

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
HCCS NO. 87 O 2009

C.R. PATEL

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PLAINTIFF

VERSUS

**1. THE COMMISSIONER LAND
REGISTRATION**

2. BEATRICE MATOVU IGA MUSISI

3. JOANITA NAMULINDWA MATOVU

∴∴∴ DEFENDANTS

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 The plaintiff through his lawyers Kwesigabo, Bamwine & Walubiri Advocates brought this suit against the defendants jointly or/and severally.

The plaintiff's claims against the defendants:-

- (i) **(a) Are Orders to cancel the registration of Leonard Dumba Matovu as the proprietor of lands known as Kibuga Block 2 plot 144 land at Namirembe and Kibuga Block 10 plot 584 land at Bukesa (hereinafter called "the suit properties"), orders to reinstate the plaintiff as the registered proprietor of the suit properties, orders that the 1st defendant delivers back to the plaintiff the special Certificate of Title for Kibuga Block 10 plot 584, general damages, interest and costs of the suit.**

- (ii) The plaintiff's cause of action against the defendants arose as hereunder:-

- (b) In November, 2007, the plaintiff bought the property comprised in Kibuga Block 10 plot 584 from the then registered proprietor Mugoya Kyawa Gaster for valuable consideration and on 11/12/2007 under Instrument No. KLA 361771, the plaintiff was registered as proprietor of this land.**
- (c) In May, 2008, the plaintiff bought the property comprised in Kibuga Block 2 plot 144 from the then registered proprietor Ssenyonga Hamad for valuable consideration and on 13/06/2008 under Instrument No. KLA 378261, the plaintiff was registered as the proprietor of this land.**
- (d) On or about 7/07/2008 the Criminal Investigations Department Officers at Kibuli interrogated the plaintiff and the plaintiff made a written statement in respect of how he purchased plot 584 from Mugoya Kyawa Gaster.**
- (e) The said CID Officers stated that Mugoya Kyawa Gaster was suspected to have obtained plot 584 by fraud and was being investigated.**
- (f) That on the same day (7/7/2008) the said CID Officers led the plaintiff to the office of the Commissioner for Land Registration and required her to confiscate and she did confiscate from the plaintiff the Special Certificate of Title to Kibuga Block 10 plot 584 at Bukesa on the pretext that she was to investigate all dealings on the said land register and if necessary, cancel the same.**
- (g) That in view of paragraphs d, e and f above, the plaintiff was constrained to file Land Division Suit No. 273 of 2008 against the first defendant. Copies of the plaint, to which no defence has been filed, served summons, Notice of motion, chamber summons, interim order and correspondences to the first defendant and Court were attached hereto and marked as annexures “C”, “D”, “F”, “H”, and “I” respectively.**

- (h) Sometime in July, 2008, the 2nd and 3rd defendants trespassed on the suit properties and this constrained the plaintiff to file Land Division Civil Suit NO. 295 of 2008 against the said defendants.**
- (i) While the said HCCS NO. 273 of 2008 and 295 of 2008 and all interlocutory applications arising therefrom referred to in paragraphs (g) and (h) above were within the full knowledge of all the defendants, pending, the 1st defendant at the instance and for the benefit of the 2nd and 3rd defendants without the knowledge of the plaintiff took steps to cancel the plaintiff's registration as proprietor of the suit properties. The plaintiff's first knowledge of this process was on 13/3/2009 when he received a letter from the 1st defendant posted by registered mail on 19th February, 2009 and on 16/3/2009 at the hearing of HCCS NO. 295 of 2009, when the defendants Counsel intimated to Court that the plaintiff's registration had been cancelled.**
- (j) After the said hearing, the plaintiff's Counsel made a search at the 1st defendant's offices and discovered that the orders to cancel the plaintiff's registration were actually made on 6th March, 2009.**
- (k) The plaintiff contends that:**
- (i) On the facts of this suit the 1st defendant had no lawful authority to cancel the plaintiff's registration as proprietor of the suit properties.**
 - (ii) Without prejudice to (a) above, the cancellation violated the statutory procedures or correction of the register or cancellation of entries in the Land Register or certificate of title.**
- (l) The plaintiff further contends that he is a bonafide purchaser for valuable consideration without notice of the suit properties and that his registration can only be vitiated by fraud attributable to him.**

(m) The cancellation of the plaintiff's registration as proprietor of the suit properties has occasioned loss of very valuable properties.

1.2 The 1st defendant through her lawyers, the Office of Registrar of Titles, Department of Lands Registration, Ministry of Lands, Housing and Urban Development filed a defence against the plaintiff's suit. In her defence, the 1st defendant denies the plaintiff entire suit in toto. She prayed that the suit be dismissed with costs.

1.3 The 2nd and 3rd defendants through their lawyers M/s Mulira & Co. Advocates filed a joint defence against the plaintiff's claims in the plaint. The two defendants denied the plaintiff's claims in toto. They, too, prayed that the plaintiff suit be dismissed with costs.

2. Agreed to issues by the parties.

2.1 **Whether the 1st defendant had jurisdiction to cancel the certificate of titles of the plaintiff in the circumstances of the case.**

2.2 **If so, whether the cancellation by the 1st defendant of the plaintiff's certificates of titles of the suit lands was done following the proper procedure laid out in Section 91 of the Land Act, as amended.**

2.3 **Whether a title deed can be impeached where no fraud is pleaded against the 2nd and 3rd defendants.**

2.4 **Whether the plaintiff is a bonafide purchaser of the suit lands without notice of any fraud.**

2.5 **What reliefs are available to the parties.**

3 Witnesses for the parties

3.1 **The plaintiff's witness**

The plaintiff hereinafter referred to as PW1, gave evidence in support of his case. He relied on a number of documents which were exhibited in Court. He was cross-examined by the defence Counsel. The plaintiff only called one witness, himself.

3.2 The defendants' witnesses.

3.2.1: The 1st defendant's witness.

