

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CIVIL SUIT NO. 18 OF 2014

AISU GODWIN ISAAC..... PLAINTIFF

5

VERSUS

KOMUHENDO BERTHA AKIIKI.....DEFENDANT

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE, JUDGE

Judgment

10 The Plaintiff, Aisu Godwin Isaac filed this suit against the Defendant, Komuhendo Bertha Akiiki seeking declarations that Plot 26 Jumabhai Road, Soroti District belongs to the Estate of the late Ricahrd Aisu and that the Defendant fraudulently registered herself on the same. (

15 According to the Plaintiff, the late Aisu Richard had a lease on the suit property granted on 5/11/1981 from Soroti Municipal Council for 25 years. That on 21/12/1995, the Departed Asian Custodian Board nullified the lease on grounds that Soroti Municipal Council did not have powers to sell to the Plaintiff's father, and so they remained tenants. The Plaintiff added that when the suit property was re-advertised for sale by the Departed Asian Custodian Board, that the Estate of the late Richard Aisu complained and the family of the
20 late Richard Aisu repurchased through private treaty.

That the Defendant and the Plaintiff's mother conducted the process up to the level of signing an agreement. However, in a twist of events, the Defendant in connivance with the officials from the Ministry of Finance, Planning and
25 Economic Development decided to fraudulently execute a second sale agreement in respect of the suit property dated 27th March 2002 displaying the Defendant as the purchaser of the estate of the late Richard Aisu.

The Defendant's case on the other hand was that the Plaintiff does not have any locus regarding the suit property against her registered interests. That the lease
30 to the late AISU RICHARD was annulled following the enactment of the Expropriated Properties Act, Cap. 87 which annulled all former dealings in Expropriated property hence Soroti Municipal Council had no locus to issue the same other than the Minister of Finance.

That whatever steps taken by the Defendant to process and acquire the suit property was done on her own behalf not for the estate of the late AISU
35 RICHARD. That the Defendant is not aware and has never been part of any

agreement with any family members to the late AISU RICHARD whatsoever towards processing and acquiring the suit property.

That being a widow to the late AISU RICHARD, the Defendant was aware of the fact the family of the late Aisu Richard nor estate had money to purchase the suit property. That the renovation of the suit property was done after the said demise of Aisu Richard and the expenses related and incidental thereto did not come from the estate funds. Similarly, the late Aisu Richard had disposed of in his lifetime, all the family property to cater for his treatment.

That the Defendant executed the purchase agreement with the Custodian Board during the life time of the Plaintiff's mother and the said mother never challenged the Defendant's ownership.

The Defendant denies ever committing any acts of fraud during the process of acquiring the Certificate of Title instead the process was transparent and honest.

The Defendant counter claimed with prayers that a permanent injunction issues against the counter Defendant, general damages, eviction order, mesne profits, interest and costs of the suit.

Issues:

1. Whether the suit property belongs to the estate of the late AISU RICHARD?
2. Whether the Defendant fraudulently procured a Certificate of Title for the suit property?
3. Whether the Plaintiff is a trespasser?
4. What remedies are available to the parties?

M/s Natala & Co. Advocates appeared for the Plaintiff and M/s Isabirye appeared for the Defendant.

Issue 1: Whether the suit property belongs to the estate of the late AISU RICHARD?

Counsel for the Plaintiff submitted that it was the Plaintiff's evidence that the suit land belonged to his late father Richard Aisu having acquired it in 1981 and that this evidence was uncontested. That the Plaintiff learnt that the title of the Late Richard Aisu was nullified by the DACB for reason that Soroti Municipal Council had no authority to sell the land to the Plaintiff's father. That eventually the property was released from public auction and the Plaintiff's mother Asaete Edith together with the Defendant applied for repurchase of the property on behalf of the estate and the property was then allocated to the estate of Richard Aisu by private treaty.

Counsel for the Plaintiff further submitted that as per the testimony of the Plaintiff, a selected team of the family was chosen and they engaged a lawyer to

write to the Custodian Board to challenge the nullification of titles and secure release of the property from public auction. He added that consequently and as a result of the letter written by the lawyer (Counsel Kakembo), that the Custodian Board allowed the Estate of the late Ricahrd Aisu to repurchase the house through private treaty.

