am also satisfied that, if the solicitors for the second respondent had examined the register at the time of the negotiations for the sale to him, they must have observed that between October, 1950, and 17th November, 1952, the first respondent was not registered as mortgagee. The contract under which the first respondent as mortgagee sold to the second respondent was concluded on 25th October, 1952 (see exhibits 2D 14A and 2D 14C), though the transfer was not executed until 21st November (exhibit D11). It may be true to say that an intending purchaser from a mortgagee is excused by the provisions of section 117 from inquiring into the validity of the notice of sale: but were not the facts here apparent on the face of the register such as to shout to an honest purchaser, "beware of irregularities"? And does section 117 entitle a purchaser to ignore the probability, visible on the register, that no lawful notice could have been given? Perhaps it does: but unless the second respondent and his solicitors were prepared to be wilfully blind, one would have expected an inquiry to be made. An honest man acting without collusion does not wish to invite a lawsuit by deliberately accepting title from a mortgagee who is, to put it at the lowest, probably acting unlawfully. In view of the fact that neither respondent sought at the trial or on the pleadings to rely on the notice given by the Pioneer Company, it seems fair to say that, not only did the first respondent sell without lawful notice, but the second respondent, unless he was wilfully blind, must have known that that was the position. This might not alone support a finding of collusion, but at least it makes it much easier to infer collusion from other evidence pointing thereto.

The sale being unlawful, the right to damages against the first respondent is established apart from any question of fraud or collusion, but it remains to consider these questions as determining the position of the second respondent. There is a considerable body of evidence, particularly that relating to Walusimbi and Kawalya Kagwa, which leads to an inference of dishonest conduct in the first

respondent, but most of this does not affect the second respondent. There is, however, one series of events, the evidence of which in my opinion conclusively implicates him. The first respondent said the negotiations were first started by the second respondent, who made a written offer of Sh. 60,000 to Sh. 63,000, which was referred to Messrs. Hunter & Greig. No such letter has been produced. The only correspondence in evidence refers to a purchase for Sh. 60,000 a very unlikely sequel to a first proposal by a purchaser that he might pay up to Sh. 63,000. The transfer, made nearly a month later, shows a consideration of Sh. 63,000. The second respondent said in his evidence-in-chief that he purchased the land for Sh. 60,000 and "the additional Sh. 3,000 represented costs on transfer". In cross-examination he expanded this as meaning "expenses, fees, stamps, etc.," and said that receipts were shown to him and everything was done by his advocates. This is no explanation at all. Assuming that the second respondent had agreed to pay the vendor's solicitors' charges, these might have to be added to the apparent sale price; but according to the scale they would only be Sh. 1,350. (See Rules of Court. Advocates' Remuneration and Taxation of Costs. Laws of Uganda, 1951. Vol. VI. p. 555.) It was never stated that he had agreed to pay those fees, and I can see no reason why he should. As regards any charges payable to his own solicitors, there could be no conceivable reason for adding these to the purchase price and so, incidentally, paying additional stamp duty not legally due. No further explanation of this extraordinary proceeding has been offered by or on behalf of either respondent. The appellant, however, suggests this explanation. Walusimbi had, some time before the ostensible agreement between the respondents was concluded, introduced himself to the first respondent as an intending purchaser at the sale, which he expected, and was perhaps deliberately led to believe, would take place in due course by public auction. He was willing to bid up to Sh. 150,000 for the remainder of the land, excluding Block B, which he knew the appellant had agreed to sell to a third party. As an earnest of his serious intentions he had deposited with the first respondent a cheque for Sh. 60,000. The respondents, having decided collusively to obtain for themselves the whole of the land at the grossly inadequate price of Sh. 60,000, and having concluded a purported agreement of sale at that price through their solicitors, subsequently realized that, even if the first respondent swore that Walusimbi was not willing to pay more than Sh. 60,000, it would still be difficult to explain why the land should be sold to the second respondent rather than to Walusimbi. To meet this point they agreed to insert the figure of Sh. 63,000 in the transfer instead of Sh. 60,000, no doubt hoping that the letters containing the contract might be suppressed or overlooked. They chose that neat margin of an additional five per cent on Walusimbi's deposit as enough to justify sale to the second respondent. In my view this hypothesis alone accounts for all the known facts and represents the truth of the transaction. I find that the two respondents were acting together collusively, the sale was not a bona fide transaction and the second respondent has rendered himself liable in damages equally with the first. I am confirmed in this conclusion by the views which I later set out concerning the true value of the land and the special facts relating to Block B.

I pause at this point to remark that a finding of collusion against the second respondent would ordinarily justify rectification of the register by retransferring the land to the appellant subject to the mortgage; but in this case that is impracticable, since registered interests have been created in innocent third parties whose titles are unimpeachable. The appellant's remedy is therefore only in damages.

The measure of damages is the value of the land at the time of the unlawful sale, less the amount of money due on the mortgage at that date. The latter figure was stated by the first respondent to be Sh. 65,700 and I am prepared to accept that as correct.

