

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 578 OF 2019

LYDIA KINTU:.....PLAINTIFF
(Suing through her Attorney Brian Kirumira)

VERSUS

- 1. SSEMAKULA ISMAEL**
- 2. DAVID KINTUDEFENDANTS**
- 3. THE COMMISSIONER LAND REGISTRATION**

BEFORE: HON. LADY JUSTICE KANYANGE SUSAN

JUDGMENT

The Plaintiff brought this Suit against the Defendants jointly and severally for fraud against which the Plaintiff sought –

- a) A Declaration that she is the rightful owner of land formerly registered as Block 276 Plot 141.
- b) A Declaration that the subdivisions and transfers of the Suit land into Plots 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168,

1169, 1170, 1171, 1172, 1424 & 1425 by the Defendants was fraudulent and unlawful.

- c) An Order for cancellation of 38 Titles still unlawfully registered in the names of the 1st Defendant to wit; Plots 1110, 1114, 1115, 1120, 1121, 1123, 1124, 1126, 1127, 1129, 1130, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1148, 1149, 1150, 1151, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1161, and 1170 and re-registration of the same in the names of the Plaintiff.
- d) An Order for delivery of all titles in the Defendants' possession jointly and severally to the Plaintiff.
- e) An Order of account and or compensation for nine unaccounted-for titles to wit: Plot 1104, 1109, 1113, 1125, 1128, 1157, 1160, 1171, and 1172.
- f) An Order for Compensation for Ug shs.600,000,000/= (Uganda Shillings Six Hundred Million) being the value of 25 Plots unlawfully sold and transferred to third parties by the Defendants.
- g) An Order of vacant possession by the Defendants and their agents from the Suit land.



- h) A Permanent Injunction restraining the Defendants or their agents or any person claiming under them from dealing or transacting in the Suit property in any way,
- i) Punitive damages,
- j) General damages,
- k) Exemplary damages,
- l) Interest and;
- m) costs of the Suit all arising from fraudulent transfers, subdivisions, and dealings in the Suit land by the Defendants.

Background of the case

The Plaintiff registered and acquired a legal interest in the Suit land in Busiro Block 276 Plots 141 measuring 7.76 Hectares on 6th July 2006. The Plaintiff appointed the 2nd Defendant as a caretaker of the Suit land and handed him the Certificate of Title to the Suit land for safe custody.

In 2013, unknown to the Plaintiff, the 2nd Defendant connived with the 1st Defendant, forged the Plaintiff's signature, and fraudulently subdivided and transferred the Suit land into the names of the 1st Defendant. The 1st Defendant subdivided the Plaintiff's land into several parcels and transferred them into his name. The 3rd Defendant, without carrying out any caution or due diligence, acted on the forged instruments of transfer and transferred the titles into the names of the 1st Defendant.

The Defendants subdivided the land and created 73 plots out of the same; to wit; 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1424, 1425.

Plaintiff averred that at the time of disposal and transfer of various plots to third parties, each plot was valued at UGX 24,000,000/= (Uganda Shillings Twenty-Four Million) by the Chief Government Valuer. The Plaintiff claims compensation of UGX600,000,000/= (Uganda Shillings Six Hundred Million), the total value of 25 plots that the Defendants transferred to third parties according to their fraudulent activities on the Suit land. The Plaintiff averred and contended that after the filing of the Suit, the Defendants returned to the Plaintiff the Certificate of Title for Plot 1425 after re-transferring it into the Plaintiff's name and backdating the transfer to 8th June 2016 contrary to the earlier search report.

Default Judgement

A default judgment was entered against the 2nd Defendant on 20th October 2020. However, upon application to set aside the judgment and file a defence out of time, the 2nd Defendant was granted leave to defend the Suit.



The 1st Defendant was served with the summons to file a defence to no avail. Notices were served upon him, but he never appeared in Court. A default judgment was entered against him, and the Suit was set down for formal proof by the Plaintiff.

In the 2nd Defendant's Written Statement of Defence to the 2nd Amended Plaint, the 2nd Defendant denied the Plaintiff's allegations of fraud against him and averred that the Plaintiff entrusted him with the duty to take care of the Suit land and handed over the Certificate of Title for the Suit land and asked him to help her transfer the same from the names of the administrators into her names.

The 2nd Defendant obtained duly signed transfer forms from the administrators and caused the transfer and registration of the certificate of title for the Suit land into the names of the Plaintiff. Between 2012 and 2013, the 2nd Defendant visited and inspected the Suit land and discovered that several people had encroached on it without his knowledge and that of Plaintiff.

The 2nd Defendant approached the 1st Defendant for advice on controlling and managing such a vast piece of land to avoid it being taken by land grabbers, and the latter told him to subdivide it into sub-plots and identify the vacant areas. The 2nd Defendant informed the Plaintiff of the advice and she agreed to the idea of subdividing the Suit land and creating subplots but still registering them in her name. The 2nd Defendant then handed over the certificate of title for the Suit land to the 1st Defendant for purposes of surveying and

making sub-division but not to register it in his (1st Defendant's) name.

To the 2nd Defendant's surprise, the 1st Defendant forged transfer forms and caused the registration of his name onto all the certificates of title. This was done without the consent, knowledge, and approval of the 2nd Defendant.

The 2nd Defendant further averred that he did not at any time connive with the 1st Defendant to cause the registration of the Plaintiff's certificate of title into the 1st Defendant's name. It is the 3rd Defendant who conspired with the 1st Defendant to do all the transfers and registration of the certificate of title into the latter's name.

That the fraud pleaded in the 2nd amended complaint was committed by the 1st and 3rd defendants, and the same cannot be attributed to the 2nd Defendant, who has never been a transferee on the certificate of title for the Suit land. It is the 1st Defendant who is liable, and his conduct in returning some certificates of title to the Plaintiff is an admission of the Plaintiff's claim in the 2nd amended complaint.

