



**Okedo v Buluma & another (Environment & Land Case 141 of 2014)
[2023] KEELC 20601 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 141 OF 2014**

**BN OLAO, J
OCTOBER 12, 2023**

BETWEEN

ALFRED BARASA OKEDO PLAINTIFF

AND

FRANCIS JUMA BULUMA 1ST DEFENDANT

LOUIS ANGURA OTWANI 2ND DEFENDANT

JUDGMENT

1. This judgment was due for delivery on 27th July 2023 but I was out of station on official duties. Thereafter, the Court went on vacation upto 18th September 2023.
2. The delay is regretted but was un-avoidable in the circumstances.
3. ALFRED BARASA OKEDO (the Plaintiff) moved to this Court vide an amended plaint in which he sought against FRANCIS JUMA BULUMA and LOUIS ANGURA OTWANI (the 1st and 2nd Defendants respectively), judgment in the following terms:
 1. Cancellation of the 2nd Defendant's title to the land parcel NO SOUTH TESO/ANGOROMO/1601 and that the same be restored to the Plaintiff.
 2. A permanent injunction restraining the Defendants, their family, agents, personal representatives or any other persons claiming on their behalf.
4. The crux of the Plaintiff's case is that he and his brother one EMORYOT OKEDO ATABA were the joint owners of the land parcel NO SOUTH TESO/ANGOROMO/749 which has since been partitioned to create the land parcels NO SOUTH TESO/ANGOROMO/1600 and 1601. That the land parcel NO SOUTH TESO/ANGOROMO/1601 (the suit land) was registered in the name of the Plaintiff who sold a portion thereof measuring 0.052 Hectares to the 1st Defendant and retained the other portion measuring 1.048 for himself. The necessary transfer forms were prepared and



the application for the Land Control Boards consent was done after which the 1st Defendant took possession of the portion measuring 0.052 hectares while the Plaintiff took possession of the other portion measuring 1.048 hectares.

5. In the year 2013 – 2014, the Plaintiff wanted to sub-divide the suit land but when he invited surveyors, it was discovered that the 1st Defendant had in fact been registered as proprietor of a portion of the suit land measuring 1.1 hectares instead of the 0.52 hectares which he had purchased from the Plaintiff. Since the institution of this suit, the 1st Defendant has sold the suit land to the 2nd Defendant who is the current registered proprietor thereof.
6. The Plaintiff therefore pleads that the registration of the 1st and 2nd Defendants as proprietors of the whole of the suit land was a mistake, illegal, fraudulent and unlawful particulars of which have been pleaded in paragraph 10(a) to (j) as follows:
 - a. Purchasing 0.052 hectares and acquiring 1.1 hectares
 - b. Applying to the Land Control Board to transfer 0.052 hectares and instead acquiring 1.1 hectares.
 - c. Misrepresentation to the Plaintiff of the contents of the documents asked to execute.
 - d. Taking advantage of the illiteracy and ignorance of the Plaintiff.
 - e. Misleading the chairmen of the Land Control Board.
 - f. Altering and/or having two sets of transfer documents including mutation, application for consent and transfer.
 - g. Occupying 0.052 hectares but having title for 1.10 hectares.
 - h. Registration of defective documents
 - i. None compliance with transfer documents.
 - j. Selling of 1.1 hectares of land parcel NO SOUTH TESO/ANGOROMO/1601 un-procedurally and while this suit is pending.

The Plaintiff therefore pleaded that due to the foresaid, he has been deprived of his interest in the suit land.

7. Together with his plaint, the Plaintiff who later donated a Power of Attorney to his son DOUGLAS MBINGI (PW1) recorded an un-dated statement filed together with his plaint which was later amended.
8. In the said statement, the Plaintiff stated that he and his brother were the joint proprietors of the original land parcel NO SOUTH TESO/ANGOROMO/749 which they later partitioned to create the land parcel NO SOUTH TESO/ANGOROMO/1600 and the suit land. That he later sold a portion of the suit land measuring 0.052 hectares to the 1st Defendant who processed the portioning and transfer thereof. However, he later discovered that the 1st Defendant had obtained title to the whole suit land which he occupies yet he (Plaintiff), had not sold him the whole of the suit land. That the 1st Defendants' acquisition of the whole of the suit land was fraudulent and illegal. He therefore seeks the restoration of the suit land in his names.
9. The Plaintiff also recorded the statement of his witness OFULA AMANIA JOHN (PW2). In his statement, also undated, the witness confirms that the Plaintiff co-owned the original land parcel



with his brother which they later sub-divided. That the Plaintiff sold a portion of his share to the 1st Defendant but still occupies the other portion.