The 1st defendant adduced evidence from only one witness, the commissioner Land Registration, Sarah Kulata Basangwa (Mrs) hereinafter referred to as DW4. She was cross examination at length by Counsel for the plaintiff, Mr. Peter Walubiri.

3.2.2: The 2nd and 3rd defendants' witnesses.

These defendants called there (3) witnesses:-

- Senyonga Hamad, hereinafter referred to as DW1. He was cross-examined by Counsel for the plaintiff at length.
- Bwanika Eddie, a retired Police Officer, hereinafter referred to as DW2. He was cross –examined by Counsel for the plaintiff at length.
- Beatrice Igga Matovu Musisi (2nd defendant) hereinafter referred to as DW3. She was cross-examined by the plaintiff's Counsel at length.

4 Resolution of the issues by Court.

4.1 Whether the 1st defendant had jurisdiction to cancel the certificate of titles of the plaintiff in the circumstances of the case.

The plaintiff's pleadings and evidence are to the effect that the Commissioner Land Registration (1st defendant) was not justified to cancel his titles of the suit lands. Counsel for the plaintiff submitted that the allegations against the plaintiff's registrations were not "errors", "mis-descriptions" or "illegalities" but that they were serious allegations of fraud

on the part of the plaintiff's predecessors in title. That this fraud could only be raised in a suit and that not before the Commissioner Land Registration.

Counsel for the defendants do not agree with the arguments by Counsel for the plaintiff. Counsel for the 1st defendant Mr.Kakelewe Yusuf, the Registrar of Titles argued and submitted that under Section 91(1) of the Land Act as amended, the 1st defendant is empowered to cancel any certificate of title, alter or issue fresh certificates of title or otherwise where errors or illegalities and irregularities are discovered on the register. In reference to the suit land, he argued that there were errors, irregularities and illegalities on the register which prompted the 1st defendant to cancel erroneous entries on the register. These errors included:-

- No gazetting of the application in the Uganda Gazette contrary to Section 70 of the Registration of Titles Act.
- Instrument Number KLA 368492 transferring the suit land from the Administrators to Ddamulira Stephen was in reference to a Court order for land comprised in Kibuga Block 32 Plots 85 and 87 and not Kibuga Block 2 plot 144 at Namirembe.
- The Duplicate certificate of title originally issued was still in existence and in possession of the 2nd defendant which would necessitate recalling of the special certificate of title for scrutinizing and appropriate action.
- One instrument Number KLA 368492 could not have been used to issue a special certificate of title and transfer the land to Ddamulira Stephen.

DW4 in her evidence emphasized that she had jurisdiction under Section 91 of the Land Act as amended to rectify the register of the errors that were appearing on the entries on the Register Book. Further, Counsel for the 2nd and 3rd defendants submitted that Under Section 91 (1) of the Land Act as amended, the 1st defendant had jurisdiction to cancel the plaintiff's certificates of title. That the special certificates of title of the suit lands were issued to the

plaintiff in error. That the decision of the 1st defendant was justified; and that the 1st defendant had jurisdiction to cancel the plaintiff's certificates of title of the suit lands.

In reply to the 1st, 2nd and 3rd defendants' Counsel's submissions, Counsel for the plaintiff submitted that the irregularities being talked about by the 1st defendant, that even if they occurred, were done before the plaintiff bought by the suit properties from the person who, on a search before the sale were duly registered as proprietors. Unless there is evidence of fraud on the plaintiff's part, and none was adduced by the defendants, the plaintiff remains a bonafide purchaser. PW1 adduced evidence that he did not commit any fraud and that his certificates of title were unlawfully cancelled by the 1st defendant.

DW4 cancelled the plaintiff's certificates of title of the suit lands on the grounds raised by DW3 (2nd defendant) in her letter which was exhibited in Court and marked Exhibit D9. That letter is dated 6th October, 2008.

For the purposes of understanding this case, it is important for me to reproduce some allegations in the said letter. At pages 1 -3 of the said letter DW3 (the 2nd defendant) states:

“06/10/2008

The Commissioner of Lands

Ministry of Lands

P.O Box 7061

Kampala

Dear Madam,

**Re: FRAUDULENT REGISTRATION IN RESPECT OF
KIBUGA 3, PLOT 85 AND 87 KIBUGA 2, PLOT 144 AND
KIBUGA BLOCK 10, PLOT 584**

I am writing to you as a citizen of the Republic of Uganda residing in the United States of America (USA), complaining about the fraudulent registration in respect of the above mentioned plot numbers.

The above plot numbers belonged to my late father Leonard Ddumba Matovu, who died in 1990. After his death, my two brothers, Daniel Mbusi and Harold Nsambu who are the barristers in England were appointed to be the administrators of the estate. Unfortunately, they did not perform their duties as they were supposed to do. For that reason, their letters of administration were revoked and my sister Joanita Namulindwa and I assumed the responsibility vide Letters of Administration HCT-00-CV- AC518 1990 from the High Court of Uganda.

On obtaining the above indicated letters of administration, we made thorough search of our late father's entire estate. To our dismay, we found that most of the land that include the above mentioned plots had been fraudulently transferred into people completely unknown to the family.

Therefore, we went ahead and reported the matter to be CID headquarters Land Titles fraud squad, who carried out investigations that to a large extent confirmed our suspicions –vide case files:

- (a) Kibuga Block 3, plot 85 and 87 were found registered into the names of a one Senyonga Hamad.**
- (b) Kibuga Block 10, plot 584 in those of Chimanbhai Ranchoohai Patel.**
- (c) Kibuga 2 plot 144 again in the names of Chimanbhai Ranchoobhai Patel” (underlining is mine for emphasis)**

The letter then detailed various allegations of fraud against several plots involved in the registration of various dealings and transfers. The letter did not talk of errors, mis-descriptions, or /and illigalities, but the letter is talking about serious frauds against the plaintiff and his predecessors in title. The matter complained of was not a light matter so as to be handled the way the 1st defendant handled it. The 2nd and 3rd defendants ought to have filed an ordinary suit in Court whereby they could plead fraud.