It was maintained that the Defendant participated in the committee which bought the property in dispute by private treaty. On the arguments that the Estate did not have money to re-purchase the property, Counsel for the Plaintiff stated that it was a falsehood on part of the Defendant as the family operated a business of a bar and lodge on the suit property. And that money was generated from that business, which money was paid to the Custodian Board through the Defendant.

Reference was made to the testimony of PW2, a sister to the Plaintiff who wondered why the Defendant obtained loans when Liberty Bar and Lodge generated its own money. Counsel therefore emphasised that the Defendant hatched plans of defrauding the Estate and selfishly taking over the property in dispute.

Counsel referred to **Section 10(1)** of the Expropriated Properties Act which allowed tenants on expropriated properties to remain tenants thereon unless the property is dealt with by the Minister.

Further submissions were that by the time the Defendant paid a fee of UGX 1,600,000/= she was acting on behalf of the Estate of Richard Aisu. And that she proceeded to execute a sale agreement bearing the names of Mrs. Bertha Akiiki Aisu, but fraudulently executed a 2nd sale agreement with the Custodian Board, on 27/3/2002 and signed in her personal names instead of the estate of the late Richard Aisu.

Counsel for the Plaintiff wondered how the Defendant allegedly got loans to purchase the house in dispute before it was advertised. He concluded that the issue of loans purported to have been obtained by the Defendant was an afterthought crafted to strengthen her fraudulent effort to steal the estate property. It was concluded that the suit property belonged to the estate of the late Richard Aisu and the Defendant fraudulently transferred the same into her name.

Counsel for the Defendant on the other hand referred this Court to **Article 26** of the Constitution which guarantees the right to own property. Counsel also referred to **Section 59** of the Registration of Titles Act to the effect that a Certificate of Title is conclusive evidence of ownership and that the Title cannot be defeated by rival claims to land. Reference was also made to the testimony of DW2, Komuhendo Bertha Akiiki that around 1992/93, the late Aisu Richard was bed ridden and sold off his properties for his own treatment until his sad

passing the 30th day of July 1994. She also testified that in 1992 the business on the suit property had to close down until December 1992 due to Aisu Richard's sickness. She stated that some of the properties that were sold by the late Aisu Richard in 1994 before his death included a Peugeot 304 Registration Number UWY 152, land on market street, and the Defendant's personal lock up on market street without her consent. She further testified that the late Aisu Ricahrd had no money as banks demanded loan payments which loans she tried to clear using her salary therefore by the time of his demise, the late Aisu Richard was for all intent and purpose bankrupt.

10 DW2 further testified that after the sad death of the late Aisu Richard she lived with the family members in the Opodoi Village in Pallisa District for two weeks until she decided to return back to Soroti District on the suit property to fend for herself. DW2 testified that the late Aisu Richard's purchase of and acquisition of expunged certificate of title over the suit property from Soroti Municipal Council in 1981, was nullified by the Custodian Board and in his lifetime refunded back the paid purchase price and this evidence is uncontroverted as it can be directly corroborated with the testimony of PW1 Aisu Godwin Isaac who admitted during cross examination that he was aware that his late father's lease was cancelled in 1982 before he was born.

20 Counsel for the Defendant further submitted that DW1 led evidence during cross examination to the effect that the law that nullified the earlier sales did not protect the tenants and there was no priority for sitting tenants. And that since DW2, Komuhendo Bertha Akiiki did not have Letters of Administration or powers of Attorney, she was acting in her individual capacity. He added that the Plaintiff (PW1) had no right to claim any proprietary rights even as a tenant.

30 Counsel emphasised that according to DW2's testimony that she has never been in any way or acted at any point in her dealings with the suit property thereafter, as the Administrator of the estate of the late Aisu Richard. She testified that she bought the suit property as an individual during the life time of her co-wife Edith Aisu who resided in Opadoi Village in Pallisa District. It is important to note that since the Defendant was registered on the certificate of Title, the late Edith Aisu was alive and she never commenced any suit against the Defendant because she knew that the Defendant had legally bought the suit property.

