

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 254 OF 2011

5 JANE NABWETEME MUKASA ..... PLAINTIFF

VERSUS

1. JAMES KIIRYA & 3 OTHERS ..... DEFENDANTS

*Before: Lady Justice Alexandra Nkonge Rugadya*

10 JUDGMENT

**Introduction:**

The plaintiff, Jane Nabweteme is a widow of the late Wilson Nabongo while the 1<sup>st</sup> defendant, Mr. James Kirya is father and Grace Nabongo, the 2<sup>nd</sup> defendant, a brother to the late Wilson Nabongo.

15 From her pleadings the deceased, the plaintiff and the 2<sup>nd</sup> defendant purchased the land from Mr. Leonard Msemakweli, comprised in ***Kyadondo Block 226 Plot 188***, measuring 2 acres, situate at Buto Bweyogerere Kira Town Council.



The plaintiff sought several remedies claiming that since the 1<sup>st</sup> defendant did not provide any consideration for the land in dispute it therefore follows that his registration on the title of the suit land was null and void.

Furthermore she sought for declarations that:

5

a). *the registration of the 1<sup>st</sup> defendant as proprietor is by fraud;*

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b). *the sale of the land to the 3<sup>rd</sup> defendant by fraud; that the 3<sup>rd</sup> defendant is not a bonafide purchaser as he was aware of the plaintiff's interest;*

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c). *the plaintiff is entitled to 1 ½ of the suit land formerly **Block 226, Plot 188**, subdivided into several plots with the remaining plots totaling 1½ acres which should be cancelled and registered in the names of the plaintiff;*

d) *general damages in the region of **Ug. Shs. 200,000,000** for the anguish she has suffered.*

20 **Arguments by the plaintiff:**

It was the plaintiff's claim that out the total purchase price of **Ug. Shs. 80,000,000/=** she had contributed **Ug.x 60,000,000/=**, paid directly to the



vendor from her accounts, by way of her two bank drafts: *Bank No. 7000235 of DFCU Bank and Bank draft No. 009837 of Allied Bank.*

The 2<sup>nd</sup> defendant contributed **Ugx 9,000,000/=** while her late husband, Wilson Nabongo contributed **Ugx 11,000,000/=** which he had paid by way of a cheque.

5 However that when the agreement was executed, the duplicate certificate of title which he later handed over to her was entered in the names of the 1<sup>st</sup> defendant without any legal justification; and that her husband passed away on 27<sup>th</sup> December 2007 before rectifying the error, despite assurances from him that he would do so.

10 The 1<sup>st</sup> and 2<sup>nd</sup> defendant who were aware of the plaintiff's interest in the land, being her share and portion of her contribution to the purchase price refused to effect the agreement but illegally applied for a special certificate, well aware that a duplicate was in existence.

15 On obtaining the certificate the 1<sup>st</sup> defendant transferred the land to the 3<sup>rd</sup> defendant and despite the fact that he too became aware of the encumbrances and disputes surrounding the land, he got registered on the land and subsequently subdivided it into twelve plots some of which he sold off.

**Arguments by the defendants:**

20 On his part the 1<sup>st</sup> defendant denied the plaintiff's claim in the suit land which he maintained he had lawfully purchased, and which his interest had never been challenged.



The 2<sup>nd</sup> defendant Grace Nabongo denied each and every allegation stating that he had nothing to do with the land. That the suit was bad in law and defective for failure to disclose a cause of action and that at the material time was never involved in any land transactions with any member of his family.

5 The 3<sup>rd</sup> defendant's defence was based on his claim that he was a *bonafide* purchaser for value without notice of the plaintiff's interest, having bought the land after conducting a search at the land registry and upon effecting full payment to the 1<sup>st</sup> defendant.

