

- b) An order directing the 1st and 2nd Defendants to provide an account of interest and monies paid by the Plaintiff to service his mortgage on the Muyenga Property and if in excess refund the excess thereto.
- c) That the 1st Defendant hands over the Plaintiff's certificate of title to him.

He prays for an order directing the Commissioner for Land Registration to cancel and reverse all entries and instruments of transfer and mortgages affecting the Muyenga Property entered in favour of the 1st, 2nd and 4th Defendants, and thereafter to transfer it in the Plaintiff's names. In addition the Plaintiff claims general, exemplary and aggravated damages and costs of the suit.

The background to the suit as discerned from the facts is that in April 2012 the 2nd Defendant who was well known to the Plaintiff interested him in the purchase of a piece of land in Makindye, which I refer hereinafter as the Makindye Property.

Lacking money to purchase the same, the 2nd Defendant introduced him to the 1st Defendant Bank. The 1st Defendant offered the Plaintiff a mortgage to enable him purchase the Makindye Property for UGX 210,000,000/=. The Plaintiff then executed a mortgage in favour of the 1st Defendant.

That having been done, the Makindye Property was transferred into the Plaintiff's names.

In July 2013 after the Plaintiff had paid to the 1st Defendant UGX 98,390,868/= the 1st and 2nd Defendant again approached the Plaintiff and interested him in the Muyenga Property which was at that time owned by one Amina Kizito Miriam, who is also PW2 in the case.

A set off would be done in such a way that Amina Kizito would take over the Makindye Property. To pay for the Muyenga Property, the 1st Defendant combined balance unpaid on the Makindye Property and added the cost of the Muyenga Property.

So by letter of offer **Exhibit P2** dated 27th July 2013 the 1st Defendant availed UGX 380 million which comprised the balance on first loan and cost of Muyenga.

This loan was approved subject to the titles of securities, namely Makindye and Muyenga, proving satisfactory.

The loan was to be “utilized for purchase of Residential House at Plot No.4987 and 1098, Kyadondo called the Muyenga Property.”

This loan facility would first be secured by a first legal charge over Plot 547, Block 261 Makindye “with all present and future developments at that time registered in the names of Charles Angina.”

Clause 7 of the Offer letter also included the property the Plaintiff intended to purchase with the loan offered. These properties were listed in clause 7 (b) as;

“The first legal charge over the following Mailo property located at Plot No.4987 Kyadondo Block 244, Kampala District, together with all present and future developments thereon registered in the names of Amina Kizito Miriam to be transferred in the names of Angina Charles and changed to the DTBU for shs. 500,000,000/=.”

Under clause 7 (c) of the offer letter, the Plaintiff was to execute a legal charge over the following;

“Malo Property located at Plot No.1098 Kyadondo Block 244, Kampala District with all present and future developments thereon registered in the names of Amina Kizito Mariam to be transferred in the names of Angina Charles.....”

Under Clause 7 (d) Ariong Joseph 2nd Defendant guaranteed the loan as a personal guarantee in support of the borrowing.

All the legal documents pertaining to the borrowings were to be prepared by the 1st Defendant. The Plaintiff claims that he diligently fulfilled his part by servicing the loan in a timely manner.

That he was however shocked when he later learnt that the 2nd Defendant had transferred the property to himself and subsequently sold it and transferred it to the 3rd Defendant.

In defence the 1st Defendant admitted that on the 14th April 2012 the Plaintiff indeed applied for and obtained the first loan for purchase of the Makindye Property.

The 1st Defendant also conceded that the Plaintiff subsequently on 18th July 2013 applied for and got a second loan amounting to UGX 380,000,00/= for purchase of property comprised in Kyadondo Block 244 Plots 2987 and 1098 at Kabalagala known as the Muyenga Property.

This second term loan was to be secured by the already existing security of the Makindye Property on which would be added the Muyenga Property on purchase. The foregoing security was further buttressed by the personal guarantee of the 2nd Defendant. The

guarantee is provided for in clause 7 (d) of the facility letter **Exhibit P2** in the words;

“Personal guarantee of Mr. Ariong Joseph in support of the borrowings.”

