

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**  
**HIGH COURT CIVIL SUIT NO.0270 OF 2009**

**TANDEKA CHARLES:.....:PLAINTIFF**  
**VERSUS**

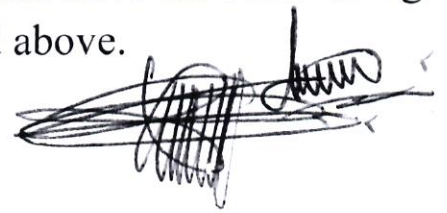
- 1. KATAMULINGO ISREAL**
- 2. NABASA ISREAL**
- 3. MPIGI DISTRICT LOCAL GOVERNMENT:....:DEFENDANTS**

**JUDGMENT**

**BEFORE: THE HON. JUSTICE. MR .TADEO ASIIMWE**

The plaintiff sued the defendants jointly and severally seeking the following orders.

- 1. That the court declares that the plaintiff is the lawfully registered owner of all the piece of land comprised in LRV 1599 FOLIO 1 PLOT 8 BLOCK 322 Land Situated In Lugusulu, Kyahi, Gomba,Mpigi District.
- 2. An order that the lease created on block 405 plot 1 granted to the second defendant by the 3<sup>rd</sup> defendant in as far as it purports to relate to the plaintiff's land was given unlawfully, negligently or in error and should be cancelled.
- 3. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have no color of tight whatsoever to the plaintiff's land described above.



4. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants, their agents, employees, assignees and successors in title from entering, trespassing and interfering with the plaintiff's occupation and enjoyment of the suit property.
5. An order to the registrar of titles for cancellation of the title to the 2<sup>nd</sup> respondent's lease if at all it has been made.

The facts giving rise to the plaintiff's case are that the plaintiff purchased the suit land the representatives of the registered proprietor and the certificate of title was transferred to him on the 16/10/2002. That the plaintiff paid all the premium and ground rent and full filled all the requirements under the lease. That in 2008 the 1<sup>st</sup> defendant surveyed the plaintiff's land and upon inquiry he found out that the 3<sup>rd</sup> defendant had issued lease on the plaintiff's land to the 1<sup>st</sup> defendant in 2008. That the location of the land described the 2<sup>nd</sup> defendant's lease is different from the plaintiff's land. That the 2<sup>nd</sup> defendant's lease was issued in error and should be cancelled.

On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> defendants in their joint written statement of defence denied the plaintiff's claim and stated that the creation of their lease were valid and legitimate and there was no fraud or forgery on their part. That they were duly allotted the land in dispute by the 3<sup>rd</sup> defendant. They further raised a counterclaim that the plaintiff's were fraudulent and listed particulars of fraud as follows; -

1. Relying on a lease hold LRV 1599 folio 1 plot 3 block 322 land at lugudulu, kyahi at lugomera kyanamire Ndorwa.
2. Relying on a lease hold that is forged with all signatures thereto.
3. Relying on a surveying print that does not exist on government record at Entebbe.
4. Denying the defendant to survey land allotted to them.

In addition, the 3<sup>rd</sup> defendant also denied the allegations of the plaintiff and stated that the land at Nabuguyo Maddu Gomba is public land which is vested in the 3<sup>rd</sup> defendant as a controlling Authority. That upon receipt of the 2<sup>nd</sup> defendant's application, the 3<sup>rd</sup> defendant proceeded to inspect the land and established that the land applied for existed and belongs to them as the controlling authority. That the 3<sup>rd</sup> defendant entertained the 2<sup>nd</sup> defendant's application and approved it and granted a lease vide MDLB MIN 5:1. That the plaintiff fraudulently got registered on the certificate on title.