In his counter-claim he prayed that court vacates the caveat **on Block 226 Plots**  
10 **533, 534, 535, 536, 537, 538, 639, 540, 541, 542, 543 and 544 Kyadondo,**  
**land at Buto**, which had been lodged after the suit was filed, as it had affected all the legal transactions on the land already sold to third-parties; general damages; and for other reliefs court is enjoined to grant under **section 33 of the Judicature Act.**

15 **Agreed facts:**

At the scheduling, the following were the agreed facts:

1) that Leornard Msemakweli signed a sale agreement for the land in favor of the 1<sup>st</sup> defendant;

20 2) that the land was registered in the names of the 1<sup>st</sup> defendant on 17<sup>th</sup> November, 2006;



3) that the 3<sup>rd</sup> defendant purchased the suit land from the 1<sup>st</sup> defendant on 8<sup>th</sup> October, 2010;

5 4) that the 3<sup>rd</sup> defendant got registered as owner of the suit land on 12<sup>th</sup> November, 2010;

5) that the 3<sup>rd</sup> defendant surveyed and subdivided the suit land into 12 different plots and sold five plots to third parties;

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6) that the plaintiff did not lodge a caveat on the certificate of the title till 5<sup>th</sup> October, 2011.

**Issues:**

At the scheduling, the following issues were raised for this court to resolve:

- 15 **1. Whether the plaintiff has interest in the suit land.**
- 2. If so, whether the 2<sup>nd</sup> defendant had notice of the plaintiff's interest in the land.**
- 3. Whether the 3<sup>rd</sup> defendant was fraudulently in his purchase of the suit land.**
- 20 **4. Whether the caveat on the suit land should be vacated.**
- 5. What remedies are available to the parties.**



**Issue No. 1: Whether the plaintiff has interest in the suit land.**

It is the plaintiff's case that she purchased the suit land jointly with her late husband, Wilson Nabongo from Leonard Msemakweli at the consideration of **Ugx. 80,000,000/=** out of which she had paid **Ug. Shs. 60,000,000/=**.

5 She relied on an agreement dated 3<sup>rd</sup> May, 2006. (**PExh 1/DExh7**), which was not in dispute, contending that she had entrusted her husband the late Wilson Nabongo to carry out the transaction with the vendor, Mr. Leonard Msemakweli. Prior to his death, he had left in her custody, the duplicate certificate of title which she kept as her security for her interest having also noted that it had been  
10 issued in the names of the 1<sup>st</sup> defendant, James Kiirya.

That when she questioned her late husband about the said names, he had assured her that he will correct the title but passed on before doing so. She came to learn later that a special certificate of title had been issued in the names of James Kiirya, the 1<sup>st</sup> defendant who was fully aware of the existence of the  
15 duplicate title which was still in her custody.

The plaintiff had two witnesses to support her claim of interest in the suit land. She testified as **PW1. PW2**, Aggrey Wagubi was at the material time serving in the office of the Administrator General, which he however left in 2012.

He claimed to have interacted with the beneficiaries of the estate of the late  
20 William Nabongo. That through his son, the 2<sup>nd</sup> defendant, James Kiirya had communicated his willingness to sign for one and a half acres of the suit land to



which she was entitled, but later rejected summons to attend the family meetings held in **PW2's** office, which were intended to resolve the dispute.

**PW3**, Mr. Balyokwabwe Fredrick was the LC 1 chairman of Butto Zone, Bweyogerere Parish where the land is located, and had held that post between  
5 2000 and 2018.

His testimony was that the original owner of this land was one Nakawombe the one who sold it to Leornard Msemakweli in 2004. He claimed that Msemakweli later sold the land to the plaintiff and her husband.

The plaintiff relied on a number of documents to prove her interest. **PExh 4** was  
10 a DFCU bank statement to the account she held in that bank. She contended that a transfer of funds was made on 3<sup>rd</sup> May, 2006, the date on which the purchase was made for the suit land and on which the sale agreement between the 1<sup>st</sup> defendant and Msemakweli was made. A sum of **Ug, Shs. 30,000,000/=** had been paid by her through bank draft, as part payment of the purchase price.

15 She also availed to court another bank statement, **PExh 5**, from the Bank of Africa, formerly Allied Bank International (U) Ltd, which also indicated that the transfer of the money was made for another sum of **Ug. Shs. 30,000,000/=**, the very day that the agreement was signed. (**PExh 38**).