The agreement of sale was however written in the names of the 2nd Defendant. The reason for this as given by PW2 the vendor is because the Plaintiff was not readily available.

Interestingly while the offer letter referred to the 2nd Defendant as guarantor, the mortgage that issued subsequently referred to him as the mortgagor and the Plaintiff as the Principal Debtor.

The 1st Defendant also stated that it was clear from the very start that the Plaintiff was the purchaser.

The 1st Defendant claimed that eventually the Plaintiff defaulted in servicing his loan and so he agreed with the 2nd Defendant, wherein the latter applied for UGX 850,000,000/= which was granted on 8th December 2014. UGX 442,678,563/= of the 2nd Defendant's loan was used to pay off the balance on the Plaintiffs UGX 380,000,000/= for Muyenga and UGX 210,000,000/= loan for the Makindye Property.

The 1st Defendant also claimed that the 2nd Defendant subsequently transferred the Muyenga Property into his own names and sold it to the 3rd Defendant.

The 1st Defendant denied being involved in the sale between 2nd and 3rd Defendant.

The 2nd Defendant on his part denied liability. He said the Plaintiff was a person well known to him and had requested that he (2nd

Defendant) guarantees a loan of 380,000,000/= which he accepted to do.

That for security reasons the Muyenga Property was purchased and mortgaged in the 2nd Defendant's names. That the Plaintiff failed to service the loan he had obtained from the 1st Defendant, and the 2nd Defendant had to make several payments on his behalf totaling UGX 573,578,563/=.

That the 2nd Defendant made several demands for payment but the Plaintiff did not pay back and so the 2nd Defendant being the registered proprietor sold the Muyenga Property to the 3rd Defendant. That the 2nd Defendant sold it to recover the money he had paid on the Plaintiff's behalf.

The 2nd Defendant also averred that he was subsequently interested in reacquiring the Property. That after a meeting between them and the 1st Defendant, the Property and liabilities were transferred back to the Plaintiff.

The 3rd Defendant on his part denied liability. He stated that he did not know the business transactions between the Plaintiff, 1st Defendant and 2nd Defendant. He stated that he honestly purchased the Muyenga Property through an asset financing facility which the 1st Defendant offered.

He made a search and found that the property was registered in the 2nd Defendant's names with no encumbrances. That he did not know of the Plaintiff's interest in the Property.

That after the purchase the 2nd Defendant offered him a piece of land in Masaka Plot 9 Block 781 Buddu situate at Malembo in return of the Muyenga land he had earlier bought from him.

That with the approval of the 1st Defendant, the liability on the Muyenga land was swapped with and transferred onto the Masaka land. Thereafter the 3rd Defendant transferred the Muyenga Property to the Plaintiff.

At the Scheduling Conference the parties agreed to the following issues for resolution.

- a) Whether the 1st, 2nd and 3rd Defendants jointly and severally acted fraudulently and illegally to deprive the Plaintiff of his land and property comprised in Kyadondo Block 244 Plots 1098 and 4987 at Muyenga.
- b) Whether the mortgage and deeds of sale executed between the 1st, 2nd and 3rd Defendants jointly and severally affecting the Muyenga Property were illegal, null and void.
- c) Whether the 3rd Defendant acted fraudulently when he transferred the property into the Plaintiff's names.
- d) Remedies.

Resolution:

Did the 1st, 2nd and 3rd Defendants act fraudulently and illegally to deprive the Plaintiff of the Muyenga Property.

It is important at this point to find out who purchased the Muyenga Property.

The background to the purchase is clearly set out earlier in this judgment.

The Plaintiff was interested in buying the Makindye Property by the 2nd Defendant. The 2nd Defendant took the Plaintiff and introduced him to the 1st Defendant guaranteeing the loan, the 1st Defendant lent the Plaintiff 210 million with which he paid for the Makindye Property and was registered as the owner.

Later the 2nd Defendant again advised the Plaintiff to buy the Muyenga Property. The Plaintiff did not have enough money so he again got a loan from the 1st Defendant. This loan was also guaranteed by the 2nd Defendant.

What the foregoing means is that the person who bought the Muyenga Property was the Plaintiff. Also going by the offer letter the Plaintiff's name was to be entered on the Muyenga Property certificate of title on execution of the documents.

