

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. HCT-00-LD-CS-2850-2016**

**1. NAKAWOMBE ROBINAH
2. NAKITYO JANE::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**
(Administrators of the estate of the late Mirisento Nalongo Kidza)

VERSUS

**1. STREAMS OF LIFE CHURCH LIMITED
2. GERALD MWEBE
3. THE COMMISSIONER LAND REGISTRATION::::::::::::::::: DEFENDANTS**

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction:

1. In 1956, in the case of Lazarus Estates Ltd v. Beasley [1956] 1 QB 702, the celebrated Jurist, Lord Justice Denning, applied the legal maxim: ***fraud unravels everything***. In this case, I consider the applicability of this legal maxim to a transaction for sale of land.

2. The brief facts of the case before me, are that the plaintiffs seek cancellation of certificates of title for two parcels of land comprised in Busiro Block 498 Plot 34 and 35, and Plot 3 at Buli, Wakiso District on grounds of fraud. The 1st defendant, who is the registered owner of the land, and the 2nd defendant deny any wrongdoing; they assert that they lawfully purchased the land from the plaintiffs pursuant to two sale agreements between them, and the plaintiffs, dated 7 December 2007 and 30 July 2008 respectively. The plaintiffs contend that the defendants procured these sale agreements through fraudulent



misrepresentation and deceit; and that as a result, they are not bound. Do the plaintiffs have adequate evidence of fraud to unravel the entire transaction for sale of land?

Representation:

3. The plaintiffs were represented by Ms. Zawedde Lukwago of Zawedde Lubwama & Co. Advocates while the 1st and 2nd defendants were represented by Mr. Isaac Walukaga of MMAKS Advocates.

The plaintiffs' evidence:

4. The plaintiffs led evidence of five witnesses: (PW1) Nakityo Jane, PW2 (Nalukoola Francis), PW3 (Zimbe Lawrence), PW4 (Sebuwufu Erisa), and PW5 (Nakalanzi Edith Kikomeko).
5. The plaintiffs relied on several documents that were admitted in evidence and marked as Exh.P1 to Exh.P14.

The defendants' evidence:

6. The 1st and 2nd defendants led evidence of two witnesses: DW1 (Sunday Mpagi), and DW2 (Gerald Mwebe).
7. The defendants relied on several documents that were admitted in evidence and marked as Exh.D1 to Exh.D51.

Locus in quo visit:

8. On the 16 June 2023, I carried out a locus in quo visit of the suit land in Ngongolo, Buli, Wakiso District in the presence of Ms. Zawedde Lubwama,

counsel for the plaintiffs; and Mr Isaac Walukaga counsel for the 1st and 2nd defendants. In attendance were the plaintiffs, Nakawombe Robinah and Nakityo Jane; PW5 (Nakalanzi Edith Kikomeko); PW3 (Zimbwe Lawrence); and DW2 (Mwebe Gerald).

9. Court observed that the main features on the land include a house said to be a community hospital which is on Plot 3, banana plantation, maize, oranges and mango trees and other activities like stone quarrying. The 2nd plaintiff stated that their land measures 105 acres while the 2nd defendant stated that their land measures 45 acres.
10. PW1 (Nakityo Jane), PW3 (Zimbe Lawrence) and DW2 (Mwebe Gerald) gave evidence during the locus in quo visit and were cross-examined by either counsel. The witnesses confirmed their evidence before court during the hearing of the case, and gave further evidence describing the boundaries of the land, and their neighbours.

Issues to be determined by court:

11. The following issues were framed for court's determination:
 - i). Whether there was a sale of the suit land between the plaintiffs and the 1st and 2nd defendants?
 - ii). If so whether the sale was in conformity with the law?
 - iii). Whether the plaintiffs have a cause of action against the 2nd defendant?
 - iv). Whether the 3rd defendant lawfully executed his or her duties in regard to the suit property?
 - v). Whether the 1st defendant was lawfully registered on the suit land?

vi). What remedies are available to the parties?

12. I shall address the issues in the following order: Issues No.1, 2 and 5 concurrently; followed by Issue No.3; then Issue No.4; and finally Issue No.6.

Issues No.1, 2 and 5:

13. The plaintiffs assert that the 1st defendant was fraudulently registered as owner of the suit land; they bear the burden of proof, and this being a fraud case, the standard of proof is heavier; it is beyond a mere balance of probabilities. See the case of Kampala Bottlers Ltd v. Damanico (U) Ltd, Supreme Court Civil Appeal No.22 of 1992 (coram: S.W.W. Wambuzi, C.J., A. Oder, J.S.C., H. Platt, J.S.C).