Her argument was that these drafts were clearly set out in the purchase  
20 agreement and indicated in her bank statements. That the total amount of **Ugx 60,000,000/=** which she therefore paid was the equivalent to one and a half



acres, which the 3<sup>rd</sup> defendant was still holding in his names in some of the subdivided titles.

She maintained that the balance of **Ugx 20,000,000/=** was jointly contributed by her late husband and his brother, the 2<sup>nd</sup> defendant, a claim which however  
5 was not backed by any proof.

The defendants on their part did not discredit the said documents as referred to by the plaintiff. Their main point of contention however was that neither she nor her late husband had any interest in the suit land.

The defence evidence was led through six witnesses, key among whom was that  
10 of the 1<sup>st</sup> defendant (**DW1**) who sold the property to the 3<sup>rd</sup> defendant. The 1<sup>st</sup> defence denied that the suit land was part of the estate of his late son which he was administering jointly with the widows. He maintained that he was the undisputed purchaser and registered owner of the suit land.

According to one of the widows of the late Nabongo, Ms Mary Namulondo, **DW3**,  
15 the estate of the deceased had already been fully distributed with each beneficiary including the plaintiff herself, receiving their respective shares. That it was therefore surprising that the plaintiff had to wait for the death of their husband to claim an interest, which in any event did not exist.

The defence contended therefore that her claims of having formed a common  
20 intention/understanding with her late husband Wilson Nabongo and the 2<sup>nd</sup>





defendant to buy the suit land from Msemakweli Nabongo remained unproven assertions without any iota of evidence.

Learned counsel for the 3<sup>rd</sup> defendant in submission referred to the admission by the plaintiff in cross-examination that she never received any receipt or  
5 written acknowledgment from Msemakweli Leornald for the amount of **Ugx 60,000,000/=**. He dispelled any suggestion therefore that Msemakweli Leornald had agreed to sell the suit land to the plaintiff.

According to him, it was more probable than not that the sum of **Ugx 60,000,000/=** paid by plaintiff's bank drafts was money collected over time by  
10 the 1<sup>st</sup> defendant and deposited with his late son, Wilson Nabongo, subsequently wired from her bank account to pay part of the purchase price on behalf of 1<sup>st</sup> defendant, a contention however that was not backed up by any evidence.

The 2<sup>nd</sup> defendant (**DW2**) denied having ever agreed to any manner of contribution with the plaintiff and the late Wilson Nabongo which denial  
15 according to the defendant watered down the plaintiff's evidence, as it had not been challenged.

**Resolution of the issue:**

I have carefully read the pleadings, the evidence adduced by each side as well as the submissions and authorities, details of which I need not reproduce here,  
20 since I have taken each of these into consideration.



By virtue of **section 101 (1) of Evidence Act, Cap. 6**, whoever desires court to give judgment to any legal right or liability depending on the existence of any facts he/she asserts must prove that those facts exist. (**George William Kakoma v Attorney General [2010] HCB 1 at page 78**).

5 The burden of proof generally lies with the plaintiff who has the duty to furnish evidence whose level of probity is such that a reasonable man, might hold more probable the conclusion which the plaintiff contend, on a balance of probabilities. (**Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004**).

10 Thus when the question is whether any person is owner of anything of which he or she is shown to be in possession, the burden of proving that he or she is not the owner is on the person who affirms that he or she is not the owner. (**Section 110 of the Evidence Act**).

The plaintiff therefore in such case as this, has to bear the burden that would  
15 require her to discharge, first that she had the *locus* to file this suit as a purchaser, beneficiary or holder of any other equitable interest in the land under which the 1<sup>st</sup> defendant had already been registered as owner.

Secondly, she also had to show this court that acts of fraud were committed directly or indirectly by the 1<sup>st</sup> defendant or his successors in title. In all such  
20 cases where fraud is pleaded it is trite that the burden of proof is a lot higher than in any other ordinary suit.