The first defendant acted on the basis of these allegations of fraud, and the police report to cancel the plaintiff’s registration under Section 91 of the Land Act. Reference is made to paragraphs 11, 16, 17, 18, 19 and 20 of the 1st defendant’s witness statement.

Section 91 of the Land Act, as amended by the Land Amendment Act, 2004 provides as follows:

(1) Subject to the Registration of Titles Act, the Commissioner shall, without referring a matter to a Court or a district land tribunal, have power to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise. (Underlining is mine for emphasis)

(2) The Registrar shall, where a certificate of title or Instrument –

- (a) is issued in error;**
- (b) contains a mis- description of land or boundaries;**
- (c) contains an entry or endorsement made in error;**
- (d) contains an illegal endorsement;**
- (e) is illegally or wrongfully obtained; or**
- (f) is illegally or wrongfully retained,**

call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to proper party.

(2a) The Commissioner Land Registration shall conduct a hearing, giving the interested party under subsection (2) an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty shall not be bound to comply with the rules of evidence applicable in a Court of law.

(2b) Upon making a finding on the matter, the Commissioner shall communicate his or her decision in writing to the parties, giving the reasons for the decision made, and may call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party”.

(3) if a person holding a certificate of title or instrument referred to a subsection (2) fails or refuses to produce it to the registrar within a reasonable time, the registrar shall dispense with the production of it and amend the registry

copy and where necessary issue a certificate of title to the lawful owner.

(4) The registrar may:

(a) correct errors in the register Book or in entries made in it.

(b) correct errors in duplicate certificate or instruments; and

(c) Supply entries omitted under this Act.

(5) The registrar may make amendments consequent upon alterations in names or boundaries but in the correction of any such error or making of any such amendment shall not erase or render illegible the original words.

(6) Upon the exercise of the powers conferred on the registrar under subsection (5), the registrar shall affix the date on which the correction or amendment was made or entry supplied and shall initial it;

(7) Any error or an entry corrected or supplied under this Section shall have the same validity and effect as if the error had not been made or entry not omitted.

(8) In exercise of any powers under this Section, the Registrar shall:-

(a) give not less than twenty one day's notice, of the intention to take the appropriate action, in the prescribed form to any party likely to be affected by any decision made under this section;

- (b) provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given;**
- (c) conduct any such hearing in accordance with the rules of natural justice but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a Court of law;**
- (d) give reasons for any decision that he or she may make.**
- (9) The Registrar shall communicate his or her decision in writing to the parties and the committee.**
- (10) Any party aggrieved by a decision or action of the registrar under this Section may appeal to the district land tribunal within sixty days after the decision was communicated to that party.**
- (11) Where the registrar has cancelled a certificate of title or an entry in the Register Book, a party in whose favour the cancellation is made shall not transfer the title until the expiry of the time within which an appeal may be lodged; and where an appeal is lodged against the cancellation, he or she shall not transfer the title until the determination of the appeal.**
- (12) The party who lodges an appeal under this Section shall take steps to ensure that the registrar and other parties are served with the notice of appeal.**
- (13) Where the person who appealed under the section fails to prosecute the appeal, the tribunal shall, on application by other party to the appeal, strike out the appeal ”**

Section 91 of the Land Act was enacted to replace Section 69 of the Registration of Titles Act, Cap. 205 (1964 Edition). Section 69 RTA was repealed by Section 97 of the Land Act No. 16 of 1998 which provided:

“ 97. The Registration of Titles Act is amended by repealing Section 69 and paragraph (a) of Section 178”.

The repealed S. 69 RTA (1964 Ed) Provided thus;

“69. In case it appears to the satisfaction of the Registrar that any certificate of title or instrument has been issued in error or contains any mis-description of land or of boundaries, or that any entry or endorsement has been made in error on any certificate of title or instrument or that any certificate, instrument, entry or endorsement has been fraudulently or wrongfully obtained, or that any certificate of title or instrument is fraudulently or wrongfully retained, he may be in writing require the person to whom such document has been so issued or by whom it has been so obtained or is retained to deliver up the same for the purpose of being cancelled or corrected or given to the proper party, as the case requires; and, in case such person refuses or neglects to comply with such requisition, the registrar may apply to the High Court to issue a summons for such person to appear before such Court and show cause why such certificate of title or instrument should not be delivered up for the purpose aforesaid; and if such person when served with such summons refuses or neglects to attend before such Court at the time therein appointed, it shall be lawful for the Court to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the High Court for examination”
(underlining is mine for emphasis)

Under the repealed **Section 69 of the RTA (1964 Ed)**, the Registrar of Titles (now Commissioner Land Registration) was empowered to cancel certificates of title and entries therein on grounds of:

- (a) Errors;
- (b) Mis-description of land or boundaries
- (c) Illegal endorsements or illegality obtained or retained instruments
- (d) Wrongfully obtained instrument or endorsements.

The legislature deliberately removed reference to “fraudulently” obtained or retained certificates, instruments or endorsements. When, as in this case, an allegation of fraud is made the proper avenue for adjudication over the matter is S.176 (c) of the Registration of Titles Act, where the person alleging fraud files a suit to cancel the fraudulent entry. Fraud is such a serious allegation that it must be specifically pleaded and proved beyond a mere balance of probabilities. It cannot be raised and casually proved before the Commissioner Land Registration.

Then in paragraphs 7.06.7 and 7.06.8 of the 2nd and 3rd Defendants’ written submissions, Counsel found fault with the manner in which a special certificate of title was issued and plot 144 transferred to Ddamulira Stephen who, in turn transferred to Lubwama Bernard who, later transferred to Ssenyonga Hamad who, subsequently transferred to the plaintiff. There is no evidence that was adduced by the defendants to connect any fraudulent actions in the dealings with the suit land to the plaintiff. The plaintiff’s evidence that he never committed any frauds in purchasing the suit land was never challenged in cross-examination by Counsel for the defendants.