Alleged fraudulent transfer of land comprised in Plot 34 & 35:

14. Regarding land comprised in Busiro Block 498 Plot 34 & 35 measuring approximately 12.20 Hectares, the crux of the plaintiffs' case is this: That the 1st and 2nd defendants forged their signatures on the transfer form that was used to transfer the land to the 1st defendant; and that the caveat that the plaintiffs had lodged on the land under Instrument Number KLA333506 on the 23 April 2007, was illegally removed on the 21 August 2013 at 12:15pm, and thereafter the land was transferred to the 1st defendant on the same day at 12:16pm, one minute after removal of the caveat.

15. Before dealing with the more serious aspects of fraud and forgery, I wish to start by considering and disposing of, the plea that was made by the plaintiffs, namely, that the 1st and 2nd defendants, by fraudulent misrepresentation and deceit; induced them to enter into a sale agreement for Plot 34 & 35 dated 30

July 2008 at a consideration of 83,700,000 shillings (Exh.D39), whose terms they did not understand; them being illiterates, and unable to understand English.

16. PW1 (Nakityo Jane) testified that they are illiterates, don't understand English, and that all along they did not know the implications of the documents they were signing. She further denied receiving payment for the land comprised in Plot 34 & 35.
17. The 1st and 2nd defendants led evidence from DW1 (Sunday Mpagi), a lawyer who previously provided legal services to the defendants, and had interacted with the plaintiffs in the course of his duties. DW1 (Sunday Mpagi) testified that the plaintiffs are not illiterates, and that they understand English. He produced a series of documents signed by the plaintiffs to prove that the plaintiffs had all along signed documents in English without any need for translation: Exh.D46 (petition for letters of administration); Exh.D47 (declaration); Exh.D49 (family minutes); Exh.D50 & 51 (application for certification of letters of administration); and Exh.D48 (inventory).
18. I am persuaded by the evidence of DW1 (Sunday Mpagi) that the plaintiffs understood the terms of the sale agreement for land comprised in Plot 34 & 35. There is no proof that the plaintiffs are illiterates since they have always signed English documents without a need for translation, as evidenced by the various English documents that they signed, when they were applying for letters of administration, without a certificate of translation.



19. This then means that the sale agreement was indeed validly signed by the two parties, and consideration of 83,700,000 shillings was paid to the plaintiffs (see Exh.D24). But fraudulent deceit and misrepresentation is not the only ground that the plaintiffs have advanced to rescind the sale agreement; they have also alleged forgery of the transfer deed, which is a more serious allegation and which I shall deal with in the next paragraphs.
20. The plaintiffs allege that the transfer form for land comprised in Plot 34 & was forged. That they did not sign the transfer form; and the signatures thereon are forged.
21. In support of her case, PW1 (Nakityo Jane) testified that:
- “I have never at any time signed transfer forms in favour of the 1st nor the 2nd defendant and whatever document that purports to be a transfer authorising the 1st or 2nd defendants to cause transfer into his names is false and a forgery. [...] That it was against those forgeries that I, together with my co-administrator, registered a land fraud complaint against the 2nd defendant case reference no. CIID GEF 202/14 that led to the laboratory report dated 11/09/2015 [...]”*
22. DW2 (Gerald Mwebe) asserted that the plaintiffs’ signatures on transfer forms are not forged. He testified that:
- “The defendant sought the opinion of a handwriting expert who confirmed that the signatures of the plaintiffs as they appear on both the sale agreement and transfer deeds are legitimate.”*



23. At the hearing of the suit, the 2nd defendant failed to produce the opinion of the handwriting expert referred to in his testimony, but the plaintiffs did. PW4 (Sebuwufu Erisa, a Forensic Document Examiner), a Superintendent of Police and Head, Department of Questioned Documents, Directorate of Forensic Sciences, Naguru Police Headquarters, testified that he was tasked to examine the questioned signatures attributed to the plaintiffs on the transfer form for Plot 34 & 35, and samples given by the plaintiffs. That his objective was to determine if the samples were of the same persons or not. His findings were stated in Exh.P14 dated 11 September 2015 as follows:

