

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT No. 588 OF 2017**

**1. BONGOMIN SUNDAY**  
**2. BIRYEMA CHRISTINE ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**

**VERSUS**

**1.KIMBUGWE FRANK**  
**2.LUTAAYA ERIC ::::::::::::::::::::::::::::::::::::::: DEFENDANTS**  
**3.COMMISSIONER FOR LAND REGISTRATION**

**BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA**

**JUDGEMENT**

**Introduction;**

1. The plaintiffs bring this suit seeking declarations and orders inter alia; a declaration against the 1<sup>st</sup> defendant, that the plaintiffs are the lawful owners of land comprised in Mailo Register Kyadondo Block 174 Plot 440 at Kabanyolo in Wakiso District measuring 0.7820 Hectares, a declaration order that the 1<sup>st</sup> defendant fraudulently transferred the suit land into his names by forging the plaintiffs' signatures on the transfer form thereof, a declaration order that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants aided the fraudulent transfer



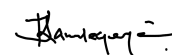
of the suit land from the plaintiffs' names into the 1<sup>st</sup> defendant's names, An order directing the 3<sup>rd</sup> defendant to cancel the 1<sup>st</sup> defendant's name from the suit title deed of the land in dispute and re-instate the plaintiffs' names thereon, an order against the defendants for payment of general damages, punitive damages and costs of the suit.

**Background;**

2. The plaintiffs being represented by a one Uyiki Denis purchased part of land comprised in Mailo Register Kyadondo Block 174 plot 440 at Kabanyolo in Wakiso District from the registered proprietor Margaret Rwakigarama Bareeba on 5<sup>th</sup>/2/2013 at a consideration of Ug shs 203,175,000 (Uganda Shillings Two hundred three million one hundred seventy-five thousand only).
3. The 2<sup>nd</sup> Defendant was instructed to mutate and subdivide the land hence creating Plot 440 (the suit land) and Plot 441 (the Residue). The 2<sup>nd</sup> defendant handed back the certificate of title for Plot 441(Residue) to the Registered proprietor Margaret Rwakigarama Bareeba and kept that of Plot 440 for purposes of transferring the same into the plaintiff's names.



4. That in November 2016, the plaintiffs were informed by the neighbors through Uyiki Denis that unknown persons were inspecting the suit land with a view of selling it and upon looking for the duplicate certificate of title, the plaintiffs' realized that the 2<sup>nd</sup> defendant had not returned the same.
5. On 18<sup>th</sup>/11/2016, the plaintiffs caused the arrest of the 1<sup>st</sup> Defendant who was inspecting the land and was detained at Kasangati Divisional Police Headquarters vide CRB 925/2016 while the 2<sup>nd</sup> defendant is still on the run. However, the criminal prosecution against them is still pending.
6. Upon interrogation, the 1<sup>st</sup> defendant revealed that he was the registered proprietor of the suit land but the plaintiffs averred that they had never sold to him nor signed transfer forms in his favour. The plaintiffs conducted a search at the land registry in which they discovered that their signatures had been forged and hence caveated the suit land.
7. The plaintiffs further aver that the 1<sup>st</sup> defendant was charged in the Chief Magistrates Court of Kasangati with the offences of criminal trespass, forgery, uttering false documents and fraudulent



procurement of registration on certificate of title for which he was convicted and sentenced to two years imprisonment on each count.

8. Whereas the plaintiffs' duly effected service on the 1<sup>st</sup> Defendant in prison and also onto the 2<sup>nd</sup> defendant who is on the run by way of substituted service, none of them filed a written statement of defence and hence the matter proceeded *ex parte* against them.
9. The 3<sup>rd</sup> defendant in his written statement of defence averred that the office of the 3<sup>rd</sup> defendant carried out all the transactions on the basis of the documents that were presented and presumed to be genuine and authentic, was only exercising its statutory mandate enshrined in the Registration of Titles Act Cap 230 and thus the plaintiffs have no cause of action against the said office.
10. The 3<sup>rd</sup> defendant further averred that it did not participate in any fraud and or illegality in connivance with the rest of the defendants and undertakes to comply with any Court orders.
11. The plaintiff pleaded the following particulars of fraud briefly;

**As against the 1<sup>st</sup> defendant**

- I. Forging the sale agreement dated 11<sup>th</sup> January 2016 where the 1<sup>st</sup> defendant purports that the plaintiffs sold to him the suit land.



- II. Forging the plaintiffs' signatures on the transfer forms.
- III. Undervaluing the suit property.

