THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 53 OF 2006

1. William Kisitu SSENGENDO
2. J.K SSALONGO
(Administrator of the Estate
of the late CHARLES KISITU FULU) ..... APPELLANTS

VERSUS

MUKONI FARMERS LTD ..... RESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Ezekiel Muhanguzi JA

JUDGMENT OF COURT

This is an appeal arising from the decision of *His Lordship Rubby Aweri Opio J* (as he then was) delivered on 14th November, 2005 in which he entered Judgment in favour of the respondent. This appeal was first heard by a Coram constituted as follows:- Buteera, Bossa and Kakuru JJ on 12th October 2017. Buteera and Bossa JJ left this Court before Judgment could be delivered. A new Coram was reconstituted as above and on 18th October 2018 when the appeal was called again for hearing Counsel for both parties adopted their earlier

submissions and requested Court to decide the appeal on that basis. This Judgment therefore is on the basis of submissions made on 12th December 2017.

Brief background

The appellants were the plaintiffs at the High Court. They sued the respondent for recovery of land comprised in Busiro Block 448 Plot No. 54 measuring 4.45 acres at Kasenyi and forming Kasenyi landing site which had allegedly been fraudulently acquired and in the alternative sought for a declaration that the transaction was illegal for failure by the respondent to obtain a ministerial consent prior to the execution of the sale agreement. It was alleged by the appellants that, the respondent and their father the late Charles Kisitu Fulu entered into a land agreement in 1981 in which he sold part of his land comprised in Busiro Block 448 Plot 51 measuring 10 acres for a consideration of Ug. Shs. 2,200,000/= to the respondent.

The respondent during the process of surveying off the 10 acres fraudulently surveyed off an extra 4.45 acres inclusive of the area known as Kasenyi landing site which became Plot 54 and transferred it into its own names without obtaining the ministerial consent which was an illegality. In 1990, the respondent purported to have obtained a ministerial consent, cancelled the first transfer and made a second transfer to itself in respect of the same property.

The respondent in its defence contended the late Charles Kisitu agreed to sell to it an additional 4.45 acres to the 10 acres it had purchased earlier. Another agreement was executed showing all the 14.5 acres for a total consideration of Ug. Shs. 2,700,000/=. That thereafter the said agreement, survey and demarcations

of the land were done with the late Charles' full knowledge and cooperation, further that the plot 51 was divided into plot 54.

The learned trial Judge dismissed the suit on grounds that the parties had entered into a fresh transaction through execution of a fresh transfer and payment of an extra consideration of Ug. Shs. 1,200,000/= which accordingly cured the illegality.

The appellants being dissatisfied with the decision of the learned trial Judge filed this appeal on the following grounds:-

1. *The learned trial Judge erred in law in holding that the failure to obtain Ministerial consent initially, in respect of the sale and transfer of land comprised in Busiro Block 448, Plot 54 from the late Charles Kisitu Fulu to the respondent did not invalidate and/ or nullify the transaction.*

2. *The learned trial Judge erred in law in holding that execution of another transfer validated the transaction between the late Fulu and the respondent.*

3. *The learned trial Judge erred in law and fact in holding that the appellants/ plaintiffs had failed to prove fraud or forgery in the purported sale and transfer of the extra 4.45 acres of land by the respondent.*

4. *The learned trial Judge erred in law when he disregarded the evidence adduced by the appellants thereby arriving at a wrong decision.*

Representations

At the hearing of this appeal on 12th October 2017, *Mr. Kawenja* learned Counsel appeared for the appellants while *Mr. Peter Walubiri* learned Counsel appeared for the respondent. All parties were present. Both Counsel agreed to argue 3 issues which had been agreed upon at the joint scheduling conference, namely;-

1. *Considering that the transaction between the parties was illegal and a nullity. Whether or not the alleged execution by the parties of a second transfer validated the transaction*
2. *Whether or not the Honourabe Judge was right to hold that the appellants failed to prove fraud or forgery against the respondent in its acquisition of the extra 4.45 of the appellants' land.*
3. *Whether the Honourable Judge failed to consider all the evidence and if so, whether this failure caused the learned Judge to come to an erroneous decision.*

