

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL SUIT NO. 484 OF 2015

GERALD M. SSEMWOGERERE :::::::::::::::PLAINTIFF/

1ST COUNTER DEFENDANT.

VERSUS

BONNY M.KAKUMBA::::::::::::::::::DEFENDANT/

COUNTERCLAIMANT


CHRISTOPHER BWANIKA :::::::::::::::2ND COUNTER –DEFENDANT

BEFORE: HON: JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

1.The Plaintiff’s claim against the defendant is for the following:

- i. That the defendant’s claim over ownership of the suit land comprised in **Leasehold Register Volume 3272 Folio 7, Plot 10 Kyadondo Block 273 land at Buziga Katuuso, Kampala measuring approximately 0.154 hectares** is not only fraudulent, but also illegal null and void.
- ii. A permanent injunction restraining the defendant or his employees, servants, agents, assignees, successors in title or his legal



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representatives or other persons claiming through or under him from claiming, dealing or interfering with the suit property.

- iii. General and primitive damages for trespass to land.
- iv. Interest at 25% from the date of filing the suit until payment in full.
- v. Costs of the suit.
- vi. Any other relief that this Court deems fit.


2. The facts constituting the cause of action as stated in the Plaint are as follows:

- i. That on 6th November 2003, the Plaintiff entered in to a sales agreement for purchase of the suit land from Christopher Bwanika hereinafter referred to as the “the 2nd counter defendant” who owned the same as Kibanja having bought it from one Margret Wamboga the then Administrator of the estate of the late Engineer Michael Wamboga.
- ii. That at the time of purchase, the land was owned under customary tenure on Kabaka’s land measuring approximately 0.40 acres and was being surveyed at the time and described as **Plot 1472 Block 273** bordering the plot of Henry Matovu on the Eastern side, Dr. Abdu Kasozi on the upper side, Hajji Kasule on the lower side and Sekandi’s Plot on the western side.
- iii. That the vendor, the 2nd counter defendant” had applied to the Buganda Land Board for a lease vide BLB/1/5 of 31st January 1997 under


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general receipt No. 8728 of 31/1/97 and covenanted to authorize the lease to be issued in favour of the Plaintiff.

- iv. That on or around the 21st June 2004, the 2nd counter defendant wrote to the Secretary Land Board applying for permission to transfer the lease offered to him into the names of the Plaintiff and further that he had no objection to a fresh lease offer or lease agreement being executed directly in the names of the Plaintiff.
- v. That on or about the 9th July 2004 to the 27th August 2004, a formal lease was executed on the suit property and certificate of title was issued in the names of Christopher Bwanika for 49 years effective 1st June 2004.
- vi. That at the instance of the Plaintiff, a search was conducted on the said land at the Buganda Land Board on or around the 29th June 2015 and a search report was issued inter alia stating that the file was opened on the 20th February 1997 and there was a sale between the 2nd counter defendant and Wambuga Margret on the 6th December 1996 and also that the 2nd counter defendant sold the same to the Plaintiff on 6th November 2003.
- vii. That the defendant forcefully entered on to the land claiming ownership of the same and was in the process of constructing illegal structured on the suit land in order to fraudulently and illegally defeat the registered and equitable interest of the Plaintiff.
- viii. The Plaintiff contends that the defendant has never been in occupation or possession of the suit land and holds no interest whatsoever in the


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suit land and is merely a trespasser for which the Plaintiff claims general and special damages.

ix. The Plaintiff contends that the defendant illegally and with intent to fraudulently defeat the Plaintiff's legal and equitable interest in the suit land is trespassing and hurriedly erecting illegal structures to the detriment and inconvenience of the Plaintiff for which he claims punitive damages.

3. The Plaintiff lists the particulars of fraud on part of the defendant as follows;

- a) Dishonestly claiming the suit land without any documentation.
- b) The defendant dishonestly representing himself as the owner of the suit land to the local authorities and the public.
- c) The defendant razing down the Plaintiff's crops and other properties.
- d) The defendant presenting and uttering false sales agreement of the suit land.

x. That this Court should infer that the impugned conduct of the defendant is motivated by no other purpose except to fraudulently defeat the legal and equitable interest of the Plaintiff in the suit property.