**As against the 2<sup>nd</sup> defendant**

- I. Failing to return the plaintiffs' certificate of title upon transferring the same into the plaintiffs' names.
- II. Colluding with the 1<sup>st</sup> defendant by handing over the duplicate certificate of title without the plaintiffs' consent.
- III. Colluding with the 1<sup>st</sup> defendant to forge the plaintiffs' signatures and handing over their transfer forms.
- IV. Failing in his duty as a surveyor to return the certificate of title upon completion of the transfer into the plaintiffs' names.

**As against the 3<sup>rd</sup> defendant**

- I. Authorizing the transfer of the plaintiffs' land into the names of the 1<sup>st</sup> defendant on glaring forged documents.
- II. Authorizing transfer of the suit land using two transfer instruments with forged signatures.
- III. Failing to cancel the 1<sup>st</sup> defendant's name after the fraud was brought to the attention of the 3<sup>rd</sup> defendant office.

**Plaintiffs' evidence**



12. The plaintiffs led evidence by witness statements and they were cross examined. The plaintiffs' case was opened on 23/10/2023 with the 1<sup>st</sup> plaintiff's testimony (PW1) where he stated in his witness statement that he only came to know about the 1<sup>st</sup> defendant when he was arrested for trespassing on the suit land. That the 2<sup>nd</sup> defendant is a surveyor who was hired to commence the process of surveying the suit land off the mother title of the former owner, transfer the same into our names which he did but he never returned our certificate of title.

13. That I was informed that there were unknown persons inspecting the suit land and that's how the 1<sup>st</sup> defendant was arrested and he revealed that the plaintiffs had sold to him the suit property and thus he transferred the same into his names, which was not true.

14. That we had never signed any agreement nor transfer forms in favour of the 1<sup>st</sup> defendant who with the aid of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants fraudulently transferred the certificate of title into his names.

15. PW2, Uyiki Denis who testified that the plaintiffs' purchased the suit land from Margaret Rwakigarama Bareeba who signed open transfer and mutation forms in favour of the plaintiff. That upon

the plaintiffs signing the said instruments I handed them over to Steven Cwanya-ai who subsequently gave them to the 2<sup>nd</sup> defendant, a surveyor.

16. That in November 2016, the caretaker a one Musoke informed me that there were unknown persons inspecting and removing tree stamps from the suit land and contacted Steven Cwanya-ai, we reported the matter at Kasangati Police station and that's how the 1<sup>st</sup> defendant got arrested.

17. PW3, Steven Cwanya-ai also gave evidence alluding to the same facts, he further informed Court that he introduced the 2<sup>nd</sup> defendant to the plaintiffs as a surveyor having done some work for him and that currently he does not know the whereabouts of the 2<sup>nd</sup> defendant.

18. PW4, Chelangat Sylvia, a handwriting expert who examined the signatures on the sale agreement, the transfer instruments and other specimens provided came to a conclusion that the questioned signature/handwriting are simulations resulting into pictorial resemblance with samples and therefore not genuine.

**3<sup>rd</sup> Defendant's evidence**

A handwritten signature in black ink, appearing to read 'Hanyanya'.

19. The 3<sup>rd</sup> defendant informed Court that all documents that were exhibited were self-explanatory and therefore there was no reason to call a witness to come and talk about the same.

### **Locus Proceedings**

20. On 1<sup>st</sup>/3/2024, Court visited Locus in Kabanyolo in Wakiso district. Court established that the plaintiffs are in possession of the suit land, cultivating vegetables thereon. The caretaker uses part of the suit land to graze with the knowledge of the plaintiffs.

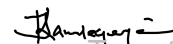
21. It was further established that the defendant has never interfered with the plaintiffs' land.

### **Representation;**

22. At the hearing, the plaintiff was represented by Counsel Kimbugwe David of M/S Kibirige & Kibirige Advocates while the 3<sup>rd</sup> defendant was represented by Sekitto Moses & Arinaitwe Sharon from The Office of the Commissioner Land Registration. The suit proceeded exparte against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

### **Issues for determination**

23. The parties filed a joint scheduling memorandum in which they agreed on the following issues;



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- i) Whether the 1<sup>st</sup> Defendant fraudulently dealt with the plaintiffs' suit land by forging the plaintiffs' signature on the transfer form thereof.*
- ii) Whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendants aided the 1<sup>st</sup> Defendant's fraudulent actions pertaining the suit land.*
- iii) What remedies are available to the parties?*

24. However, Court shall proceed to amend the issues under Order 15 Rule 5 of Civil Procedure Rules and frame the following issues for proper resolution of the matter in controversy.

- i) Whether the 1<sup>st</sup> Defendant's registration on the suit land was tainted with fraud?**
- ii) What remedies are available for the parties?**

**Analysis and determination of the issues;**

**Issue 1.**

- 1) Whether the 1<sup>st</sup> defendant's registration on the suit land was tainted with fraud?**

25. 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.”