“I have examined the questioned signatures and then compared them with the corresponding samples provided using scientific analytical methods such as sketching, video spectral comparator, 5000 and visual observations and found the following; 1. I have found fundamental differences between the sample signatures [...] and the questioned signatures [...]. These differences include shape and design of letters J, N and A, internal proportions of letters N and E (shape and internal proportions middle cross), handwriting skill and letter positions. [...] Based on the above observations, in my opinion, it is most likely that the writer of the sample signatures [...] and the questioned signature [...] is not the same person. 2. I have also observed fundamental differences between the sample signatures [...] and the questioned signature [...]. These differences include design of letters R, n, N, k, a and b, letter sizes, heights and proportions i.e., letters b and k, shape of i-dot, character combinations, letter positions and handwriting skill. Letter R on questioned signature is slowly written with shaky pen movement a characteristic of simulations. Based on the above observations, in my



26. In the case of Nazmudin Gulam Hussein Viram v. Nicholas Roussos, Supreme Court Civil Appeal No.1 of 2006, the respondent adduced evidence to prove that the transfer deed was forged. The appellant claimed that he had lawfully bought the suit property from the respondent. The crucial question was whether or not the transfer deed was forged. The handwriting expert concluded that the signature on the transfer document was forged. The learned Trial Judge, Justice Tabaro found that the transfer deed was forged. The Judge accepted the evidence of the handwriting expert that the signature of the vendor on the transfer form was forged. The Judge ordered the Registrar of Titles to cancel the names of the appellant from the certificate of title of the suit property, and substitute it with that of the respondent. The appellants were dissatisfied with the judgment of the High Court, and appealed to the Court of Appeal which found no merit in their appeal, and dismissed it. The appellant appealed to the Supreme Court which upheld the decision of the Court of Appeal. Kanyeihamba, J.S.C who wrote the lead judgment of the Supreme Court of Uganda held that:

“I agree with the concurrent findings of the two courts below that the appellants failed to prove that they were bona fide purchasers for value without notice. Once fraud has been proved, and the defence of a bone fide purchaser for value without notice ruled out, no transaction can pass title to anyone under such circumstances.”

27. In the case of Shokatali Abdulla Dhalla v. Sadrudin Meralli, Supreme Court Civil Appeal No.32 of 1994 (Coram: Odoki, Ag. D.C.J., Oder, J.S.C., & Tsekooko, J.S.C.), the appellant claimed that the land was fraudulently transferred, using a forged transfer form. At the trial of the suit, the appellant adduced evidence from a handwriting expert at Police Headquarters, Mr.

Apollo Ntarirwa who testified that the appellant's signature on the transfer form was forged. The High Court disregarded the evidence of the handwriting expert and dismissed the suit. On appeal to the Supreme Court of Uganda, basing on the opinion of the handwriting expert, the court held that the appellant's signature was forged and that the registration of the respondent as owner of the land was null and void. The court ordered for cancellation of the respondent's certificate of title and the registration of the appellant as the lawful owner of the land.

28. Turning to the case before me, it is my decision that, on the basis of the opinion of the handwriting expert, PW4 (Sebuwufu Erisa), the transfer form which the 1st defendant used to transfer the land comprised in Plot 34 & 35 into its name is forged. This has grave implications on the entire transaction for sale of land as I shall later on discuss.

Illegal removal of the caveat on Plot 34 & 35:

29. The second element of fraud alleged by the plaintiffs is the illegal removal of the caveat on land comprised in Busiro Block 498 Plot 34 and 35 at Buli measuring approximately 12.20 Hectares. PW1 (Nakityo Jane) testified:

“That whereas I had lodged a caveat on the suit property way back in 2007, I didn't know how this caveat was lifted to cause registration of the 1st defendant on the suit property.”

30. I have examined Exh.D18, certificate of title for Plot 34 & 35. It proves that the caveat that the plaintiffs had lodged on the land under Instrument Number KLA333506 on the 23 April 2007, was removed on the 21 August 2013 at 12:15pm, and the land transferred to the 1st defendant on the same day at

12:16pm. When the plaintiffs discovered that the caveat had been removed, they lodged a second caveat on the land in 2015 (Exh.P3).