Further, even if there were errors or irregularities in the issue of the special certificates of title and transfer to Ddamulira Stephen, which is not proved, the plaintiff was not party to the errors committed in the

office of the first defendant by her officers. To condemn the plaintiff on account of errors he was never privy to would be to abolish the indefeasibility of title principle which is protected in Sections 59,64,77,176 (C) and 181 of the Registration of Titles Act and which is the hallmark of the torrens system of title by registration practiced in Uganda. Section 91 of the Land Act was never intended to abolish this age old concept of indefeasibility of title. Indeed Section 91 (1) of the Land Act begins with the expression,

“ (1) Subject to the Registration of Titles Act,”.

to underscore the binding and overreaching status of the Registration of Titles Act on matters of land registration. Errors, illegalities and even frauds in earlier registrations cannot entitle the 1st defendant to cancel a registration of a person who is not privy to those errors.

In paragraphs 7.07 of the 2nd and 3rd defendants written submissions, reference is made to Section 64 of the Registration of Titles Act as authority for the proposition that where a Special Certificate of Title is issued and the Duplicate certificate of title is later found to be available, the Duplicate Certificate of title is considered as a “prior registered certificate of title” which takes priority.

That is a wrong interpretation of Section 64 of the Registration of Titles Act. A special certificate of title once issued under Section 70 of the Registration of titles Acts simply replaces the Duplicate Certificate of title which is lost or presumed lost. It is the same case with a substitute certificate of title which replaces a lost original certificate of title under Section 71 of the Registration of Titles Act. The replacement is not a new or separate certificate of title and the lost or destroyed certificate of title is not “ a prior” certificate of title in terms of Section 64 of the Registration of Titles Act since it is not a separate part of the Register (folio). The

Special and Duplicate Certificates of title are all based on one folio of the register (white page).

It is my interpretation of the law that Section 64 (1) read together with Section 176 (e) RTA on priority of titles is quoted out of context. It deals with a situation where there are two or more conflicting registers (folios) in respect of the same piece of land. It does not deal with a situation where under Section 70 of the RTA a duplicate certificate of title is issued. Here there are no two conflicting certificates of titles but a replacement of the same certificate of title. Great reference is made on **Dallas Wiseman: The Law Relating of Transfer of Land, 2nd Ed; The Law Book Company of Australia Ltd, Sydney (1931) and Peter Butt and Frank Ticehurst (Eds), Woodman & Nettle. The Torrens System in NSW, 2nd Ed. LRC Information Services, 1996. These Australian authorities discuss. Sections of Australian Statutes in parimateria with S.64 (1) RTA.**

In the last paragraph of 5.01 of the 2nd and 3rd defendants' written submissions, a lot of people of whom notice was given by the 1st defendant before the cancellation in respect of Kibuga Block 2 plot 144 is given. Mr. C.R. Patel is not among those to whom notice was given. Clearly he was condemned without notice and a hearing.

In the premises, I answer issue no.1 in the negative. In the circumstances of this case, the 1st defendant did not have jurisdiction to cancel the plaintiff's certificates of title.

4.2 If so, whether the cancellation by the 1st defendant of the plaintiff's certificates of titles of the suit lands was done following the proper procedure laid out in Section 91 of the Land Act,1998 as amended.

DW4 in her evidence stated that she followed the law as laid out in Section 91 of the Land Act, 1998, as amended when she cancelled the plaintiff's certificates of title of the suit land. In his submissions, counsel for the 1st defendant submitted that the procedure for cancellation or rectification of the register is laid down under Section 91 of the Land Amendment Act. That notice of intention to amend the register was communicated to the relevant parties on the title and sent by registered mail on their respective postal addresses. That they never appeared or raised any objections to the proposed cancellations apart from the plaintiff who appeared in the office of the 1st defendant and agreed to the cancellation. It is the 1st defendant's Counsel's submission that the cancellation was done following the procedure under Section 91 of the Land Act as amended. Section 91 thereof has been reproduced hereinabove for purposes of clarity and reference to the parties.

In addition, Counsel for the 2nd and 3rd defendants submitted that the 1st defendant describes in detail in her written statement the steps she took before cancelling the certificates of title and that they need not repeat them here. In paragraph 5 of the plaintiff's written submissions an attempt was made to fault the 1st defendant's action. Counsel for the 1st, 2nd and 3rd defendants further submitted that, however, all the allegations are answered by documentary evidence in particular exhibitions D 10 and D 11 which he said show that notices were given to the plaintiff as required by law. That if the plaintiff did not receive a notice it is because he was not on the title yet. But notices were given but they were not responded to. That the plaintiff cannot complain that the provisions of Section 91 of the Land Act were not complied with simply because certain orders of Court were not adhered to by the 1st defendant.

Having found on issue no.1 above, the 1st defendant lacked jurisdiction in the circumstances of the case to cancel the plaintiff's certificates of title of the suit lands, the cancellation was done without following the proper procedure under Section 91 of the Land Act as amended. I hasten to add that in respect of Kibuga Block 10 plot 584, the following non compliance with the law occurred:

- (a) The 1st defendant did not conduct any hearing as envisaged in Section 91 (2a) and (8) (b) and (c) of the Land Act.
- (b) The 1st defendant ignored the proceedings and orders in **HCCS No. 273 of 295 of 2008** and all applications and orders arising therefrom. Indeed during cross –examination Sarah Kulata Basangwa DW4 was upbeat that at the time of cancellations she was aware of these suits that were challenging her attempts to cancel C.R Patel’s registration.
- (c) The 1st defendant took a decision to cancel the plaintiff’s registration before 21 days notice to the plaintiff expired. The notice according to, DW4, Sarah Kulata Basangwa’s testimony in cross examination was dated 6/2/2009 and sent by registered post on 18/5/2009. According to her, it was delivered the same day! This is not possible. It takes several days for the mail to be sorted and for the post office to send a notice to the addressee to collect the registered mail. Under Section 35 of the interpretation Act, Cap.3 a registered letter is deemed to have been delivered “ at the time at which the letter would be delivered in ordinary post”. This computation was relied on by **Oder JSC in J.W.R Kakooza vs M.L.S Rukuba, Civil Appeal No. 13 of 1992, Supreme Court**. In paragraph 16 of her witness statement, seven days earlier, on 6/3/2009, the first defendant had signed exhibit D.12 (b) ordering cancellation of the plaintiff’s registration! That was a travesty of justice.
- (d) The 1st defendant did not notify her findings and reasons to the plaintiff as required by S.91 (2b) of the Land Act.