The plaintiff's claim of interest in this case is based on the sale transaction that resulted in an agreement between the vendor, Msemakweli and James Kiirya, the 1<sup>st</sup> defendant. As per **PEXH 1** and **PEXH 2**, the purchase price had been made in two instalments.

5 The stipulation under **section 10 of the Contract Act, 2010** is that an agreement is binding if made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object and with intention to be bound.

A sale agreement is considered to be binding on those who were parties and therefore signatories to it. Indeed as argued by the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> 10 defendants, to ascertain the intention of the parties court reads the terms of the contract as a whole, giving the text its most natural and ordinary meaning. The role of this court is therefore to interpret and ensure enforcement of the terms and conditions as agreed upon between the parties.

15 Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants also referred this court to **section 61 of the Evidence Act, Cap. 6**, which places **PEXH 1**, the undisputed sale agreement, in the category of primary evidence.

The 1<sup>st</sup> defendant, James Kiirya who filed his defence albeit belatedly, denied the plaintiff's alleged interest against him as the purchaser or as against the vendor 20 in the sale agreement, the suggestion being that she was a stranger to the transaction.



In *paragraph 7* of his witness statement his claim was that he paid installments through his late son and that the money had been obtained from the proceeds of agricultural proceeds.

He therefore rejected the claim by the plaintiff that she had paid for the suit land, though he led no evidence to disprove the claim that an amount of **Ugx 60,000,000/=** had been paid as purchase price by way of two bank drafts, having been withdrawn from two separate bank accounts held by the plaintiff, drawn off the very day that the agreement had been signed.

The question raised by the defence was therefore whether in light of the terms of the sale transaction as stipulated the plaintiff had duly acquired proprietary interest in the suit land.

***Clause 2 (a) of the sale agreement PExh 1, reads:***

*The agreed consideration of **Ugx 80,000,000/** shall be paid to the vendor by the purchaser as follows:*

15 *(a) Uganda **shs. 60,000,000/=** by way of two bankdrafts in the sum of **Ugx 30,000,000/=** each drawn on Allied Bank Ltd and DFCU Bank Ltd bearing the numbers **009837/9271020004** and **700235/0200386007** respectively and dated 3/05/06 and 3/05/06;*

20 *(b) The balance of **Ugx 20,000,000/=**.... to be paid to the vendor by the purchaser within a period of 2 months from the date of execution of this agreement ....;*



*The vendor shall on completion of the final payment execute transfer forms to the favour of the purchaser.*

*The vendor shall introduce the purchaser to the local council officials of the land where the land is situate.*

5 It is not in dispute that the vendor had signed the sale agreement in favour of the 1<sup>st</sup> defendant on 3<sup>rd</sup> May, 2006. The party who signed the agreement appended his signature for or on behalf of the 1<sup>st</sup> defendant as the purchaser and the assumption therefore was that he was the beneficiary under that transaction.

10 With all due respect therefore, the vendor's interest at that point was hardly the source of funding but the rather if and when the actual payments would be made to seal the deal.

In *paragraph 5* thereof, the vendor's warrant was that the land was free from any encumbrances and/or third party claims. He also expressly undertook to effect  
15 exhumation and relocation of some human remains in a grave located in the road at the said land which condition he apparently fulfilled since during the *locus* visit conducted by this court no graves were found on the suit land. This also implied that the contract was fully executed by those who were parties to it, in accordance with the terms of that contract.



The assumption therefore was that the 1<sup>st</sup> defendant duly concluded a deal with the vendor> Thus if the plaintiff had issues with it she ought to have challenged it, or had it reviewed as an aggrieved third party.

The plaintiff did not attempt to deny the fact the land had been sold to the 1<sup>st</sup> defendant. She also admitted in her evidence that the vendor, Msemakweli was not known to her and that she never met him even after the transaction had been concluded.

In relation to that transaction, the plaintiff did not present any other sale agreement between her and the vendor; or evidence of any prior arrangement between her and her deceased husband as alluded to; or any trust created as between her and the 1<sup>st</sup> defendant as suggested.