The other piece of evidence that points at the Plaintiff as the purchaser is the evidence of PW2 Mariam Amina who was the original owner of the Muyenga Property.

She told court that she was the original owner of the Muyenga Property and she sold it to the Plaintiff.

She further stated that the 2nd Defendant told her that he could sign the agreement on behalf of the Plaintiff and that believing what he said she signed the Sale Agreement.

She further stated that the 1st Defendant was aware of the swap of property because she even gave the Plaintiff the money to pay PW2's loan with Grofin (U) Ltd which then released the Makindye Property title so that PW2 would take over.

She further stated that on top of the Makindye Property and clearing her mortgage, the Plaintiff also paid her a cash top up which would be delivered to her by the 2nd Defendant.

The release of certificates of Muyenga title was made to the 1st Defendant. It was addressed to the Head Corporate Banking, Diamond Trust Bank (U) Ltd, for the attention of Kelan Engineer. I reproduce the forwarding letter.

“RE: MS. MARIAM AMINA KIZITO- DISCHARGE OF MORTGAGE

Reference is made to our letter dated 29 July 2013 on the above subject. We herewith endorse:

a) The original certificate of Titles comprised in-

1) Kyadondo Block 244 Plot 4987 Land at Muyenga in the names of Amina Kizito Mariam; and

2) Kyadondo Block 244 Plot 1098 land at Muyenga in the names of Amina Kizito Mariam.

*b) Four copies of the Release of Mortgage kindly acknowledge receipt of the Duplicate copy of this letter.” **Exhibit P3.***

The lawyers Ms. Sebalu & Lule who forwarded the certificates of file were paid from the Plaintiff’s account in legal fees.

The receipt of the certificate of Titles of the Muyenga land prompted the release of the Makindye land to PW2. The foregoing is clear from annexure to the Plaintiff’s witness statement. Releasing the Makindye land in exchange of the Muyenga land as security the 1st Defendant wrote to the Plaintiff;

“Dear Sir,

RE: TITLE DEED FOR PROPERTY COMPRISED IN BLOCK 268 PLOT 547 KYADONDO LAND AT LUKULI IN THE NAMES OF CHARLES ANGINA.

Reference is made to the above property which was provided as security to Diamond Trust Bank by the registered proprietor. In line with the fact that the said property has been sold off by the registered proprietor and the remaining security being adequate to cover your exposure with Diamond Trust Bank (U) Ltd. Please find your above mentioned security and the accompanying release of mortgage.....”

The security referred to as being adequate was the Muyenga Property.

The 1st Defendant's letter shows that she was an active participant in the whole transaction. She knew that the Makindye Property belonged to the Plaintiff. She played a role in the exchange of property between the Plaintiff and Amina. She credited the Plaintiff's account enabling him to pay of Grofin who was Amina's Creditor so as to release the Muyenga Titles. The 1st Defendant is also the one who received the Muyenga Titles from Grofin through M/s Sebalu & Lule. They are the ones that retained them as security for the Plaintiff's debt.

They are therefore the ones, well knowing that it's the money from the Plaintiff's account that paid for it, who went ahead and handed the title to the 2nd Defendant who in turn using documents signed by Amina, caused a transfer into his names and subsequently sold the property to the 3rd Defendant.

Other pieces of evidence that show it was the Plaintiff who bought the Muyenga Property are **Exhibit D1** and **Exhibit P2** the offer letter.

By **Exhibit D1** dated 18th July 2013 the Plaintiff applied to 1st Defendant for a loan of shs. 380,000,000/= for purchase of land situate at Block 244 Plot 4987 and 1098 Kabalagala which was the Muyenga Property. The loan was to be secured by the Makindye Property and the Muyenga Property which he intended to buy.

On the 27th July 2013 the 1st Defendant granted the Plaintiff's request. The term loan would be utilized to purchase Residential House at Plot 4987 and 1098, Kyadondo, the Muyenga Property.

Lastly the 2nd Defendant also under cross examination conceded that the sale agreement told a lie when it referred to him as a purchaser. Answering counsel for Plaintiff on being asked whether he was the purchaser, 2nd Defendant replied;

"My Lord I am not the purchaser. I am not the owner."