35 It was further emphasised that being a tenant does not confer proprietary rights under the law.

40 Counsel for the Defendant also wondered why the Plaintiff forcefully entered the suit property instead of using legal means if at all the suit property belonged to the estate of the Late Richard Aisu. He concluded that the sum total of the circumstances reveal that the Defendant/Counter Claimant is the owner of the suit property and that the Plaintiff's forceful entry thereon be nullified. This

Court has carefully considered the submissions on both sides on whether the suit property belonged to the estate of the late Richard Aisu. I have also considered the evidence on record and the documents relied on by both sides.

5 In the first instance, it has been agreed by both sides that Soroti Municipal Council sold the land in dispute illegally to the late Richard Aisu. And that the sale was rescinded and the Commissioner for land Registration cancelled the entry of the late on the Title. Consequently, the land reverted back to the custodian Board.

10 According to DW1, Bizibu George William, it was advertised through a government gazette for sale. DW1 on page 18 of the proceedings testified as follows;

15 *“Bertha Akiiki successfully applied to purchase the property, it was a rigorous process, it required evaluation of the property, the divestiture committee handled the paper work, then they gave a report to the Secretary who advised the Minister on how to handle the property. It was agreed that Bertha Akiiki be sold the property by private treaty. That was according to her submissions. She was the only bidder hence the private treaty. Bertha Akiiki was required to deposit the purchase price over a given period.”*

20 During cross-examination by Counsel for the Plaintiff, DW1 on page 22 of the proceedings stated that although the original tenant was Richard Aisu, that he had bought fraudulently and the title was cancelled. And whereas the Plaintiff’s case was that when Advocate Kakembo wrote to the Custodian Board and it was agreed that the Estate of the late Richard Aisu could purchase the house through private, treaty, during cross examination on 5 and 6 of the proceedings, PW1, 25 Aisu Godwin Isaac stated that there was a family meeting when the property was advertised although he could not tell when that meeting took place as he was 10 years old.

30 PW1 further conceded that after the death of his father, the Defendant continued living on the suit property. PW1 also admitted that he had no proof that money paid for the purchase of the suit property was from the Estate of the deceased.

PW1 continued with the cross-examination as follows on page 6;

35 *“The agreement was between the Estate of Richard Aisu and the Minister. It is not valid as the Minister did not sign it. I got the documents from the Custodian Board. The second sale agreement PEXH 9 is between the Defendant and the Minister. I noticed there was an irregularity in the sale agreement after the death of my mother in August 2011. I did not sue the Custodian Board for falsifying records.”*

In view of what the Plaintiff stated during his testimony, whereby he contradicted himself that he had no proof that the money paid for the purchase of the suit property was from the Estate of the deceased, then this Court cannot believe his side of the story.

5 I therefore agree with the submissions of Counsel for the Defendant that the Late Aisu Richard and his family lost ownership following the enactment of the expropriated properties Act Cap. 87, Laws of Uganda. That Act nullified their lease and left them as mere tenants. The suit property did therefore not belong to the estate of the late Aisu Richard as it vested in the Government of Uganda
10 under the stewardship of the Minister of Finance who had full mandate to deal with the Expropriated property. Under **Section 9 (3)** of the Expropriated Property Act.

This Court further finds and holds that the deceased's lease title was cancelled in 1982 before the Plaintiff was born. The Plaintiff cannot therefore benefit
15 under **Section 59** of the Registration of Titles Act because the title was cancelled.

The Defendant was in the circumstances rightly and legally granted a Certificate of purchase in her names as per **Exhibit DEXH2** on record and the same was never challenged by any aggrieved person as required under **Section 15 (1)** of the Expropriated Properties Act. For avoidance of doubt, it provides;

20 *“Any person who is aggrieved by any decision made by the Minister under this Act, may, within thirty days from the date of communication of the decision to him or her, appeal to the High Court against the decision.”*

So although the Plaintiff (PW1) testified during cross examination that he learnt about the irregularities in August 2011, he filed the present suit much later in
25 2014 as an afterthought. That leads to the conclusion that the Defendant (DW2) legally and legitimately acquired the suit property in her individual capacity.