They also listed the particulars of fraud as follows; -

1. Buying the land from the persons who were not shareholders of the company.
2. Buying land without a resolution of the company/board of directors.
3. Transferring the land without proper documents of title from the company
4. Purchasing the land from beneficiaries without letters of administration

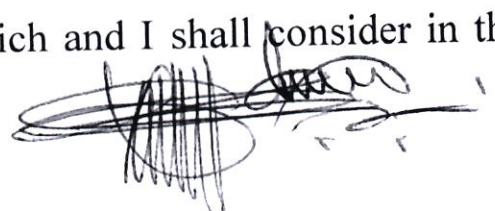
At scheduling the following issues were raised for determination

- 1) Whether the plaintiff is the lawful owner of the suit property.
- 2) Whether the grant of the lease on the suit land by the 3<sup>rd</sup> defendant to the 1<sup>st</sup> and 2<sup>nd</sup> defendant was lawful
- 3) What remedies are available to the parties?

At the hearing the case proceeded ex parte against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

The plaintiffs were represented by counsel Amos Mushaija, the 1<sup>st</sup> defendant was represented by Counsel Robert karigenda.

Both counsel filed written submissions which and I shall consider in this Judgement.



## THE LAW.

The general rule is that he or she who asserts must prove and the burden of proof therefore rests on the person who must fail if no evidence at all is given on either side. The standard of proof required to be met by either party seeking to discharge the legal burden of proof is on a balance of probabilities.

**In Miller V Minister of Pensions [1947]2 ALL E R 372 Lord denning** stated:

*“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.”*

*It is also the position of the Law that the evidential burden does not shift to the defendant unless there is cogent and credible evidence produced on the issue for determination.*

In a bid to proof their case, the plaintiffs led evidence of 2 witness while the defendants led evidence of 3 witnesses

**Pw1 Mr. Tandeka Charles** in his witness statement stated that he is the registered proprietor of land comprised in LRV 1599 FOLIO 1 PLOT 8 BLOCK322. That after purchase, he took possession of the land and has since lived on the land and carried out farming activities peacefully and uninterrupted. That he was later registered on the certificate of title on the 16<sup>th</sup> day of October 2002 and have since always paid ground rent and fulfilled all the requirements under the lease. That the lease is for a period of 49 years and runs from October 1983 and the same is still subsisting up to 2032. That in 2008 the defendant’s agents surveyed his land without permission and on inquiry he was told that the land had been given to the 1<sup>st</sup>

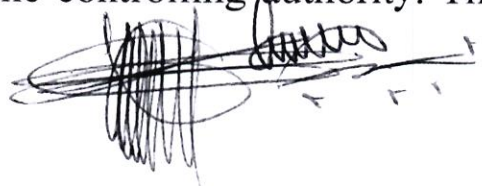
defendant by government. That the description of land described in the 2<sup>nd</sup> defendant's lease is different and far apart from his land.

In cross examination, he confirmed to court that he bought the suit land on the 3<sup>rd</sup> November 1999 from children of a company owner a one kamugabo. That he searched the land in the land office which confirmed that the land belongs to kamugabo and zirabamuzale. That by the time he bought zirabamuzare had died. That he has 4 permanent houses on the suit land. That by the time he bought he did not know any directors or shareholders. That he has been on the suit land for 19 years uninterrupted.

**Pw2 Mr. Partric Batuusa** in his witness statement testified that he knows the plaintiff as his friend and the first defendant since his cousin brother is married to his daughter. That in 1999, the plaintiff approached him and told him that he had seen the suit land and wanted to buy it. That he went with the plaintiff and inspected the property which the plaintiff wanted to buy and the same belonged to lugusulu estate limited. That upon search and inspection, a sale agreement was reached where the plaintiff paid 50 cows to owners of the land as the purchase price. That he witnessed the said purchase agreement as a witness. That ever since the plaintiff bought the land some time in 1999, he has occupied the same uninterrupted up to date.

In cross examination, he confirmed that the plaintiff bought the suit land in 1999 and paid 50 cows to kamugabos children and zirabamuzaale before the chairman LC. That he doesn't know whether kamugabo is/was dead or alive. That the children showed them documentation to show that they had powers to sell.