The 3rd Defendant contends that in all transactions regarding the Suit land, they relied on documents presented before its officers, which were believed to be authentic.

Plaintiff's Evidence

Counsel for the Plaintiff led evidence from two witnesses to prove her case: PW1, Sebuwufu Erisa (Handwriting Expert), and PW2, Brian Kirumira, the Plaintiff's Lawful Attorney.

PW1 testified that he could not tell who forged the signature, but the signature differed from the samples. The signatures do not match as they differ in slant and handwriting.

PW2 stated on oath that the 2nd Defendant helped Plaintiff to transfer the title into her name. None of the titles is registered in the names of the 2nd Defendant. All titles are registered in the names of the 1st Defendant.

He stated that he does not know who forged the Plaintiff's signature. PW2 further stated that he got some of the titles from the 2nd Defendant, who surrendered the titles willingly but did not bring some. At re-examination, PW2 stated that the title belonged to Lydia Kintu, the Plaintiff. The titles were being kept by the 2nd Defendant, and since the title was being kept by him, he had to explain how it got in the hands of Ssemakula, the 1st Defendant, and how the land was transferred and subdivided. He added that the 2nd Defendant never told him that the title was stolen. It's the 2nd Defendant who handed over the surrendered titles to him.

2nd Defendants' Evidence

Counsel for the 2nd Defendant led evidence of 1 witness,

DW1 Kintu David

During cross-examination, DW1 testified that Plaintiff trusted him to keep her Certificate of Title for the Suit land and was a caretaker of the land, but Plaintiff never gave him power of attorney to deal with the Suit land. DW1 stated that he visited the Suit land and found trespassers, but he did not write to them, nor did he take them to

Court or report them to the Police. He told the Plaintiff about the idea of subdivision and engaged the 1st Defendant to do subdivision.

DW1 further testified that he is familiar with the process of transfer and subdivision; the owner has to sign mutation forms, but the Plaintiff has never signed mutation forms. When the subdivision was done, none of the plots were registered in the names of the Plaintiff. They were in the name of Ismael Ssemakula. He was surprised that Semakula had fraudulently transferred land into his name. He does not recall that the title was first transferred under the name Semakula.

DW1 stated on oath that the Titles produced were around 70 and that he put caveats on those plots. DW1 confirmed to this Court that the Plaintiff's signature was forged and that he never informed the Plaintiff when he discovered the forgery. DW1 added that he demanded the 1st Defendant surrender the titles, but he surrendered some, not all. Some surrendered titles were in 1st Defendant's name, others in Plaintiff's name. He did not take legal action and tried to make the 1st Defendant sign the titles back, but he kept dodging him.

It was DW1's testimony that he knows that some of the plots subdivided were transferred to third parties, but he does not know how many and how much they paid.

They should have paid stamp duty; he does not know the value of those plots. The Plaintiff was not compensated for all plots taken by 3rd parties. He only knew about the transfers when in Court. He thought he would sort out the problem, so he did not tell the Plaintiff.

At re-examination, DW1 testified that the Plaintiff gave him powers to transfer the title from administrator into her name, which he did. He thinks Semakula signed the transfer forms. DW1 stated that the 1st Defendant got the title from him because he was subdividing a piece of land where squatters were. He did not have a mutation form from the Plaintiff to subdivide the land. He does not know how many titles were returned. The 3rd Defendant did not bring witnesses.

Locus Proceedings

The Court visited the locus on 12th March 2024. Evidence of 1 witness was led, that is, PW2. PW2 stated that the Suit land was 20 acres, but the 2nd and 1st Defendants subdivided it. 8 acres remained, but 1 acre was given to a lady assigned to keep the land. The Court noted that there are some few structures on the subdivided land in plots that sit on 12 acres.

8 acres is an empty land. PW2 informed the Court that the developments on the land came from around 2009 to 2020. PW2 testified that by the time they filed this Suit, the land was in the name of the 1st Defendant, and the 1st Defendant was able to return 23 plots from subdivided land.

During cross-examination, PW2 stated that he was not around when the subdivision took place. Through a search, they got the names of some of the people who bought the subdivided plots. He has not seen any title registered in the names of the 2nd Defendant, Kintu David, and no structures on the Suit land by the 2nd Defendant.

At re-examination, PW2 stated that Plaintiff did not give anyone the authority to carry out any sales on the land. The 2nd Defendant never told him how the structures on the land came up because these structures were not there by the time the 2nd Defendant was keeping the land. PW2 confirmed to the Court that the 23 plots returned are scattered. It is the upper part of the suit land (12 acres) that is subdivided. The down part (8 acres) is intact. Initially, the down part not subdivided had been transferred into the 1st Defendant's name. The 1st Defendant re-transferred it back to the Plaintiff's name. Twenty-four (24) plots not returned. Most of them were 50 by 100. There are two houses on the land and a structure near the mast, but he does not know who owns the houses. Charles is the caretaker of the house. The 2nd defendant did not produce witnesses at locus.

Legal Representation

The Plaintiff was represented by **Nakiranda & Co. Advocates. M/S Jolly Mutumba & Co. Advocates** represented the 2nd Defendant. The 3rd Defendant was represented by the **Department of Land Registration, Ministry of Lands, Housing and Urban Development.**

The 3rd Defendant never filed submissions. In a Joint Scheduling Memorandum, it was agreed by the parties that;

- a) The Plaintiff acquired ownership and title registration of the Suit land in Busiro Block 276 Plot 141 in 2006.
- b) The Plaintiff resides in the United Kingdom.

- c) The Plaintiff entrusted the Suit land to the 2nd Defendant and handed him the Certificate of Title to the Suit land.