He further stated that even the transfer of the Muyenga Property into his names was done by the 1st Defendant.

The 2nd Defendant said;

"It came to light that eventually the property was transferred to my names but not by me. Most likely it was transferred by the Bank."

Asked whether the Plaintiff knew about the transfer the 2nd Defendant replied;

"This was done internally with the Bank. These changes were in the Bank and we were not privy to these documents. So I do not know as he was running his account whether he came to know about."

Lastly he explained that the transfer into his names was just a step to enable the lending of the money to the Plaintiff. What is interesting is that knowing very well that the property was not his, he went ahead and sold it to the 3rd Defendant. Worse still he did that without telling the Plaintiff.

Again what is interesting is that the 1st Defendant who knew very well that the Muyenga Property belonged to the Plaintiff whom she had lent money to purchase it, allowed the 2nd Defendant to pick the Certificate of Title from her vaults and sold the property to the 3rd Defendant.

Another thing that is surprising, the 2nd Defendant told court that he sold the Plaintiff's property because, he had defaulted and the 1st Defendant had instead removed money from Wash and Wills to pay.

But it is not Wash and Wills which sold the Muyenga Property to the 3rd Defendant it is the 2nd Defendant. Even when he tried to recover the money which was allegedly paid on behalf of the Plaintiff, the 2nd Defendant appears as the Plaintiff. This is clearly seen in the plaint of suit 999 of 2019 in which the Plaintiff is Ariong Joseph Odea instead of Wash and Wills.

By the foregoing the 2nd Defendant was claiming money that was not his. By selling the Muyenga Property he sold property he knew he did not own at all.

Turning to the 1st Defendant, by enabling the 2nd Defendant to transfer Muyenga Property into his names, she was committing an illegality. More so by standing by when the 2nd Defendant transferred it into the 3rd Defendants names the 1st Defendant failed in its duty as a bank.

Worse still the 1st Defendant well aware that the Property did not belong to the 2nd Defendant, still went ahead to provide a loan to the 3rd Defendant to purchase it from the 2nd Defendant.

The Plaintiff alleged that the foregoing transactions by the 1st and 2nd Defendants amounted to fraud.

What constitutes fraud was ably described in **Sekungu vs. Yakobo SCCA 35 of 2006**. Their Lordships observed;

“Fraud includes all acts, omissions and concealments which include a breach of legal or equitable duty, trust or confidence.

It implies a willful act on the part of anyone, whereby another is sought to be deprived by illegal or inequitable means of what he is entitled to.”

Dealing with fraud in **Frederick J.K. Zabwwe v. Orient** the learned Justice of the Supreme Court described it in these words;

“to act with intent to defraud’ means to act willfully and with specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.”

In the instant case the Muyenga titles were forwarded to the 1st Defendant after debiting the Plaintiff’s account in favour of Grofin the Creditor who originally held them.

The 1st Defendant in an offer letter **Exhibit P.2** was obliged to have them registered in the Plaintiff’s names to whom she had lent money

to pay Grofin. She knew that the Muyenga Property now belonged to the Plaintiff.

The 2nd Defendant was not only aware of this position, but had been an active participant having even guaranteed the loan.

The 2nd Defendant concedes that the property was transferred into his names. He however denied playing any part in the process of transfer.

I do not believe the 2nd Defendant in this because the transfer must have required his signature on one document or the other. I can in

the least say he was not being truthful when he said the 1st Defendant had him registered on the Muyenga Certificates without his

knowledge. Whatever the case their action was intended to deceive and cheat the Plaintiff. The transfer of the property into the 2nd

Defendant's names yet it had been paid for by the Plaintiff amounted to cheating and caused financial loss to the latter. The fact that the

2nd Defendant sold the same property to the 3rd Defendant, brought a financial gain to the 2nd Defendant. This transaction in which the 1st

Defendant played a central role by availing the 3rd Defendant the funds for its purchase also brought financial gain to her.

The fraud in their action is seen in their omissions to inform the Plaintiff of what the duo was doing. Their concealment of the

transaction from the Plaintiff certainly amounted to a breach of a legal duty, trust and confidence.