The learned Chief Justice said in his judgment:

"At the time of the sale the plaintiff had already sold to the knowledge of defendant No. 1 a piece of the land (Block B) to one Kasule, a piece on which a building of one Jetha Valij stands. Thus the value attaching to Block B of the land must be excluded from any assessment of the value of the land as at the date of sale."

With respect, I disagree. The contract with Kasule was valid and subsisting and the appellant could at any time have performed it, after paying off the mortgage or obtaining the mortgagee's consent, and subdividing. The unlawful sale made it impossible for the appellant ever to perform the contract and rendered him liable in damages to Kasule. The amount of those damages are clearly part of the damage which he has himself suffered, and the measure of them (the purchase price having been paid at the time of the contract) is the value of Block B at the time when owing to the unlawful sale performance of Kasule's contract became impossible. If I am right, the learned Chief Justice assessed the damages on a wrong principle and the whole issue is open to us.

The evidence of value of the land consisted first of the opinion of Mr. Heymann, a chartered surveyor and land agent and an expert whose valuation was made in March, 1955, for the purpose of these proceedings. The learned Chief Justice accepted his evidence that the land, excluding Block B, was not worth substantially more than Sh. 63,000. He added "I prefer to be guided by that opinion rather than to be confused by the other evidence." I think this was, in the circumstances, hardly justifiable. The other evidence was in fact not confusing at all. Walusimbi, whose evidence the learned Chief Justice never expressly rejected, had said that he would have bought the land, excluding Block B, for Sh. 150,000, and that after 1952 he would have received Sh. 27,360 a year in rent. He was never really cross-examined on this. Velji valued Block B and his house thereon at Sh. 75,000 to Sh. 80,000. The appellant said he would not willingly have sold for less than Sh. 200,000, and it appears probable that he excluded Block B from this estimate. The first respondent suggested to Kawalya Kagwa that he should take the nominal title to this land, but only a one-third beneficial interest therein. for Sh. 60,000, indicating a total value of Sh. 180,000. Even if Walusimbi and Velji put their figures too high, I think a total value of some Sh. 200,000 is much more likely to be correct than Mr. Heymann's, and it must not be forgotten that he agreed in cross-examination that Africans are the best judges of the value of land of this kind. My conclusion would be to say that the land was worth Sh. 185,700 and to award that figure less

Sh. 65,700, or Sh. 120,000 as damages. The futility of the respondents' estimates of value is shown by their evidence about Block B. The first respondent valued it as Sh. 50,000 to Sh. 60,000, and said it was "excluded from the sale", which it obviously was not. The second respondent gave a total value of Sh. 70,000 to Sh. 80,000, including Sh. 25,000 for Block B. which he considered to be included: but shortly afterwards he received Sh. 50,000 for a 49-year lease of Blocks A and C alone, leaving Block D in his own hands and Block B untouched. This evidence does not affect my estimate of the damages. In my view the appeal should be allowed with costs, the judgment and decree of the High Court should be set aside, and judgment should be entered for the appellant against both respondents (1) for a declaration that the mortgage debt is discharged; \$(2)\$ for Sh. 120,000 damages and \$(3)\$ for costs of the suit.

BACON, J. A.—I have had the advantage of reading the judgment of the learned Acting Vice-President and I agree with it but, since we are differing from the learned Chief Justice on questions of fact, I shall give my reasons. In that judgment the factual history of the case is fully set out, which it is unnecessary to repeat.

The case for the respondents is briefly as follows. They rely on sections 115 to 117 of the Registration of Titles Ordinance (Cap. 123 of the Laws of Uganda, 1951). Harping on his punctilious compliance with the statutory requirement as to giving notice of an intended sale, and on the letter of the law whereby a mortgagee who has duly given such a notice is empowered to sell the mortgaged land, the first respondent contends that in effect the appellant stood by and acquiesced in the sale by private treaty of his land and that consequently his inaction on that occasion has put beyond his reach any remedy which he might otherwise have had for the allegedly disastrous result of the sale. The first respondent concedes that the letter of the law differs from the spirit in which it is applied, to the extent that in Uganda it is only very rarely indeed that a mortgagee sells his mortgagor's land by private treaty, but says that, although it may be the almost invariably accepted custom to sell such property by public auction, nevertheless section 117 expressly provides for the possibility of the mortgagee electing to sell and selling privately, and that accordingly it is but vain pleading when the appellant now complains that the respondents resorted to fast practice for personal gain at the appellant's expense.

The second respondent adopts the first respondent's contention and asserts that he (the second respondent) is innocent of fraud, collusion or dishonesty in any form and was a bona fide purchaser of the land in question.

Both respondents assert that not only was the sale irreproachable as a transaction but that it was effected at a reasonable and proper price.

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In my opinion the law on this matter is clear. On the one hand strict compliance with the terms of section 115 followed after the requisite lapse of time by a private sale of the land concerned cannot be said to be illegal **per se**, or of itself to entitle the mortgagor to any remedy either at law or in equity. On the other hand the choice of a sale by private treaty which that section gives to a mortgagee in no way abrogates from his obligation, if he chooses to enforce his rights, to

enforce them at every stage in all good faith and in particular to sell at a fair price, although he is not a trustee for the mortgagor. If the sale is by public auction duly advertised and to all appearances properly conducted there is a strong *prima facie* case of fulfilment of that dual obligation. But where the sale is by private treaty the practical safeguard afforded by the publicity attending the usual procedure is of course denied to the mortgagor and it is incumbent on the mortgagee to make particularly sure that the mortgagor's interests are amply protected.