- d) The suit land was subdivided into various plots registered in the names of the 1st Defendant.

The Parties further agreed on the following issues for the Court's determination;

1. Whether the Registration of the Certificate of Title and Sub-division of the Suit Land into the 1st Defendant's name was fraudulent and done in connivance with the 2nd and 3rd Defendant.

2. What remedies are available to the parties

Plaintiff's Submission

Counsel for the Plaintiff created sub-issues from Issue 1 and submitted as follows; -

- a) Whether the Registration of the Certificate of Title and Sub-division of the Suit Land into the 1st Defendant's name was fraudulent?

- b) Whether the 2nd Defendant connived with the 2nd and 3rd Defendants to deprive the Plaintiff of her land?

On sub-issue (a)

Counsel for the Plaintiff submitted that the Plaintiff did not consent nor did she sign any transfer form when her Certificate of Title was being transferred from her name to the 1st Defendant's name. PW2 testified that the 2nd Defendant was the one keeping the Plaintiff's Certificate of Title for the Suit land. PW2 further testified that since the title was kept by the 2nd Defendant, he seeks an explanation on how the title got into the hands of Ssemakula and how the land was subdivided without the consent of the Plaintiff.

PW2 also testified that the land is now registered in the name of the 1st Defendant, Ismael Ssemakula and that some of the subdivided plots were returned by the 2nd Defendant.

Additionally, Counsel for the Plaintiff submitted that while at locus, PW2, Brian Kirumira testified that at the time this Suit was filed, all the land titles were in the name of the 1st Defendant. PW2 stated that there are structures on the land sold by the 1st Defendant and that the people informed him that the 1st Defendant sold the land to them. The 1st Defendant graded and cleared part of the land.

It was Counsel for the Plaintiff's submission that the 2nd Defendant told the Court that the land was 20 acres. The 2nd Defendant stated that he was the caretaker of the land, but the Plaintiff did not give him Power of Attorney. That he was familiar with the land subdivision process and that the Plaintiff did not sign mutation forms for the subdivision.

The 2nd Defendant stated that no certificate of title came in the name of the Plaintiff after subdivision. All titles were in Ismael Ssemakula's name, and the Plaintiff signed no transfer forms. The 1st Defendant fraudulently dealt with the Plaintiff's land, and the Plaintiff's signature was forged.

Relying on **Section 77 of the Registration of Titles Act, Cap. 230**, the case of **Lazarus Estate Ltd vs Peasley (1956) QB 702 at page 712**, and **Makula International Vs His Eminence Cardinal Nsubuga [1982] HCB 12**, Counsel for the Plaintiff submitted that there is glaring evidence on the record and through the testimony of the 2nd Defendant that the Plaintiff's Certificate of Title was fraudulently transferred into the 1st Defendant's name. PW1 testified in court that he could not determine who forged the signature, but the signature differed from the samples provided.

PW1 further testified that the signatures submitted to him and the samples did not match, implying that different persons wrote them because of the slants and writing skills. So he gave his opinion that the author is not the same between the sample and the questioned signature because the writer individualizes the signature. Citing the case of **Divie v Edinburgh Magistrates (1953) SC 34 at 40**, the Plaintiff's Counsel submitted that this Court be pleased to rely on the expert evidence of PW1, Sebuwufu, who testified and furnished a report indicating that the author is not the same between the sample and the questioned signature.



On sub-issue (b)

Counsel for the Plaintiff submitted that the 2nd Defendant connived with the 1st and 3rd Defendants, and they fraudulently transferred the Plaintiff's Certificate of title into the name of the 1st Defendant to deprive the Plaintiff of her land. The 2nd Defendant is a dishonest person, and he took advantage of the Plaintiff's absence on the ground.

In his testimony, the 2nd Defendant stated that he was trusted with the Plaintiff's Certificate of Title and was just a caretaker of the land. He did not write to the trespassers. He did not report the trespassers to Court or the Police.

He is aware that Plaintiff's signature was forged. He did not inform the Plaintiff about the forged signature. He handed over the certificate of title to the 1st Defendant willingly, and he did not take legal action against the 1st Defendant to recover the remaining titles that he had withheld.

Citing the Supreme Court case of **Halling Manzoor vs Serwan Singh Baram, SCCA No. 9/2001**, and relying on PEx.3 and PEx.4, Counsel for the Plaintiff submitted that the 2nd Defendant had no legal interest in the land to be transferred to other parties. The 2nd Defendant never obtained signed transfer forms, consent forms, and mutation forms from Plaintiff as required by law before the registration of the land from Plaintiff's name to the 1st Defendant's name; all that he did was forgery.



2nd Defendant's Submission

Counsel for the 2nd Defendant submitted that the 2nd Defendant denied the particulars of fraud against him and, in his written statement of defence, said that fraud was committed by the 1st Defendant and the same cannot be attributed to him, who has never been a transferee on the certificate of title for the Suit land.

Counsel for the 2nd Defendant relied on ***Kampala Bottlers Ltd v Domanico (U) Ltd SCCA No. 22/1992*** and submitted that Plaintiff failed to discharge her burden of proving fraud against the 2nd Defendant to the required standard. Plaintiff had to adduce evidence to prove it is the 2nd Defendant who forged the Plaintiff's signature to transfer the title into the 1st Defendant's name or that the 2nd Defendant aided the 1st Defendant to forge the said signature.

However, the Plaintiff called PW1, a handwriting expert whose report marked PIDI was never tendered in evidence and admitted as an exhibit, and during cross-examination, PW1 stated that he could not determine who forged the signature. It was the 2nd Defendant's Counsel's submission that all the documents that were exhibited by Plaintiff do not in any way implicate the 2nd Defendant in the commission of the alleged forgery.