**Dw1 Katalimulingo Isreal** the 1<sup>st</sup> defendant stated that he is the registered proprietor of land comprised in LRV 3950 folio 9 Gomba block 405 plot 2 at Nabuguyo, kyahi Gomba district. That he acquired the suit land by way of a lease from the 3<sup>rd</sup> defendant who was the controlling authority. That



when the plaintiff found out that he had been given a lease, he starting claiming the suit land. That plot 8 block 322 the plaintiff claims doesn't have a valid deed plan. That upon carrying out a survey, it was discovered that the plaintiff's deed plans were approved by the commissioner of surveys and mapping. That the transfer forms were signed by a one KAMUGABO yet he was already dead.

In cross examination, he confirmed that that he is the registered owner of the suit land having applied and got a lease from the land board. That he got on tittle in 2009. That the plaintiff is on his land. That the plaintiffs land is located on a differed plot 238 yet his is block 405.

**DW2 MS JOYCE HABAASA** stated that he is a practicing surveyor and that she received instructions from the 1<sup>st</sup> and 2<sup>nd</sup> defendants to open boundaries of LRV 3959 FOLIO 9 GOMBA 405 PLOT 1 which was subdivided to produce plots 2 and 3 and LRV 1599 folio 15 Gomba block 322 plot 8. That she visited Mpigi district land office, Entebbe land office and Kampala land registry. That she ascertained that the correct LRV AND FOLIO for the suit land is LRV 1599 folio 15 and not folio 1. That of the 4 cadastral sheets at a scale of 10,000 on which plot numbers 8,9, and 10 Gomba blocks 322,323 and 324 fall, sheets 68/2/24,68/2/23,68/4/3 and 68/4/4/4 only the latter two have ever been constructed at Entebbe. The two which are existing is where plot 2 and 3 Gomba block 405 fall and were plotted. The plot in the suit land as indicated in the court order is not appearing on the said sheets implying that the survey creating plot 6 and the resulting plots 8, 9 and 10 from plot 6 has never been plotted at Entebbe. That as from the searches, a copy of the deed plan for plot 6 could not located so as to ascertain the origin of the deed plans and the instruction to survey number under which plot 6 was surveyed given the circumstances that the subdivision survey which created plot 8, 9 and 10 is not yet approved although plot 6 and 6 and its resulting plot exist in the records at Mpigi land

office. That the deed plan for plot 1 Gomba block 405 indicates that the instruction to survey number under which plot I was surveyed as z/1/0059 and the deed plans are dated 3/9/2007. That the survey file for the suit land instructions to survey number Z3049 is at Entebbe in the drawing office. That it is very clear that the deed plans for lease on Gomba block 322 plot 8 did not go through the office of mapping.

In cross examination, that the suit lad plot belonging to the plaintiff occupies plot 1 on ground belonging to the 1<sup>st</sup> and 2<sup>nd</sup> defendant, although different bocks on paper but on ground it is the same place. That there are two titles issued sitting on the same space because one surveyor never reached a logical conclusion. That the survey on block 322 who surveyed block 322 plot 6 from which plot 8 emanates, they would have found plot 1 block 405 already in existence therefore block 525 was issued in error. That block 405 was the first in time. That PE1 is a certificate of title for plot 8 block 322 in the names of Lugusulu estate registered in 1987 but plot 8 was created in 1999 in the names of the plaintiff.

**DW3 MR JASPER KAKOOZA A SENIOR STAFF** surveyor stated that by virtue of his employment, he came to learn of the conflict between the plaintiff and the defendants. That the land in dispute is on Gomba block 405 plot 1 which was subdivide to form plots 2 and 3. That the same disputed land also forms part of Gomba block 322 plot 8. That records in his office indicate that 1<sup>st</sup> and 2<sup>nd</sup> defendants land i.e. Gomba block 405 plot 2 and 3 were properly surveyed and prints issued by his office. Further that records in his office indicate that the subdivision of Gomba block 322 plot 6 to form plots 8, 9 and 10 was never completed and as such deed plans for plot 8, 9 and 1- were indicatively not issued by his office.