10. The Plaintiff filed the following documents vide his list of documents dated 3rd July 2014:

1. Agreement for sale of land dated 3rd August 1984.
2. Application for consent of the Land Control Board dated 15th August 1985.
3. Mutation Form dated 5th August 1985.
4. Letter of consent dated 1st April 1985.
5. Letter of consent dated 15th August 1985.
6. Boundary dispute summons dated 8th April 2014, 9th December 2013, 7th November 2013.
7. Transfer of Land Form.

The Plaintiff later filed the Power of Attorney granted to his son DOUGLAS MBINGI on 11th November 2018. And although the Plaintiff's list of documents shows that he also filed the copy of register for the land parcels NO SOUTH TESO/ANGOROMO/749 and 1601, no such documents were filed. However, the same were later filed by the Defendants.

11. The Defendants filed separate defences.

12. The 1st Defendant who was later substituted with his son VINCENT OSINYA JUMA (DW2) filed a defence and counter-claim dated 18th September 2014. He pleaded, inter alia, that he could not have purchased a portion measuring 0.052 hectares of land from the Plaintiff for agricultural purpose. He denied the allegations of fraud and illegality adding that the Plaintiff is guilty of delay in filing this suit which is time-barred. He pleaded that the Plaintiff sold to him three (3) acres of land and his interest in the suit land has been totally extinguished. He added further that the documents filed by the Plaintiff have alterations and manipulations which cannot be relied upon to change the ground position and size of the land which the Plaintiff freely sold and demarcated for him and that at the appropriate time he would move the Court for fresh mutation to be dawn and registered reflecting the ground position. He therefore sought the dismissal of the Plaintiff's suit with costs.

13. In his counter-claim, he pleaded that in 1982, he commenced transactions by which he purchased three (3) acres of land from the Plaintiff comprised in different portions. He added that the Plaintiff demarcated the portions into one portion which is clearly defined with boundary and that he and his family have been in occupation thereof for a period exceeding twelve (12) years to the exclusion of the Plaintiff. That he has been cultivating the said portion but in 2014, the Plaintiff took advantage of the Defendant's absence and sold the Defendant's portion to one MATHEWS MBINGI who has since moved thereon and evicted a semi-permanent structure thereon thus interfering with the Defendant's ownership. That on 30th April 2014, the Plaintiff filed a case before the Land Registrar seeking to alter the boundaries but his claim was dismissed and no appeal was filed.

14. The 1st Defendant therefore counter-claimed for judgment against the Plaintiff as follows:

1. A declaration that the 1st Defendant has acquired by adverse possession the land parcel NO SOUTH TESO/ANGOROMO/1601.
2. An order directing the COUNTY LAND REGISTRAR and SURVEYOR to cancel the mutation form used to sub-divide land parcel NO SOUTH TESO/ANGOROMO/1601 and in its place carry out fresh survey and draw fresh Mutation Form picking the existing



boundaries for the sub-divided portions of land being SOUTH TESO/ANGOROMO/1600 and 1601.