In respect of Kibuga Block 2 plot 144, the following non compliance with the law occurred:

- (a) The 1st defendant did not give notice of her intention to cancel the plaintiff’s certificate of title contrary to Section 91 (2) of the Land Act and the principle of fair hearing under Article 28 (1) of the Constitution.
- (b) The 1st defendant did not conduct any hearing as envisaged in Section 91 (2a) and 8 (b) and (c) of the Land Act.

- (c) The 1st defendant ignored the proceedings and orders in HCCS no. 273 of 2008 and 295 of 2008 and all applications and orders arising therefrom.
- (d) The 1st defendant did not notify her findings and reasons to the plaintiff as required by Section 91 (2b) of the Land Act.

The plaintiff, in my considered opinion, was condemned in a flawed, biased, highhanded and unfair process. In that regard, the plaintiff ought to be protected by law (RTA).

In paragraph 8.03 of the 2nd and 3rd defendants' submissions, it is conceded that the plaintiff was not given any notice and therefore no hearing in respect of Kibuga Block 2 plot 144. The reason advanced for this injustice is that "he (the plaintiff) was not on the title yet".

During the cross examination of DW4, Sarah Kulata Basangwa, the Commissioner Land Registration, she was shown the Special certificate of title for Kibuga Block 2 plot 144 (exhibit p. 29) hitherto in the plaintiff's custody. She identified it and stated –

“This is the Special certificate of title for Kibuga Block 2 plot 144. It bears the signature resembling that of Ambrose Orikiriza (Registrar of titles). The special Certificate of title was issued under instrument No. KLA 368492 on 29.2.2008 which is the same referred to in paragraph 8 of my witness statement...”

The witness was taken through the entries on the Special Certificate of title and they all tallied with those on her witness statement in respect of the series of transactions registered on the register for Kibuga Block 2 plot 144. However, she tried to avoid accepting the entry of Mr. C.R Patel (the plaintiff) on the register as proprietor under instrument No. KLA 378261 of 13.6.2008. When pressed about the signature of the Registrar of titles on that entry, she conceded:-

“There is a signature which resembles that of Orikiriza Ambrose, registrar of titles. There is a stamp of Senior Registrar of titles.”

Interestingly, the witness could not trace the lodgment book for the critical instrument no. 378261 under which C.R Patel was registered. This was a deliberate concealment of evidence on the part of the 1st defendant.

C.R Patel was registered as proprietor of Kibuga Block 2 plot 144 on 13.6.2008 under instrument No.378261. In the plaintiff’s Counsel’s written submissions under paragraph 2.4(iv), they state so. In paragraph 2.01 of the 2nd and 3rd defendants’ Counsel’s written submissions this fact and all the facts the plaintiff set out in his submissions are admitted. In view of all the above analysis, evidence and admission, it is clear that C.R. Patel who was a registered proprietor of the suit lands was denied notice and a hearing notice before cancellation of his registration on the certificates of title of the suit lands. This denial of a hearing alone vitiates the said cancellation by the 1st defendant.

In paragraph 8.04 of the 2nd and 3rd defendants’ written submissions it is conceded that “certain orders of Court were not adhered to by the 1st defendant”. This admission of proceedings to cancel a registration in the face of Court proceedings including interim orders challenging and stopping the attempted cancellation is good ground to invalidate the said cancellation of the plaintiff’s registration.

In the result and considering the reasons given hereinabove, I answer issue no.2 in the negative.

4.3 Whether a title deed can be impeached where no fraud is pleaded against the 2nd and 3rd defendants.

Counsel for the plaintiff in his submissions argued that this issue was framed at the instance of the 2nd and 3rd defendants and that it is their obligation to argue this issue. I do not agree with the aforesaid submissions. It is important to note that during the scheduling process, the parties agreed to all the issues. It is with this spirit that Counsel for the plaintiff endeavoured and made submissions on this issue. He submitted that the 2nd and 3rd defendants moved and conspired with the 1st defendant to have the plaintiff's registration in respect of the properties cancelled.

It is the submissions by Counsel for the 1st defendant that whether a title deed can be impeached where no fraud is pleaded against the 2nd and 3rd defendants Section 91 (1) of the Land Act provides that **“subject to the Registration of Titles Act, the Registrar shall without referring a matter to a Court or a District Land Tribunal, have power to take such steps as are necessary to give effect to the Act, whether by endorsement or alteration or cancellation of certificate of title, the issue of fresh certificates of title or otherwise”**.

This provision does provide exceptions of fraud where under Section 91 of the Land Act errors, irregularities or illegalities are discovered on the face of the register. In this case the 1st defendant is empowered to amend the register through cancellation, alteration, endorsement or issuance of fresh certificates of title or otherwise. And the 1st defendant need not have to inquire whether there was fraud or she could rectify errors on the register that necessitate cancellation of erroneous entries thereof. In that way, the certificates of title which would have been obtained without following the law are cancelled by the Commissioner Land Registration.

The submissions by the 1st defendant do not address this issue. The 1st defendant simply defends the cancellation of the plaintiff's registration under Section 91 of the Land Act. From his submissions, it appears to me that Counsel for the 1st defendant did not comprehend the issue no.3 as stated. According to the

submissions by the 1st defendant's Counsel, Counsel for the 1st defendant is of the view that the 1st defendant has powers to impeach a certificate of title where fraud is not pleaded. Rather, I hasten to state that the said issue no.3 is on whether Court can impeach the titles of the 2nd and 3rd defendants when the plaintiff has not plead fraud in the plaintiff against them.