The only person who can be suspected of forging the said transfer documents is the one in whose favour they were executed. Plaintiff tendered 26 search reports marked PEx.6 (a-z) for several plots which were transferred to third parties, but none of the plots were registered in the names of the 2nd Defendant.



Furthermore, Counsel submitted that the 2nd Defendant testified in paragraphs 18, 19, 20, 21, and 22 of his witness statement that when he came back from the USA, he approached the 1st Defendant to find out how far with the process of subdividing the land but to his surprise, he found out that the 1st Defendant had fraudulently dealt with the land and caused the registration of his names onto all the certificates of title for the subplots without his knowledge and consent. All the titles for the subdivision were supposed to be in the Plaintiff's name, but they were registered under the name Ssemakula Ismael.

Counsel for the 2nd Defendant submitted that the titles were registered into the names of Ssemakula Ismael and Lydia Kintu using one instrument number, KLA 565321, on the same date and at the same time which is 18/3/2013 at 8:52 am, which is an indication of actual fraud committed by the 1st Defendant in connivance with the 3rd Defendant. Additionally, Counsel added that the 2nd Defendant tendered in DEx.1, DEx.2 up to DEx.15, and none of this evidence was challenged in cross-examination, yet it had the net effect of exonerating the 2nd Defendant from participation and commission of fraud and forgery complained of by the Plaintiff.

Counsel submitted that there was no evidence to prove the 2nd Defendant connived with the 1st and 3rd Defendant to deprive the Plaintiff of her land. It was the 2nd Defendant's Counsel's submission that the 2nd Defendant did not participate or commit fraud and also did not connive with the 1st and 3rd Defendant to deprive the Plaintiff of her interest in the Suit land.



Determination of Court

ISSUE 1:

Whether the Registration of the Certificate of Title and Sub-division of the Suit Land into the 1st Defendant's name was fraudulent and done in connivance with the 2nd and 3rd Defendant?

Katureebe, JSC in the case of ***F. K Zaabwe Vs Orient Bank Ltd & Ors, SCCA No. 4 of 2006***, referred to the Black's Law Dictionary, 6th Edition at page 660 for the illustrative definition of fraud to mean; -
"An Intentional perversion of truth to induce another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture. A generic term, embracing all multifarious, means which human ingenuity can devise, and which are resorted to by one individual to get an advantage over another by false suggestions or by suppression of truth..."

In Sebuliba Vs Co-operative Bank Ltd, [1987] HCB 130, the Court stated that the standard of proof in fraud cases is beyond the mere balance of probabilities required in ordinary civil cases, though not beyond a reasonable doubt required in criminal cases. See **also Ratilal Gordhandhai Makanji [1957] EA 314**).

Section 59 of the Registration of Titles Act, Cap. 230 provides that every Certificate of Title shall be conclusive evidence of ownership and that the person named in the certificate is the proprietor of the land.

In the ongoing case, it was an agreed fact by the parties that Plaintiff acquired ownership and title registration of the Suit land comprised in Busiro Block 276 Plot 141 in 2006 and that she entrusted the Suit land to the 2nd Defendant and handed over the Certificate of Title to the Suit land to him. It was also an agreed fact that the suit land was subdivided into various plots registered in the names of the 1st Defendant.

It is a well-established principle of law that a party relying on fraud must specifically plead it and that particulars of the alleged fraud must be stated on the face of the pleading. It is not allowed to leave fraud to be inferred from the facts pleaded, and accordingly, fraudulent conduct must be distinctly alleged and distinctly proved. See: ***Davy v. Gannet (1878) 7 Ch. D. 473 at 489***).

In the 2nd Amended Plaintiff, the Plaintiff gave the particulars of fraud committed by the 1st, 2nd and 3rd Defendants, respectively, as follows;

Particulars of Fraud by the 1st Defendant

- a) Obtaining possession of the Certificate of Title from the 2nd Defendant without the knowledge and consent of the Plaintiff.
- b) Forging the Plaintiff's signature on transfer forms and land consent forms.
- c) Transferring the Suit land into his name without the knowledge and authorization of the Plaintiff and using a forged transfer deed.
- d) Subdividing the suit property without the Plaintiff's knowledge and consent.
- e) Fraudulent declarations of the value of the land.
- f) Re-transferring Plot 1425 into the Plaintiff's name using a forged transfer deed.

It is a well-established law that fraud means actual fraud or some act of dishonesty.

See: ***Waimiha Saw Milling Co. Ltd Vs Waione Timber Co. Ltd (1926) AC 101 at p. 106***. And In the case of ***Kampala Bottlers Ltd Vs Damanico (U) Ltd, SCCA No. 22/92***, Wambuzi, C.J (as he then was) stated on page 7 of his Judgement that;

“Fraud must be attributable to the transferee. I must add here that it must be attributable 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.” See also: **David Sejjaka Vs Rebecca Musoke, SCCA No. 12/1985**). The Learned Chief Justice further stated that; “I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters.”

In Paragraph 5 (j) of his written statement of defence to the 2nd Amended Plaintiff, the 2nd Defendant stated that the 1st Defendant forged transfer forms and caused the registration of his names onto all the Certificates of Title. It is the 3rd Defendant who connived with the 1st Defendant to do all the transfers and registration of the certificate of title into the latter’s name.

It was the evidence of PW2 that the 1st Defendant obtained possession of the Certificate of Title from the 2nd Defendant without the knowledge and consent of the Plaintiff. PW2 also testified that the land is now registered in the name of the 1st Defendant. Mr. Ssemakula Ismael, and that the 2nd Defendant returned some of the subdivided titles.

DW1 confirmed to the Court that the Plaintiff’s signatures were forged. The Plaintiff never signed mutation forms. He was surprised when he found out that the 1st Defendant subdivided the Suit land but transferred and registered them into his name. None of the plots were registered in the name of the Plaintiff.

