

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 08 OF 2012

HABRE INTERNATIONAL (U) LTD APPELLANT

VERSUS

10 DABO KALILOU RESPONDENT

(An appeal from the decision of the High Court of Uganda at Kampala by Hon. Mr. Justice Ruby Opio Aweri dated 18th March, 2011 in High Court Civil Suit No. 739 of 2006)

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

15 Hon. Mr. Justice Stephen Musota, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF THE COURT

Brief background

20 This is an appeal from the decision of Ruby Opio Aweri, J (as he then was) in High Court Civil Suit No. 739 of 2006 delivered on the 18th day of March, 2011.

The appellant company was the plaintiff at the High Court. It filed a suit against the respondent seeking the cancellation of the respondent's name from the register in the land comprised in Block 12 Plot 885, land at Mengo. It contended that Hussein Abdallah one of the directors of the appellant company sold the suit land fraudulently. Further that, when the respondent became registered on the suit land
25 on 1st December 1994, on or about 4th June, 2006, he proceeded to enter upon the

5 suit land and demolished the property thereon. The suit was for recovery of the said land and for special and general damages and also costs of the suit. The High Court dismissed the suit hence this appeal. The grounds of appeal are as follows:-

- 10 1. *The learned trial Judge erred both in law and fact by finding that there was no fraud and illegality in the transaction and thereby arrived at a wrong decision occasioning a miscarriage of justice.*
2. *The learned trial Judge erred both in fact and law by ignoring the fact that the transfer was not duly executed and attested to and thereby arrived at a wrong conclusion a marriage of justice.*
- 15 3. *The learned trial Judge erred both in law and fact by finding that there was ostensible authority that Hussein Abdallah had authority to sell or mortgage the suit property and “part of his authority was an option to sell which he did to the defendant” and thereby arrived at a wrong conclusion occasioning a miscarriage of justice.*
- 20 4. *The learned trial Judge erred in law and fact by relying on Exhibit D7 in making his decision and thereby arrived at a wrong conclusion occasioning a miscarriage of justice.*
5. *The learned trial Judge erred by finding that the respondent did not demolish the appellant's structures on the said land and thereby arrived at a wrong conclusion occasioning a miscarriage of justice.*

25 **Representations**

At the hearing of this appeal *Mr. Denis Mudoola* learned Counsel appeared for the appellant while *Mr. Peter Nkurunziza* learned Counsel appeared for the respondent. The parties agreed to proceed by way of written submissions but were also permitted to make brief oral arguments. It is on the basis of the written submissions
30 and the brief oral arguments that this appeal has been determined.

Appellant's case

In respect of ground 1, it was submitted that the agreement executed on the 15th day of June 1994 between the respondent and Hussein Abdallah was illegal as the vendor mentioned therein was not the registered proprietor and as such he had no authority to sell the suit land. The registered proprietor at that time was Greenland Bank and that was the position until the 1st day of December 1994.

Counsel contended that, the whole transaction was tainted with fraud and illegality since it was contrary to *Section 92* of the Registration of Titles Act (RTA) which empowers only the registered proprietors to transfer land. The respondent purchased from a person who was not the registered proprietor and could not thereby claim to be a bonafide purchaser.

Counsel further contended that, the respondent's duly appointed agent made an under declaration of Ug. Shs. 2,000,000/= (Uganda Shillings Two Million Only) as the purchase price of the suit land yet the actual purchase price was Ug. Shs. 14, 000,000/= (Uganda Shillings Fourteen Million Only) and such a fraudulent act was condoned by the learned trial Judge by differentiating the actions of the respondent's lawyer from those of the respondent.

In respect of ground 2, Counsel contended that the transfer instrument was not duly attested to as required under *Section 148* of the Registration of Titles Act as the signatures on the transfer form were not in Latin characters. He submitted that, it was not known who signed for and on behalf of the vendor as well as the purchaser, their signatures were not attested to and as such the said execution of the transfer deed offended *Section 147* and *148* of the RTA.

Counsel argued that, the signature of the applicant on application for consent was neither in Latin character nor was it attested to. He submitted that the above issue

5 was brought to the attention of the learned trial Judge but the same was ignored. Counsel faulted the learned trial Judge for having failed to evaluate all the evidence before him which occasioned a miscarriage of justice.