31. The defendants did not rebut evidence brought by the plaintiffs on the illegal removal of a caveat on Plot 34 & 35.
32. Sections 140(2) & (3) of the Registration of Titles Act (Cap 230) (R.T.A) prescribes the legal process for the removal of the caveat. This legal process is designed to offer protection to a caveator's alleged interest in the land. Upon receiving a notice from the Registrar of Titles, informing him or her about the intended removal of the caveat, the caveator is at liberty to obtain a court order, to delay any dealing in the land. It follows then, that the failure to observe this prescribed legal process for the removal of the caveat, removes the protection offered to the caveator by the law. It is because of this, that courts have held that the illegal removal of a caveat, amounts to fraudulent conduct.
33. In the case of Teopista Mugenze v. Pascal Byron Mugenze & 2 Others, Civil Suit No. 166 of 1992 where a question arose on the illegal removal of a caveat in contravention of Section 140(2) of the Registration of Titles Act (Cap 230), Lady Justice Monica Mugenyi had this say:

“[...] the removal of the caveat lodged by the plaintiff with *blatant disregard for prescribed legal process did smirk of dishonest dealing in land. I do therefore find that the registration of the 2nd defendant's interest was tainted with fraud.*”



“No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, Collins v Blantern (1767) (2 Wils. KB 342), as to judgments, Duchess of Kingston's Case (1776) 1 Leach 146, and, as to contracts, Master v Miller (1791) 4 TR 320. So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void [...].”

37. Matters concerning fraud are so serious that even a judgment that has been pronounced through a full trial process cannot be spared the ramifications of fraud when discovered. Such a judgment can be set aside through a fresh cause of action if an aggrieved party presents evidence of fraud that was not available to a trial court. This matter was the subject of consideration in the recent English case of Takhar v. Gracefield Developments Ltd & Ors [2019] UKSC 13, where the court reiterated the legal maxim that fraud unravels everything. The brief facts of the case were that a plaintiff filed a case in 2008 claiming that her signature was forged but she did not have evidence of forgery. She lost the case. In 2013, she filed the same case again, and presented evidence of forgery. The matter was dismissed on grounds of res judicata (rule against re-litigation). She appealed to the Court of Appeal which dismissed her appeal. On appeal to the Supreme Court of the United Kingdom, the judgment was set aside on grounds of fraud.

Lord Briggs held that:



“The principle that fraud unravels all is deeply rooted in the common law, and its continued application is an important contributor to honesty within society, to the rule of law and to the ability of the courts to adjudicate disputes justly. Fraud of this kind is all the more serious because it is aimed at deceiving the court itself.”

Lady Arden held that:

“It is only right that in the generality of cases a judgment obtained by the fraud of the winning party should be rescinded because it is wrong in principle that a person who is proved to be a fraudster should obtain and retain the fruits of his fraud.”

38. The plaintiffs have proved to my satisfaction, the two elements of fraud against the 1st and 2nd defendants: forgery of the transfer form; and illegal removal of a caveat. No court of law in this land shall allow a fraudster to profit from the fruits of his or her fraud. This is in furtherance of the rule of law, honesty within society, and just adjudication of disputes. Consequently, the sale agreement for land comprised in Busiro Block 498 Plot 34 and 35 at Buli measuring approximately 12.20 Hectares, between the plaintiffs and the 2nd defendant, dated 30 July 2008, is rescinded on grounds of fraud. The entire transaction for sale of land from start to finish; is unravelled by the fraud. Therefore, whereas under normal circumstances, the parties would have been legally bound by the sale agreement dated 30 July 2008; because of the fraud and forgery committed by the 1st and 2nd defendants in the transfer of the land, the law dictates that such a transaction cannot be upheld by a court of law; it must be rescinded. Everything is unravelled!



39. Fraud is attributable to the 1st defendant, who is the direct beneficiary of the fraud. The result is that the 1st defendant was fraudulently registered as owner of the land comprised in Busiro Block 498 Plot 34 & 35. See the case of *Kampala Bottlers Ltd v. Damanico (U) Ltd, Supreme Court Civil Appeal No.22 of 1992 (coram: S.W.W. Wambuzi C.J, A. Oder, J.S.C., H. Platt, J.S.C).*
40. *Section 176 (c) of the Registration of Titles Act (Cap 230)* provides for cancellation of a certificate of title obtained fraudulently. In the case of *Hilda Wilson Namusoke & 3 Others v. Owalla’s Home Investment Trust (E.A) Ltd & Commissioner for Land Registration, Supreme Court Civil Appeal No. 15 of 2017 the Supreme Court of Uganda (per Justice Prof. Tibatemwa-Ekirikubinza)* held that:

“Section 177 of the RTA vests powers in the High Court to direct the Commissioner to effect any order of cancellation of a certificate of title [...].”