15. The 1st Defendant filed his un-dated statement in which he stated that in 1982, he purchased from the Plaintiff 2.5 acres which was surveyed in 1986 and the consent to sub-divide was granted.
16. That he immediately settled on the land on which he started farming and also planted many trees. No one has ever questioned his occupation thereof. A few years ago, he purchased another parcel of land near the BUSIA-NAMBALE road where he moved to and decided to stay. The Plaintiff has taken advantage of his absence to file this suit and his claim is statute barred. It should be dismissed with costs.
17. The 1st Defendant filed the proceedings before the Land Registrar Busia MR TOM CHEPKWESI involving him and the Plaintiff over a boundary dispute. The dispute was heard on 23rd April 2014 and in his report, MR CHEPKWESI, found that what was before him was not a boundary dispute but a claim to land.
18. The Plaintiff filed a reply to defence and a defence to the counter-claim. He reiterated the contents of his claim that the registration of the 1st Defendant as proprietor of the suit land was obtained fraudulently and illegally. He insisted that he only sold to the 1st Defendant a portion measuring 0.052 hectares and this suit is properly before this Court and the 1st Defendant is not, in the circumstances of this case, entitled to the order of adverse possession. In any event, the fact that the 1st Defendant has never occupied the whole of the suit land was admitted in BUSIA CMCC NO 273 of 2015. The defence and counter-claim are therefore bad in law and a preliminary objection would be raised.
19. The 2nd Defendant filed his statement of defence and counter-claim dated 29th July 2019. He pleaded, inter alia, that he is a stranger to the Plaintiff's claim which is guilty of laches. He added that he is a bonafide purchaser of the suit land and denied the allegations of fraud and illegality putting the Plaintiff to strict proof thereof.
20. In his counter-claim, he sought judgment against the Plaintiff in the following terms:
 1. Dismissal of the Plaintiffs suit with costs.
 2. An order for the eviction of the Plaintiff or any other person acting or claiming through him from the land parcel NO SOUTH TESO/ANGOROMO/1601.
 3. Costs of the counter-claim.
21. The 2nd Defendant filed his two statements dated 29th July 2019 and 2nd March 2023. In the said statements, he stated that he knew the 1st Defendant since he (1st Defendant) was a worker in his (2nd Defendant's) home.
22. That the 1st Defendant who used to live on the suit land approached him on or around 2016 saying that he (1st Defendant) was having wrangles with the Plaintiff over the suit land which he offered to sell to the 2nd Defendant. The 2nd Defendant initially declined but after a lot of persuasion, he agreed to purchase it. He carried at due diligence and after confirming that the suit land had no encumbrances and the 1st Defendant had a good title, he decided to purchase it. The Plaintiff has meanwhile purported to sell the suit land and he therefore seeks his eviction therefrom as well as those others claiming through him. He also seeks the dismissal of the Plaintiff's suit.
23. The 2nd Defendant filed two lists of documents the first dated 29th July 2019 and the second dated 2nd March 2023. The two lists basically have the same documents with only slight differences.
24. In the first list, the 2nd Defendant annexed the following documents:



1. Copy of title deed to the land parcel NO SOUTH TESO/ANGOROMO/1601 in the name of 1st Defendant issued on 5th December 2013.
 2. Copy of Green Card for the land parcel NO SOUTH TESO/ANGOROMO/1601.
25. The second list had the following documents:
1. Copy of title deed to the land parcel NO SOUTH TESO/ANGOROMO/1601 in the name of the 2nd Defendant issued on 28th September 2018.
 2. Certificate for official search in respect to the land parcel NO SOUTH TESO/ANGOROMO/1601 issued on 12th October 2017.
 3. Copy of title deed to the land parcel NO SOUTH TESO/ANGOROMO/1601 issued in the name of the 1st Defendant issued in the name of the 1st Defendant on 5th December 2013.
 4. Certificate of official search in respect of the land parcel NO SOUTH TESO/ANGOROMO/1601 dated 25th February 2018.
 5. Green Card for the land parcel NO SOUTH TESO/ANGOROMO/1601 dated 24th February 2021.
 6. Proceedings before the Land Registrar Busia in respect to the boundary dispute before the Plaintiff and 1st Defendant on 23rd April 2014.
 7. Index Registry Map dated 30th December 2023.
26. The matter proceeded for hearing before me on 23rd February 2023. And although MR WANYAMA had earlier appeared for the 1st Defendant and MR IPAPU for the 2nd Defendant, both counsel informed OMOLLO J on 16th February 2022 that their clients had taken away their files. MR MATASI appeared for both Defendants during the trial.
27. The Plaintiff testified and called as his witness OFULA AMANIA JOHN (PW2). They both adopted as their evidence the contents of their statements which I have already summarised above.
28. The Defendants were the only witnesses who testified in support of their respective cases. They too adopted as their evidence the contents of their statement and produced their lists of documents as their documentary evidence.
29. Submissions were thereafter filed both by MR FWAYA instructed by the firm of GABRIEL FWAYA ADVOCATES for the Plaintiff and by MR MATASI instructed by the firm of SHABAAN & COMPANY ADVOCATES for the Defendants.
30. I have considered the evidence by all the parties and the submissions by counsel.
31. Before I delve into the merits or otherwise of each of the parties cases, I must begin by setting the record straight on two issues.
32. Firstly, the Defendants' counsel has annexed various documents to his submissions. Those documents include copies of Letters of Consent, Mutation Form and Transfer of Land Form. Those documents are evidence and it is not conventional to annex documentary evidence to submissions. Documentary evidence is ordinarily filed and produced by the parties during the plenary hearing so that they can be cross-examined on them by the other party. I must therefore disabuse counsel for the Defendants of the notion that documentary evidence can be introduced during submissions unless of course it is done with the consent of both parties. Luckily for the Defendants, those same documents had been



earlier filed and produced during the hearing. No prejudice has therefore been caused to the Plaintiff and the introduction of the same through submissions was therefore superfluous.