4. The Plaintiff therefore seeks for remedies listed herein above.

5. The defendant in his written statement of defence and counter claim states inter alia;


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- i. That on 20th March 1992, Muganga James Kwaabwe sold the suit land to Mr. Bagonza Henry, Mr. Muganga James Kwaabwe bought the land from Hajji Muhammad Kasule Lubboho.
- ii. That at all material times thereafter, Bagonza Henry physically possessed and fully utilized the suit land without resistance from any person or authority whatsoever.
- iii. That on 13th of April 2006, Bagonza Henry sold the suit land to the defendant/counter claimant for fifty-five million shillings (55,000,000/=) which was dully and fully paid.
- iv. That the defendant/counter claimant took physical possession of the suit land and since then continuously used the same without protestation from any person or authority for the last ten years and that he remains in possession thereof.
- v. That the defendant/counter claimant discovered that some unscrupulous persons claimed interest in his land and were trespassing on the same and he only managed to stop them with the assistance of the area authorities and Police. That in the order to protect his land, the defendant constructed a wall fence around the same.
- vi. The defendant/counter claimant contends that at all material times he has been a lawful occupant on the suit land and the Plaintiff does not have any interest whatsoever in his land.


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- vii. The defendant/counter defendant further contends that the Plaintiff has no legal interest in the suit land and any claims in respect thereof are imaginary, fraudulent and therefore illegal.
 - viii. It was the defendant's contention that, even if the plaintiff had any title to the land, which is denied, the plaintiff acquiesced in the defendant's occupation of the suit land and is estopped from arguing otherwise. That accordingly an action in trespass and ejection from the suit land against the defendant is misconceived.
 - ix. The defendant prays that the suit be dismissed with costs.
 - x. The defendant raised a counter claim against the Plaintiff and Christopher Bwanika herein after referred to as the 1st and 2nd counter defendants respectively.
6. The counter claimant claims against the counter defendants jointly and severally is for;
- i. A declaration that the counter claimant is the lawful occupant on the suit land.
 - ii. A declaration that the counter claimant /defendant is the rightful owner of the suit land.
 - iii. A declaration that the second counter defendant's certificate of title to the suit land is void for fraud and illegality.
 - iv. An order for cancellation of the 2nd counter defendant's certificate of title to the suit land.


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- v. A permanent injunction restraining the counter defendants, their agents, officers, servants and /or any one from /under whom they claim from disturbing the counter claimant's quiet and peaceable enjoyment of the suit land.
- vi. General damages for inconvenience and;
- vii. Costs of the counter claim.

7. The counter claimant avers that the certificate of title registered in the names of the second counter defendant is void for fraud and illegality.

8. The counter claimant lists the particulars of fraud and illegality as follows;

- a) The purported agreement of sale between the counter defendants describes the land and subject matter thereof as **Block 273 Plot 1472**, which has no historical relationship with the land formerly known as **Kyadondo Block 273 Plot 10** over which the certificate of title was made.
- b) That the land known as **Kyadondo Block 273 Plot 10** over which the purported lease hold certificate of title was created did not exist at the time the title was purportedly created.
- c) That **Plot 10** previously measured **10143.61 acres** and was subdivided into plots 11,12,13,14,15 and 16 leaving residue Plots 17 and 18 long before the impugned certificate of title was created.

That none of the subdivided or residue plots belongs to any counter defendant.


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- d) That in the purported agreement of sale, the acreage of land is indicated as 20 decimals. That in the purported previous sale purchase transaction, the suit land is indicated as measuring 50 decimals. That hence the said documents cannot purport to refer to the same piece of land (the suit land).
- e) That the purported verification of ownership of the Kibanja by the second counter defendant to be issued with a leasehold certificate of title on the suit land states that it is located in Katuuso Local Council one and is dated 15th January 1997 yet at that time the Local Council System was not in existence.
- f) Procuring, preparation and issue of a certificate of title over the suit land with full knowledge that Bagonza Henry was in effective physical occupation of the same and therefore unlawfully disregarding his lawful interests that the counter claimant inherited in law.
- g) Purporting that the land belonged to the second counter defendant whereas not.
- viii. The counter claimant prays that a permanent injunction issues restraining the counter- defendants from disturbing his quiet possession of the suit land.
- ix. The counter claimant further contends that he has been greatly inconvenienced on account of the unlawful actions of the counter defendants for which they should be held liable in general damages.
9. The Counter claimant prays that the main suit should be dismissed with costs and Judgment be entered on the counter claim.