On ground 3, Counsel faulted the learned trial Judge for finding that, Hussein Abdallah had ostensible authority. He submitted that, the respondent entered into a
10 transaction with a person who did not have powers to transact on behalf of the company and as such the said transaction was not binding on the appellant. There was no company resolution made empowering the said Hussein Abdallah to sell the suit land. Further learned Counsel argued that the appellant had changed its names from Habre International Trading Co. Ltd to Habre International Co (1993)
15 therefore, the respondent executed the transaction with the former and not the latter as indicated on the sale agreement. Again that, Habre International Trading Co. Ltd was a nonexistent entity at the time of the execution the sale agreement, and as such the appellant could not have been party to that transaction.

Counsel also faulted the learned trial Judge for finding that the appellant had
20 secured a mortgage from Greenland Bank. He argued that there was no evidence adduced to show that the appellant had mortgaged the suit land to Greenland Bank. He submitted that Greenland Bank was not registered on the title as a mortgagee on the encumbrance but was registered as proprietor. Further that, there was no evidence adduced to show that the suit land had been redeemed from Greenland
25 Bank at the time of the transaction and the subsequent transfer.

In respect of ground 4, Counsel submitted that, the learned trial Judge wrongly relied on evidence which had not been adduced at the trial. He contended that fresh evidence was smuggled into Court by the respondent as Exhibit D7. The respondent's exhibits were marked D1 to D6. 'Exhibit D7' was not admitted on
30 record at the trial yet it was heavily relied upon by the trial Judge. He argued that,

5 relying on such a document was an error and he cited *George Tuhirirwe vs Carolina Rwamuhunde, Supreme Court Civil Appeal No. 15 of 2007* for the above proposition.

On ground 5, Counsel submitted that, the respondent had no right to demolish the structures on the suit land since the suit land did not belong to him. He argued that, the learned trial Judge erred in justifying the respondent's action of demolishing the structures on the suit land having held that he was the entitled to the suit land.
10 Counsel asked Court to allow the appeal with the orders sought.

Respondent's reply

Mr. Nkurunziza for the respondent opposed the appeal and submitted that, the sale and transfer of the suit land to the respondent was not tainted with fraud and illegality as alleged by the appellant. Further that, the evidence on record shows that
15 the respondent dealt with appellant through its managing director Hussein Abdallah and his position as the director was never contested. He argued that, the appellant had 5 directors and none of them testified in court to challenge the sale of the suit land by the appellant to the respondent therefore there was no fraud on part of the
20 respondent.

Counsel submitted that, it was appellant company misrepresented itself as the registered proprietor of the suit land at the time of the transaction and as such the respondent cannot be said to have acted fraudulently in that respect and the transaction could not have been tainted with fraud.

25 Counsel further submitted that, the transaction was legal and did not offend *Section 92* of the RTA. He argued that, the section does not stipulate that at the time of signing the transfer the transferor must be the registered proprietor. What is important is that at the time the transfer is presented for registration, the person named in the transfer as transferor is the person whose name is in the register as
30 proprietor. He contended that the transfer was not executed in breach of *Section 92*

5 of the RTA, since Exhibit P6 showed that, the appellant was registered on the title on 1st December 1994 at 9:20 am and the respondent was registered at 9:25 am on the same day. He submitted that, the transfer may have been irregular on the face of it but that did not amount to an illegality.

10 Counsel submitted that, the respondent was not party to declaration of Ug. Shs. 2,000,000/= (Uganda Shillings Two Million Only) as the purchase price and he did not cheat the government of revenue as alleged by the appellant. He further argued that no evidence had been adduced to prove that the government did not receive the correct amount of revenue in respect of the transaction and as such the transaction was neither fraudulent nor an illegal.

15 In respect of ground two, Counsel conceded to the fact that, the issue of attestation was not addressed by the learned trial, he however submitted that the evidence on record clearly indicates that the attestation and execution were lawful.

20 Counsel submitted that *Section 92* of the RTA empowers a proprietor of land to transfer in one of the forms in the seventh schedule and that *Section 132* of the RTA provides that a corporation for the purpose of transferring land may in lieu of signing the instrument for such purpose required affix to the instrument its common seal. "A seal" is defined by *On-line Collaborative Dictionary* as;-

"An engraved or inscribed stamp used for marking an impression wax or other soft substance to a document."

25 He submitted that Exhibit P4 (a) clearly shows the rubber stamp of Habre International Trading Company Limited with two signatures in Latin character had been affixed on the document. The same was attested to by Alexander Womutuba. He contended that, the whole transaction was in accordance with the law.