33. Secondly, the claim by the Defendants that the Plaintiff's suit is statute barred is no longer an issue for determination in this judgement. That issue was determined in favour of the Plaintiff by OMOLLO J vide her ruling dated 3rd December 2020 against which no appeal was preferred. That issue is therefore spent.
34. I consider the following issues to be germane to the determination of this dispute:
- a. Whether the registration of the 1st Defendant and subsequently the 2nd Defendant as proprietor of the suit land was obtained through fraud, misrepresentation, illegally, unprocedurally or corruptly.
 - b. Whether the 1st Defendant has proved his counter-claim.
 - c. Whether the 2nd Defendant is an innocent purchaser.
 - d. Whether the Plaintiff has proved his case or he should be evicted from the suit land.
 - e. Who should meet the costs.
35. The foundation of this dispute is essentially the land sale agreement between the Plaintiff and the 1st Defendant dated 3rd August 1984. It is what I usually refer to as "home-made agreement" as it has been drawn by the parties themselves without any legal assistance. It has not been signed by the parties but is witnessed by one AFRICANUS OKEDO (who recorded a statement as the Plaintiff's witness but did not testify) and another person whose name is not very legible but looks like ALOISE OSIGU Both counsel have submitted on the said agreement in support of their clients respective cases.
36. On behalf of the Plaintiff, MR FWAYA has made the following submissions in paragraph 9:

"The documents produced by the Plaintiff as exhibits – the agreement dated 3/8/84 clearly showed the Plaintiff sold a portion, the application for Land Control Board Consent indicated the portion designated for the 1st Defendant was 0.052 Ha, the mutation form showed L.R NO. SOUTH TESO/ANGOROMO/1601 measured 0.05Ha."

On his part, MR MATASI for the Defendants has submitted as follows in paragraphs 1, 2 and 4.

SUBPARA 1:

"That on or about 1982, the Plaintiff and the Defendant entered into a sale of land agreement of the land parcel L.R SOUTH TESO/ANGOROMO/1601 which was to be partitioned from L.R SOUTH TESO/ANGOROMO/749. The parties agreed to the sale of land at Kshs.6,200 of which 5,250 was paid."

SUBPARA 2:

"That on or about 3rd August 1984, the parties drew an agreement acknowledging the payment of Kshs.5,250 in relation to the land parcel L.R. SOUTH TESO/ANGOROMO/749 and an additional of Kshs.1,200 towards the purchase price totalling Kshs.6,200. The Defendant however made payment of Kshs.5,250 and the outstanding balance was Kshs.950/."

SUBPARA 4:

"It is these documents that the Plaintiff has relied upon to bring up his case, claiming fraud, and as such, prays that the said title be revoked and reverted back to him. That the Defendant's case is



that he physically occupied the portion of land given to him by the Defendant from 1984 to around 2007, when he moved to live next to the tarmarked road about 2 - two kilometers away. During his stay, the Defendant developed his land, planted trees and maintained the boundaries of his land. Even after he relocated to the tarmarked road, he was still cultivating the suit parcel L.R. SOUTH TESO/ ANGOROMO/1601.”

As I have stated above, the land sale agreement between the parties was “home made”. It is not elegantly drawn. However, it can give this Court a glimpse of what was in the parties mind. Clearly there was an intention to purchase and sell land. The Plaintiff in paragraph 4 of his statement says:

“I sold a plot measuring 0.052 Ha part of my land to the Defendant.”

On the other hand, the 1st Defendant in paragraph 1 of his statement said:

“My name is FRANCIS JUMA BULUMA. I bought my land in 1982 from BARASA OKEDO ALFRED (applicant) measuring 2.5 acres. There has been no dispute since I bought the land and even after surveyors surveyed the land in 1986 and marked the boundaries. I went to the Land Control Board with the applicant on two occasion on application for consent to sub-divide consent to transfer.”