At locus, PW2 testified that at the time the Suit was filed, all the land titles were in the name of the 1st Defendant. There are structures on

the land sold by Mr. Ssemakula, and the people informed him that the 1st and 2nd Defendants sold the land to them. The 1st Defendant graded and cleared part of the land.

I have looked at **PEX.2**, a copy of the Certificate of Title for Block 276 Plot 141, which indicates that the Plaintiff registered on the suit land on 6th July 2006 and the 1st Defendant registered himself onto the land on 3rd April 2013. The 1st Defendant then re-registered the Plaintiff onto the Suit land on 8th June 2016.

PEX.6 (a-z) is copies of 26 search reports as of 18th April 2019 for Plots that were disposed of and transferred into the names of third parties. These are; Plots 1102, 1103, 1105, 1106, 1107, 1108, 1111, 1112, 1116, 1117, 1118, 1119, 1122, 1131, 1132, 1147, 1152, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1424.

According to **PEX.9 (a-o)**, Fifteen (15) Plot title deeds were unlawfully retained by the 1st Defendant and still registered in the names of the 1st Defendant. These plots are Plot 1110, 1120, 1124, 1133, 1146, 1148, 1149, 1150, 1151, 1153, 1154, 1155, 1156, 1159, and 1161.

PEX.8 (a-w) is copies of Twenty-three (23) Title deeds that were surrendered to Plaintiff while still registered in the names of the 1st Defendant when Plaintiff discovered the fraud committed by Defendant. These plots are Plot 1105, 1114, 1115, 1121, 1123, 1126, 1127, 1129, 1130, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1158, and 1170.

I have noted that Nine (9) Plot Title deeds were unaccounted for despite efforts to conduct searches with the Defendants, and the Plots are Plot 1104, 1109, 1113, 1125, 1128, 1157, 1160, 1171, 1172.

PEX.7 (b) is a copy of the Certificate of Title for Plot 1425 that was returned to Plaintiff in the course of the pendency of the Suit when the 1st Defendant re-registered it in the names of Plaintiff and purportedly re-transferred on 08.06.2016 despite the earlier search report of 18th April 2019 showing that it was still registered in the names of the 1st Defendant.

PEX.7 (a) is a copy of the search report for Plot 1425, which is still registered in the 1st Defendant's name.

PEX3 and PEX.4 are copies of the forged transfer form, application for consent to transfer Plot 1102-1171 and a forged consent to transfer form, respectively.

PEX.5 is a copy of the Deed print with fraudulent subdivisions. PW2, in his Witness Statement in paragraph 7 (d), stated that what remained unclear was the exact position of Plot 1105 because of the search report of 18th April 2019, PEX. 6(c) shows that it was transferred to Apollo Freddie Kironde on 10th/12/2013, yet it also forms part of the 23 titles, PEX.8 (a), handed over to the Plaintiff by the Defendants.



The above documents point to the fraudulent dealings of the defendants on the Plaintiff's suit land. During cross-examination, the evidence of PW1, a signature expert of questioned documents, showed that the signature on the transfer forms, consent, and mutation forms differed from the samples. The documents had signatures that did not match as they differed in slant and handwriting.

The opinion of PW1 has guided this Court in ascertaining whether the documents used by the 1st Defendant were forged.

PEX.11 is a copy of a land transfer form with a questioned signature;

PEX12 is a copy of an application for consent transfer of land with a questioned signature;

PEX. 13 is a copy of the paper with the Plaintiff's sample signatures. A copy of a report from the Handwriting Expert dated September 2019 was only identified as PID1.

In paragraphs 9 &10 of PW1's Witness Statement, he stated that after careful examination of the questioned signatures on **PEX.12 and PEX.13** in comparison with the sample signatures provided in **PEX.14**, he found fundamental differences between them concerning the design, shape and manner of execution of letters d, y, K, t and L which implied that the signatory to the questioned documents was not the same. PW1 further stated that based on the observations, it is most likely that the author of sample signatures PEX.14 did not sign any of the questioned signatures on **PEX. 12 and PEX.13**.

I have examined the disputed documents alongside the Plaintiff's genuine signature samples. In my assessment, the signatures on the disputed documents exhibit clear and unmistakable differences from the Plaintiff's signatures. The differences are not merely minor or attributable to standard variations in handwriting but are substantial and indicative of forgery. The evidence presented by Plaintiff conclusively demonstrates that the signatures on the transfer and mutation forms were forged, confirming the testimony of PW1 that the signatures purported to be those of Plaintiff were inconsistent with her genuine signatures. This discrepancy was evident in the slant, formation, and overall handwriting style, strongly indicating forgery.

Furthermore, DW 1's testimony that Plaintiff did not sign any mutation or transfer forms for the Suit land confirmed the lack of Plaintiff's signatures on the mutation and transfer forms. There was no evidence to rebut this testimony, leaving the assertion that the signatures were forged unchallenged. The absence of genuine transactional evidence between Plaintiff and the 1st Defendant corroborates this fraudulent activity.

There was no proof of a valid transaction or consent that would justify the transfer of the Plaintiff's land to the 1st Defendant. It can be deduced from the several transfers done by the 1st Defendant, first into his names and then into the names of third parties and some later into the names of Plaintiff, that fraud is directly attributed to the 1st Defendant being the transferee on the Certificate of Title without the consent and knowledge of the Plaintiff.

The 1st Defendant committed actual fraud when the 2nd Defendant handed him the Certificate of Title of the suit land for subdivision and he transferred the Suit land into his name and created sub-plots that he sold to third parties.

Thus, there is enough evidence to prove that the 1st Defendant's registration on the Suit land is directly attributable to him as a transferee. There is no doubt that the 1st Defendant, throughout the subdivision of the plots, acted fraudulently.