In cross examination, he confirmed that plot 1 block 405 and plot 8 blok322 are different on paper but similar on ground. That as per his records in Entebbe cadastral records, plot 1 block 405 existed first and therefore plot 8

overlaps plot 1. That they do not have records how plot 8 was created and that he cannot confirm the existence of plots 8, 9, and 10.

## **RESSOLUTION**

In this case, although issues one and two were argued separately, I will resolve them together since they are quite relatable.

### **Issue one & 2**

**1) Whether the plaintiff is the lawful owner of the suit property.**

**2) Whether the grant of the lease on the suit land by the 3rd defendant to the 1st and 2nd defendant was lawful**

In this case from the evidence on record, it is clear that the plaintiff and the 1<sup>st</sup> & 2<sup>nd</sup> defendant hold lease certificates of title over the same land on ground although different in description on paper. These titles are exhibited as PEX1 and DEX11 respectively.

The plaintiff's evidence is that he purchased the suit land from the representatives of the registered proprietors then lugusulu estate limited as per PEX2 and was registered on title on the 16<sup>th</sup> day of October 2002 as per PEX 1.

It is indeed true as per exhibits PEX1 and PEX2 that the predecessors of the plaintiff in title were Lugusulu estates limited. The defendant's alleged fraud faulting the purchase process of the suit land by the plaintiff arguing that the sellers were not representative of Lugusulu limited and that the documents of transfer were signed by a dead person. The law is that he who alleges must prove. The defendants apart from faulting the purchase process, they never produced any evidence to prove their allegations. Besides the members of the company from whom the plaintiff's purchased the suit land are not complaining.



**In Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992**, it was held that;

*“Fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters.*

As already stated above, the defendants concentrated on raising allegations against the purchase process by the plaintiff but fell short proving fraud as the law requires.

The purchase process of the suit land by the plaintiff is quite immaterial in determining the rights of the parties in this case. It would have made sense if the persons faulting the purchase process were representatives or shareholders of lugusulu estates limited. Even if the purchase process was faulty it does not automatically make the defendants owners of the suit property and therefore quite an irrelevant and farfetched` argument by the defendants.

What is clear from the evidence of DW2 and DW3 is that although there are different tittles, the land in dispute is the same on ground. It was the evidence of DW2 and DW3 that plot 8 was created later and that the way it was created is not clear. They equally stated that plot one was created first. However, they do not dispute the fact that plot 6 from which plot 8 originates exists on ground. DW3 confirmed that even if plot 8 was to be found to be non-existent it would revert to plot 6 belonging to lugusulu Estate Ltd. Logically the mix up in plot numbers does not take away the fact that the subject matter on ground remains the same. Besides it is not the plaintiff to blame for this mix up but rather the 3<sup>rd</sup> defendant that issued tittle to the plaintiff's predecessor in tittle in 1983 and ignored those errors.

DW3 further confirmed that a tittle cannot be issued when survey and plotting is not complete. The 3<sup>rd</sup> defendant cannot turn around to claim that plot 8 is non -existent when plot 6 from which it originates exists. Ideally

the 3<sup>rd</sup> defendant was aware or should have been aware that the lease hold title belonging to lusugulu estates limited was in existence. It could not have been a mistake that they created a different tittle over the same land belonging to lugusulu Estates Limited.

Even if the 3<sup>rd</sup> defendant had genuine issues with the tittle of the plaintiff's predecessors in tittle, they dint have to create another tittle. They would have sued lugusulu for whatever complaints they had including breach of the lease agreement not to sublease without consent of the 3<sup>rd</sup> defendant. However, they condoned the errors and breaches and therefore are estopped from turning around to blame the plaintiff. Even if the plaintiff's predecessors in tittle were to be blamed, the plaintiff would be protected by the doctrine of legitimate expectation.