In his submissions Counsel for the Plaintiff referred to **Section 10 (1) of the EPA**. However, that Section allows tenants on Expropriated property to remain tenants thereon till the property is dealt with by the Minister. That Section does
30 not confer ownership.

Furthermore, I also find and hold that the Defendant, Komuhendo Bertha Akiiki has never been an Administrator to the Estate of the late Aisu because PW2, Achom Susan testified during cross examination that there is no person granted letters of Administration. She testified that it was in 2012, that a family meeting
35 to process letters of Administration was arranged where the suit property was included as part of the Estate but the said meeting flopped. That evidence of Achom Susan corroborates that of DW1, Bizibu George William, who stated during cross examination that Komuhendo Bertha Akiiki never acted as an Administrator. And since there were no letters of Administration ever granted
40 for the Estate of the late Richard Aisu, then it is erroneous for the Plaintiff to

submit that Komuhendo Bertha Akiiki was acting in the capacity of an Administrator. This Court also finds and holds that since the Defendant, Komuhendo Bertha Akiiki got the Certificate of Title during the lifetime of her co-wife, Edith Aisu, who never complained, then that adds credence to the Defendant's case.

The conclusion of this Court in view of what I have outlined is that the Defendant/counter-claimant is the owner of the suit property. The 1st issue is therefore resolved in the negative. The suit property does not belong to the Estate of the late Aisu Richard.

10 **Issue 2: Whether the Defendant fraudulently procured a Certificate of Title for the suit property?**

Counsel for the Plaintiff submitted that under Section 10(1) of the Expropriated Properties Act Cap. 87, the tenants on expropriated properties remain tenants thereon till unless the property is dealt with by the minister. He added that since the lawful tenant was Richard Aisu and when he passed on, the same passed to his Estate.

It was further submitted that after the Custodian Board released the suit property from advertisement and offered the same to the estate of Richard Aisu to purchase on private treaty at UGX 16,000,000/= on condition that 10% of the said sum (1,600,000/= be deposited as commitment fee, the Defendant while acting for the estate paid 1,600,000/= on 4/7/2000 and signed an agreement on the same day with the Board as per Exhibit PEx8.

Counsel went on to submit that UGX 1,600,000/= is what is reflected on the receipts in the receipts of payments of 4/7/2000 which formed part of the purchase price and UGX 500,000/= of 27/3/2002 is not reflected anywhere in the payment schedule. He added that when the Defendant paid a fee of UGX 1,600,000/=, she was acting on behalf of the Estate of Richard Aisu and proceeded to execute a Sale Agreement bearing the names of Mrs. Bertha Akiiki Aisu.

30 Further submissions were that the Defendant disregarded the above said sale agreement and proceeded to fraudulently execute a 2nd sale agreement with the Custodian Board, on the 27th March 2002, which she signed in her personal names and not for the estate of the late Richard Aisu.

35 Counsel for the Plaintiff added that the 2nd Sale Agreement executed by the Defendant is null and void and tainted with fraud for reasons that; firstly, when the Defendant was asked in cross examination whether she made a separate application to purchase the suit property from the Custodian Board, she responded in the negative.

The Advocate for the Plaintiff wondered how the 2nd Sale Agreement arose without a formal Application. Counsel for the Plaintiff summed up that the Defendant started paying for the property on 4/7/2000 which was the date the 1st sale agreement was executed and that she paid UGX 1,600,000/= which was 10% of the purchase price of UGX 16,000,000/= and which was supposed to be paid within 14 days from execution of the agreement.

Counsel for the Plaintiff concluded that the issue of loans purported to have been obtained by the Defendant was an afterthought by the Defendant to strengthen her fraudulent efforts to steal the Estate property and that the loan booklets are suspect of forgeries. Counsel therefore added that the Defendant fraudulently transferred the suit property in her names.