As duly submitted, the plaintiff had no receipt in acknowledgment by the vendor of receipt of the payment for the suit land. Not only therefore did she fail to challenge the transaction but also the certificate of title which she continued to hold in her possession. It was not therefore until after the demise of her husband that she took the first step to question the 1<sup>st</sup> defendant about the ownership of the suit land.

Where a suit property is acquired through purchase, it follows that the evidence (oral and documentary) relevant in the transaction i.e negotiations for the sale, the sale itself, who provided the purchase money and ownership is relevant and has to be evaluated.



Within the spirit of **sections 91 and 92 of the Evidence Act**, the principle is also clear that when the terms of a contract, grant or other disposition of property are required by law to be reduced in a form of document, no evidence of any oral agreement shall be admitted in court as between the parties for the purpose of  
5 contradicting, varying adding to, or subtracting from its terms. None of the exceptions to the rule against the parole evidence appearing in **section 92 of the said Act** would in my view be applicable to the present case.

The plaintiff in seeking to vary the evidence in **PExh 1** contrary to the above provisions was at the same time a veiled attempt by her to demand for specific  
10 performance of a contract in respect of which she was a total stranger.

The undisputed fact was that there was in existence two certificates of title issued over the same piece of land. In her custody was the duplicate certificate title which she claimed had been left with her by the late husband and which she kept as security for the 1.5 acres she claimed to be entitled to.

15 According to her, the 1<sup>st</sup> defendant who held the land as entrusted to him by his late son, was fully aware of the existence of the duplicate but still went ahead to secure the special certificate of title in his names. (**PExh6 and PExh 29**).

The 1<sup>st</sup> defendant however maintained that he had inquired from the widows the whereabouts of the duplicate title and neither had availed it to him. The plaintiff  
20 herself did not present the cheque or any other evidence to reflect the alleged contribution made by her husband out of the **Ugx 20,000,000/=** paid to meet the full purchase price.



In her evidence in chief she also had this to say:

5        *Yes, we wanted to jointly buy the land because the contribution was separate. My contribution to jointly buy this land with my husband in front of the Administrator General as a widow my contribution was 60 million to that cause. The late Nabongo in his cheque book he contributed 11 million....but I could not account for the 9 million. In front of the Administrator General mzee Kiirya said 'abaana bangulira'. So we the children that (sic ) bought him the land and that's why we registered it in his names.. (Refer: page 7 and 8, transcribed record of proceedings).*

10      The natural and ordinary meaning that one would attach to the above oral testimony by the plaintiff was that the children, including herself had pooled together resources to buy the 1<sup>st</sup> defendant the land in question.

However neither she nor any of those whom she claimed to have contributed to the purchase price had been either parties or witnesses to the sale transaction.

15      The 2<sup>nd</sup> defendant as a matter of fact denied that he had made any contribution to the purchase price.

In my view therefore there was a clear admission by the plaintiff and a perception by this court therefore that the land had been bought for the 1<sup>st</sup> defendant by his children.





By implication, this was not individually acquired by her or jointly owned property between her and her husband, or property that she could validly claim as a beneficiary since it was not acknowledged as part of his estate.

5 This was property which with her knowledge had been bought by the children of the 1<sup>st</sup> defendant including herself; registered in the names of the 1<sup>st</sup> defendant during the time when her husband was still alive. There was no evidence to prove that he was holding the same merely as a trustee, since in any case there was no identifiable beneficiary.

10 Similarly, **PW2's** evidence alluding to a handwritten chit (**PExh 11**), her proof that the 1<sup>st</sup> defendant had only half of an acre out of the two acres constituting the suit land could not be relied on as a valid consent between the plaintiff and the 1<sup>st</sup> defendant.

15 The chit did not bear a date, signatures of the parties and lacked evidence of authorship. It is surprising that it was even availed to court as evidence in support that commitment.

The defence also punched several holes in the plaintiff's case, raising solid arguments regarding the admissions she made in her evidence. An admission may be express or implied, either in the pleading or otherwise.