Appellants' case

In respect of issue 1, Counsel for the appellants submitted that, the respondent (non-Ugandan) entered into a land transaction with the appellants' father (deceased) in 1981 and it was registered as owner of the suit property on 12th December 1981 without obtaining a mandatory ministerial consent. However, in 1990 the respondent is purported to have obtained the required ministerial consent and executed a 2nd transfer to validate its earlier registration. Counsel contended that, the whole transaction was a nullity because it was contrary to *Section 2* of the Land Transfer Act. He submitted that, according to the

interpretation of *Section 2* of the Land Transfer Act, once there is a sale, transfer and possession of land by non-Ugandan without ministerial consent, that transaction becomes a nullity and nothing done afterwards validates said transaction. For the above proposition he relied on the case of *Kisugu Quarries Ltd Vs Administrator General, Supreme Court Civil Appeal No. 10 of 1998.*

He argued that, the 2nd transfer could not re-validate the said transaction because the 1st transaction had been concluded without a ministerial consent and that, the suit land never reverted back to the deceased person who was purported to have signed the 2nd transfer. He argued that it was a forgery because the suit land at the time was not in the names of the late Charles Kisitu and he had no capacity to sign a fresh transfer since he was not the registered owner of the suit land and there was no instrument on record to show the same.

In respect of issue 2, Counsel argued that the respondent fraudulently acquired extra 4.45 acres of the appellant's land forming Kasenyi landing site. He submitted that the learned trial Judge failed to interpret the wording of the agreement specifically the term 'overlooking'. The word overlooking as used in the agreement did not mean to include Kasenyi landing site yet this is what the surveyor demarcated and transferred to the respondent. He argued that, the acquisition of Kasenyi harbour was an act of fraud and learned trial Judge erred when he ignored such an important matter.

In respect of issue number 3, Counsel argued that, the Judge failed to consider all the evidence on record. He relied on the evidence of DW1 Ndozireho who drafted the agreements in respect of the transactions, yet there was evidence of PW1 Tibisasa who was the Commissioner for Land Registration at that time.

According to his evidence he stated that, the error committed in this matter was not about the re-registration but it was about the entry of the word 'error' on the register to be used as validation of this transaction.

He asked Court to quash the decision of the learned trial Judge and grant the appellant reliefs sought in the High Court.

Respondent's reply.

Mr. Walubiri, opposed the appeal, and supported the decision of the learned trial Judge. In response to issue 1, Counsel submitted that the respondent executed a subsequent transfer of 1990 after discovering that it had omitted to get the mandatory ministerial consent. According the evidence of DW2 Mr. Tobani, when the omission was discovered, the respondent's lawyer approached the late Kisitu explained to him the circumstances and he agreed to sign a fresh transfer.

The late Kisitu requested for consideration of Ug. Shs. 1,200,000/= to effect the fresh transaction which was accordingly paid. A new transfer was duly executed between the appellants' father and the respondent a day after the consent of the Minister had been obtained. He submitted that the learned trial Judge rightly found in his judgment that this was a fresh transaction for fresh consideration.

Counsel further argued that, the authorities cited by the Counsel for the appellant are not applicable to the facts before Court. The first transaction was rightly cancelled as having been entered in error by the Registrar, the parties realized their error. There is nothing in the law including the Land Transfer Act that precludes parties who in the past made a mistake to enter into a new and valid

transaction and for fresh consideration. He asked Court to uphold the learned trial Judge's finding in respect of the above issue.

In respect of issue 2, on the allegation of fraud the particulars of fraud were not specifically pleaded by the appellant and no evidence was led to prove the forgery of the sale agreement. The respondent tendered in exhibits P1 P2 and P3 which contained the late Kisitu's signature, during examination PW2 simply had doubts whether it was his father's signature or not, beyond that doubt he led no evidence to prove that the signatures were forged.

Counsel submitted that the respondent adduced enough evidence to prove that there was no fraud on its part. DW1 Christopher Charles Ndozireho an advocate in his evidence stated that he prepared the two sale agreements which were signed by Mr. Kisitu and by Mr. Tobani on behalf of the respondent. He argued that, the agreements were not forged since they were signed in his presence and his signature also appears on the said agreements. Further, that the late Kisitu's signatures on the agreements were confirmed by a handwriting expert.