Fraudulent in Black's Law Dictionary, "To act with "intent to defraud" means to act willfully, and with the specific intent to deceive or cheat; ordinarily for either causing some financial loss to another or bringing about some financial gain to oneself."

The 1st Defendant intended to defraud the Plaintiff of her legal rights to the Suit land through several transfers in his name and the sale to third parties. I, therefore, find that Plaintiff has met the standard of proof required to establish fraud against the 1st Defendant.

The evidence of forgery, uncontested testimony regarding the absence of authorized signatures, and the lack of any legitimate transaction between the parties provide a clear case of fraudulent conduct by the 1st Defendant.

Particulars of Fraud by the 2nd Defendant

- a) Conniving with the 1st Defendant to dispose of the Plaintiff's land and title

- b) Handing over the Certificate of Title to the 1st Defendant without the Plaintiff's consent with the intention of defrauding the Plaintiff of her interests in the Suit land
- c) Forging and or aiding the 1st Defendant to forge the Plaintiff's signature in order to transfer the title into the 1st Defendant's name.
- d) Breaching his obligations as a caretaker with the fraudulent intention of depriving the Plaintiff of her land.
- e) Returning to the Plaintiff a forged title purportedly registered in the names of the Plaintiff whereas not.

Counsel for the Plaintiff submitted that the 2nd Defendant connived with the 1st and 3rd Defendants to deprive the Plaintiff of her land. The 2nd Defendant was a dishonest person, and he took advantage of Plaintiff's absence on the ground.

During cross-examination, DW1, Kintu David testified on oath that the Plaintiff entrusted him to keep her Certificate of Title for the Suit land. He stated that the Plaintiff did not give him Power of Attorney to deal with the Suit land. He was only a caretaker of the land.

Furthermore, DW1 stated that when he visited the land in 2012, he found trespassers, but he did not write to them, nor did he take them to Court or report them to the Police. He informed Plaintiff about the idea of subdivision and engaged the 1st Defendant to do the

subdivision, where he willingly handed over the title to the 1st Defendant. He was familiar with the land sub-division process, and Plaintiff did not sign mutation forms for the subdivision. The evidence of PW2 was that the 2nd Defendant kept the Plaintiff's Duplicate Certificate of Title for the Suit land.

PW2 further testified that since the 2nd Defendant maintained the title, he sought an explanation on how the title got into the hands of Ssemakula and how the land was subdivided without the consent of the Plaintiff.

At locus, PW2 testified that from the search reports, he had not seen any title registered in the names of the 2nd Defendant, Kintu David, and there were no structures on the Suit land by the 2nd Defendant.

DW1 stated on oath that the Titles produced were around 70. DW1 added that he demanded the 1st Defendant to surrender the titles, but he surrendered some of them. Some surrendered titles were in 1st Defendant's name, others in Plaintiff's name. He did not take legal action and tried to make the 1st Defendant sign the titles back, but he kept dodging him. DW1 stated that he thought he would sort out the problem, so he did not tell the Plaintiff. The question is, why didn't he inform Plaintiff, Police or Court, of the fraudulent activities of 1st Defendant?

The evidence on record shows a plain representation of the 2nd Defendant's connivance and participation in the fraudulent activities perpetrated against Plaintiff.

It is particularly telling that despite his familiarity with the process of land subdivision, the 2nd Defendant handed over the Plaintiff's Certificate of Title to the 1st Defendant without any mutation forms, transfer forms and consent forms signed by the Plaintiff. This act alone is highly suspicious and indicative of a deliberate intention to defraud.

This blatant disregard indicates a deliberate attempt to assist the 1st Defendant in unlawfully acquiring and subdividing the Plaintiff's property. Furthermore, the 2nd Defendant's failure to report the fraudulent activities of the 1st Defendant to the Plaintiff, the Police, or the Court is highly questionable. He admitted in Court that he did not inform Plaintiff about the fraudulent activities, despite knowing that her signatures were forged and that the 1st Defendant was unlawfully holding onto some of the subdivided titles. This lack of reporting suggests a deliberate attempt to conceal the fraudulent activities from the Plaintiff, thereby aiding in the deceit and also shows connivance with the 1st defendant.

He admitted knowing that the 1st Defendant was dodging him when asked to surrender the titles. Instead of taking decisive steps to protect the Plaintiff's interests, the 2nd Defendant opted to handle the matter informally.

It is perplexing and suspicious that, despite knowing the Plaintiff's signature was forged and that there were trespassers on the land, the 2nd Defendant chose not to take any legal measures to safeguard the Plaintiff's rights.

I find that the cumulative effect of these actions points to a calculated scheme between the 1st and 2nd Defendants to deprive the Plaintiff of her rightful property. Thus the 2nd defendant was fraudulent in his actions.

Particulars of Fraud by the 3rd Defendant

- a) Acting on forged transfer deeds and consent deeds to transfer forms to effect multiple transfers and subdivisions of the Plaintiff's land in favour of the 1st Defendant.
- b) Effecting transfers without proof of payment of stamp duty
- c) Conniving with the 1st Defendant to effect registration of transfers and subdivisions of the Plaintiff's property in favour of the 1st Defendant.
- d) Failure to verify the authenticity and genuineness of the transfer forms affecting the transfers.
- e) Acting on a single transfer instrument to effect multiple transfers of 73 titles.
- f) Acting on the undervaluation of the land to effect the multiple transfers.
- g) Forging the instrument number to falsely indicate the Plaintiff as the registered proprietor of Plot 1425 of the suit land.