The transaction by the 1st and 2nd Defendants was a willful act which sought to deprive the Plaintiff by illegal or to say the least inequitable

means what he was entitled to.

1st and 2nd Defendants' actions completely fell within the description of fraud and my conclusion is that the duo were fraudulent in their action.

Before I leave this issue I would like to examine and subject the Bank through the lens of the bank's duty to its customers. There is an overriding duty imposed on the bank to act in the face of dishonesty. The bank was under a duty to refrain from executing an order as long as it was on notice that it would be furthering a dishonest function. ***Barclays Bank vs. Quincecare Ltd and Another (1992) ALL ER 331.***

In the instant case the 1st Defendant was aware that the Muyenga Property belonged to the Plaintiff. That notwithstanding she went ahead to facilitate the 2nd Defendant, by releasing the title to him so that he could transfer the land into his names.

The 1st Defendant did not stop there but also went ahead to facilitate the 3rd Defendant to buy the property from the 2nd Defendant.

Whether the mortgage is illegal was clearly conceded to by DW1 on behalf of the 1st Defendant. She stated that the document spoke a lie about itself.

This I must say arises from the fact that the sale agreement in the names of the 2nd Defendant was obtained by trick in that the 2nd Defendant misrepresented to PW2 that the Plaintiff had said it be written in his name. But even if the Plaintiff had allowed him to sign the agreement, the 1st Defendant knew that the 2nd Defendant was not the owner of the land. For those reasons the 2nd Defendant could not sign as the mortgagor or as proprietor of the property. He had no interest in the property which breached Section 3 of the Mortgage Act.

Moreover the mortgage documents were signed before he was even registered as owner.

The mortgage document therefore told a lie and was invalid because it was contrary to the Mortgage Act. All acts based on it thereafter were null and void; ***General Parts (U) Ltd versus Non-Performing Assets Recovery Trust CA 5 of 1999.***

The 1st Defendant can therefore not rely on the fact that the Plaintiff also signed the document. It was incumbent upon the 1st Defendant to advise him of the danger of signing a mortgage document in which the 2nd Defendant referred to himself as owner of the property whereas not. It was indeed the 1st Defendant's obligation to advise the Plaintiff to seek independent advise. This she did not. They ended up signing a mortgage which was no mortgage. That being the case the mortgage and subsequent deeds of sale in respect of the Muyenga Property were illegal, null and void.

On whether the 3rd Defendant acted fraudulently when he transferred the property into the Plaintiff's name, the Plaintiff told court that when he discovered that the property had been transferred first in the 2nd Defendant's and then into the 3rd Defendant's names, he approached the 2nd Defendant who told him that he had acted the way he did because the Plaintiff had defaulted in servicing the loan.

I found this unusual because the Plaintiff would have been notified. The notification in a matter that concerns a mortgage, must be written because it involves time spans. Neither the 1st nor 2nd Defendant produced proof of such notice. There is therefore no proof that the Plaintiff defaulted in servicing the loan. The absence of notice also strengthens the Plaintiff's averment that he used to pay through the 2nd Defendant.

The Plaintiff further stated that when the 2nd Defendant failed to satisfy him on why he had sold the property, he went to the 1st Defendant who called the 2nd Defendant. That in the meeting, the 1st and 2nd Defendant's apologized and promised to transfer the property back to the Plaintiff.

That later the 3rd Defendant signed transfer form for the Muyenga land after the Plaintiff had filed this suit.

A statement of search **Exhibit JK** shows that the Plaintiff was registered as proprietor on 14th February 2018 at 2:45p.m about nine days after the filling of this suit.

The Plaintiff claims that the transfer was fraudulent because there was no Masaka land swap as claimed by the 2nd and 3rd Defendant. In this he relied on a statement of search dated 18th December 2018 which showed that the Masaka land Leasehold Register Volume 3201 Folio 11 land at Malembo Bukoto Plot 9 was never transferred to the 3rd Defendant. He also stated that while the 3rd Defendant contended that the Plaintiff had paid for the return of Muyenga property, it was not the case.

The 3rd Defendant on his part stated that the 2nd Defendant is the one who sold the Muyenga Property to him. That he made a search and found it registered in the 2nd Defendant's names. There were no encumbrances or anything to show that it belonged to the Plaintiff. That the transaction was honest and regular through an asset financing facility offered by the 1st Defendant.