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10. In his reply to the written statement of defence /counter claim, the Plaintiff /1st counter defendant states inter alia;

- i. That the written statement of defence is bad in law and amounts to approbation and reprobation seeking to benefit from parts of the facts in the matter while denying the others.
- ii. The 1st Plaintiff /1st counter defendant contends that he is a bonafide purchaser of the suit land for value without notice of any fraud whatsoever and has been in physical possession and occupation through care takers until the day he was forcefully evicted by the defendant/counterclaimant and his properties and crops destroyed in the process.
- iii. The on the 6th November 2003, he entered in to a sales agreement for purchase of the suit land with the 2nd Counter defendant who owned the suit land as Kibanja having bought it from a one Margret Wamboga the then administrator of the estate of the late Engineer Michael Wamboga.
- iv. That at the time of purchase the land was being owned as customary tenure on Kabaka's land measuring approximately 0.40 acres and was being surveyed at the time and described as **Plot 1472 on Block 273** bordering the Plot of Henry Matovu on the eastern side, Haji L Kasule on the lower side and Sekandi's Plot on the western side.
- v. That the vendor had applied to Buganda Land Board for a lease vide BLB /1/5 of 31st January 1997 under general receipt No. 8728 of

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31/1/97 and covenanted to authorize the lease to be issued in favour of the Plaintiff.

- vi. That on or around 21st June 2004 the 2nd Counter defendant wrote to the secretary Land Board applying for permission to transfer the lease offered to him in to the names of the Plaintiff and had no objection to a fresh lease offer or lease agreement being executed directly in the names of the plaintiff.
- vii. That on or about the 9th July 2004 to 27th August 2004, a formal lease was executed on the suit property and a certificate of title thereby issued in the names of the 2nd counter defendant for forty nine years effective 1st June 2004.
- viii. That at the instance of the Plaintiff a search was conducted on the suit land at Buganda Land Board on or around the 29th June 2015 and the search report was issued stating that the file was opened on 20th February 1997 and there was a sale between Christopher Bwanika and Wamboga Margaret on the 6th December 1996 and that the 2nd Counter defendant had sold the same to the Plaintiff on 6th November 2003.
- ix. That the defendant forcefully entered on to the suit land claiming ownership of the same and was in the process of constructing illegal structures in order to fraudulently and illegally defeat the registered and equitable interest of the Plaintiff in the same.

12. In reply to the counter claim the 1st counter defendant states inter alia;

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- i. That the Counter claimant does not raise any fact or does not raise any fact or grievance against the 1st counter defendant at all in its plaint and there is none to reply to.
- ii. That on 6th November 2003 the 1st counter defendant entered in to a sales agreement for the purchase of the suit land with the 2nd counter defendant who owned the suit land as Kibanja having bought from a one Margaret Wamboga the then administrator of the estate of the late engineer Michael Wamboga.
- iii. That at the time of purchase, the land was owned under customary tenure on Kabaka's land measuring approximately 0.40 acres and was being surveyed at the time and described as Plot 1472 on Block 273 bordering the Plot of Henry Matovu on the eastern side, Dr. Abdu Kasozi on the upper side, Hajji Kasule on the lower eastern side and Sekandi's Plot on the western side.

13. The rest of the pleading in the 1st defendant's Counter claim were the same as what he had claimed in his plaint.

14. The 1st Counter defendant contended that the counter claimant has never been in occupation or possession of the suit premises and holds no interest whatsoever in the suit land and is a trespasser for which the 1st counter defendant claims for general and special damages.