From the evidence adduced in Court by Plaintiff, which I have thoroughly considered, it is clear that the 3rd Defendant should have exercised due diligence when handling the multiple transfers executed by the 1st Defendant. The 3rd Defendant's failure to act with the necessary caution resulted in the processing of forged transfer deeds and consent forms, leading to the unauthorized transfer and subdivision of the Plaintiff's land in favour of the 1st Defendant.

This neglect in verifying the authenticity and genuineness of the transfer forms used to execute these transfers is particularly troubling.

While a single transfer instrument can be used to effectuate multiple transfers involving 73 titles, caution should be taken when doing so.

Despite this, I have no direct evidence pointing to the collusion of a specific agent from the 3rd Defendant's office with the 1st Defendant nor the 2nd defendant, though there are signs of negligence. I thus find no fraudulently actions done by agents of the 3rd defendant.

In conclusion, I find that the registration of the certificate of title and the subsequent subdivision of the Suit land into the 1st Defendant's name were carried out fraudulently and with evident connivance between the 1st and 2nd Defendants but not the 3rd defendant.



ISSUE 2: What remedies are available to the parties

The Oxford Law Dictionary 5th Edition, page 423, defines a remedy as any of the methods available at law for the enforcement, protection, or recovery of rights or for obtaining redress for their infringement. Such a remedy can be a civil one, which the Court may grant in the form of damages

The Plaintiff prayed inter alia for a declaration that she is the rightful owner of land formerly registered as Block 276 Plot 141, cancellation of 38 titles still registered in the 1st Defendant's name, compensation, punitive, exemplary, and general damages, vacant possession, interests and costs of the Suit.

Section 176 (c) of the Registration of Titles Act, Cap. 230 provides that;

“No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor except in the case of a person deprived of or claiming any land included in any certificate of title of another land by misdescription of the other land or of its boundaries as against the registered proprietor of that other land not being a transferee of the land bona fide for value. A registered proprietor of land is protected against an action for ejectment except on the ground of fraud.

Having proved and established fraud on the part of the 1st Defendant, he cannot be protected from ejectment on the subdivided plots he fraudulently registered into his name without the consent and knowledge of Plaintiff.

Accordingly, the Plaintiff is the rightful and lawful owner of the Suit land formerly registered as Block 276 Plot 141.

Cancellation

The Plaintiff further prayed for an Order for cancellation of 38 Titles still unlawfully registered in the names of the 1st Defendant to wit: Plots 1110, 1114, 1115, 1120, 1121, 1123, 1124, 1126, 1127, 1129, 1130, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1148, 1149, 1150, 1151, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1161, and 1170 and re-registration of the same in the names of the Plaintiff.

Section 177 of the Registration of Titles Act, Cap. 230 provides that;

“Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may, in any case in which the proceeding is not herein expressly barred, direct the Registrar to cancel any title or instrument or any entry or memorial in the Register book relating to land, estate, or interest and to substitute such certificate of title or entry as the circumstances of the case requires; and the Registrar shall give effect to that order.”

In the instant case, this Court found out that the 1st Defendant’s registration on the suit land was fraudulent and that the Plaintiff is the rightful and lawful owner of the Suit land. This Court directs the 3rd Defendant to cancel the 38 titles still unlawfully registered in the names of the 1st Defendant and re-register the same in the names of the Plaintiff.



Compensation

Section 178 of the Registration of Titles Act, Cap. 230 provides that “any person deprived of land or any estate or interest in land in consequence of fraud or by the registration of any other person as proprietor of the land, estate or interest...may bring and prosecute an action for the recovery of damages against the person...”

Counsel for the Plaintiff submitted that 25 titles marked **PEX.6 (a-z)** were sold off by the 1st Defendant and registered in the names of third parties. Each plot is valued at 22,000,000/= at the time of filing the Suit. The Plaintiff prayed to be compensated Ug shs 550,000,000. These Plots are 1102, 1103, 1106, 1107, 1108, 1111, 1112, 1116, 1117, 1118, 1119, 1122, 1131, 1132, 1147, 1152, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1424.

It was DW1's testimony that he knows that some of the plots subdivided were transferred to third parties, but he does not know how many and how much they paid. That the Plaintiff was not compensated for all plots taken by 3rd parties.

The Court acknowledges that the valuation provided by Plaintiff is based on the specific transfer values of plots 1102 and 1152, which the 1st Defendant used during the transactions with third parties. While giving some insight into the value of these two plots, this approach does suffice as a comprehensive basis for valuing all 25 plots.



I thereby order that the 1st and 2nd defendant compensates plaintiff shs 22,000,000 for each of the 25 sold off plots to third parties. Totaling to Ug shs 550,000,000.

General damages

The Plaintiff prayed for general, exemplary and punitive damages. Counsel for the Plaintiff submitted that Defendant's deprivation of the Plaintiff of her land subjected her to a lot of stress, inconvenience and financial strain. Counsel for the 2nd Defendant submitted that the Plaintiff is entitled to general damages from the 1st and 3rd Defendants since these are the direct and probable consequences of the wrongful act complained of. However, the Plaintiff is not entitled to the award of punitive and exemplary damages.

It is trite law that damages are the direct and probable consequence of the act complained of. Such consequences may be loss of use, profit, physical inconvenience, mental distress, pain and suffering. Damages must be prayed and proved. *See: Kampala District Land Board & George Mitala V Venansio Babweyana SCCA 2/2007*

The award of general damages is at the discretion of the Court. (See: *Erukan Kuwe v. Isaac Patrick Matovu & A'nor H.C.C.S. No. 177 of 2003*). A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he or she would have been if she or he had not suffered the wrong. See: *Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992*). Also, in the case of *Takiya Kashwahiri & A nor v. Kajungu Denis, CACA No. 85 of 2011*, it was held that general damages should be compensatory in nature in



that they should restore some satisfaction, as far as money can do it, to the injured Plaintiff.