26. Section 176 (c) of the Registration of titles Act provides thereof that no action for ejectment or other action for recovery of any land shall lie or be sustained against the person registered as proprietor except in the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bonafide for value from or through a person so registered through fraud.

27. Section 77 of the Registration of titles Act provides thereof that any certificate of title, entry, removal of encumbrance, or cancellation in the register book, procured or made by fraud, shall be void as against all parties or privies to the fraud.

28. At trial, it was not in dispute that the plaintiffs purchased the suit land from Margaret Rwakigarama Bareeba and the same was accordingly transferred into their names on 15/9/15 vide

instrument number WAK00061271. The Plaintiffs further informed Court that they have never sold the suit land to the 1<sup>st</sup> defendant nor did they execute transfer forms in his favour.

29. This was collaborated by the evidence of PW4 who examined the signatures on the transfer forms and sale agreements and came to a conclusion that the questioned signatures/handwriting were not genuine and a report was adduced in Court as PEXH 11 to that effect and the said evidence was not challenged nor rebutted.

30. **Section 59 of the Registration of Titles Act cap 230** connotes to the fact that a certificate is conclusive evidence of title. However, in instances of fraud and other underlying factors, the same position cannot stand.

31. With the glaring evidence as adduced above, it brings me to undisputable conclusion that the plaintiffs are the owners of the suit land and that the same was fraudulently transferred into the 1<sup>st</sup> defendant's name with the aid of the 2<sup>nd</sup> defendant who had the plaintiffs' certificate of title in his custody.

32. It is counsel for the plaintiffs' submissions that the 3<sup>rd</sup> defendant refused to cancel the 1<sup>st</sup> defendant's name to reinstate the plaintiffs'



names on the certificate of title to the suit property despite having been notified of the fraud.

33. It is trite law that the office of the Commissioner for land registration does not or is not bestowed with the powers to cancel entries on the certificate of title on grounds of fraud. **(Section 177 of the Registration of Titles Act and Hilda Wilson Namusoke & 2 others v Owalla's Home Investment Trust (E.A) LTD & Anor Civil Application No. 14 of 2019)** Thus, the 3<sup>rd</sup> defendant could not cancel the said entries at the request of the plaintiffs.

34. It is to the finding of this Honourable Court that the suit land was fraudulently transferred into the names of the 1<sup>st</sup> defendant with the aid of the 2<sup>nd</sup> defendant.

35. The 3<sup>rd</sup> defendant only executed its statutory duty on bonafide belief that all instruments were properly executed as presented.

## **2) What remedies are available to the parties?**

36. 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**).

37. The decision in **Kampala District Land Board & George Mitala v Venansio Bamweyana Civil Appeal No. 2 of 2007** is 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.

38. The plaintiffs have greatly suffered at the hands of the 1<sup>st</sup> and 2<sup>nd</sup> defendants owing to their fraudulent dealings in the suit land which justifies the award of general damages. This Court therefore shall consider the award of Ug shs 10,000,000 as general damages.

39. The law on punitive damages, punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awarded to punish, deter, express outrage of Court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. (**See; Ahmed El Termewy v Hassan Awdi & others HCCS No. 95 of 2012**).

40. The 1<sup>st</sup> and 2<sup>nd</sup> defendants' fraudulent dealings in the suit in which they clearly had no interest cannot be over looked by this

Court. The 2<sup>nd</sup> defendant ought to have handed back the certificate of title for the suit land to the plaintiffs as the rightful owner but he instead aided the 1<sup>st</sup> defendant's illegal and fraudulent transfer of the same into his names. Such conduct only justifies the award of punitive damages. Therefore, this Court shall award Ug shs 10,000,000 as punitive damages.

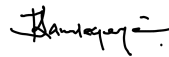
41. For the foregoing reasons, I proceed to pronounce judgement and decree for the plaintiffs against the defendants jointly and severally upon the terms below;

- i) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendants' dealings in the suit land were fraudulent.
- ii) A declaration that the 1<sup>st</sup> defendant's registration on the certificate of title for the suit property was tainted with fraud.
- iii) An order directing the 3<sup>rd</sup> defendant to cancel the 1<sup>st</sup> defendant's names on the certificate of title to the suit land and reinstate the plaintiffs' names thereon as registered proprietors within a period of 30 days from the date of delivering this judgement.
- iv) General damages of Ug shs 10,000,000 to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly and severally.



- v) Punitive damages of Ug shs 10,000,000 to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly and severally.
- vi) The 1<sup>st</sup> and 2<sup>nd</sup> defendants shall be jointly and severally liable to pay costs of this suit.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**20<sup>th</sup>/06/2024**