*. A legitimate expectation is said to arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority. Therefore, it extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive. When such a legitimate expectation of an individual is defeated, it gives that person the locus standi to challenge the administrative decision as illegal. Thus even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial remedy.*

*Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. It may be possible though for a decision-maker to justify frustrating an established legitimate expectation where there is an overriding public interest. Hence, once the legitimacy of the expectation is established, the court will have the task of*

*weighing the requirements of fairness against any overriding interest relied upon for the change of policy (see Regina v. North and East Devon Health Authority ex parte Coughlan and Secretary of State for Health Intervenor and Royal College of Nursing Intervenor, [2001] 1 QB 213, [2000] 2 WLR 622, [1999] Lloyds LR 305). As held by Lord Denning in Schmidt v. Secretary of State for Home Affairs, [1969] 1 All ER 904; [1969] 2 Ch 160, even in cases, where there is no legal right, a person may still have "legitimate expectation" of receiving the benefit or privilege. In such cases, the court may protect his "expectation" by invoking principle of "fair play in action." The court may not insist that a public authority to act judicially, but may still insist that it too acts fairly.*

*A claim for violation of a legitimate expectation will arise where a public authority either (a) alters rights or obligations of a person which are enforceable by or against him in private law; or (b) deprives him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn (see Council for Civil Service Unions v. Minister for the Civil Service [1985] 1 AC 374, [1984] 3 All ER 935, [1984] 3 WLR 1174).*

A legitimate expectation arises when a public body by representation or by past practice aroused expectation which it would be within its powers to fulfil. Claims based on legitimate expectation do not necessarily require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppels.

In the instant case, the 3<sup>rd</sup> defendant did not challenge the title of lugusulu Estate's Ltd which was registered on title in 1983 as per PEX1 they further did not challenge the title of the plaintiff who was registered on title in 2002. But instead the plaintiff paid ground rent to the 3<sup>rd</sup> defendant as per PEX3 and the same was not rejected. By they conduct the 3<sup>rd</sup> defendant put the plaintiff in a position of entitlement which the plaintiff acted on and therefore are estopped from doing otherwise.

Be that as it may, the plaintiff acquired good title from Lusugu lugusulu Estate's Ltd

However, since the 1<sup>st</sup> defendants were given title by the controlling authority as well, it is important to rule out which title was issued first.

The law is very clear that where there are competing legal interests, the first in time succeeds. **Section 48 of the RTA and Livingstone.M. Sewanyana v. Martin Alikar, S.C.C.A No. 40 of 1991 [1992] KARL 116** where court held *that*

*“since the title of the 1st Defendant was issued subsequent to one earlier issued to the Plaintiff, it would follow that the 1st Defendant's title was issued when there was a subsisting lease; hence it was issued in error. No two concurrent titles can be properly issued over the same land”*

In this case as per PEX 1 the plaintiff was registered on title in 2002 having inherited the lease granted to Lugusulu Estate's Ltd in 1983 running for 49 years ending in 2032. On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were registered on title in 2009 6 years after the plaintiff was registered on title and 26 years after Lugusulu Estate's Ltd had been registered on title. It therefore goes without saying that the plaintiff was registered on title first and his title takes precedence.

Further, even if the plaintiff was not registered in title first, his predecessor in title's registration would count. Lugusulu Estates Limited was registered on title in 1983. The Plaintiff's lease had not yet expired when the 3rd Defendant issued another minute creating yet another lease over the same land in favor of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The suit land was not available for leasing.

Therefore by 2009 when the 1<sup>st</sup> and 2<sup>nd</sup> defendants were given a lease, the 3<sup>rd</sup> defendant had no lease to offer over the suit land and therefore the grant of the lease on the suit land by the 3rd defendant to the 1st and 2nd defendants was unlawful.