The first respondent's contentions fail at the outset. He did not duly give the statutory notice under section 115 of the Registration of Titles Ordinance because at the date of his notice he was not the registered mortgagee and the mortgage was accordingly ineffectual for the purpose of entitling him to give any such notice. It was not until nearly two months after the first respondent issued his notice that the mortgage was retransferred to him and the retransfer registered. Accordingly he had no legal right to sell the land at all.

I now turn to the second respondent's position. He testified at the trial that he had acted throughout with the assistance of his legal adviser. Having seen an advertisement of an intended sale of the land by public auction he discovered that the auction would not take place. Thus warned and advised, he proceeded to negotiate the sale by private treaty. An examination of the register at that time would disclose to any intending purchaser that the proposed vendor had no right to sell. By proceeding with the purchase in those circumstances the second respondent invited the inference of collusion with the first respondent in an unlawful dealing with the land behind the back of the registered owner who was the appellant.

The facts in evidence relating to the sale by first to second respondent only serve to establish that that inference should be drawn. The witness Walusimbi deposited with the first respondent a cheque for Sh. 60,000 by way of showing his bona fide intention to bid for the land excluding Block B which to his knowledge the appellant had sold to another. Walusimbi went on to say that he had been and indeed still was at the time of the trial-prepared to bid up to Sh. 150,000 for the land less Block B. It appears that to defeat his unwanted intervention the respondents arranged a sale to the second respondent for a consideration expressed to be Sh. 63,000, that is to say Sh. 3,000 more than the amount of Walusimbi's deposit, and indeed Sh. 3,000 more than the figure of Sh. 60,000 for which sum the respondents had themselves already made a purported agreement for sale through their legal advisers—so that it might be said, if awkward questions were thereafter asked, that a higher bid than Walusimbi's had very properly prevailed. If one excludes, as I do, the evidently absurd explanation that the additional Sh. 3,000 represented "expenses, fees, stamps, etc.", payable by the second respondent, it remains to be asked: why this particular addition of Sh. 3,000—why not Sh. 2,000, or perhaps Sh. 4,000 to make it look a little better? For my own part I am inclined to think that the first respondent increased the purchase price to Sh. 63,000 having in mind the fact that, according to his account of the appellant's indebtedness to him at the time of the purported notice of sale, the appellant owed him Sh. 62,558/38 and accordingly that a sale for Sh. 63,000 would provide a convenient and certain method of recovering that debt. If that is the explanation the first respondent had overlooked the fact that, by the time the sale came to be carried out, the appellant's indebtedness had grown to a sum in

excess of Sh. 63,000 by reason of the exorbitant rate of interest, namely 24 per cent compound with monthly rests, for which he was liable. Be that as it may, the material fact which in my view stands out clearly is that, whatever the reason for fixing Sh. 63,000 as the augmented purchase price, the decision to put up the price after the initial agreement to sell to the second respondent at Sh. 60,000 sprang from dishonest collusion between the respondents with the object of acquiring the land for their own future purposes at the appellant's expense.

The respondents are responsible in law to the appellant for the direct consequences of that manoeuvre. The only remaining question is what remedy the appellant should have. Restitutio in integrum by rectification of the register is no longer practicable, for subsequent purchasers, who have bought in good faith so far as this Court knows, have acquired registered titles to the land. The appellant must therefore be given such sum as the law allows him by way of damages. I agree that the measure of such damages must be the value of the land sold by the first respondent at the time of the sale less the sum then due to him by the appellant under the mortgage.

For that purpose the value of the land must include the value of Block B. since the first respondent included this Block in the property sold. The fact that the appellant had long since sold it by unregistered transfer to one Kasule (a fact which was known by the first respondent) does not affect the matter, for by reason of the unlawful sale and the subsequent dealings the appellant has been prevented from ever being able to give a good title to Kasule if called upon to do so, and thus stands liable to Kasule for the whole value of Block B as at the time of the first respondent's sale.

As regards the assessment of the value of the whole property, I agree with my brother Briggs, J.'s, observations as to the true effect of the evidence and with his calculation of the sum which should be allowed as damages.

It also appears to me to be proper to accept the figure of Sh. 65,700 as representing the sum due from the appellant under the mortgage as at the date of sale.

Accordingly I agree that the appeal should be allowed with costs against both respondents, that the judgment and decree of the High Court should be set aside and that judgment should be entered for the appellant against both respondents in the form proposed in the judgment which has just been read.

WORLEY, President.—I have had the advantage of reading the two judgments which have just been read, and entirely agree with them. I wish particularly to express my agreement with the comments that have been made on the need for amendment of section 117 of the Registration of Titles Ordinance. As it stands it is almost an inducement to fraud and collusion in the conditions existing in Uganda. An order will be made in the terms proposed by the learned Acting Vice-President.

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