The 3rd Defendant contended that when the 2nd Defendant offered him the Masaka Property, in exchange of Muyenga Property, he with the approval of the 1st Defendant made a swap of Muyenga and Masaka Property.

From the evidence on record, the 3rd Defendant was offered the Muyenga Property by a proprietor who had a title in his names. He proceeded to make a search which indicated that Muyenga Property belonged to the 2nd Defendant. There is nothing on record to indicate that he knew of the illegal transactions that had taken place before the 2nd Defendant was registered. He in my view was an honest purchaser who after due diligence obtained an asset financing facility from the 1st Defendant and paid for the property. In my view as far as the buying was concerned he committed no fraud.

The issue however is whether in his sell and transfer of Muyenga he remained free of fraud.

The 3rd Defendant told court that he transferred the Muyenga Property to the Plaintiff. The land title **Exhibit D12** shows that the 3rd Defendant transferred Muyenga to the Plaintiff on the 14th February 2018 at 2:54p.m.

What is in issue is how it was transferred. Was it a gift? Did the Plaintiff pay for it? **Exhibit P10** upon which the 3rd Defendant transferred the Muyenga Property to the Plaintiff, shows that the 3rd Defendant;

“Opolot Isiagi Patrick son of Sylvanus Isiagi of Inyakol clan being the registered proprietor of the land comprised in the above title in consideration of the sum of shillings 360,000,000/= paid to me by the purchaser on or before the execution of these presents the receipt thereof I hereby acknowledge DO THEREBY TRANSFER all that piece of land comprised in the above title which is delineated to the plan annexed hereto and thereon edged in red and now

plot number..... to Charles Angina herein called the purchaser.....”

This transfer form suggests that the Plaintiff was a buyer who bought the Property from the 3rd Defendant. It also suggests that the Plaintiff paid shs. 360,000,000/= to the 3rd Defendant.

It is clear however from the evidence that the 2nd Defendant due to pressure from the real owner approached the 3rd Defendant and convinced him to relinquish the Plaintiff's property. This position is not disputed by the Defendants. The transfer form therefore told a lie.

What then does giving a figure of purchase when there was no exchange of money amount to?

There was no money consideration between the Plaintiff and 3rd Defendant. Under such circumstances section 92 (1) of the Registration of Titles Act would come into play. It provides;

“1. The proprietor of land or of a lease or mortgage or any estate, right or interest therein respectively may transfer the same by a transfer in one of the forms in the Seventh Schedule of this Act; but where the consideration for a transfer does not consist of money, the words “the sum of” in the forms of transfer in that schedule shall not be used to describe the consideration, but the true consideration shall be concisely stated.”

In the present case the contract between the 1st, 2nd and 3rd Defendants was that Muyenga land be transferred into the names of the Plaintiff in exchange of the 2nd Defendant's Masaka Property. The Masaka Property was therefore the consideration for the 3rd Defendant to give up his interest in the Muyenga Property. It follows that the

transfer of Muyenga was not a purchase (cash) by the Plaintiff. It is the Masaka Property that would have been indicated in the transfer form as the consideration.

The false declaration that the Plaintiff had paid money to the 3rd Defendant contravened Section 92 (1) of the RTA. What the 3rd Defendant did by inserting into the form a consideration that never was, was “*tantamount to concealment of the true consideration for the transaction and amounts to fraud*”; ***Betty Kizito versus David Kizito and 7 Others SCCA 8 of 2018.***

Although the 3rd Defendant had got the land honestly, his transfer of the same based on false statements in respect of the consideration amounted to fraud.

The transfer of Muyenga into the Plaintiff's names being fraudulent, rendered the transfer void for fraud.

Consequently although Muyenga Property belongs to the Plaintiff, its registration through the means the 3rd, 2nd and 1st Defendant adopted renders it void. The title thus ought to be cancelled and registered in the Plaintiff's names following the provisions set out in the Registration of Titles Act and in particular Section 92 (1).