Counsel for the Defendant on the other hand submitted that DW2, Komuhendo Bertha Akiiki led evidence during Examination in Chief and cross examination to the effect that she is the registered proprietor of the suit property after purchasing the same through several loans from Finance Trust Bank and Soroti Hospital Cooperative Society. She testified that her savings book bearing her name before the Court, shows that she acquired a loan UGX 1,500,000/= (one million five hundred thousand shillings only) on the 19th day November 1997 and another loan of the same amount on the 3rd day of April 1998. It was her evidence that some of her receipts got lost. She further testified that she has a payment schedule from the Custodian Board showing payments as evidenced by receipts of UGX 200,000/= (August 2001), UGX 160,000/= (18th day of October 2000), UGX 300,000/= (5th day of September 2000) and UGX 1,600,000/= (4th day of July 2000). It was DW2's evidence that she began paying for the suit property described as Plot 26, Jumubai Road in the year 2000 and finished the last instalment on the 2nd day of May 2002.

Further submissions were that the Late Aisu Richard in his lifetime attempted in vain to buy the suit property from **Soroti Municipal Council** and that those dealings were ultimately declared null and void for want of title and the purchase money refunded to the deceased.

Counsel for the Defendant further referred to the evidence of DW2, to the effect that the Departed Asian Property Custodian Board valued the suit property at UGX 16,000,000/= minus the renovation costs of UGX 11,191,455/=. Counsel added that it was the evidence of DW2 that she was instructed to pay UGX 5,000,000/= which she rightly paid by 2/5/2002. It was emphasised that the money paid by the Defendant (DW2) for the suit property was her own money and also from her drug shop.

On the testimony by PW1 that before his father's death the family operated a bar where the Plaintiff was working, Counsel for the Defendant wondered how a child of less than 10 years could work in a bar and yet he was still attending school having been born in 1984.

Counsel for the Defendant also attacked the evidence of PW2, Achom Susan during cross examination that her mother contributed to the purchase of the suit property as baseless because PW2 failed to produce the receipts in Court and thereby confirming the suit property was purchased by the Defendant.

5 Counsel for the Defendant further submitted it was DW2's testimony that the first receipts issued by the Custodian Board were issued in error of the person of payee which was rectified upon the Custodian Board being notified by DW2 who actually was paying the money and buying the suit property. DW2 stated that the Custodian Board was convinced that she was the rightful person with
10 the first right of allocation to the lease over the suit property since she was the sitting tenant against the extinguished equitable interests of the estate of Aisu Ricahrd upon his sad demise. This testimony was corroborated by the testimony of DW1 who confirmed to Court during cross examination that the errors on the payment receipt were corrected since DW~~2~~ did not have letters of
15 Administration so she was acting in her own capacity.

Counsel for the Defendant referred to the Defendant's testimony that in 2002 when she bought the suit property, the lease was expiring in 8 years' time and so she applied for a twenty-year extension which was registered under instrument number 453488 dated 15.8.2011.

20 Further reference was made to the testimony of PW1, Aisu Godwin Isaac is evidence that the first sale agreement between Ministry of Finance and Economic Development and Estate of Aisu PEXH. 8 dated 4th day July 2000 was not endorsed by the Head of task force Custodian Board and the Minister and therefore. PW1 admitted during cross examination that the agreement was
25 invalid. Further still it was his testimony that the second sales agreement dated 24th day of March 2002 and tendered in Court as PEXH9 was between the DW2 and Ministry of Finance and Economic Development thereby confirming that DW2 legally and legitimately bought the suit property.

30 Counsel for the Defendant further submitted that the lapses and inconsistencies in the evidence of PW2, Achom Susan was an orchestrated plan to deprive the Defendant of the suit property as PW2 testified that the family did not take action against the Custodian Board. He added that PW2 admitted having knowledge that the Defendant was issued with a Certificate of completion of payment for the suit property.

35 Counsel for the Defendant also referred to the testimony of PW3, Emuron Mesulamu to the effect that there was no dispute between the Defendant and the co-wife, the late Edith Aisu over the suit property. And that the source of funding was never part if the Late Aisu Richard's estate and that the right procedure was followed by the Defendant while purchasing the suit property.