Counsel submitted that, the size of Kasenyi Harbour was not ascertained and no evidence was led to show the boundary delineating the harbour. However, during cross examination Dw1 ascertained that in second agreement the land was described as 14.45 acres comprised in Busiro Block 448 Plot 51, this one was inclusive of the acres in the 1st agreement. Therefore by the time the agreement was signed, the land had already been demarcated by a surveyor. This evidence was not controverted and since the signatures were proved to be those of the late Kisitu there was no fraud involving an additional 4.5 acres. He asked Court to resolve the issue in favour of the respondent.

In reply to issue 3, Counsel argued that, the evidence relied on by the learned trial Judge was not extrinsic as submitted by the appellant's Counsel. He submitted that, Dw1 was a party to the drafting and signing of the sale agreements, therefore he was the best witness to testify in that respect. He further submitted that, the cancellation of the first transfer was a procedural matter handled by the Registrar of Titles. Therefore the respondent had no role in how the Titles office performed its functions. There was a transaction and registration which was a nullity and it was for the Registrar of Titles to deal with it. However, what was important was to register the new transfer after obtaining the ministerial consent which was supported with new consideration. Counsel submitted that the learned trial Judge rightly found that the registration of the fresh transfer was lawful and there is nothing to fault him. He asked Court to dismiss the appeal with costs to the respondent both in this Court and in the trial Court.

In rejoinder Mr. Kawenja, submitted that, the second transaction did not validate the first transaction regardless of the fact that the late Kisitu signed the transfer. He contended that, there was nothing on record to show that land reverted back to the appellants' father after cancellation of first transaction,

Court's resolution

We have read the record of appeal, the conferencing notes and submissions by both parties to this appeal. We have also read the authorities cited and relied upon by Counsel.

This Court is required under *Rule 30* of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. *Rule 30 (1) (a)* states as follows:

"Power to reappraise evidence and to take additional evidence.

(1) on any appeal from a decision of the High Court acting in its original jurisdiction, the court may

(a) reappraise the evidence and draw inferences of fact"

In the case of *Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002,* Mulenga JSC in his lead Judgment put this obligation of the first appellate Court in the following words:-

"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. This principle has been consistently enforced, both before and after the slight change I have just alluded to. In Coghlan vs. Cumberland (1898) 1 Ch. 704, the Court of Appeal (of England) put the matter as follows -

"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes

to the conclusion that the judgment is wrong .... When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."

In *Pandya vs. R (1957) EA 336,* the Court of Appeal for Eastern Africa quoted this passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction.

We shall therefore proceed to reappraise the evidence and come to our own conclusion as required by law.

Issue 1:

It is the appellant's contention that the first transaction between the parties was illegal and a nullity and that alleged execution of a second transfer did not validate the first transaction. The first transaction was executed in 1981 without obtaining a mandatory ministerial consent. In 1990 the respondent obtained the required ministerial consent and thereafter executed a second transaction in order to validate the earlier registration. The two transactions are distinct and separate from each other. Where one transaction lacked consent and this consent was mandatory under the law, then getting the required consent made the first

transaction void *abintio*. When the respondent entered into a second transaction with the appellant and this time acquired the required consent, it made the second transaction legal and enforceable and entitles the respondent to the land.

The fact that the appellants' father entered into a fresh transaction where he was paid again in addition to the earlier payment more money over the same piece of land means in our view that he had entered into a fresh contract and thus estopped from challenging the legality of the first transaction. The appellants are estopped by conduct from claiming illegality over the ownership of the land since their late father entered into a new contract with the respondent and accepted fresh consideration of Ug. Shs. 1,200,000/= on the sale and to transfer the suit land to the respondent the illegality of the earlier contract notwithstanding.

The doctrine of estoppel prohibits a party from proving anything which contradicts his previous acts as a declaration to the prejudice of a party who relying upon them has altered his position. See: *John Oitamong vs Mohammed Olinga [1985] HCB 86.*

Conditions for application of the equitable doctrine of estoppel are set out in *Section 114* of the Evidence Act (Cap 6). It provides that:-

> *"When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing."*

While resolving this issue the learned trial Judge stated at page 11 of the Judgment as follows:-

> *"My understanding of the two cases above is that the transaction between the plaintiff and the defendant which was completed in 1981 was illegal in view of Section 2 of the Land Transfer Act when it was still the law...*
>
> *The point here is that there was no question of subsequent ministerial consent. The transaction was invalidated with a new consideration. The plaintiff accepted the defendant's request and executed fresh transfer which later translated in the cancellation of the title which had been transferred in error and the proper re-registration that was possible because the transaction was not inherently illegal since there was a fresh consideration...*
>
> *There was therefore no illegality in the current registration as alleged by the plaintiff. The plaintiff should have had a point if he had rejected the defendant's approach to rewrite the contract with an extra consideration. But he decided to shallow his own poison..."*