20 For it to be binding it has to be plain and obvious as a pikestaff and clearly readable because of the likelihood of it resulting in entering in a judgment. (**Choitram vs Nazari [1976 -1985] EA 52**).



Where therefore such is made, the doctrine of estoppel as enshrined in **section 114 of the Evidence Act, Cap. 6** which serves as an evidentiary rule would operate to preclude a party from denying the existence of a particular set of facts. It would operate as a shield but not as a sword. (**Dawson Bank Ltd vs Japan**

5 **Trading Cotton Co.[1935] Airpc 79 (unreported)**).

Thus a party who stands by and keeps silent when he/she observes another acting under misapprehension or mistake which by speaking out he could have prevented by showing the true state of affairs can be estopped from later alleging the true state of affairs. (**Refer also to section 114 of the Evidence Act, Cap.**

10 **6: Namyalo Josephine vs National Curriculum, Development Centre, HCCS No.122/2008**).

True to form, equity comes in to mitigate the rigours of strict law. It will prevent a person from insisting on his/her strict rights, whether arising out under a contract or on his title deeds or by statute, when it would be inequitable to do so  
15 having regard to the dealings which have taken place between the parties. (**Ibaga vs Tarakpe Civil Appeal No. 0004 of 2017**). This particularly applies where third party rights have accrued, as in this present case.

Under **section 59** of the **RTA**, the general principle is that a title is conclusive evidence of ownership, except where it has been established that fraud has been  
20 committed. A registered proprietor is accordingly protected from ejection from certificate except where fraud is proved to have been committed (**section 176 (c)**).



Any acts of fraud pleaded must be attributable either to the registered purchaser or the purchaser's agents. (***Assets Company Ltd. vs Mere Roihi & Others [1905] A.C. 176, at p. 210 the Privy Council***).

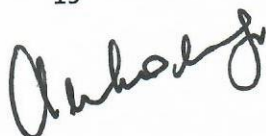
5 If indeed the plaintiff had been genuine or that serious in her claim, while her husband was still alive she could have challenged him for his alleged breach of trust in respect of the sale transaction between Msemakweri and the 1<sup>st</sup> defendant since it is the belief by this court that his role had been instrumental.

10 She could have taken appropriate action to challenge the validity of the transfer and duplicate certificate of title as an aggrieved party while the deceased was still alive. She chose to ignore all and instead hold onto the title.

She had the chance to invite the vendor, Leonard Msemakweri as a key witness during trial in support of her assertions or even better, make him a party to this suit, which options she did not explore.

15 As correctly pointed out by the defence counsel, both the duplicate and the special certificates of title the issuance of which she had failed to challenge had been made in the names of the 1<sup>st</sup> defendant.

20 Under **section 70 of the RTA**, where as claimed by the 1<sup>st</sup> defendant a duplicate is lost or destroyed, a party having knowledge of the circumstances of such loss may provide such information to the commissioner who upon being satisfied about the truthfulness of that information and the bona fides of the transaction, may issue the special title.



The Commissioner, Land Registration must give at the applicant's expense, at least one month's notice in the gazette of his or her intention to do so.

In the present instance as per **PExh 25**, upon an application dated 11<sup>th</sup> May, 2011 by the 1<sup>st</sup> defendant, the Ag. Commissioner for Land Registration had  
5 issued a notice of 30 days in the gazette of his intention to issue a special certificate of title.

In the spirit of **section 70 of the RTA**, the presumption (which the plaintiff was required to rebut within thirty days following the gazette notice) was that the 1<sup>st</sup> defendant had duly satisfied the Commissioner about the truthfulness of the  
10 information concerning the title and the bona fides of the transaction.

In the final result, therefore the plaintiff did not discharge the burden which she shouldered, to prove that she had interest in the suit land, either as purchaser or beneficiary under her husband's estate.

This implied therefore that the plaintiff had no basis to challenge the issuance  
15 of the special certificate of title after failing to challenge its authenticity, years after the gazette notice had been issued.