Counsel concluded that the allegations of fraud have not been proved as per standards set out in many cases including *Mudiima Issa & 5 Others versus Elly Kayanja & 2 Others*, HCCS No. 232 of 2009, where Justice Bashaija held that allegations of fraud must be specifically pleaded and proved.

5 I have carefully considered the submissions on both sides, the pleadings on record and the evidence as far as the second issue of whether the Defendant acted fraudulently in regard to the purchase and obtaining the Certificate of title. Under paragraph 6 of the Plaintiff, particulars of fraud were stated as follows;

- 10 *“i. Executing a 2nd sale agreement in respect of the suit property.*
- ii. Procuring the replacement of the initial sale agreement executed in respect to the suit property displaying the Estate of the late Richard Aisu as the purchaser and the Defendant as the representatives of the Estate with one displaying the Defendant as the purchaser of the suit property.*
- 15 *iii. Liasing with the Officials at the Departed Asians Property Custodian Board and Ministry of Finance, Planning and Economic Development, to withhold the forwarding of the right sale agreement dated 4th day of July 2000 to the then Honourable Minister of Finance, Planning and Economic Development for the purposes of issuing a Certificate of Purchase.*
- 20 *iv. Giving false information to the Minister of Finance, Planning and Economic Development as regards the rightful purchaser of the suit property.*
- v. Using the fraudulently procured Certificate of Purchase to procure the Defendant registered by the Commissioner of Land Registration as the Registered Proprietor of the suit property.*
- 25 *vi. Using the fraudulently obtained Certificate of Title to deny the other beneficiaries to the Estate of the late Richard Aisu from benefiting from the proceeds of the suit property.”*

Fraud was defined in the case of *Fredrick Zaabwe versus Orient Bank & Others*, SCCA No. 04 of 2006 to mean 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. It is a false representation of a matter or fact or misleading allegations or concealment of that which deceives and is intended to deceive another so that he or she shall act upon it to his or her legal injury.

35 Furthermore, **Section 64(1)** of the Registration of Titles Act is to the effect that the estate of the registered proprietor is paramount except in cases of fraud. Also **Section 176 (c)** of the same Act is to the effect that no action shall be sustained against a person named as a registered proprietor except in cases of fraud.

So whereas the particulars of fraud were stated in the plaint as required under the law, the next question to be resolved is whether those particulars of fraud were proved.

5 Counsel for the Plaintiff reiterated that the Plaintiff and his witnesses testified that after the lease on the suit property to the late Richard Aisu was nullified by the Expropriated Properties Act, that the Custodian Board advertised the suit property for sale by Public Auction. And that the family of the late Richard Aisu acting through the Defendant and their lawyers M/s Kakembo & Co. Advocates made a complaint to the Custodian Board, where upon the property was released from the advertisement and was offered to the Estate of the late Richard Aisu to purchase on private treaty.

10 In resolving the matter raised by the Plaintiff and his Advocate above, this Court has to consider the time or period when the alleged events took place. Whereas the Plaintiff has emphasised that the Defendant acted on behalf of the Estate of the late Richard Aisu, the evidence on record is to the contrary. And whereas 15 Counsel for the Plaintiff submitted that the receipts issued by the Custodian Board were issued in the names of the Estate of the late Richard Aisu, it was the testimony of the Defendant that the first Receipts issued by the Custodian Board were issued in error of the person of payee which was rectified upon the 20 Custodian Board being notified by the Defendant (DW2) who was actually paying the money and buying the suit property.

The Defendant testified that the Custodian Board was convinced she was the rightful person with the first right of allocation to the lease over the suit property since she was the sitting tenant as against the extinguished equitable 25 interests of the Estate of Aisu Richard upon his death. And the Defendant's testimony was corroborated by DW1, Bizibu George William, the Executive Secretary, Departed Asians Property Custodian Board. DW1 confirmed to Court that the errors on the payment receipt were corrected since the Defendant did not have letters of Administration and so she was acting in her own capacity. 30 For avoidance of doubt, I do hereby reproduce the Defendant (DW2)'s testimony on page 31 of the record of proceedings.