Counsel for the 2nd and 3rd defendants submitted that this issue was framed specifically in reference to the duplicate certificate of title issued to Leonard Ddumba Matovu in 1964 which at all relevant times was in the custody of the 2nd defendant. Counsel for the 2nd and 3rd defendants submitted that the plaint prays for cancellation of Leonard Ddumba Matovu's certificate of title without alleging fraud against him or his successors. That a certificate of title can only be cancelled by a Court of law under the provisions of Section 176 of the Registration of Titles Act. That the plaintiff has not attempted to bring this case within the purview of this provision and that accordingly the issue must be answered in the negative. He further submitted that interestingly, it is the plaintiff's special certificate of title which is caught by Section 176 (e) which protects the certificate of title issued first in point of time and cancels that issued subsequently. That the plaintiff's certificates of title were cancellable under that provision.

I have considered the submissions by both parties and in my considered view, the cancellation was not in accordance with the law as found in the previous two issues. My findings on issues nos. 1 and 2 are to the effect that the process of cancellation of the plaintiff's registration was an illegal, biased, unfair and irregular process of cancellation of the plaintiff's registration which was initiated by the 2nd and 3rd defendants and out of which they derived benefit is for all intents and purposes a fraudulent and illegal scheme.

In addition, I emphasize that where the Commissioner Land Registration cancels a certificate of title or an endorsement thereon or an instrument under Section 91 of the Land Act, the aggrieved party has a right to file an appeal under Section 91

(10) of the land Act. The appeal cannot proceed without joining and hearing all persons who could be affected by the decision of the Court, on appeal. In this case, the cancellation was done at the instance of and for the benefit of the 2nd and 3rd defendants and any appeal, if successful, would be to their detriment. They have to be parties and once they are heard, the Court can cancel the orders of the Commissioner Land registration if found illegal or wanting. Again on issue no.1, this Court made a finding that the 1st defendant without jurisdiction cancelled the plaintiff's certificates of title. Anything done without jurisdiction is illegal and a nullity at law. Hence the registration of the 2nd and 3rd defendants and the cancellation of the plaintiff's registration were a nullity. In that regard, the certificates of title of the 2nd and 3rd defendants are impeachable by Court.

Accordingly, therefore, this issue no.3 is answered in the affirmative

4.4 Whether the plaintiff is a bonafide purchaser of the suit lands for value

The plaintiff's (PW1) evidence and the submissions by Counsel for the plaintiff are to the effect that the plaintiff is a bonafide purchaser of the suit properties/lands for value and without any notice of fraud.

Counsel for the 1st defendant argued in his submissions that the 1st defendant under Section 91 of the Land Act is not required to investigate the issue of bonafide or mala fide of the purchase that, that is for the Courts of law. That what the 1st defendant was required of was to study the register following a complaint by the 2nd defendant as to whether there were errors, irregularities and illegalities on the register. That the 1st defendant discovered there were errors and amended the register because of those erroneous entries.

The 1st defendant argued that under S. 91 of the Land Act, the Commissioner Land registration can cancel a certificate of a bonafide purchaser! This argument is not only absurd but would lead to chaos in the land registration system. The essence

of S.64 (1), 176 and 181 of the Registration of titles Act, Cap. 230 is to protect a registered purchaser who is not privy to fraud. S.91 of the Land act cap. 227 as amended which is itself subject to the Registration of Titles Act, was never intended to abolish the nearly one century old Torrens system of title by registration, the hallmark of which is the indefeasibility of a registered title.

On other hand Counsel for the 2nd and 3rd defendants submitted that the plaintiff in his written submission has tried to prove that he paid the purchase price and did everything above board. That does not mention anything about the actions of his lawyer. Counsel for the 2nd and 3rd defendants argued in his submissions that there is evidence that the plaintiff's lawyer, Mr. Peter Walubiri:-

- (a) Acted for Ssenyonga Hamad;
- (b) Drafted an agreement of sale between Ssenyonga Hamad and Ddamulira Stephen although he knew that Ssenyonga did not pay a penny to Ddamulira.
- (c) Submitted a fraudulent consent judgment to the Commissioner for Land Registration.
- (d) Transferred the land on the basis of an instrument which was in respect of an application for a special certificate;
- (e) Submitted a fraudulent statutory declaration in support of an application for a special certificate;
- (f) The plaintiff's counsel filed a suit on behalf of Ssenyonga Hamad without his instructions.

That all the above are to be collected from the evidence of Ssenyonga Hamad, Eddie Bwanika and Sarah Kulata. It is surprising that when Mr. Mulira Peter Counsel for the 2nd and 3rd defendants in his cross-examination of the PW1, he never put any such questions to PW1 so as to connect him with the fraud he is complaining of. Counsel for the plaintiff Mr. Peter Walubiri was never called as a witness by the defendants for purposes of cross-examination on their allegations

of fraud against him. The allegations of fraud labeled against Mr. Peter Walubiri do not hold any water at all.

According to the **Supreme Court Judgment in Civil Appeal NO. 12 of 1985 – David Sejjaka Nalima vs Rebecca Musoke at page 154** it was held that notice of fraud on the part of the advocate is imputed to the purchaser. In this case no knowledge of fraud by his Counsel is imputed to the plaintiff. Ssenyonga Hamad and Eddie Bwanika were categorical in showing that the Patel’s Counsel was not part of the racket to defraud the 2nd and 3rd defendants of their land.