30 In respect of grounds 3 and 4, Counsel submitted that the learned trial Judge stated correctly the position of the law that a director of a company has ostensible

5 authority to act for and on behalf of the company. He also argued that the change of
the company name did not affect the transaction since the respondent dealt with
Hussein Abdallah the director of the appellant. He relied on Halsbury's Law of
England 4th edition 1996 Vol. 7(1) paragraph 160 which is to the effect that,
10 issuance of a certificate of incorporation of change of name is not to reform or re-
incorporable the company as a new entity but to recognise the continued existence
of the company under the new name. Counsel further submitted that, at the time of
registration of the respondent on the land title, the land was registered in the name
of Habre International Trading Co. Ltd *vide* instrument No. KLA 170217. The
appellant was in existence *albeit* under a new name Habre International Co (1993)
15 Limited. The appellant was the clearly the registered proprietor.

Counsel contended that, Exhibit D7 was not smuggled into Court as alleged by the
appellant. The record of appeal indicates that at the trial the respondent's Counsel
indicated that other documents would be adduced at a later stage. This was not
objected to by the appellant's Counsel and the same was accepted by the Court.

20 Counsel also submitted that, the appellant's director had powers to use the land title
of the suit land to either secure loans or sell the land as indicated in Exhibit D2
which was a special resolution passed by the appellant company. The appellant was
given latitude by a company resolution to do so. Therefore the learned trial Judge
rightly held that as a director he had ostensible authority and relied on the evidence
25 adduced to court.

On ground 5, Counsel submitted that, the learned trial Judge rightly found that the
respondent had a right to demolish the structures on the suit land. The structures
thereon ceased to be property of the appellant after it had sold the same to the
respondent.

30 Counsel asked Court to dismiss the appeal with costs.

5 **Resolution**

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)* provides as follows:-

“Power to reappraise evidence and to take additional evidence.

10 *(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”

See:- *Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002, Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of*
15 *1997 and Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.*

We shall therefore proceed to reappraise the evidence and come to our own conclusion as required by law. We have carefully perused the record and considered the submissions of Counsel.

Ground 1, it's the appellant's contention that the transaction between Hussein
20 Abdallah and the respondent was tainted with fraud and illegalities. The Supreme Court in *Fredrick Zaabwe vs Orient Bank & Others, Supreme Court Civil Appeal No. 04 of 2006*, relying on Black's Law Dictionary 6th Edition at page 660, defined fraud to mean;-

25 *“the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her 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 concealment of that which deceives and it is

5 *intended to deceive another so that he or she shall act upon it to his or her legal injury.”*

The allegations of fraud have to be strictly proved and attributed directly or by implication to the transferee. In *Kampala Bottlers Ltd vs Damanico (U) Ltd, Supreme Court, Civil Appeal No. 22 of 1992*, Wambuzi, C.J stated at page 7 of his judgment that,
10 it must be attributable directly or by implication to the transferee.

“.....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.”

15 The learned Chief Justice went further to find 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.”

While resolving this issue the learned trial Judge stated at page 15 of his judgment
20 as follows:-

*“...The defendant testified that after entering into the transaction, Hussein Abdalla indicated to him that there was problem with Greenland Bank which needed to be sorted out before final balance could be paid and that Hussein Abdalla later cleared the balance and then registered the company on the title
25 i.e Habre International Trading Co. Ltd before transferring the property into his own names, that very day, the above transactions were smart because once a mortgage always a mortgage. The company was right to redeem the property from the bank before transferring it into the name of the defendant. There was therefore no fraud in the above transaction.”*

5 The documentary evidence on record clearly indicates that the appellant at all times represented itself as the registered proprietor of the suit land. The appellant described itself as the registered proprietor per the sale agreement executed on the 15th day of June 1994, the transfer form dated 21st September, 1994 also indicates the same. The certificate of title reveals the appellant as the registered proprietor and there is nothing to the contrary. We have not been able to find evidence of fraud on part of the respondent as the transferee at this stage of the transaction.