Alleged fraudulent transfer of land comprised in Plot 3:

41. The plaintiffs assert that the 1st and 2nd defendants forged a transfer form for land comprised in Busiro Block 498 Plot 3 land at Buli measuring approximately 15 acres. However, there is no evidence to support this allegation. The report of the handwriting expert, PW4 (Sebuwufu Erisa) specifically relates to Plot 34 & 35, and cannot be used to support claims of forgery on the transfer of Plot 3.
42. DW2 (Gerald Mwebe) gave evidence on how he acquired Plot 3; he testified that:

“The agreement for plot 3 was executed on the 7.12.2007 [...] The plaintiffs approached me and informed me that they had land that belonged to their family and that the land was on sale [...] Plot 3 was acquired in 2007 before the plaintiffs were registered as Administrators of the Estate of the Late Naume Babirye. Th[ey] sold this property as beneficiaries and later executed transfer deeds [...] The Agreement for Plot 3 was prepared by M/s Kibuuka Musoke & Co Advocates [...]”

43. DW2 (Gerald Mwebe) tendered in Exh.D38, a sale agreement dated 7 December 2007, as proof that he lawfully purchased land comprised in Plot 3. I have examined Exh.D38; it shows that the 2nd defendant purchased Plot 3 at a consideration of 45 million shillings, of which 15 million was paid to the plaintiffs at the time of signing the agreement. The plaintiffs acknowledged receipt of this payment by appending their signatures. I have also examined Exh.D24, an agreement dated 30 November 2011, between the plaintiffs and the 2nd defendant, confirming that the plaintiffs received payment of 45 million shillings from the defendants
44. PW1 (Nakityo Jane) testified that they are illiterates, don't understand English, and that all along they did not know the implications of the documents they were signing. She further denied receiving payment for the land comprised in Plot 3.
45. The 1st and 2nd defendants led evidence from DW1 (Sunday Mpagi), a lawyer who previously provided legal services to the defendants, and had interacted with the plaintiffs in the course of his duties. DW1 (Sunday Mpagi) testified

those profits, but shall not include profits due to improvements made by the person in wrongful possession”

53. The plaintiffs are entitled to mesne profits on account of wrongful deprivation of land comprised in Plot 34 & 35 at the hands of the 1st and 2nd defendants. The plaintiffs are also entitled to general damages.
54. In the final result, I enter judgment in favour of the plaintiffs with the following declarations and orders:
- 1). That the 1st defendant, Streams of Life Church Ltd, was fraudulently registered as owner of the land comprised in Busiro Block 498 Plot 34 and 35 at Buli, Wakiso District using a forged transfer form.
 - 2). That the Commissioner for Land Registration is directed to cancel a certificate of title in the name of the 1st defendant, Streams of Life Church Ltd, for land comprised in in Busiro Block 498 Plot 34 and 35 at Buli, Wakiso District.
 - 3). That the Commissioner for Land Registration is directed to enter Nakawombe Robinah and Nakityo Jane (Administrators of the estate of the late Mirisento Nalongo Kidza – HCT-00-CV-AC-615-2008) as registered owners of the land comprised in Busiro Block 498 Plot 34 and 35 at Buli, Wakiso District measuring approximately 12.20 Hectares.
 - 4). That the 1st and 2nd defendants shall vacate the land comprised in Busiro Block 498 Plot 34 and 35 at Buli, Wakiso District, and remove any illegal buildings within **3 (three) months** from the date of this judgment, in default of which, they shall be evicted, in accordance with The Constitution (Land Evictions) (Practice) Directions, 2021.

- 5). That a permanent injunction issues restraining the 1st and 2nd defendants, their agents, servants, workmen and all those claiming under them and/or deriving authority from them trespassing, encroaching, interfering and/or in any way dealing with the land comprised in Busiro Block 498 Plot 34 and 35 at Buli, Wakiso District.
- 6). That the 1st defendant was lawfully registered as owner of the land comprised in Busiro Block 498 Plot 3 at Buli, Wakiso District.
- 7). That the 1st and 2nd defendants, jointly and/or severally, shall pay general damages of 25,000,000 Ushs (Uganda Shillings Twenty Five Million only) to the plaintiffs.
- 8). That the 1st and 2nd defendants, jointly and/or severally, shall pay mesne profits of 25,000,000 Ushs (Uganda Shillings Twenty Five Million only) to the plaintiffs.
- 9). That the 1st and 2nd defendants shall pay interest of 15% per annum on general damages and mesne profits from the date of judgment until payment in full.
- 10). That the 1st and 2nd defendants, jointly and/or severally, shall pay costs of the suit to the plaintiffs.

IT IS SO ORDERED.



BERNARD NAMANYA
JUDGE
5 September 2023

Delivered by E-mail:

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