In the case of ***Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305***, the Court gave guidance on how to assess the quantum of damages, that the consideration should mainly be the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered.

In the circumstances of the case, the Plaintiff is granted general damages at a sum of Ug shs 50,000,000/= against the 1st and 2nd Defendants.

Exemplary damages

In ***Rookes vs. Barnard [1964] ALL ER 367, Lord Delvin*** stated the instances when exemplary damages can be awarded as follows;

- a) Where there has been oppressive, arbitrary or unconstitutional action by servants of the government.
- b) Where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the Plaintiff
- c) Where some law, for the time being in force authorizes the award of exemplary damages.

The 1st and 2nd Defendant's fraudulent conduct has made them, earn a lot more money than that which Plaintiff can ever recover. They,

should be deterred from committing fraud in the future. Accordingly, the Plaintiff is awarded a sum of UGX 20,000,000 against the 1st and 2nd Defendants severally and jointly.

Punitive damages

In the case of *El Termewy v Awdi & Ors, Civil Suit No. 95/2012*, Lady Justice Elizabeth Musoke stated as follows;

“Punitive and exemplary damages are an exception to the rule that damages generally are to compensate the injured person.

Punitive is awardable to punish, deter, and express the outrage of the Court at the Defendant’s egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are also awarded for improper interference by public officials with the rights of ordinary subjects.

Unlike general and aggravated damages, Punitive damages focus on the Defendant’s misconduct and not on the injury or loss suffered by the Plaintiff. They are in the nature of a fine to appease the victim, discourage revenge, and warn society that similar conduct will always be an affront to society and also to the Court’s sense of decency. They may be awarded to prevent unjust enrichment.

They are awardable with restraint and in exceptional cases because punishment ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract.”

In the circumstances of the case, I won’t award any punitive damages since I have awarded other damages.

Vacant Possession

PW2 testified that the 1st Defendant graded the land.

New structures are being constructed on Plaintiff's land without Plaintiff's knowledge. Consequently, an order of vacant possession doth issue against the 1st and 2nd Defendant and their agents and/or servants from the Suit land.

Permanent Injunction

A Permanent injunction is a remedy for preventing wrongs and preserving rights so that by a single exercise of equitable power, an injury is both restrained and repaired to dispense complete justice between the parties. A permanent injunction is hereby granted against the Defendants and their agents' servants to prevent them from dealing with the Suit land in any way whatsoever.

Interest

Section 26 of the Civil Procedure Act, Cap. 230 gives discretion to the Court to award just and reasonable interest. The guiding principle is that interest is awarded at the discretion of the Court, but like all discretion, it must be exercised judicially, taking into account all circumstances of the case. See: ***Uganda Revenue Authority vs. Stephen Mbozi, SCCA No. 26 of 1995***). In ***Annet Zimbiha vs. Attorney General***, the Court held inter alia that;

“A just and reasonable interest rate, in my view, would keep the awarded amount cushioned against the ever-rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic

value of money, but at the same time one which would insulate him or her against any economic vagaries of inflation and depreciation of the currency if the money awarded is not promptly paid when it falls due.”

The Plaintiff is thus awarded an interest rate of 10% per annum on the compensation, general, and exemplary damages awards.

Costs

It is a trite law under Section 27 of the Civil Procedure Act, Cap. 71, that costs follow the event unless, for some good reason, the Court directs otherwise. (See: **Jennifer Rwanyindo Aurelia & A'nor vs. School Outfitters (U) Ltd., CACA No. 53 of 1999**). Having determined the case in favour of the Plaintiff, she is entitled to the costs of the Suit.

Accordingly, Judgement is entered in favour of the Plaintiff, and it is hereby declared and ordered that -

- 1) The Plaintiff is the rightful and lawful owner of the Suit land formerly registered as Block 276 Plot 141.

- 2) The subdivisions and transfers of the Suit land into Plots 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162,


1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1424 & 1425 by the 1st Defendant was fraudulent and unlawful.

- 3) An Order doth issue directing the Commissioner Land Registration to cancel 38 Titles to wit: Plots 1110, 1114, 1115, 1120, 1121, 1123, 1124, 1126, 1127, 1129, 1130, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1148, 1149, 1150, 1151, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1161, and 1170 that are still unlawfully registered in the names of the 1st Defendant and re-register all of the same in the names of the Plaintiff.
- 4) An Order doth issue directing the 1st Defendant to deliver all titles that are remaining in his possession to the Plaintiff.
- d) An Order of account and/or compensation for nine unaccounted-for titles: Plot 1104, 1109, 1113, 1125, 1128, 1157, 1160, 1171, and 1172 at shs 22,000,000 each
- e) An Order for the 1st and 2nd defendant to compensate the plaintiff Ug shs 550,000.000 (five hundred and fifty million for plots 1102, 1103, 1106, 1107, 1108, 1111, 1112, 1116, 1117, 1118, 1119, 1122, 1131, 1132, 1147, 1152, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1424
- f) An Order of vacant possession by the 1st Defendant and his agents from the Suit land.



- g) A Permanent Injunction restraining the Defendants or their agents or any person claiming under them from dealing or transacting in the Suit property in any way.
- h) General damages of Ug shs 50,000,000/= (fifty million) are awarded to the Plaintiff against the 1st and 2nd Defendants severally and jointly
- i) Exemplary damages of UG shs 20,000,000(twenty million) are awarded to the Plaintiff against the 1st and 2nd Defendants severally and jointly.
- j) An Interest rate of 10% per annum for (e), (h), (i), and (j) above from the date of judgment till payment in full.
- k) Costs of the suit are awarded to the Plaintiff against the 1st and 2nd Defendants.

16th August
DATED AT KAMPALA THIS -----DAY OF -----2024

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KANYANGE SUSAN
JUDGE LAND DIVISION