We agree with the findings of the learned trial Judge, the appellants are estopped from claiming otherwise. The mandatory ministerial consent was obtained as reflected by Exhibit "D4"and transfer forms were properly executed (Exhibit P.1). The documentary evidence on record clearly indicates that the respondent is the rightful owner of the suit land. The parties having entered into written sale agreements, the appellants cannot now rely on oral evidence to contradict their agreements.

The first transfer had lacked ministerial consent, therefore with due respect, the second transfer did not validate the first one, but rather was a fresh and distinct transaction between the parties. In otherward the respondent paid again the appellant in the second transfer. This still being the same conclusion as the learned trial Judge that, the second transfer was valid since there was new consideration.

This ground partly succeeds, but substantially fails.

Issue 2:

The appellants challenged the findings of the learned trial Judge that, the execution of a second land sale agreement in favour of the respondent was not a fraudulent act. Counsel submitted that, the acquisition of Kasenyi harbour by the respondent was an act of fraud and learned trial Judge erred when he ignored such an important matter. The fraud alleged by the appellants was not proved, to the satisfaction of Court. They did not adduce any evidence to prove the allegations of fraud. The allegations of fraud had to be strictly proved. In *Kampala Bottlers Ltd –Vs- Damanico (U) Ltd, Supreme Court Civil Appeal No. 22of 1992,* the supreme Court decided that even if fraud is proved, it must be attributable directly or by implication, to the transferee. Wambuzi, C.J stated at page 7 of his judgment as follows;-

> *".....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."*

The learned Chief Justice goes further to state:

> *"Further, 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 *Fredrick. J.K. Zaabwe vs. Orient Bank Ltd & Others SCCA No. 141 of 2006 and Kampala Bottlers ltd vs. Damanico (U) Ltd Supreme Court Civil Appeal No. 22 of 1992.* Katureebe, JSC discussed fraud in depth as follows;-

> *"In my view, an allegation of fraud need to be fully and carefully inquired into. Fraud is a serious matter, particularly where it is alleged that a person lost his property as a result of fraud committed upon him by others. In this case it was necessary to ask the following questions; was any fraud committed upon the appellant? Who committed the fraud, if at all? Were the respondents singly or collectively involved in the fraud, or did they become aware of the fraud? I find the definition of fraud in BLACK's LAW DICTIONARY 6TH Edition page 660, very illustrative.*
>
> *"An intentional perversion of truth for the purpose of inducing 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 advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. "Bad faith" and "fraud" are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. .....

As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture....."

We have carefully perused the High Court Judgment and found that the learned trial Judge dealt exhaustively with this issue before him at the trial. In order not to repeat ourselves, we are constrained to reproduce in *extenso* the pertinent parts of his Judgment.

While determining the allegations of fraud the learned trial Judge stated as follows at pages 8 and 9 of his Judgment;-

"From the evidence on record I find that the plaintiff had not strictly proved the particulars of fraud to the required standard. Instead it is the defendant's evidence which is more credible. A very pertinent evidence was from Christopher Charles Ndozireho DW1, the lawyer who drafted the two sale agreements. He testified that the first agreement was in respect of

10 acres. After sometime the same parties went and made another agreement in respect of 14.45 acres of land he stated that the 14.5 acres of land was inclusive of the 10 acres in the first agreement. The additional consideration for the 4.45 acres was Shs. 500,000/=. He testified that in 1998 Sebalu S.C went to his chambers to confirm if the signatures on those agreements were authentic whereupon he confirmed that they were because they were signed in his presence and that of Charles Kisitu.

The above evidence was corroborated by that of Thobani Dw5 and Sempala Dw4 Thobani in particular testified that after the purchase of the 10 acres, within one month they got indication that Charles Kisitu wanted to sell to them more land on top of the 10 acres. He went with Charles and a local elder called Mr. Muluma to see the location of the extra land. That land was empty on the shores of lake Victoria. They agreed to the purchase price of Shs. 500,000/= for the 4.45 acres. Kisitu later signed another agreement in the presence of their lawyer.