The Plaintiff made several prayers. The first one being a declaration that the 1st Defendant had acted in complete breach of its statutory mandate, obligation, Mortgage Act and the Financial Institutions Act. This Court has found earlier in this Judgment that the 1st Defendant irregularly executed a mortgage where the mortgagor was not the owner of the land.

It has also been found that the 1st Defendant did this well knowing the lack of proprietorship by the 2nd Defendant who was the mortgagor in

this case. The Court also found that the 1st Defendant in giving away certificates of title of the Muyenga land facilitating the 2nd Defendant to register and have his names entered on the certificate of title as proprietor and subsequently providing the money with which the 3rd Defendant paid for the same land grossly acted contrary to the provisions of the Financial Institutions Act and the banker-customer relationship which obliged her to ensure the security of documents deposited with her and protection of customer's interest.

The Plaintiff also prayed that Court declares that the 1st, 2nd and 3rd Defendants jointly and severally acted fraudulently and illegally deprived the Plaintiff of his land and property comprised in Kyadondo Block 244 Plots 1098 and 4987 at Muyenga.

This court found, earlier in this judgment that the 1st Defendant as the custodian of the certificate of title of the Muyenga property which she received from Grofin Limited's Advocates to keep and secure on behalf of the Plaintiff wrongly released them to the 2nd Defendant well knowing that the land did not belong to the 2nd Defendant. For the 2nd Defendant to then proceed, assisted by the 1st Defendant and cause a transfer of the said Muyenga land by registering his name on Title as proprietor also acted in breach of the trust bestowed upon him by the Plaintiff.

The 1st and 2nd Defendants did this without permission from the Plaintiff. Their actions amounted to depriving the Plaintiff of Muyenga property. Their actions resulted into a financial benefit to both of them in as far as the 2nd Defendant sold the land to the 3rd Defendant and in as far as the 1st Defendant by using the same property availed an asset facility to the 3rd Defendant thereby benefiting through interest, obtained from the servicing of the loan by the 3rd Defendant.

This amounted to fraud.

In this they committed a breach of a legal duty. They acted willfully with intention to deprive by illegal means the Plaintiff of the property he was entitled to.

This action by the Plaintiff amounted to deceiving and cheating not only the Plaintiff but also the 3rd Defendant who believed in the proprietorship of the 2nd Defendant who was fully supported by the 1st Defendant.

The final result was that the 1st and 2nd Defendant caused a financial loss to the Plaintiff and directly caused a financial gain to themselves. The activities mentioned above completely fall within the four corners of the definition of fraud and it is my finding and declaration that the 1st and 2nd Defendants acted fraudulently and illegally depriving the Plaintiff of his Muyenga property.

As for the 3rd Defendant this court has earlier found that the Plaintiff has failed to adduce evidence that at the time of the purchase, the 3rd Defendant knew of the illegalities that were committed by the 1st and 2nd Defendants. The 3rd Defendant made a search and the search clearly indicated that the land belonged to the 2nd Defendant with no encumbrances.

It is therefore my finding that the 3rd Defendant having bought the land honestly believing that it belonged to the 2nd Defendant he neither acted fraudulently nor intended to deprive any property from the Plaintiff.

Since this court has found that the mortgages and deeds of sale were illegal all the transactions based on those illegal documents including the sales and transfers were illegal, null and void.

Having found that the Plaintiff was illegally deprived of his certificate to the Muyenga Property, the 1st Defendant who received it from Messrs Sebalu and Lule Advocates is directed to hand it over to the Plaintiff. Considering that all the entries beginning from entry of the 2nd Defendant to that of the 3rd Defendant were illegal, null and void and considering that from the evidence of PW1 the Plaintiff is no longer indebted to the 1st Defendant, this court directs the Commissioner for Land Registration to cancel and reverse all entries and instruments of transfers and mortgages affecting the Muyenga land entered in favour of the 1st, 2nd and 3rd Defendants and thereafter transfer the Muyenga Property into the Plaintiff's names.

The Plaintiff also prayed for general damages. The fundamental rationale for the award of General damages was well illustrated in ***Dharamshi versus Karsam [1974] EA***, that such damages are awarded to fulfill the common law remedy of *restitution in integrum* which means that the Plaintiff has to be restored as nearly as possible to a position he or she would have been had the breach complained of not occurred.