- 35 • *“Otherwise to me who made the payments. I do not know the documents headed application to purchase property. It is not a correct document because by the time I applied, the late Richard Aisu was dead. So he could not have risen from the dead to sign.*
- *I insist the correct application was signed by myself.*
- *I did not involve the Estate as it had no money. Secondly I am not the Administrator of the Estate.*
- *The late Richard Aisu had another wife called Edith Aisu, staying in Palisa District.*
- 40 • *She was staying in the deceased's house (she died).*

- Edith Aisu never stayed at the suit property.
- She was the biological mother of the Plaintiff.
- She died on the 20/8/2011.
- I had already purchased the property in dispute by the time she passed on.
- I told her when the house was advertised.
- I wanted her to get a loan and we buy together but she refused and she never contested the purchase of that property during her lifetime.
- The title issued to me expired in 2010 and I applied for extension.
- The certificate of title I am holding is a new one dated 15/08/2011 in my names for 20 years.
- 20 years started on the 01/12/2010.

Court: Photocopy of a new Certificate of Title tendered in and marked DEXS.

Signed

15 Judge

DW2 Continues:

- My deceased husband had attempted to purchase property but failed and his money was returned around 1982. Annexure "A" the Certificate of Title in the names of Richard Aisu was nullified.
- I also filed a counter claim.
- My issue against the Plaintiff is that on the 17/05/2014, he forcefully invaded my house, divided it and started operating a bar. He was staying in the village before."

25 This Court is inclined to believe the above testimony of the Defendant. I also agree with the submissions of Counsel for the Defendant that by the time she applied for the purchase of the suit property on 25/8/1994, Aisu Richard was already dead.

30 The Defendant further testified that at the time the suit property was advertised, she informed the late Edith Aisu and advised that the two join effort to secure the suit property but the late Edith Aisu declared that she was a mere school teacher and could not risk to acquire a loan and told off the Defendant to go ahead and pay for the suit property for herself.

35 In my view, all those steps taken by the Defendant were not acts of a person with fraudulent intentions. The other evidence to consider which turns to be in favour of the Defendant is that of FW2, Achom Susan. During the lengthy cross-examination on pages 9, 10 and 11 of the proceedings, she categorically stated that when their father (Late Richard Aisu died) no one applied for Letters of

Administration. PW2 further testified that the suit property was advertised for sale four years after their father's death. She admitted that the Defendant got loans and that she did not know if her late father Aisu Richard was unable to meet his inabilities due to illness or not. I therefore find and hold that PW2, Achom Susan was not sure of her facts and did not prove any fraud on the part of the Defendant.

Counsel for the Plaintiff maintained in rejoinder that the purchase price of the suit premises was money that was generated from the family business of **Liberty Bar and Lodge**, but that the Defendant executed a second sale agreement with the Ministry of Finance. However, and as I have already held, PW2, Achom Susan did not know the capital of Liberty Bar and Lodge business on the suit property. And there is no evidence on record of any money or contribution coming from any other person other than the Defendant. It is therefore mere assertions without proof that the money used to pay for the suit premises came from Liberty Bar and Lodge. I therefore agree with the submissions of Counsel for the Defendant that the source of funding was not part of the late Aisu Richard's Estate.

Counsel for the Plaintiff submitted that the Defendant deliberately misled and or connived with the legal Manager in the Ministry of Finance to hide the 1st agreement signed on behalf of the Estate and presented the one signed in her own name wrongly and fraudulently secured registration in her name.

The finding and holding of this Court is that the above submissions are not supported by evidence. There is no evidence on record to show that the Defendant connived with the legal manager in the Ministry of Finance to hide the 1st agreement as alleged. So it is not a question of analysis of events and coming up with false assumptions and theories which are not backed by evidence. Courts of law act on evidence and not on fanciful theories and assumptions.