It is clear from the register that the suit land was created on 13th October 1986. It therefore did not exist in 1982 when the 1st Defendant says he purchased it from the Plaintiff. It was subsequently transferred to the 2nd Defendant on 28th September 2018.

37. The suit land, as per the title deed, measures 1.1 hectares which translates to (1.1 x 2.471) 2.718 acres. It is however common ground that the Plaintiff is still in occupation of the suit land. When he was cross-examined by MR MATASI, DOUGLAS MBINGI (PW1) and who testified on behalf of the Plaintiff said:

“I was not present when the sale agreement dated 3rd April 1984 was signed. The Defendant does not live on the land in dispute and he has never lived there. My father only sold the Defendant a portion measuring 0.052 ha but the Defendant does not live there at all. I do not know about other plots there.”

38. On his part, the 1st Defendant’s son VINCENT BULUMA (DW1) said the following when cross-examined by MR FWAYA:

“I was young about 5 years old when the Plaintiff sold my father the land. So I was not privy to the sale agreement. I do not live on the suit land. My father moved away in 2000. The Plaintiff is the one now in occupation of the suit land. The Defendant moved away.”

It is also clear from the proceedings which were held by the Land Registrar on 23rd April 2014 that the Plaintiff and 1st Defendant have been having a boundary dispute. Indeed, according to the 2nd Defendant, it is this dispute that made the 1st Defendant sell him the suit land. Clearly therefore, the Plaintiff could not have sold the whole suit land to the 1st Defendant and yet continued to occupy it. His occupation at least of a portion of the suit land is what has prompted the 2nd Defendant to seek his eviction therefrom.

39. The application for consent to transfer land dated 15th August 1985 executed by the Plaintiff and his brother EMORUT OKEDO as the sellers and by the 1st Defendant as purchaser with respect to these suit land has an alteration from “3 acres” being the size of the parcel to be transferred, which has



been deleted to read “0.052 hectares.” The mutation form in respect to the original land parcel NO SOUTH TESO/ANGOROMO/749 shows that it was approximately 2.2. hectares before it’s sub-division to create the land parcels NO SOUTH TESO/ANGOROMO/1600 which was registered in the Plaintiff’s brother EMORYOT OKEDO ATABA and the land parcel NO SOUTH TESO/ANGOROMO/1601 which was registered in the name of the Plaintiff. Those documents have been certified by the Land Registrar Busia MR T. M. CHEPKWESI as true copies of the original. It is therefore rather late in the day for the 1st Defendant to plead, as he has done in paragraph 15 of his defence and counter-claim, that:

15: “The Defendant counter-claims against the Plaintiff for an order directing the County Land Registrar and the County Land Surveyor to cancel the mutation form used to sub-divide land parcel NO SOUTH TESO/ANGOROMO/749 and in it’s place carry out a fresh survey and draw a fresh mutation form by picking the existing boundaries for the sub-divided portions of land being SOUTH TESO/ANGOROMO/1600 and SOUTH TESO/ANGOROMO/1601.”