In **Hajji Nasser Kitende vs Vithalidas Haridas & Co. Ltd Civil Appeal No. 84 of 2003, Mukasa Kikonyogo DCJ citing Hannington Njuki vs Nyanzi** held that for a purchaser to rely on the bonafide doctrine he must prove that:

- (a) He holds a certificate of title.**
- (b) He purchased the property in good faith.**
- (c) He had no knowledge of the fraud.**
- (d) He purchased for valuable consideration.**
- (e) He vendors had apparent valid title.**
- (f) He purchased without notice of any fraud.**
- (g) He was not party to the fraud**

In respect of Kibuga Block 10 plot 584 the plaintiff holds a certificate of title which was handed over to the 1st defendant for investigation as evidenced by Exhibit D.14 (attached to Sarah Kulata’s witness statement). The plaintiff’s Certificate of title for Kibuga Block 2 plot 144 was tendered in Court as Exhibit P.29. Accordingly, the 1st ingredient of bonafide doctrine is satisfied.

The 2nd ingredient of “purchase in good faith” is also satisfied. The plaintiff in his witness statement and cross examination led evidence to show that he purchased the suit properties from the registered propertors (Gaster Kyawa Mugoya in

respect of Kibuga Block 10 Plot 584 and Senyonga Hamad in respect of Kibuga Block 2 plot 144) for valuable consideration. The plaintiff tendered in Court the sale agreements – (exhibits P.22 and P.23) and evidence of payment of the purchase price, namely:

- (a) Application for transfer of funds by TT. (Bank of Baroda) (Shs 295,000,000?) – Ex. P.24.
- (b) Payment voucher for US\$ 4,000/= - Exhibit P.25.
- (c) Payment voucher for US\$ 36,000/= - Exhibit P.26.
- (d) Payment voucher for US\$ 111,000/= - Exhibit P.27.
- (e) Payment voucher for US\$ 20,780/= - Exhibit P.28.

At the time of purchase, searches were done and there were no registered incumbrances. The Commissioner Land Registration (Sarah Kulata Basangwa) during cross examination in respect of plot 584 stated thus:

“There was no caveat stopping registration of transfer (to plaintiff) at the time it was registered. On the face of the White Page, there was nothing to stop registration of C.R. Patel’s transfer”.

Similarly, in respect of Block 2 plot 144 there was no caveat to stop the registration. The plaintiff bought for valuable consideration and in good faith from vendors who had apparent valid certificates of titles. There was no apparent defect in their Certificate of Titles. All the ingredients of the bonafide doctrine are satisfied.

On the question of whether the plaintiff was aware of or privy to the fraud, the police investigators who were trained for the job are the best witnesses. The investigating officer Mr. Eddie Bwanika (DW.2) made a witness statement and he was cross examined. At page 4 of his statement, he set out the methodology of his investigation. He Carried out investigations at the Land Office, at Nakawa Court and interviewed several people. Curiously he never interviewed Mr. C. R. Patel, the

plaintiff! In his findings at pages 5 to 7 of his witness statement, he does not indicate that the plaintiff was party to or even aware of the alleged fraud.

Attached to (DW4) Sarah Kulata's witness statement is a "progressive Report on a case of Forgery and obtaining registration by false pretence...." (exh. D23) prepared by the same Bwanika Eddie (DW2) and examined and submitted by Kutesa Simon (D/ACP), Head of Land Titles Fraud Squad. During cross-examination, Sarah Kulata Basangwa (DW4) stated:

"Exhibit D.13 is the police report I relied on to send notice of cancellation to plaintiff. In this report, there is no incrimination of C.R Patel in the irregular dealings on the suit land. "Patel is only mentioned in paragraph 4.4 (as a purchaser from Mugoya Kyawa Gaster".

It is clear from all his evidence adduced by the parties that the plaintiff bought from vendors who had apparent valid certificates of titles. There was no registered incumbrances on the register. The plaintiff who had no notice of the alleged fraud bought in good faith and for valuable consideration. The plaintiff was not a party or even aware of the alleged fraud on the part of the predecessors in title. The plaintiff is a bonafide purchaser for value without notice of any fraud in the suit lands.

The 2nd and 3rd defendants have not shown that the plaintiff was privy to any fraud or was aware of any and took advantage of it. Instead they have made a very heinous attack on Counsel for the plaintiff alleging in paragraph 10.02 of their submissions that Counsel was involved in several acts of fraud which should be imputed on the plaintiff on the authorities of **David Sejjaka Nalima vs Rebecca Musoke and Fredrick J.K Zabwe vs Orient Bank**. There is no evidence in support of this allegation. To drive my point home I shall look at each of these "particulars" of the alleged conduct of Counsel for the plaintiff:-

(a) He acted for Senyonga Hamad

From the evidence of DW1, Ssenyonga Hamad, the plaintiff's Counsel came into contact with Ssenyonga Hamad, after Ssenyonga was already a registered proprietor of Kibuga Block 2 plot 144 and when he was selling to C.R. Patel (the plaintiff). There is no evidence that the plaintiff's Counsel ever dealt with Hamad Ssenyonga or any of the parties involved in the series of transactions leading to Ssenyonga's registration. He simply searched for the sale to his longtime client C.R. Patel. He then drafted the sale agreement. Where then is the fraud or illegality on part of Counsel to be imputed on his client C.R. Patel? None whatsoever.

(b) Drafted an agreement of sale between Ssenyonga Hamad and Ddamulira Stephe although he knew that Ssenyonga did not pay a penny to Ddamulira

No iota of evidence was led by any of the defence witness to this effect. The alleged agreement of sale was never tendered. Counsel for the 2nd and 3rd defendants endeavoured in his submissions to adduce evidence from the bar. Such statements from the bar have no evidential value at all. In that regard, I hold that there was no such evidence adduced by the defendants.

(c) Submitted a fraudulent consent judgment to the Commissioner Land Registration.

The only consent judgment on record is exhibit D.1 attached to the witness statement of Beatrice Matovu iga Matovu (DW3). C.R.Patel, the plaintiff herein was not party to that suit and his Counsel was not party either. None of the defence witnesses alleged that the consent judgment was ever tendered to the Commissioner by Mr. C.R. Patel's Counsel. Again this allegation is a malicious fabrication from the bar.