In conclusion, the 1<sup>st</sup> issue is answered in the affirmative while the 2<sup>nd</sup> issue is answered in the negative.

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

The plaintiff sought for the following remedies

- 1. A declaration that the suit property exclusively belongs to the plaintiff.**

I have already found that the suit land belongs to the plaintiff and I so declare.

- 2. A declaration that the lease issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants by the 3<sup>rd</sup> defendant in so far as it seeks to apply to the suit land be declared invalid.**

I have already found that the lease granted to the 1<sup>st</sup> and 2<sup>nd</sup> defendants was/is unlawful and was issued in error and I so declare.

- 3. An order directing the registrar of title to cancel the 1<sup>st</sup> and 2<sup>nd</sup> defendant's certificate of title to the said land.**

**Under Section 59 Registration of Titles Act** possession of a certificate of title by a registered person is conclusive evidence of ownership of the land described therein. Further, under Section 176 (c) (supra) a registered proprietor of land is protected against an action for ejectment except on ground of fraud. (See **Kampala Bottlers versus Damanico (U) Ltd, S. C. Civil Appeal No. 22 of 1992 and H. R. Patel versus B.K. Patel [1992 - 1993] HCB 137**). Therefore, the Plaintiff can only be impeached on grounds of illegality or fraud, attributable to the transferee.

**Further, Section 177 of the Registration of titles Act** empowers this Court to direct the cancellation of the Certificate of title or any entries thereof which have been fraudulently or unlawfully obtained in the present case.

In this case I have already found the 1<sup>st</sup> and 2<sup>nd</sup> defendant's title was issued unlawfully and in error. The 1<sup>st</sup> and 2<sup>nd</sup> defendants definitely knew that the plaintiff had an interest in the suit land since he was in occupation of the same but went ahead to get a lease on the same land to defeat his interest. That was rather unlawful and fraudulent.

Accordingly, I do hereby order the cancellation of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Certificate of title in respect of the suit land.

**4. A permanent injunction**

Having found that the suit land belongs to the plaintiff, a permanent injunction is therefore here by issued restraining the defendants or their agents from interfering with the suit land.

**5. An order that the defendant pay the costs.** Its trite law that costs follow the event and the successful party is entitled to costs.

**Section 27 of the Civil Procedure Act** states;

*“Provided that the costs of any action, cause or other matter shall follow the event unless the court or the judge shall for good reason otherwise order”.*

The plaintiff being a successful party is entitled to the costs of the suit which are hereby granted.

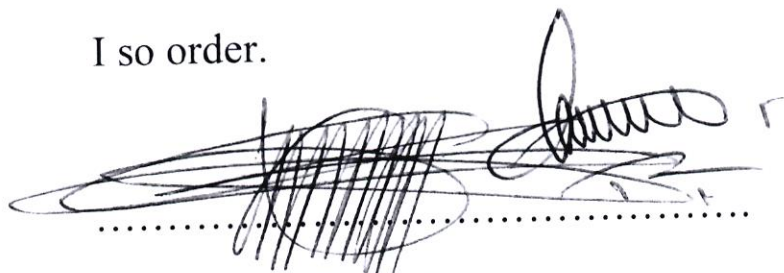
In conclusion the plaintiff's case succeeds with the following orders.

1. A declaration that the suit property belongs to the plaintiff.
2. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendants' certificate of title to the suit land is invalid
3. The registrar of titles is ordered to cancel the 1<sup>st</sup> and 2<sup>nd</sup> defendant's certificate of title over the suit land.

A permanent injunction is hereby issued against the defendants and their agents from interfering with the suit land.

4. Costs are awarded to the plaintiff against the 3<sup>rd</sup> defendant only.

I so order.



TADEO ASIIMWE

JUDGE

14/06/2023