15. The 1st counter defendant prayed that the counter claim should be dismissed with costs.


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16. in his written statement of defence to the counter claim the 2nd counter defendant states inter alia;

- i. That the land was originally owned by the estate of the late Engineer Michael Wamboga who was the chief mechanical Engineer of the defunct Coffee Marketing Board and was sold to the 2nd counter defendant as Kibanja by Margaret Wamboga in her capacity as administrator of the estate of the late engineer Michael Wamboga.
- ii. That the late Micheal Wamboga had purchased the Kibanja from a one Mohammed Lubboho Kasule in a sale agreement dated 31st October 1987.
- iii. That the land purchased by the 2nd counter defendant which was Kibanja on Kabaka's land at Katuuso Bunga hill was at all material times bordering Henry Matovu west wards, Dr. Kasozi on the upper side and Hajji Kasule and Sekandi on the eastern side and the 2nd Counter defendant took possession of the suit land and embarked on processing a title for it and used the suit land until he sold it to the 1st counter defendant to whom he handed over possession and it was not true that the counter –claimant or any person the counter claimant claims under ever had physical possession of the same.
- iv. That the 2nd counter defendant having lawfully acquired the suit land, obtained all the necessary authorization to process a lease and was offered a lease on 7th June 2004 from Buganda Land Board and eventually paid the premium and after which he was granted a 49-year lease on 5th July 2004.


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- v. That by sale agreement dated 6th November 2003 the 2nd Counter defendant sold all his interest in the suit land and by that time the 2nd counter defendant was still in the process of obtaining a lease title for the suit land.
- vi. That the suit land was still under survey and titling to the extent that it was initially indicated to the 2nd counter defendant by surveyors handling the process that it was described as **plots 1472 and 472** during the process of surveying and mapping.
- vii. That the process of surveying was carried out and superintended by a registered surveyor by the name of Batume trading as surveyed properties (U) limited and under the authority and supervision of Buganda Land Board and the department of surveys and mappings.
- viii. That after the survey and mapping process was completed the suit land was titled and given a description of **Block 273 Plot 10** as seen on the certificate of title.
- ix. That during the process of survey and titling , the land was reduced in acreage and the Plot shape changed on account of a passage on public way/road created between the 2nd counter defendant's Kibanja and a neighbor's land on the western side, the late Mzee Henry Matovu which the 2nd counter defendant had initially objected to but later accepted through a mediation by the department of Surveys and Mappings and Buganda Land Board as was reflected in the letter to the Secretary of Buganda Land Board referenced P-03-1208-01 of February 2004.

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- x. The 2nd Counter defendant denies the allegations of fraud made against him by the counter claimant.
- xi. That the office of Surveys and mapping after confirming the final demarcation and boundaries of the suit land, cancelled the deed prints for **Plot 1472** on 19th December 2003 and prints for **Plot 10** were issued.
- xii. The 2nd counter defendant contended that the certificate of title was obtained lawfully from Buganda Land Board and the office of the Registrar of Titles.
- xiii. That the suit land was never lawfully acquired by the alleged Bagonza Henry and never came into his physical possession or occupation.
- xiv. That neither the counter claimant nor the said Bagonza Henry nor Muganga James Kiwabwe have ever lawfully held, possessed and or occupied the suit land and the claim by the counter claimant is a calculated scheme to steal the 1st counter defendant's land.
- xv. The 2nd Counter defendant further contends that the counter claimant does not have any legal or equitable rights or interests whatsoever in the suit land and he has concocted his claim and is not entitled to any reliefs sought.

17. The 2nd counter defendant prayed that the counter claim should be dismissed with costs.

18. I will resolve the issues raised in the order the Plaintiff submitted on them.


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19. Issue one and two: Who is the rightful owner of the land in dispute and whether the 2nd counter defendant lawfully acquired the suit land and obtained registration of the certificate of title in his names legally.

20. Plaintiff's evidence and Submissions

The Plaintiff tendered in Court an agreement dated 6th November 2003 where he bought the suit land which was at the time owned by customary tenure on Kabaka's land from the 2nd counter defendant.

The Plaintiff testified that he was in possession of the suit land until the year 2015 when he was evicted by the defendant /counter claimant.

21. The Plaintiff further stated that he made inquiries from the local council committee of the area before he purchased the suit land and he was informed that the suit land belonged to the 2nd counter defendant.

