

THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT MUKONO  
CIVIL SUIT NO. 287 OF 2021

1. SHABAN MUKASA
2. SHADIA MUKASA ..... PLAINTIFFS

VERSUS

1. LAMBA ENTERPRISES LTD
2. THE COMMISSIONER LAND REGISTRATION ..... DEFENDANTS

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

JUDGMENT

**Background.**

1. In 2009, the 1<sup>st</sup> Plaintiff was approached by gentlemen with a proposal for having a lease for a stone quarry in relation to a rock located on part of the suit land. The gentlemen whose names and contacts the 1<sup>st</sup> Plaintiff does not recall requested to see his original title for further scrutiny as discussions went on. That the gentlemen enticed the 1<sup>st</sup> Plaintiff who was expecting to execute a lease for the rock for a substantial amount with UGX. 5,000,000/= as a deposit. The 1<sup>st</sup> Plaintiff and the gentlemen agreed to a further meeting to conclude the transaction but to-date he has never set eyes on them.



2. In 2020, the 1<sup>st</sup> Plaintiff was approached by one of his tenants, a *kibanja* owner on the suit land, with a proposal to buy his portion of *kibanja* and get a title. When he did a search at the land registry, he was shocked to discover that his title was registered in the 1<sup>st</sup> Defendant's names. That the Plaintiffs have never executed a sale agreement with the 1<sup>st</sup> Defendant and they have never dealt with any official from the 1<sup>st</sup> Defendant company. The 1<sup>st</sup> Plaintiff has never signed transfer forms for the 1<sup>st</sup> Defendant or any other person and wonders how his property was transferred to its names hence this suit.
3. The Plaintiffs filed this suit for:
- (a) a declaration that the 1<sup>st</sup> Defendant fraudulently caused a transfer of the suit land into its names;
  - (b) a declaration that the 1<sup>st</sup> Plaintiff is the owner of the suit land comprised in Block 64 Plot 213;
  - (c) an order directing the 2<sup>nd</sup> Defendant to cancel the entry of the 1<sup>st</sup> Defendant and re-register the 1<sup>st</sup> Plaintiff as proprietor of the suit land;
  - (d) a permanent injunction restraining the 1<sup>st</sup> Defendant, its agents or other persons claiming/deriving interest from it from interfering with the Plaintiffs' use of the suit land;
  - (e) general and punitive damages and costs of the suit.
4. Both Defendants did not file their written statements of defence despite being served by substituted service on 10<sup>th</sup> December, 2021 as for the 1<sup>st</sup> Defendant and physically on 16<sup>th</sup> December, 2021 as for the 2<sup>nd</sup> Defendant. The suit proceeded ex-parte. During the hearing of this suit



the Plaintiffs were represented by Counsel Mutyaba Ivan from M/s DeMott Law Advocates. The Plaintiffs produced two witnesses and learned counsel filed the Plaintiffs' written submissions in this court on 21<sup>st</sup> March, 2023.

### **Issues**

- (1) Whether the 1<sup>st</sup> Defendant's name was fraudulently entered on the certificate of title for land comprised in Block 64, Plot 213 land at Bamutakude, by the 2<sup>nd</sup> Defendant.**
- (2) Whether there are remedies available to the parties.**

### **Issue 1.**

- 1. Whether the 1<sup>st</sup> Defendant's name was fraudulently entered on the certificate of titles for land comprised in Block 64, Plot 213 land at Bamutakude, by the 2<sup>nd</sup> Defendant.**
5. It was submitted for the Plaintiffs that the 1<sup>st</sup> Plaintiff has been the owner of the property comprised in Block 64 Plot 213 land at Bamutakude and that he has never transferred the suit property to the 1<sup>st</sup> Defendant. That he has never executed transfer forms in favor of the 1<sup>st</sup> Defendant, yet upon doing a search he discovered that his land was transferred into the 1<sup>st</sup> Defendant's names as proprietor.
6. Furthermore, that the 1<sup>st</sup> Plaintiff P.W.1 elaborated how he surrendered his title but never executed any transfer forms for anybody. That it was a rude shock to later discover that the 1<sup>st</sup> Defendant had secured a



transfer of title to the suit land into its names without the 1<sup>st</sup> Plaintiff's consent. And that the only explanation is that of forgery and fraud to secure the said transfer.

7. It is the general rule in civil matters that he or she who alleges must prove his or her allegation to the satisfaction of the trial court. The plaintiff is required to prove his or her case on a balance of probability.