This means that general damages are compensatory in nature and are intended to make good to the aggrieved party as far as money can do for the losses he or she has suffered as the natural result of the wrong done to him or her, ***Okello James versus Attorney General HCCS No. 574/2003***.

When considering general damages the court may take into account factors such as malice or arrogance on the part of the Defendant and the injury suffered by the Plaintiff for example by causing him stress; ***Obong versus Kisumu Council [1971] EA at pg 91***.

The amount depends on the discretion of the court based on the circumstances surrounding a particular case; ***Crown Beverages Ltd versus Sendu Edward SCCA No. 1 of 2005.***

In the instant case the 1st Defendant interested the Plaintiff in both the Makindye and Muyenga Property. He played the role of the good and supporting brother and introduced him to the 1st Defendant who availed the necessary facilitation in respect of both properties.

The Plaintiff relied on them, little did he know that they would turn round, transfer his properties into the 2nd Defendant's name and sell it to the 3rd Defendant. The Plaintiff was deprived of the ownership of his property. To cover this up the 2nd Defendant claimed that the Plaintiff had not fully paid his loan, but as earlier seen no such notification took place.

This resulted into unnecessary court proceedings which were indeed an inconvenience to the Plaintiff. As it is he could not use that property to raise money or even receive rent when it was no longer his but that of the 3rd Defendant.

The act of the 1st and 2nd Defendant was highly irregular and in respect of the 1st Defendant it is surprising that a bank of that repute could go around playing games on the intelligence of its customers by lending them money to buy property and then giving the property away to some other party.

For those reasons I find that the Plaintiff suffered damages which ought to be atoned. Considering all the circumstances surrounding this case I find that the 1st and 2nd Defendants are liable in damages.

Taking into account the activities of both I would award the Plaintiff general damages of 300 million shillings, apportioning the liability the 1st Defendant bearing $\frac{2}{3}$ and the 2nd Defendant bearing $\frac{1}{3}$.

The Plaintiff also prayed for exemplary damages. Simply put these mean damages for examples' sake. They represent a sum of money of a penal nature in addition to the compensatory damages given for the pecuniary or physical and mental suffering; ***Butterworth versus Butterworth & Englefield [1920] Pg 126.***

As considered by the House of Lords in ***Rookes versus Banard [1964] ALLER 367 at 410, 411*** exemplary damages are to be awarded where there has been oppressive or arbitrary conduct.

Secondly, where the Defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the Plaintiff or where some law for the time being in force authorizes the award of exemplary damages.

In the instant case the 1st Defendant acted with impunity. She was supposed to safeguard the Plaintiff's relationship with her. She was supposed to protect the Plaintiff's documents from people who could put them to unlawful and unauthorized use. In this the 1st Defendant failed.

She let them out to the 2nd Defendant and financed their movement to the 3rd Defendant. It was a complete breach of her fiduciary relationship with the Plaintiff. The conduct of the 1st Defendant raises a lot of question as to how safe their customers' money and property is.

As for the 2nd Defendant, he was trusted by the Plaintiff, he was even a guarantor to the Plaintiff's loan facilities. In all he acted as if he

wished the Plaintiff success. In the end however he turned round, took the property, transferred it to himself and sold it. These acts of impunity cannot be allowed in the banking world.

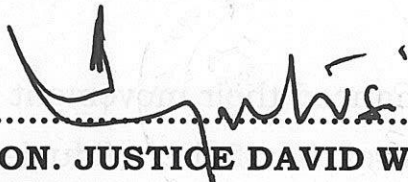
The two Defendants reaped from properties that were not theirs. Considering all this, I find this a fit and proper case wherein exemplary damages should be awarded jointly and severally against the 1st and 2nd Defendant.

Taking all circumstances into account, I award UGX 100,000,000/= against the 1st and 2nd Defendant.

All the monetary awards under the heads of General and exemplary damages will attract interest of 10% pa from date of judgment till payment in full.

The 1st and 2nd Defendants shall pay the costs of the suit.

Dated at Kampala this.....^{05th}.....day of^{May}.....2021.


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HON. JUSTICE DAVID WANGUTUSI
JUDGE