22. The Plaintiff also stated that he carried out a search at Buganda Land Board which confirmed the ownership of the suit land to belong to the 2nd counter defendant.

23. In his submissions the Plaintiff cited the case of *David Sejjaka Namila versus Rebecca Musoke –S.C.C. A NO. 12 of 1985* where it was held that a bonafide purchaser was one who purchases in good faith and without notice of any fraud and that the onus was on the defendant to establish the plea of bonafide Purchaser for value without notice.

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24. **Defendant's evidence and submissions.**

The defendant claimed he bought the suit land from a one Bagonza Henry. He stated that he established that the suit land belonged to the said Bagonza Henry after inquiring from the area Chairperson the late David Mukasa. That he also learnt that Henry Bagonza purchased the suit land from Muganga James Kwaabwe on the 20th March 1992 and that the said Bagonza provided him with a copy of the agreement of purchase. That the Chairperson of the area also provided him with a letter relating to a former dispute between Muganga James Kwaabwe and Haji Muhammad Kasule Lubobbo dated 14th August 1989 to confirm that Muganga James Kwaabwe indeed purchased the suit land from Hajji Muhammad Kasule Lubobbo.

25. The defendant /Counter Claimant also contended that Bagonza Henry gave him copies of two rental receipts from Buganda Land Board wherein he was paying rent for the years 2003 and 2005 and that he could not trace the receipts for the previous years. The defendant further contended that Bagonza Henry was in physical possession of the suit land since 1992.

26. The defendant contended that he bought the suit land from the said Bagonza for a consideration of 55,600,000/= and the sale agreement was witnessed by a one Ntabazi Swally and Sendijja Geresom and it was also witnessed by a one George William Semakula who was a Parish Chief and the representative of the Kabaka.


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27. The defendant claimed that after the execution of the agreement he started utilizing his Kibanja and stopped and compensated a one Kakooza Edward who was quarrying stones there at as well as cultivating crops.

28. The defendant contended that since 2005 he had been utilizing the suit land without any disturbance.

29. The defendant further contended that between 2013-2014 he went on a business trip to Mutukula and the employees he had left to continue working on the land left due to the fact that they were not paid that on his return in 2015 he found when the said Henry Matovu had died and a one Bena Nakate Matovu informed him that someone had acquired a title to his Kibanja which shocked him.

30. The defendant stated that he later got to know that it was the Plaintiff who claimed to have a title over the suit land and on various occasions they tried to resolve the problem in vain.

31. The defendant contended that the Deputy Resident Commissioner for Makindye Division conducted a mediation session between him and the plaintiff and he concluded that the suit land belonged to him (defendant /counter claimant).

32. That he also investigated the authenticity of the title and found that there were many inconsistencies in the alleged agreements for the purchase of his land that led to the creation of the title.

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33. That whereas the purported agreement of sale between the counter defendants described the suit land as **Block 273 Plot 1472** it had no historical relationship with the land formerly known as **Kyadondo Block 273 Plot 10** over which the Certificate of Title was purportedly made.

34. **Decision of Court on issues one and Two.**

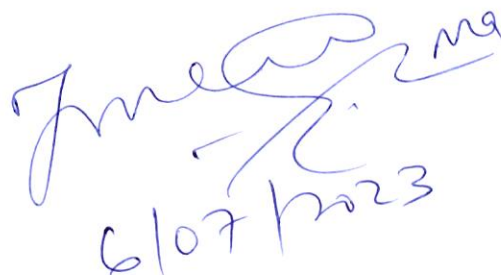
Section 103 of the Evidence Act Cap 6 provides that *“The burden of proof a to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by the law that the proof of that fact shall lie on any particular person.”*

35. There is no contention that the suit land was formerly Kibanja (customary land).

36. The Plaintiff /1st Counter defendant adduced evidence that he bought the suit land on 6th November 2003 from the 2nd Counter defendant. The agreement was tendered in Court and marked as exhibit PE1.

37. The suit land was later registered in the names of the 2nd counter defendant, Christopher Bwanika who had applied for a lease for the same from Buganda Land Board before he sold it to the Plaintiff /1st Counter defendant. The lease was entered in to on 5th July 2004 and registered on the certificate of title on 2nd August 2004 vide instrument KLA 262827 for 49 years.