40. This Court cannot issue such an order. To do so would mean that there would be interference with the title to the land parcel NO SOUTH TESO/ANGOROMO/1600 which is the property of the Plaintiff’s brother EMORYOT OKEDO ATABA and who is not even a party in this case.
41. The fact that the Plaintiff is still in occupation of the suit land almost 40 years after the sale agreement coupled with the entries on the application for consent of Land Control Board only serve to strengthen his case that he only sold a portion measuring 0.052 hectares to the 1st Defendant and not the whole suit land.
42. The 1st Defendant’s counsel has suggested in his submissions that it is only following the onset of devolution that people started selling their properties in plots. That the Plaintiff could therefore not have sold the 1st Defendant a plot in 1982. This is only evidence from the bar. I did not hear any of the parties give such testimony. The fact however is that even in the 1980’s before devolution in 2010, nothing stopped any land owner from selling plots out of his land. Clearly therefore, the 1st Defendant was only entitled to a portion measuring 0.052 hectares out of the suit land. And as the Plaintiff has pleaded, he took advantage of the Plaintiff’s illiteracy and ignorance to transfer the whole suit land to himself rather than the 0.052 hectares. The Plaintiff has proved fraud on the part of the 1st Defendant to the standard set out in the law and reiterated in several cases including KINYANJUI KAMAU - V- GEORGE KAMAU 2015 I KLR [G & F] 742 and also VIJAY MORAJARIA -V- NANSINGH MADHUSINGH DARBAR & ANOTHER 2000 eKLR among others.
43. As to whether the 1st Defendant passed a good title to the suit land to the 2nd Defendant, it is clear that since the 1st Defendant was only entitled to 0.052 hectares, he could not have lawfully sold the whole suit land to the 2nd Defendant. Other than for the portion measuring 0.052 hectares out of the suit land and which was his lawful entitlement, the 1st Defendant basically stole the other portion of the said land. A thief has no right or interest in stolen property which he can transfer to another person. Such a transaction would be void ab initio – JANE GACHOKI GATHECA -V- PRISCILLA NYAWIRA GITUNGU & ANOTHER C.A. CIVIL APPEAL NO 343 and 345 of 2002 [2008 eKLR]. The only way the 1st Defendant could have questioned the validity of the application for consent of the Land Control Board, and which has been duly certified by the Land Registrar, would have been calling the Land Registrar himself.
44. I am not persuaded, having considered all the evidence herein, that the 1st and 2nd Defendants obtained a proper title to the suit land. The Plaintiff has proved, to my satisfaction, that the 1st and 2nd Defendant’s title was obtained through fraud and mis-representation.



45. As to whether the 1st Defendant has proved his counter-claim, he seeks orders that he has acquired the suit land by way of adverse possession and also an order directing the County Land Registrar and Surveyor to cancel the mutation form used to sub-divide the original land parcel NO SOUTH TESO/ANGOROMO/749 and to carry out fresh survey and draw fresh mutation.
46. On the issue of cancelling the mutation which was used in sub-dividing the original land parcel NO SOUTH TESO/ANGOROMO/749, I have already stated in the preceding paragraph of this judgment that that order cannot be available to the 1st Defendant as it would touch on the property of a person who is not a party in these proceedings.
47. Secondly, such an order can only be directed to the Land Registrar and Surveyor who are also not parties to this suit. They are also functus officio with regard to the sub-division of the original land parcel NO SOUTH TESO/ANGOROMO/749.
48. On the claim for adverse possession, it is common knowledge that the 1st Defendant has since sold the suit land to the 2nd Defendant. In his statement dated 29th July 2019, the 2nd Defendant has said in paragraph 4 as follows:

SUBPARA 4:

“That, I bought land L.R NO S. TESO/ANGOROMO/1601 from FRANCIS JUMA BULUMA the 1st Defendant herein after carrying out a search and verified the same to be an un-encumbered title and acquired title therein.”

And when he was cross-examined by MR FWAYA, VINCENT BULUMA (DW1), said:

“I do not live on the suit land. My father moved away in 2000. The Plaintiff is the one now in occupation of the suit land. The 1st Defendant moved elsewhere.”

A claim in adverse possession is essentially about occupying the land of another person. The 1st Defendant cannot claim an order for adverse possession for land which he does not occupy.

49. Most importantly, the registered proprietor of the suit land since 28th September 2018 is now the 2nd Defendant who is his co-Defendant. The Plaintiff is not the registered proprietor of the suit land and the 1st Defendant cannot possibly mount any counter-claim for adverse possession against the 2nd Defendant who has not filed any claim against him.
50. The 1st Defendant’s counter claim is therefore for dismissal.
51. As for the 2nd Defendant, he claims in paragraph 7 of his counter claim, is that he is a “bona fide registered proprietor” of the suit land. The term bona fide is defined in BLACK’S LAW DICTIONARY 10TH EDITION as:

“Latin in good faith”

Made in good faith; without fraud or deceit. Sincere; genuine”.

The term good faith is defined in the same Dictionary as follows:

“A state of good mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.”



In paragraph 4 of his defence, the 2nd Defendant has pleaded thus:

4: “The 2nd Defendant further in reply to paragraph 4 – 7 avers that he is a bona fide purchaser for value of L.R NO S. TESO/ANGOROM/1601”.

The term bona fide purchaser is defined in the same DICTIONARY as:

“Someone who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects or infirmities, claims, or equities against the seller title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.” Emphasis mine.