While addressing the issue of under declaration, the learned trial Judge stated as follows at page 16 of his judgment;-

15 *“The defendant testified that Lawyer Kayondo who acted for both of them just told him to sign only transfer forms and left him to process the transfer. It was not the defendant who made the under declaration of 2 million. There was no evidence to establish that the Defendant was a party to the alleged fraud. I therefore find that the defendant did not give his lawyers instructions to defraud Government in stamp duties. It is trite law to observe here that fraud must be attributed to the party being claimed against...”*

25 We agree with the learned trial Judge that, there was no evidence upon which Court could have found fraud on part of the respondent. The consideration indicated in the sale agreement is Ug. Shs. 14,000,000/= (Shillings Fourteen Million only), there is no evidence on the record indicating that the respondent instructed his lawyers to defraud the government.

This Court while addressing a similar issue in *David Kizito Kanonya and others vs Betty Kizito Court of Appeal Civil No. 187 of 2012* observed as follows;-

30 *“Firstly, that there is the issue of misrepresentation of the consideration of the property. The 1st appellant did not state the true consideration of the property when he stated in form exhibit P1 that it was a gift. We know it was not. The*

5 *purpose of stating the consideration, among others is to help determine the value of the property. This is superfluous to say the least as the government valuer is required to physically inspect the property in issue in every application for transfer and ascertain its value, which value is endorsed on the transfer form under his or her signature...*

10 *As already noted above the value of the land or whether or not it is developed, is ascertained by the government valuer's physical inspection, irrespective of what is written on the consented or transfer form."*

Accordingly we find that, the respondent was not fraudulent and the transactions were not illegal. Ground 1 of this appeal accordingly fails.

15 Ground 2 is in respect of execution of the transfer. It's the appellant's contention that the transfer was not duly executed and was not attested to. In the instant case, the transfer executed on the 21st day of September 1994 shows that the appellant affixed its seal. *Section 132* of the RTA provides for the use of a seal in lieu of signing. It stipulates as follows:

20 *"A corporation, for the purpose of transferring or otherwise dealing with any land under the operation of this Act, or any lease or mortgage, may, in lieu of signing the instrument for such purpose required, affix to the instrument its common seal."*

25 Exhibit P4 (a) at page 59 of the record of appeal indicates the appellant's seal with two signatures thereon. We find that, this is in compliance with *Section 132* of the RTA (Supra) and therefore satisfactory for the appellant to pass its interest in the suit land to the respondent.

30 Attestation of instruments is provided for under *Section 147* of the RTA and *Section 148* of the RTA deals with signature of instruments and power of attorney. *Section 148* provides as follows;-

5 *“No instrument or power of attorney shall be deemed to be duly executed unless either:-*

(a) the signature of each party to it is in Latin character; or

(b) a transliteration into Latin character of the signature of any party whose signature is not in Latin character and the name of any party who has affixed a mark instead of signing his or her name are added to the instrument or power of attorney by or in the presence of the attesting witness at the time of execution, and beneath the signature or mark there is inserted certificate in the form in the Eighteenth Scheduled to this Act.”

10

The rationale of this was restated in *Fredrick Zaabwe vs Orient Bank & Others*
15 *(supra)* Katureebe CJ held, inter alia, that;

“In my view, the rationale behind section 148 requiring a signature to be in Latin character must be to make clear to everybody receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. When the witness attesting to a signature merely scribbles a signature, without giving his name or capacity, how would the Registrar or anyone else ascertain that that witness had capacity to witness in terms of section 147 of the Registration of Titles Act?”

20

From the evidence on record, we note that the appellant (vendor) used its seal and signed the same as required by the provisions of the RTA, while the name of the attesting witness in respect of the respondent was Alexander Womutuba Advocates is in Latin Character accompanied by his signature thereon. We find that, the transfer was duly executed and as such it was valid. Ground 2 of this appeal accordingly fails.

25

5 In respect of ground 3, the learned trial Judge is faulted for having found that Hussein Abdallah had ostensible authority. The respondent entered into a transaction with the appellant in respect of the suit land through Hussein Abdallah, the director. A sale agreement executed on the 15th day of June 1994, the transfer was executed on 21st September, 1994 and subsequently the respondent was registered as proprietor on the certificate of title on 1st December, 1994.

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

15 While resolving this is issue the learned trial Judge stated as follows at page 10 of his judgment;-

“Record also shows that by a special board resolution of Habre International Trading Company Limited, which was registered with the registration of companies on 9/12/1991 Mr. Hussein Abdalla who was designated as the Managing Director was allowed to use the titles to the suit land for securing sale or loan. Therefore in the above circumstances, the defendant had a bonafide belief that he was dealing with the company through its director. The above point appears to have been captured by the case of Enco Plastica Limited v Freeborne [1971] EA 432 where the defunct Court of Appeal for East Africa held that where a person who entered into a contract with the appellant company was appointed Chairman or Managing Director of the company, the third party dealing with the company was entitled to assume that there was authority on the part of the person to bind the company...

