

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO. 843 OF 2018**

5 **JAMES NTAMBI SEBANYIGA**

(suing through his lawful attorney:::PLAINTIFF

Ssekandi Christopher)

Vs

**1. NANYONGA FLORENCE**

10 **2. NAKANGA HENRY :::DEFENDANTS**

**3. KYEWALYANGA RONALD**

**4. THE COMMISSIONER LAND REGISTRATION**

**Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

**JUDGMENT**

15 The Plaintiff, through Mr. Ssekandi Christopher, his lawful attorney, sued the Defendants jointly and severally seeking the orders for;

1. Cancellation of certificates of titles comprised in Block 350, Plots 45 and 46 land at Kifumbe- Bulemezi, the suit land.
2. Reinstatement of the Plaintiff as registered proprietor on the suit land.
- 20 3. Cancellation of letters of administration granted to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant to the estate of the Plaintiff.
4. A permanent injunction.
5. Special damages

6. General damages and

7. Costs of the suit.

Summons to file a defence were served upon the Defendants but none filed a written statement of defence prompting this court to enter default judgment against all four of them under Order 9 rule 11 of the CPRs. The matter was set down to be heard ex parte and the Plaintiff testified and adduced documentary evidence in support of his claim.

### Plaintiff's facts

On the 26th day of July 1994 the Plaintiff got registered on the suit comprised in East Buganda Block 350 Plot 38 land at Kifumbe under instrument No. BUK. 51481. He obtained the owner's copy of the certificate of title which is still in his custody to-date. Without the Plaintiff's consent or knowledge, the 1st and 2nd Defendants illegally obtained Letters of Administration to his estate under Administration Cause No.471 of 2015, when he was alive and well. As fraudulent administrators to the Plaintiff's estate, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants obtained a special certificate of title to Block 350 Plot 38. They then went on to cause the subdivision of Plot 38 to create Plots 45 and 46 land at Kifumbe. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants proceeded to transfer Plot 46 into the name of the 3<sup>rd</sup> Defendant. Thereafter, the 4<sup>th</sup> Defendant, the Commissioner land registration, wrongfully registered the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the certificate of title as proprietors. Hence this suit.

Counsel for the Plaintiff framed three issues for this court's resolution.

### Issues

1. Whether the Registration of the 1st, 2nd Defendants on land comprised of East Buganda Block 350 Plot 38 land at Kifumbe was fraudulent.
2. Whether the 1st and 2nd Defendants passed any title to the 3rd Defendant in respect of land comprised in East Buganda Block 350 Plot 46 land at Kifumbe.

### 3. What remedies are available to the Plaintiff?

#### RESOLUTION

I shall resolve issue 1 and 2 concurrently.

#### **1. Whether the Registration of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on land comprised of East Buganda Block 350 Plot 38 land at Kifumbe was fraudulent?**

The Plaintiff did not testify in court. His lawful attorney Mr. Sekandi Christopher testified on his behalf as PW1. He told this court that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants obtained letters of administration to the Plaintiff's estate by faking his death. There was a search statement dated 3<sup>rd</sup> May 2016 in relation to Bulemezi Block 350 Plot 45, Exb. P.9 in the Plaintiff's trial bundle. It indicated that the land measured 27.588 hectares and the registered proprietors were Nanyonga Florence and Makanga Henry (grand daughter and son) The Administrator of the late Sebanyiga Ntambi James as per cause No. 471 of 2015 registered under instrument number BUK 139830 on 25/12/2016 at 9.55AM.

In addition, Exb. 15, was a batch of documents which included a copy of the white page of the special certificate of title to Bulemezi Block 350 Plot 38,45 and 46. It was issued on the 14<sup>th</sup> January 2016 and certified on the 2<sup>nd</sup> November 2020 by the Commissioner Land Registration. A perusal of this document revealed that;

- a. On the 25<sup>th</sup> February 2016, Nanyonga Florence and Makanga Henry (granddaughter and grandson) The Administrators of the late Sebanyiga Ntambi James as per cause No. 471 of 2015 were registered on the title under instrument number BUK 139830.
- b. The encumbrance page of the title contained two caveats. The first lodged by Nakku Alice on the 25<sup>th</sup> May 2016 under instrument number BUK 143865. Accompanying this caveat was a statutory declaration wherein the caveator claims interest particularly in Block 350 Plot 46.

- c. The second caveat was lodged on the 18<sup>th</sup> July 2017 by Sekandi Christopher, holder of powers of attorney from Ntambi James Sebayinga.
- d. The entries relating to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Nanyonga Florence and Makanga Henry had been cancelled and the words, 'entered in error', replaced thereon.
- e. The subdivisions on the title under instruments BUK 137758 and BUK 139982 were also cancelled and the word, 'error', written besides them.