PW3 Emuron Mesulamu, who on page 13 of the proceedings (top) stated that the late Aisu made money that was used to purchase the suit premises. But during cross-examination, he testified that one Oweson of Onapi alias Okurut was appointed caretaker of Aisu's property, and he does not mention anything to do with fraud on the part of the Defendant. The conclusion of this Court is that the allegations of fraud have not been proved as against the Defendant. Issue No.1 is therefore resolved in the negative.

Issue No. 3: Whether the Plaintiff is a trespasser?

It was the Plaintiff's case that he has lived on the suit premises and is therefore not a trespass. Secondly, that the Plaintiff is the lawful beneficiary and so he has all the rights to live on the suit property.

Further emphasis was that since the Plaintiff and the Defendant were living under the same roof on the suit property, he cannot be a trespasser.

5 Counsel for the Defendant on the other hand referred to the evidence of DW2, Komuhendo Bertha Akiiki that the Plaintiff came from **Opadoi Village** where he was staying, and without any colour of right entered upon the Defendant's suit property and started operating a bar. The Defendant's further testimony was that she reported to Police to no avail.

10 Counsel for the Defendant also submitted that the Plaintiff admitted during cross examination that by the time he started doing business on the suit property on 17/4/2014, the Certificate of Title was in the Defendant's name and so the Plaintiff was a trespasser. This Court has considered the evidence on record and the submissions on both sides.

15 Trespass is defined as an act where a person makes an unauthorized entry upon land and thereby interferes, or portends to interfere with another person's lawful possession of that land. The case of *Justine E. M. N. Lutaaya versus Stirling Civil Engineering Company*, Supreme Court Civil Appeal No. 11 of 2002 is in point. *Mulenga JSC (late)*, citing *Moya Drift Farm Ltd versus Theuri [1973] E.A 114*, held that a person holding a Certificate of Title has, by virtue of that title, legal possession and can sue in trespass. The tort of trespass to land is therefore committed against the person who is in actual or constructive possession of the land. In the circumstances and in view of the Supreme Court decision as clearly stated in *Justine E.M.N.Lutaaya versus Stirling Civil Engineering Company (Supra)*, then I find and hold that the Defendant has proved that the Plaintiff is a trespasser. The third issue is therefore resolved in favour of the Defendant.

Issue 4: What remedies are available to the parties?

30 Counsel for the Plaintiff submitted that the Plaintiff has proved on the balance of probability that he is the owner of the suit land. The Plaintiff's Counsel also called upon this Court to order the cancellation of the Defendant's Certificate of Title **over Plot 26 Jumabhai Road**, as it was fraudulently acquired. They also prayed for general damages, and costs.

35 Counsel for the Defendant on the other hand submitted that a Court of law cannot sanction an illegality once it is brought to its attention. He referred to the case of *Makula International versus His Eminence Cardinal Nsubuga [1982] HCB 11*, where it was held that an illegality overrides pleadings.

40 Counsel therefore called upon this Court to restore the Defendant as the rightful owner of the suit premises. Without further Ado, and having answered issues 1, 2 and 3 in favour of the Defendant, I do hereby proceed to declare that the Defendant is the rightful owner of the suit property. The Defendant also filed a counter claim praying for a temporary injunction against the Plaintiff, a

declaration that she is the lawful owner of the suit property and an eviction order. She also prayed for general damages and costs.

5 Since this Court has found and held that by the time the Plaintiff trespassed on the suit property on 17/4/2014, he was aware of the Defendant's Certificate of Title over the same, then I do hereby issue an eviction order against the Plaintiff. I further grant a permanent injunction restraining the Plaintiff and his agents from interfering with the Defendant's quiet possession of the suit property and a declaration that the Defendant is the lawful owner of the suit land.

10 Counsel for the Defendant has also prayed for general damages of UGX 200,000,000/= however, I have considered the circumstances and background of this case and I find that UGX 200,000,000/= is on a higher scale. I find and hold that a sum of UGX 50,000,000/= is appropriate as general damages.

I decline to award interest but costs are hereby granted to the Defendant in the main suit and counter claim.

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WILSON MASALU MUSENE

JUDGE

26/11/2020

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