In this case there was ostensible authority that Hassan Abdalla had been authorised to sell or mortgage the suit property. Indeed that said property had

5 *been mortgaged to Greenland Bank. Part of his authority was an option to sell which he did to the defendant.*”

It is evident that Hussein Abdallah was clothed with the necessary authority to transact on behalf of and for the company and the company was bound by his actions. In *Royal British Bank v Turquand (1856) 6 E&B 327*, it was held that;

10 *“A person dealing with a company is entitled to assume in the absence of facts putting him to inquiry, that there has been due compliance with all matters of internal management and procedures required by the articles.”*

See also: *Hely-Hutchinson v Brayhead Ltd [1968] 1 QB 549*

15 While resolving the issue of change of names, the learned trial Judge found as follows at page 13 of his judgment;-

20 *“According to Halsbury’s Laws of England Change of name is not to reform or incorporate the company as a new entity but to recognise the continued existence of the company under the new name. In other words therefore, even after changing its name to Habre International Trading Company (1993) Limited from Habre International Trading Company Limited, the said change of name never meant that there was a new entity created but was meant to recognise the continued existence of the company under the new name. There was nothing wrong therefore when the transaction in dispute was carried out under the old company name who was recognised the owner of the suit property...*

25

There is therefore no doubt that even if the company had changed its names, ownership of the suit property still remained in Habre International Trading Company.”

5 We agree with the finding of the learned trial Judge as set out above. He correctly set out the position of the law. Change of a company name is simply that. It only changes a name. All documents issued in the previous name remain valid. All documents and references made or issued subsequent to the change of name are read and construed as if they had been made in the new name. Any errors as to the
10 description of the company by its earlier name would not invalidate any transaction in absence of deliberate misrepresentation or fraud. We have found no such misrepresentation or fraud in the instant case. We find no reason to fault the findings of the learned trial Judge. We accordingly uphold his findings. We find no merit in this ground of appeal.

15 In respect of ground 4, it was the appellant's contention that the learned trial Judge wrongly relied on Exhibit D7 which was smuggled in by the respondent. According to the judgment, the learned trial Judge stated that Exhibit D7 was a document showing a history of frequent change of names of the appellant. Upon careful perusal of the Court record we have not found any Exhibit Marked D7. With all due
20 respect we find that the learned trial Judge erred for having relied on Exhibit D7 which was never exhibited in Court at the trial.

Be that as it may, the issue of variance of name was not rebutted by the appellant at the trial. These were documents in possession of the appellant company. Their existence and contents are not denied. From the record we note that there are
25 documents exhibited by the appellant company in regard to the change of name of the appellant company. Exhibit P1 indicates the company was incorporated and registered under the name Habre International Trading Company Limited, Exhibit P2 shows that the appellant company changed its name from Habre International Trading Co. Limited to Habre International Trading Co. (1993) Limited on 16th
30 December, 1993 and Exhibit P3 is yet another change of name from Habre International Trading Co. (1993) Limited to Habre International (Kampala) Limited

5 on 20th October, 1997. We find that Exhibit D7 had no consequence on the outcome of the suit as the evidence of change of name is contained in other exhibits. We accordingly find no merit in this ground of appeal.

On ground 5, the learned trial Judge was faulted for having justified the respondent's action of demolishing structures on the suit land. The respondent
10 acquired ownership of the suit on 1st December, 1994. While resolving this issue the learned trial stated as follows at page 17 of his Judgment;-

*"There is no dispute that the appellant was the proprietor of the suit land before selling it to the respondent. The respondent took possession of the suit land and wrote to the occupants to vacate. He was therefore entitled to demolish
15 whatever structures which did not please him because the plaintiff transferred all hereditaments and fixtures in the land under the maxim quicquid plantatur solo, solo cedit."*


We entirely agree with the learned trial Judge's findings. We find no merit in this ground of appeal.

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

25

5

Dated at Kampala this 25th day of June, 2019.



.....

10

Kenneth Kakuru
JUSTICE OF APPEAL



.....

15

Stephen Musota
JUSTICE OF APPEAL

20



.....

25

Christopher Madrama
JUSTICE OF APPEAL