(d) Acted for Gaster Mugoya

No evidence was led by any defence witness to the effect that Counsel for C. R. Patel acted for Gaster Mugoya in all the alleged actions of Gasta Mugoya in the transactions relating to the two suit properties. No agreements, documents, Court pleadings or other instruments involving Gaster Mugoya were tendered to show the involvement of C.R. Patel's Counsel. The allegation is a desperate, false and malicious allegation by the defendants.

(e) Transferred the land on the basis of an instrument which was in respect of an application for a special certificate.

There is no evidence either by Ssenyonga Hamad (DW1), Eddie Bwanika (DW2) or Sarah Kulata (DW4) to link Counsel for C.R. Patel in the transfer of any land on the basis of an instrument which was in respect of an instrument for a special certificate of title. The alleged instrument was never tendered in Court to show who drafted it and submitted it for registration. Again this is fabricated "evidence" from the bar.

(f) Submitted a fraudulent statutory declaration in support of an application for a special certificate.

None of the defence witnesses ever testified or even submitted any statutory declaration to back up this allegation! This is another falsehood from the bar which cannot be upheld.

(g) The plaintiff's counsel filed a suit on behalf of Ssenyonga Hamad without his instructions

No pleadings of any suit filed by Mr. C.R. Patel's Counsel on behalf of Ssenyonga Hamad were exhibited in Court to prove this allegation from the bar. Indeed Ssenyonga Hamad in his evidence never testified to this effect. This baseless

argument does not hold any water at all. It ought to be dismissed with the contempt it deserves.

Clearly no evidence has been lead to prove fraud on the part of the plaintiff or his Counsel. The plaintiff bought for valuable consideration and in good faith without notice of any defect in the vendor's title. He is a bonafide purchaser for value of the suit lands without notice of any fraud.

In the result, this issue no. 4, too, is answered in the affirmative. The plaintiff is a bonafide purchaser for value of the suit lands, without notice of fraud.

4.5 What reliefs are available to the parties

Counsel for the plaintiff submitted that the plaintiff is entitled to all reliefs prayed by the plaintiff in his evidence and the plaint.

In his submissions, Counsel for the 1st defendant argued that the plaintiff's entries were canceled under the provisions of Section 91 of the land Act; and he prayed that the suit be dismissed with costs. On the part of the 2nd and 3rd defendants, their Counsel submitted that they have demonstrated that the plaintiff's certificates of title were cancelled under the provisions of Section 91 of the Land Act which give the 1st defendant special powers to cancel a title deed. That fraud is irrelevant because it is not even mentioned in the Section. That the plaintiff has been misguided to base his case on the ordinary rules governing fraud in respect of title deed. That it does not apply here. That what the plaintiff should have done was to prove that the words used in the Section such as "error", "illegal", "wrongful" etc do not apply to the case. In further reply, Counsel for the plaintiff does not agree with the submissions by the defendants' Counsel. He maintains his prayers that the plaintiff is entitled to the reliefs prayed for in the plaint. I agree with his position on the matter.

Issues nos. 1, 2, 3 and 4 were found in favour of the plaintiff. It follows therefore that the plaintiff is entitled to reliefs sought for in the plaint. Though the general damages were pleaded in the plaint, the plaintiff did not plead particulars of general damages. In his written submissions, Counsel for the plaintiff and also for the defendants never addressed Court on the issue of general damages. In his evidence PW1 stated that

“ the cancellation of my certificates on land I bought for valuable consideration without notice of any other persons’ claims has occasioned and continues to occasion me loss and damage.”

In cross –examination, Counsel for the defendants never cross examined PW1 on this piece of evidence. In defence, DW1, DW2, DW3 and DW4 in their respective evidence in Court never challenged this piece of evidence. Their arguments in the defence and prayer are that the plaintiff’s suit be dismissed with costs. The defendants never concerned themselves with the issue of reliefs available to either party. In such regard, I make a finding that the plaintiff is entitled to general damages. Since the plaintiff has been denied enjoyment of the suit lands he lawfully bought by the defendants since 2007, I assess and award the plaintiff Shs 40,000,000/= (shillings forty millions) as general damages with interest of 25% per annum from the date of this judgment till payment in full.

On the whole, the plaintiff is entitled to all the reliefs claimed in the plaint. I answer issue no. 5 in favour of the plaintiff.

5 Conclusion

In the result and for the reasons given hereinabove in this judgment, I hold that the plaintiff’s suit has merit. It succeeds. Accordingly, therefore, judgment is entered for the plaintiff in the following orders, that:-

- (a) The plaintiff is the bonafide purchaser for the value of the suit lands without notice of any fraud.
- (b) The 1st defendant is directed to cancel the registration of Leonard Ddumba Matovu as proprietor of Kibuga Block 10 plot 584 and Kibuga Block 2 plot 144, the suit properties.
- (c) The 1st defendant is directed to reinstate the plaintiff as the registered proprietor of Kibuga Block 10 plot 584 and Kibuga Block 2 plot 144, the suit properties.
- (d) The 1st defendant is directed to reinstate the special certificates of title in respect of Kibuga Block 10 plot 584 and Kibuga Block 2 plot 144 in the names of the plaintiff.
- (e) The 1st defendant is directed to hand over to the plaintiff the Special Certificate of title for Kibuga Block 10 plot 584 which she took from the plaintiff.
- (f) The directives on (b), (c), (d) and (e) above shall be complied with by the 1st defendant as soon as practicable but not later than (10) days from the date of this judgment.
- (g) General damages of shillings 40,000,000/= (fourty million shillings) are awarded to the plaintiff.
- (h) Costs of the suit are awarded to the plaintiff.
- (i) Interest on (g) and (h) at 25% p.a is awarded from date of this judgment till payment in full.

Dated at Kampala, this 21st day of January, 2013.

sgd

MURANGIRA JOSEPH
JUDGE