After failing to prove that she was entitled to 1.5 acres, the rest of the issues raised would not therefore arise.



**Conclusion:**

In the final result, therefore the plaintiff did not discharge the burden shouldered by her, to prove that she had interest in the suit land, either as purchaser or beneficiary under her husband's estate.

5 She could not satisfy this court that she had a claim for the 1.5 acres which she pegged onto a contract that she did not sign, witness or even set out to challenge. By her own admission therefore the land had been purchased by the children for the 1<sup>st</sup> defendant.

10 It mattered the least therefore how much he himself had contributed to the purchase price, if at all he did. He had every right therefore to dispose it to a third party, who in this case was the 3<sup>rd</sup> defendant.

**Reliefs sought by the defendants:**

15 The 1<sup>st</sup> and 2<sup>nd</sup> defendants both denied all allegations of fraud. The 2<sup>nd</sup> defendant denied involvement in any of the transactions relating to the suit land. Both defendants contended that the plaintiffs were not entitled to any of the reliefs she sought and prayed therefore for court to dismiss the suit, with costs. Neither the 1<sup>st</sup> defendant nor the 2<sup>nd</sup> defendant however filed any counterclaim.

The 3<sup>rd</sup> defendant on his part sought for various reliefs in his counterclaim. He sought for judgment to be entered, on the terms below:



- 1) the counter defendant's caveat vide **Instrument No. 519706** on the suit land comprised in **Kyadondo, Block 226, plots No. 533 to 544** be vacated;
- 2) general damages interest at court rate on (2) above from the date of judgment till payment in full;
- 3) costs of the counterclaim

**General Damages:**

General damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim. These follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as well as damages for paid loss and suffering. **See; Uganda Commercial Bank Vs Deo Kigozi [2002] EA 293.**

**Black's Law Dictionary 9th Edn at page 445** defines damages as the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong. It is trite law that damages are the direct probable consequence off the act complained of. Ref: *Storms versus Hutchison* (1905) AC 515.

In the case of **Assist (U) Ltd. versus Italian Asphalt and Haulage & Anor, HCCS No. 1291 of 1999 at 35** it was held that; the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering'.



The 3<sup>rd</sup> defendant claimed the caveat had been placed by the plaintiff on all the twelve plots which included those duly recognized in the temporary injunction order issued vide **MA No. 659 of 2011** by this court as having been sold to third parties.

5 Further that the caveat crippled the land sales business for over 8 years, subjected him to untold hardship, stress financial loss and mental anguish. He attributed the suffering, loss and inconvenience on the plaintiff's frivolous claims.

Court's attention in this case was drawn to the fact that a caveat **DExh 9**, was  
10 lodged on all the twelve plots comprised in **Block 226, plots Nos 533- 544, Kyadondo, land at Buto**, curved out of the suit land, some of which had already been transferred by the 3<sup>rd</sup> defendant to third parties. But that had been done after the suit was filed, by which time the 3<sup>rd</sup> defendant had already purchased the suit land.

15 He prayed for damages in the sum of **Ugx 78,000,000/=** which I believe was on the higher side. In the circumstances as presented, an award of damages of **Ugx 50,000,000/=** would be justified.

In the premises, the suit is dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

20 The counterclaim by the 3<sup>rd</sup> defendant succeeds, with the following orders made by this court:



1) the caveat vide **Instrument No. 519706** on the suit land comprised in **Kyadondo, Block 226, plots No. 533 to 544** is hereby vacated;

2) the duplicate certificate of title issued in the names of the 1<sup>st</sup> defendant is hereby cancelled;

3) general damages of **Ugx 50,000,000/=** are awarded to the 3<sup>rd</sup> defendant/counterclaimant, payable by the plaintiff;

4) interest is allowed at court rate on (3) above, to be paid from the date of judgment till payment is made in full;

5) costs awarded to the 3<sup>rd</sup> defendants.



**Alexandra Nkonge Rugadya**

**Judge**

**27<sup>th</sup> November, 2020**