The above evidence clearly shows that the late Charles Kisitu Fulu willingly signed the 2nd agreement in respect of the extra 4.45 acres after the inspection of the land. In fact the late Fulu even went ahead and allowed the defendant to construct an access road to this extra land way back in 1982. That was evidence that the two parties were seeing eyes to eyes. There was further evidence that after the transaction the plaintiff and the defendant became close friends to the extent that the plaintiff was able to access two friendly from the defendant with security from the residual part of the land which he sold to the defendant.

As far as forgeries of the agreements are concerned, Ndozireho Dw1, Sempala Dw3 and Thobani Dw5 were emphatic that the plaintiff signed the agreement willfully and when he was in a clear state of mind. The above evidence was corroborated by the expert witness Olanya Joseph Okwanga Dw4 who analysed the transaction documents were that of Kisitu Charles and not any other. For the reasons, I conclude that there was no evidence of fraud or forgery on the defendant's side. The transaction which led to this dispute was concluded with the necessary honesty. In fact if the defendant had wanted to be dishonest they could have claimed 24.45 acres. But they stucle to the agreements and which were in respect of a total of 14.45 acres at consideration of Shs. 2,700,000/=. In conclusion the first issue is answered in favour of the defendant."

We agree with the learned trial Judge that there was no evidence upon which Court could have found fraud on part of the respondent.

It appears clearly from the evidence on record that two sale agreements were executed between the appellant's father and the respondent, the first one in respect of 10 acres is annexture "C2" and annexture "C5" stipulates the second agreement in respect of 14.5 acres. They were both executed in the same year in the months of September and November 1981 respectively and they both contain the late Kisitu's signature. Although the second agreement was challenged by the appellants, it is clear on the face of it, that it was properly executed between the respondent and the appellant's late father in respect of 14.5 acres for a total consideration of Ug. Shs 2,700,000/=. It is our finding is that, the parties entered into a second agreement in respect of a bigger piece of land, the including a part overlooking Kisenyi harbor land. For that land the respondent paid Ug. Shs.

2,700,000/= as consideration, in addition to amount earlier paid in respect of the first agreement. The second agreement was therefore in respect of 14.4 acres for Ug. Shs. 2,700,000/= as opposed to the first agreement which was for Ug. Shs 2,200,000/= for 10 acres.

The appellants also fault the learned trial Judge for failing to interpret the term 'overlooking' as used in the agreement. They argued the term did not mean to include Kasenyi landing site. This term is used in both the first and second sale agreements. In the first sale agreement annexture "C2", paragraph 1 stipulates as follows:-

> *"The Vendor will sell and the Purchaser will buy the vendor's ten acres on his land comprised in Busiro Block 448, Plot 51 overlooking Kasenyi Harbour on lake Victoria inclusive of Manoga Cliff and Bendegere Cliff."* (Emphasis added).

Paragraph 1 of the second sale agreement reads as follows:-

> *"The Vendor will sell and the purchaser will buy the vendor's 14.45 (Fourteen point forty five) acres on his land comprised in Busiro Block 448, Plot 51 overlooking Kasenyi Harbour on lake Victoria inclusive of Manoga Cliff and Bendegere Cliff."* (Emphasis added).

Clearly "Kasenyi Harbour" was sufficiently described in the agreement. The learned trial Judge correctly interpreted that term "overlooking", since it is contained in both the first and second sale agreements which were executed in respect of different acres of land. We are unable to find anything contrary to the findings of the learned trial Judge and we accordingly uphold them on this point.

Ground 2 of this appeal also fails.

Issue 3:

The appellants contend that the learned trial Judge failed to consider all the evidence on record. It is our duty to evaluate all the evidence on record and come to our own findings, at the trial the appellants called 4 witnesses while the respondent called 5 witnesses, Pw1 Jonathan Tibisaasa, Commissioner for Land Registration in his testimony in examination in chief stated that, the land in dispute comprised in Busiro 448, plot 51 was transferred from Charles Kisitu to M/S Mukoni Farmers Ltd for consideration of Ug. Shs. 1,200,000/= on 5th April 1990. The transfer forms were accompanied by the application for consent.