Section 101 of the Evidence Act, Cap. 6, provides as follows:

*"(1) 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.*

*(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

8. Section 103 of the Evidence Act also 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 provided by any law that the proof of that fact shall lie on any particular person."*

9. In the case of **Miller v. Minister of Pensions [1947]2 All ER 372**, Lord Denning held that:

*"The degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it more*



*probable than not, the burden of proof is discharged but if the probabilities are equal, it is not."*

10. However, allegations of fraud are more serious in nature and are required to be specifically pleaded and strictly proved before a court of law by the person alleging it. The standard of proof in allegations of fraud is slightly higher than that in ordinary civil suits. In **Kampala Bottlers Ltd v. Damanico (U) Ltd, SCCA No.22 of 1992**, the Supreme Court held thus;
- "Fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters."*
11. In the instant case, P.W.1 testified that when the 1<sup>st</sup> Plaintiff examined the documents retrieved from the land office by police, he immediately noticed that the signature appearing on the transfer forms was different from his and the photos of the persons that appeared as directors for the 1<sup>st</sup> Defendant were alien to him. That this is confirmation of dishonesty, forgery with the sole intent of depriving the Plaintiffs of their property.
12. Additionally, that no witness was adduced by either the 1<sup>st</sup> Defendant or 2<sup>nd</sup> Defendant to be subjected to cross examination to explain how the transfer was secured. That it is trite law that evidence that is not challenged by way of cross examination or leading evidence to the contrary shall ordinarily be taken by court as truth, as such the Plaintiffs' testimony should be treated as truth since it is unchallenged. Counsel prayed that court finds that the 1<sup>st</sup> Defendant's action of



transferring the title to the suit land in its names without the consent of the Plaintiffs was illegal and fraudulent.

13. The Plaintiffs have attached to their pleadings a copy of the certificate of title which indicate the 1<sup>st</sup> Defendant as the current registered proprietor of the suit land. The 1<sup>st</sup> Defendant did not file its written statement of defence to explain the circumstances under which it became registered on the certificate of title for the suit land.
14. Fraud has been defined in the case of **Zaabwe v. Orient Bank Ltd & Others, SCCA No. 4 of 2006**, by the then Chief Justice, Katurebe, to mean:  
*“an intentional perversion of truth for 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 deceives and is intended to deceive another so that he shall act upon it to his legal injury.”*
15. Section 77 of the Registration of Titles Act, Cap 230, provides thus:  
*“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.”*



16. Further, section 176 (c) of the Registration of Titles Act states as follows:

*“No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases—*  
*(a) .....*;  
*(b) .....*;  
*(c) 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 bona fide for value from or through a person so registered through fraud.”*

17. The 1<sup>st</sup> Plaintiff who testified as P.W.1 gave evidence during examination in-chief that at all material times, he has been the owner of property comprised in Block 64 Plot 213, land at Bamutakude. That sometime in 2009, he was approached by some gentlemen with a proposal for having a lease for a stone quarry in relation to a rock located on part of the suit land. That the gentlemen whose names and contacts he does not recall requested to see his original title for further scrutiny as discussions went on. That the gentlemen enticed the 1<sup>st</sup> Plaintiff in expectation to execute a lease for the rock for a substantial amount with UGX. 5,000,000/= as a deposit.

18. That the 1<sup>st</sup> Plaintiff agreed with the gentlemen to further meet to conclude the transaction but to-date he has never seen them again. P.W.1 added that hopeful that the gentlemen would come back with



his title since he had not sought any consent from the 2<sup>nd</sup> Plaintiff his wife and having not signed any transfer forms, he laid back.

19. P.W.1 also testified that in the year 2020, he was approached by one of his tenants, a *kibanja* owner on the suit land, with a proposal to buy a legal interest on his portion of the *kibanja* and get a title. That upon a discussion with the *kibanja* owner, the 1<sup>st</sup> Plaintiff recalled that the title was with the gentlemen that wanted to lease his rock and that when he did a search at the land registry he discovered that his title was registered in the 1<sup>st</sup> Defendant's names.
20. That he reported the matter to police vide SD Ref: 44/12/08/2021 and the police embarked on investigations. Additionally, P.W.1 stated that during the police investigations, the police retrieved all the documents related to the suit land from the land registry and on inspection of the same, it was evident that the 1<sup>st</sup> Plaintiff's signature appearing on the transfer forms was different from his real signature and the persons whose photos appeared as directors in the 1<sup>st</sup> Defendant's company were alien to him as he has never met any of them. Further, that the consideration registered for the suit property was UGX. 8,000,000/=, which is way so low for land with a rock. That the Defendants' actions are dishonest and intended to illegally deprive the Plaintiffs of their property given that no consent was ever sought from them.
21. P.W.1's evidence was corroborated by PW2 who claimed to have been married to the 1<sup>st</sup> Plaintiff for more than 38 years. She further





testified that they own more than 2 square miles in the area with many titles which made the 1<sup>st</sup> Plaintiff not to pay keen attention on the suit land's title.