52. Although the 2nd Defendant has pleaded that he bought the suit land from the 1st Defendant, it is not lost to this Court that none of them has provided evidence by way of sale agreement showing the consideration paid e.t.c. That says a lot about the bona fides of their transaction. However, since the 1st Defendant was the registered proprietor of the suit land in 2016 when, according to the 2nd Defendant, he (1st Defendant) approached him to purchase the suit land, this Court will not wish to interrogate that transaction any further. In any event, since the suit land was then registered in the name of the 1st Defendant, it was his property and he was at liberty to even give it away to any person as a gift.
53. However, the evidence herein shows that the 2nd Defendant was clearly not a bona fide purchaser as he claims to be. He claims he did due diligence and found that the suit land had no encumbrances. That is correct as the certificate of official search and other documents show that the title to the suit land, was in the 1st defendant’s name. However, in the case of *KATENDE -V- HARIDAL & COMPANY LTD* 2008 2 E.A. 173, a Ugandan case which has been applied in our jurisdiction, it was held that:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove that:

- a. he purchased the property in good faith;
- b. he had no knowledge of the fraud;
- c. he purchased for valuable consideration;
- d. the vendors had apparent valid title;
- e. he purchased without notice of any fraud;
- f. he was not party to any fraud.” Emphasis mine

From the circumstances of this case, even if the Court shuts its eyes to the fact that there is no evidence of any valuable consideration paid by the 2nd Defendant for the suit land, he can hardly describe himself as a bona fide purchaser without notice. This is because in paragraphs 4 and 5 of his statement dated 2nd March 2023, he has stated thus:

4: “On or around 2016, the Defendant approached me to ask me to buy the parcel number S. TESO/ANGOROMO/1601.”

5: “He explained that he was having wrangles with the Plaintiff over the said parcel of land.” Emphasis mine.



The moment he became aware that the 1st Defendant and Plaintiff were having “wrangles” over the suit land, the 2nd Defendant’s antenna should have alerted him that he was purchasing a skunk. That is if indeed he paid any consideration for it. Surely his first point of call should have been to reach out to the Plaintiff and find out what those “wrangles” were all about with respect to the suit land. The fact that he did not bother to make such enquiries does not demonstrate conduct of a purchaser who was acting in “good faith”, “without actual or constructive notice of any defects” or “without notice of prior adverse claims”. If anything, the conduct between the two Defendants with respect to the transfer of the suit land is further proof that the 1st Defendant, being fully aware that he had obtained the registration of the suit land fraudulently, wanted to be as far away from it as possible since he knew that he had been caught with his hand in the cookie jar.

54. The 2nd Defendant cannot therefore benefit from the doctrine of bona fide purchaser.
55. His counter-claim is equally for dismissal.
56. It is clear from all the above that the 1st Defendant obtained registration of the suit land fraudulently. He was only entitled to a portion measuring 0.052 hectares which the Plaintiff had conceded. He has since, however, relinquished the whole suit land to the 2nd Defendant and even if this Court was minded to give unto Caesar, what belongs to Caesar, this Court cannot give him the 0.052 hectares because he voluntarily gave it away to the 2nd Defendant. It is no longer his land. Hopefully, he has now learnt that crime does not pay.
57. Since the 1st Defendant obtained the suit land through fraud, he had nothing to transfer to the 2nd Defendant. The Plaintiff’s claim has been proved and he is entitled to the orders sought.
58. Ultimately therefore, and having considered all the evidence herein, there shall be judgment for the Plaintiff against the Defendants jointly and severally in the following terms:
 1. The 2nd Defendant’s registration as proprietor of the land parcel NO SOUTH TESO/ANGOROMO/1601 is cancelled and the same to be restored to the Plaintiff.
 2. An order of permanent injunction is hereby issued restraining the 1st and 2nd Defendants, their families, agents, personal representatives or any other person claiming through them from interfering in any manner with the Plaintiff’s occupation and use of the land parcel NO SOUTH TESO/ANGOROMO/1601.
 3. The 1st Defendant’s counter-claim is dismissed.
 4. The 2nd Defendant’s counter-claim is dismissed.
 5. The 1st and 2nd Defendants shall jointly and severally meet the Plaintiff’s costs of his suit and of the dismissed counter claims.

BOAZ N. OLAO

JUDGE

12TH OCTOBER 2023

Judgment dated, signed and delivered by way of electronic mail on this 12th day of October 2023 and with notice to the parties.

Right of Appeal.

BOAZ N. OLAO



JUDGE

12TH OCTOBER 2023

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