He testified that the same land was subject of an agreement dated 25th November 1981 for consideration of Ug. Shs. 2,700,000/= between the same parties but it lacked the consent from the Minister which made it unlawful. In re-examination, he stated that the 1990 transfer was entered in error therefore it did not validate the 1981 transfer which lacked the ministerial consent.

Pw2 Kisitu Ssengendo, son of the late Charles Kisitu testified that, his father sold off 10 acres to M/S. Mukoni Farmers in 1981 for consideration of Ug. Shs. 2,200,000/= and that there were no other agreements executed. In 1985, his father appointed a caretaker who realised that, the respondent had trespassed on the late Kisitu's 4 acres of land. The matter was reported and a caveat was lodged on the title to the suit land in respect of the 4 acres.

Pw3 Hussein Muwanga, testified that,the late appellants' father was a landlord at Kasenyi and the respondent had a beach near the late Kisitu's land.

Pw4 D/ASP Odwar George testified as the investigating officer in respect of the complaint lodged by the late Kisitu about forgery of a sale agreement by Mukoni Farmers Ltd.

In respect of the respondent, Dw1 Christopher Charles Ndozireho in his testimony stated that, he drafted two sales agreements in respect of land comprised in Busiro 448, plot 51 which were duly signed in his presence by the late Kisitu and the respondent. The first agreement in which the respondent purchased 10 acres of land was executed in September 1981 for consideration of Ug. Shs. 2,200,000/= (annexture "C2"). The second agreement which indicates 14.5 acres was executed on 25th November 1981 for consideration of Ug. Shs. 2,700,000/= (annexture C5). The 14.5 acres was inclusive of the 10 acres in the first agreement and there was an additional consideration of Ug. Shs. 500,000/= for the extra 4.45 acres. He further stated that, the first transfer lacked the ministerial consent.

Dw2 George Mugenyi testified that, he carried the registration of the disputed land into the respondent's names. He stated that it was entered in error due to lack of the ministerial consent. However, in 1990 he re-registered the same land after the respondent had obtained the ministerial consent which validated the second transfer.

Dw3 Francis Xavier Mbuga Luyombya, testified that, he witnessed the loan agreements between the appellants' father and the respondent, he also witnessed the 1990 transaction in which the respondent paid Ug. Shs. 1,200,000/= to the appellant's father for the second transfer.

Dw4 Joseph Olanya, Government analyst in his testimony stated that, he examined the documents in respect of the disputed land and found that the signatures on the documents belonged to the appellants' father, hence they were not forged. And Dw5 testified that, he carried out all the land transactions as the managing director for Mukoni Farmers Ltd.

The appellants contend that the error committed in this matter was not about the re-registration but it was about the entry of the word 'error' on the register to be used as validation of this transaction. The law applicable at the time was the the Registration of Titles Act cap 203, *Section 178 (a)* gave the registrar powers to correct errors made in the register book, it stipulated as follows:-

> *"To correct errors in the Register Book or in entries made therein or in duplicate certificates or instruments, and may supply entries omitted to be made under the provisions of this Act, and may make amendments consequent upon alterations in names or boundaries, but in the correction of such error or making of any such amendment he shall not erase or render any illegible the original words, and shall affix the date on which such correction or amendment was made or entry supplied and initial the same, and ever error or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry not omitted, except as regards any entry made in the Register Book as regards any entry made in the Register Book prior to the actual time of correcting the error or supplying the omitted entry"*

The Registrar had the right and power to enter the word 'error' on the register book. We find that entry of the word "error" cancelled the first transfer. However

it did not validate the second transfer as we found in resolution of issue one, since the second transfer was a separate transaction.

The other evidence on record is the documentary evidence adduced by the parties. We note that all the above evidence was largely in favour of the appellant, the witnesses proved the execution of the agreement and the transfer of ownership, the various other documents also proved the same. The handwriting expert's report is also strong evidence which proved that the signatures on the agreement belonged to the appellant's late father. The appellants failed to adduce satisfactory evidence to prove what they pleaded. This ground has no merit and it accordingly fails. We uphold the trial Judge's decision.

This appeal fails and is hereby dismissed with costs to the respondent.

Dated at **Kampala** this ..7th.. day of ..Nov.. 2018.

.....

Kenneth Kakuru

JUSTICE OF APPEAL

.....

Geoffrey Kiryabwire

JUSTICE OF APPEAL

.....

Ezekiel Muhanguzi

JUSTICE OF APPEAL