Alongside these facts, was the original certificate of title to Bulemezi Block 350 Plot 38 which was tendered in evidence and marked Exb. P.2. And a copy of a title to Block 350 Plot 46, Exb. P.7, where the Plaintiff was registered as first proprietor on the 25<sup>th</sup> July 1994.

Furthermore, regarding Exb. P.3, the caveat lodged by PW1 on Block 350 Plot 38; Section 146 of the Registration of Titles Act Cap 230 provides as follows;

*“(1) The proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in the Sixteenth Schedule to this Act.”*

The problem that arises is that under section 146(1) of the Registration of Titles Act, the power of attorney shall be presumed to be in force at the time of registration in accordance with the Registration of Documents Act. This power of attorney was registered on the 2<sup>nd</sup> November 2018. PW1, was therefore not in possession of the Plaintiff's power of attorney when he lodged the caveat on Block 350 Plot 38. It is my view that the caveat was registered in error since PW1 was not a proper person to lodge the caveat as he had lacked authority at the time.

I should add that there is no copy of the title to Block 350 Plot 46 that has been tendered by the Plaintiff to demonstrate that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were registered thereon

as administrators to the Plaintiff's estate. I have also not been availed with a copy of the suit title indicating that the 3<sup>rd</sup> Defendant is registered thereon as proprietor.

In my view, without a certified copy of Administration Cause No.471 of 2015, the alleged genesis of the fraud complained of, and in light of the gaps in the Plaintiff's evidence that I have highlighted above, I find that the Plaintiff has failed to prove fraud against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. In Kampala Bottlers Ltd v Damanico (U) Ltd SC CA 22/1992, Wambuzi CJ, at p.7 held that;

*'fraud must be attributed to the transferee. It must be attributed either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.'*

It was the mandatory duty of the Plaintiff to adduce evidence of the court file and proceedings in Administration Cause No. 471 of 2015. This was the genesis of the fraud. Without proof that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant directly participated in those proceedings, as was alleged in paragraph 3, 7(a) and 7(b) of the Plaint, I find that this suit was untenable.

Regarding the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their alleged illegal actions, could only come into issue following the establishment of the fraud by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, which was not done by the Plaintiff.

Before I take leave of this matter, on the court record are a batch of documents submitted by the Commissioner Land Registration in response to a court order dated 28<sup>th</sup> September 2020. The court made the order directing that the CLR avail certified copies of all registered documents pertinent to this suit. No particulars of the documents were contained in the court. On his own volition, Counsel for the Plaintiff elected to attach a list of documents containing errors in the description of the suit land in this matter, supposedly in a bid to explain the court order. If Counsel wanted this court to

include a list of documents in the court order, this prayer should have been made to court and would most probably have been granted.

The result was that, included in the batch of documents forwarded by the Commissioner Land Registration were documents relating to Block 362 Plot 13 land at Kasambya; an application to be registered on that land lodged by the administrators to the estate of the late Philipo Zavuga of Kasambya LC1- Kasagga- Nakaseke District. And letters of administration issued by the Magistrate Grade 1 of Luweero to the late Philipo Zavuga's estate.

Counsel for the Plaintiff invited this court to find that the 4<sup>th</sup> Defendant, the Commissioner Land Registration had relied on these documents to submit that the 3<sup>rd</sup> Defendant and prior to that, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this matter were fraudulently registered on the suit land on the basis of these documents. I disagree with respect to learned Counsel. I could find no logical basis for such a conclusion. The land indicated and the persons named in those documents are completely different from the subject matter and parties to this suit and no nexus has been drawn between them by the Plaintiff, save for speculation. It is my view, that it is therefore more likely that these particular documents were added inadvertently to the other documents meant for this matter, most likely because of the wrong description of some of the documents listed in Counsel's letter.

For the foregoing reasons, I find that the Plaintiff has failed to prove that the registration of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on land comprised of East Buganda Block 350 Plot 38 land at Kifumbe was fraudulent.

## **Issue 2**

**Whether the 1st and 2nd Defendants passed any title to the 3rd Defendant in respect of land comprised in East Buganda Block 350 Plot 46 land at Kifumbe?**

I have already found that there is no documentation on court record pertaining to the 3<sup>rd</sup> Defendant's registration on the suit land. Considering my findings in relation to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the resolution of this issue is moot. There is no evidence of a transaction between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the 3<sup>rd</sup> Defendant to enjoin this court to resolve this issue. It may very well be the subject of another civil suit if the Plaintiff is able to obtain the necessary evidence to support this claim.

**In conclusion, I dismiss this suit and order that the Plaintiff shall bear his own costs.**

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**Olive Kazaarwe Mukwaya**

**JUDGE**

**8<sup>th</sup> February 2021**

15 **Delivered by email to Counsel for the Plaintiff.**