38. The Plaintiff /1st Counter defendant was given a search report by Buganda Land Board that described the suit land as **Kyadondo Block 273**


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Plot 10 Buziga Katuuso which indicated that the owner was the 2nd Counter defendant.

39. The file on the suit land had been opened on 20th February 1997 by Buganda Land Board and indicated that there had been an agreement of sale on 6th December 1996 between the 2nd Counter defendant and a one Wambuga Margaret and the 2nd Counter defendant had sold the land to the Plaintiff /1st Counter defendant on 6th November 2003.

40. The search also indicated there were no rent arrears as they had been duly paid. The search letter was tendered in Court and marked as exhibit PE4.

41. The defendant /Counter Claimant relied on the agreement of sale of Kibanja (the suit land) to him by Bagonza Henry. The agreement was tendered in Court and marked DE5.

42. The defendant /Counter Claimant never adduced any evidence from witnesses he purportedly bought the suit land from nor even their administrators.

43. It is evident that the suit land was transferred into the names of the 2nd Counter defendant as shown in Exhibit PE3.

44. **S.59 of the Registration of Titles Act Cap 230** provides that *“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title*

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48. The defendant /Counter Claimant acknowledged during cross-examination that he was aware that the suit land belonged to the Kabaka of Buganda who is represented by Buganda Land Board. The defendant /counter claimant acknowledged that he did not obtain consent from Buganda Land Board. The defendant only stated that the Muluka Chief signed on the sale agreement as a representative of Buganda Land Board.

49. In the search report dated 29th June 2015 which was tendered in Court as exhibit PE4 it was acknowledged by the customer service manager Buganda Land Board that the suit land comprised in **Kyaddondo Block 273 Plot 10 Buziga Katuuso** had been sold to the Plaintiff/1st Counter defendant by the 2nd counter defendant. This in effect was proof that Buganda Land Board had consented to the said sell between the 2nd counter defendant and the 1st counter defendant/Plaintiff hence a report in the said search to that effect. The search report had also corroborated the 2nd counter defendant's evidence that he had purchased the suit land from Wambuga Margaret on 6th December 1996.

50. Basing on the said evidence, I find that the plaintiff/ 1st counter defendant is the rightful owner of the land in dispute.

51. I also find that the second counter defendant lawfully acquired the suit land and obtained registration of the certificate of the title in his names legally. The allegations of fraud on part of the 2nd counterclaimant as alleged by the counter claimant had no basis as the 2nd counter defendant legally


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all surprise, tricks, cunning, dissembling, and any unfair way by which another is cheated.”

53. For the plaintiff to succeed in a claim of fraud, he or she has to show that the acts of the defendant were dishonest, a wilful perversion of truth, a total misrepresentation of the truth and they deprived the plaintiff of his or her legal right.

54. In this case the defendant/ counterclaimant's agreement he relied on to prove ownership of the suit land was void ab initio as it lacked the consent of the registered owner as required by law.

55. The defendant's/counterclaimant acts to prove ownership relying on a void agreement was an act of fraud as it concealed the truth and was aimed at dispossessing the plaintiff/1st counter defendant of his land.

56. Issue 4: - Remedies.

Judgment is entered for the plaintiff and the counter defendants with the following declarations/orders:

- (i) The plaintiff/1st counter defendant is the rightful owner of the suit land comprised in leased hold Register volume 3272 folio 7, plot 10, Kyadondo Block 273 land at Buziga Katuuso, Kampala.**
- (ii) The defendant/counterclaimant trespassed on the suit land.**


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- (iii) A permanent injunction is hereby issued restraining the defendant/counterclaimant from claiming dealing or in any way interfering with the suit property.
- (iv) The plaintiff/1st counter defendant will be awarded general damages of one hundred million shillings (100,000,000/=) as general damages for trespass.
- (v) The defendant/counterclaimant will pay interest on the general damages at the rate of 10% per annum from the date of the cause of action until payment in full.
- (vi) The plaintiff will be awarded the costs of this suit.
- (vii) The counterclaim will be dismissed with costs to the counter defendants.



Hon. Justice John Eudes Keitirima

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