22. Based on the above uncontroverted evidence, I find that there is sufficient proof that the 1<sup>st</sup> Defendant indeed fraudulently got registered on the 1<sup>st</sup> Plaintiff's certificate of title. In my judgment, the plaintiffs have discharged the burden of proving this case, hence the 1<sup>st</sup> issue is accordingly resolved in the Plaintiffs' favour.

**Issue 2: Whether there are remedies available to the parties.**

23. It is trite that for a certificate of title to be cancelled on the ground of fraud, one must follow due court process like the Plaintiffs did in the instant case. Section 177 of the Registration of Titles Act provides thus:  
*"Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the Registrar shall give effect to that order."*
24. Having proved to the satisfaction of this court that the 1<sup>st</sup> Defendant fraudulently got registered on the certificate of title, the 1<sup>st</sup> Plaintiff is entitled to be re-entered on the certificate of title in his own



capacity as the legal owner of the suit land. This court is empowered under section 177 of the Registration of Titles Act, Cap. 230, to direct the Registrar of Titles, who is the 2<sup>nd</sup> Defendant in this case, to cancel the 1<sup>st</sup> Defendant's names from the 1<sup>st</sup> Plaintiff's certificate of title.

25. The law on permanent injunction is very clear and settled that it is a remedy for preventing wrongs and preserving rights so as to restrain and repair injury for the purpose of dispensing complete justice between the parties. In **Akena Christopher & 9 Others v. Opwonya Noah, HCCA No. 0035 of 2016**, Justice Stephen Mubiru held that:
- “Permanent or final injunctions are granted as a remedy against an infringement or violation which has been proven at trial. Such an injunction will be granted to prevent ongoing or future infringement or violations.”*
26. It is the Plaintiffs' undisputed case that the 1<sup>st</sup> Defendant fraudulently got registered on the suit land. This is a deserving case where a permanent injunction can be issued to prevent the 1<sup>st</sup> Defendant company from dealing with the suit land in any adverse manner.
27. As to damages, they are awarded to fairly compensate the aggrieved party for the inconveniences accrued as a result of the actions of the opposite party. It is the duty of the party alleging that he



or she was injured by the other party to plead and prove that there were damages, losses or injuries suffered by such actions

28. The Plaintiffs in the instant case have proved that they have been inconvenienced as a result of the 1<sup>st</sup> Defendant's entry on the certificate of title hence they are entitled to an award of general damages. The Plaintiffs are accordingly awarded general damages of UGX. 20,000,000/= payable by the 1<sup>st</sup> Defendant.
29. The general rule as to the award of costs in civil suits is that costs follow the event of the action; that is, the costs of the successful party are to be paid by the party who is unsuccessful. However, the court retains a wide discretion to grant or withhold or apportion costs as it thinks fit. This discretion is to be exercised judiciously. Section 27 (1) of the Civil Procedure Act, Cap.71, gives this court the discretion to award costs to any party. It provides thus:
- "(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid."*
30. The circumstances of this case warrant an award of costs to the Plaintiffs as against the 1<sup>st</sup> Defendant by virtue of the fact that its fraudulent actions made the Plaintiffs to incur costs in prosecuting this



suit to the end. This could have been avoided had it not been for such fraudulent and illegal actions of the 1<sup>st</sup> Defendant.

### **Conclusion**

31. Pursuant to the foregoing analysis, judgment is hereby entered in favour of the Plaintiffs and I hold that the 1<sup>st</sup> Defendant's fraudulent registration of its names on the 1<sup>st</sup> Plaintiff's certificate of title for land comprised in Block 64 Plot 213 land at Bamutakude, is void and any transaction arising from the 1<sup>st</sup> Defendant's fraudulent entry on the 1<sup>st</sup> Plaintiff's certificate of title for the suit land by the 2<sup>nd</sup> Defendant is a nullity and is hereby declared void *ab initio*. I further order:

- (a) that the Registrar of Titles who is the 2<sup>nd</sup> Defendant should cancel the 1<sup>st</sup> Defendant's names from the 1<sup>st</sup> Plaintiff's certificate of title and re-enter the 1<sup>st</sup> Plaintiff's names as the registered proprietor of the suit land;
- (b) that a permanent injunction doth issue against the 1<sup>st</sup> Defendant restraining it, its agents or workmen, successors in title or those deriving survival from it, from interfering with the 1<sup>st</sup> Plaintiff's ownership and quiet possession of the suit land;
- (c) an award of general damages of UGX. 20,000,000/= to the Plaintiffs payable by the 1<sup>st</sup> Defendant;
- (d) an award of costs of the suit to the Plaintiffs as against the 1<sup>st</sup> Defendant.

I so order accordingly.



This judgment is delivered this 4<sup>th</sup> day of May, 2023 by



**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

- (1) Counsel Mutyaba Ivan from M/s DeMott Law Advocates, for the Plaintiffs;*
- (2) Ms. Pauline Nakavuma, the Court Clerk.*