

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 292 OF 2014

FELIX IGA-----
PLAINTIFF

VS

1. SEKAGYA
2. NAKABUYE AGNES-----
DEFENDANTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

This suit is brought by the Plaintiff against the Defendants seeking;

1. Cancellation of the Defendants' registration to the suit land comprised in LRV 2398 Folio 20 Plot 2 Kitumbu Road Entebbe.
2. A declaration that the suit land belongs to the Plaintiff.
3. General damages for unlawful interference with the Plaintiff's proprietorship of the suit land.
4. Costs of the suit.

A number of attempts were made to secure the Defendants' participation in this suit and when these proved futile, the suit was set down to be heard ex parte.

Plaintiff's Facts

The Plaintiff took occupation of the suit land in 1987 and acquired registration of the lease from Entebbe Municipality vide LRV Volume 2398 Folio 20 Plot 2 Kitimbu Road Entebbe on 5th of July 1995 under instrument No. 271777. He held a leasehold
5 certificate of title to the suit land upon which is his family home.

In November 1996, during the existence of the EDF Micro Project Programme, under the Prime Minister's office, the Plaintiff with another called John Abiine, then trading as Jason's International Limited, surrendered the original duplicate certificate of title
10 for the suit land as security for loan monies in the amount of UGX18,106,000/= (Uganda Shillings Eighteen Million One Hundred Six Thousand Only). The loan was fully repaid by August 1998, but the EDF Micro Project Programme closed without returning the Plaintiff's certificate of Title.

15 Later in 2013, the Plaintiff was informed by the then Deputy RDC Entebbe, that the suit property was registered in the names of the 2nd Defendant, a fact the Plaintiff confirmed on searching the land registry at Wakiso. The 2nd Defendant is said to have acquired the suit property from the 1st Defendant though the registration was not effected on the original title (registry copy) but was captured in the Lands Registry computerized
20 system.

The Plaintiff maintains that he has never transferred his property to the 1st Defendant. He has never even met him. Several efforts were made by different agencies to trace the Plaintiff's certificate of title but he was finally informed that it disappeared under
25 unknown circumstances.

Mr. Felix Iga is aggrieved by the cancellation of his registration to the suit land and consequent registration of the Defendants as successive proprietors of the suit land and filed this suit to seek redress.

5 Counsel for the Plaintiff, Ms. Betty Munabi filed final submissions which I have considered.

Issues

- 10 **1. Whether the Defendants fraudulently acquired the suit land?**
 2. Whether the Plaintiff is entitled to the remedies sought?

RESOLUTION

Issue 1

15 **Whether the Defendants fraudulently acquired the suit land?**

Fraud is; ‘**anything calculated to deceive, whether by a single act or combination, or by suppression or truth, or suggestion of what is false, whether it is by direct false hood or innuendo by speech or silence, word of mouth, look or gesture...**’ See Fredrick Zaabwe v Orient Bank & 5 Others SCCA 04/2006

20 It was the duty of the Plaintiff to plead the particulars of fraud complained of and he did so under Paragraph 4(h), (i) and (ii) of his Plaint. In addition, the Plaintiff, then made a written statement which was admitted as his evidence in chief. He reiterated the facts of his case and adduced documentary evidence chronicling the repayment of the

25 loan to the EDF Micro Project Programme and his unsuccessful efforts to retrieve his certificate of title from the Government of Uganda, following the closure of the Programme. Mr. Felix Iga distanced himself from the signatures on the transfer form purported to be his own. He denied being called to the land office to verify his signature

on the transfer form that saw the 1st Defendant registered on the title. Regarding the 2nd Defendant's transfer on the title, the Plaintiff testified that while the computerized land registration system names her as the current registered proprietor, the original certificate of title does not reflect her registration. An indicator that her registration was also
5 marred by fraud.

Mr. Felix Iga testified that at all material times, his certificate of title was in the possession of the EDF Micro Project Programme as security for the loan. And the title was therefore not available for transfer to the 1st Defendant and subsequently to the 2nd
10 Defendant.

PW2, Mr. Sebuwufu Erisa, a forensic document examiner at the Directorate of Forensic services was called as an expert witness. He testified that he received a request from M/S Munabi & Co. Advocates, to examine the authenticity of the signature on a transfer
15 form signed on the 8th day of June 1999 in respect of land comprised in LRV 2398 Folio 20 Plot 2 Kitumbu Rd-. Entebbe. Mr. Sebuwufu added that the request was accompanied by the contested transfer form purportedly signed by the Plaintiff and various documents bearing the uncontested signature of the Plaintiff.

PW2 carried out the analysis and in his report dated 25th November 2019, he concluded that in his opinion, the author of the sample signatures most likely did not sign the questioned signatures on the transfer form.
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A perusal of the transfer form indicates that the 1st Defendant, (Eliphaz) Sekajja, is the transferee and according to Exb. P.13, he is the current proprietor on the suit land certificate of title having been registered on the 26th September 2013. I had some concerns about the name of the 1st Defendant. It is indicated as 'Sekagya' in the Plaint
25 and yet the transfer instruments bear the name, 'Eliphaz Sekajja'. To clear this up, I

summoned the Plaintiff and his advocate and they appeared on the 9th April 2021. Ms. Betty Munabi clarified that when she received instructions from the Plaintiff to file this suit, he only knew the name 'Sekagya'. Full particulars were only obtained after this court granted an order on the 28th November 2016 allowing the Plaintiff to be availed of the documents pertaining to the land from the Commissioner Land Registration.

I am satisfied with that explanation and I find that the Plaintiff has adduced sufficient evidence to establish that fraud took place on his certificate of title, perpetuated by the 1st and 2nd Defendants.

Issue 2

Whether the Plaintiff is entitled to the remedies sought?

All remedies sought by the Plaintiff are justified in my view. It was on 26th September 2013 that the 1st Defendant fraudulently got himself registered on the Plaintiff's land. This suit was filed on the 4th June 2014. For almost seven years, the Plaintiff has been in court trying to correct the fraud occasioned on his title by the Defendants. These circumstances definitely warrant an award of general damages for pain, inconvenience and suffering. And to that end, I award a sum of UGX 30,000,000/=.

In conclusion, I enter judgment for the Plaintiff against the Defendants and order as follows;

- 1. Cancellation of the Defendants' registration to the suit land comprised in LRV 2398 Folio 20 Plot 2 Kitumbu Road Entebbe.**
- 2. The suit land comprised in LRV 2398 Folio 20 Plot 2 Kitumbu Road Entebbe, belongs to the Plaintiff, Mr. Felix Iga.**
- 3. General damages of UGX 30,000,000/= are awarded to the Plaintiff.**
- 4. Costs of the suit are awarded to the Plaintiff.**

Olive Kazaarwe Mukwaya

5 **JUDGE**

12th April 2021

Delivered by email to Counsel for the Plaintiff.