THE EFFECT OF FRAUD ON LAND DEALINGS: A CASE STUDY OF WAKISO DISTRICT IN UGANDA

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DECLARATION

I, **AMUTUHAIRE DOROTHY** do hereby declare that this dissertation is my original work and has, to the best of my knowledge, not been presented or published or submitted for a similar or any award at the Law Development Centre or any other institution.

Dated this …………day of …………………..2024.

DEDICATION

This research is dedicated to my beloved family most especially **Mr.& Mrs. Aloysious Natwijuka Baryeza.** All I can say is thank you for everything and words alone cannot express how grateful I am. To my best friend **Mr. Comrade Nuwandinda**, thank you for the love and support through this academic struggle, importantly those prayers you made, I do not take them for granted. To my inspirational friend **Sharon Nakazibwe**, thank you for the motivation, advise and encouragement. I love and cherish you all. May the good God bless you for me.

CERTIFICATION

I certify that this work is an initiative of **AMUTUHAIRE DOROTHY** and it has been done under my supervision. It suits the stands of a fully recommended research paper by the Legal Learning Institution as per the rules governing a research paper and are sane as a partial fulfillment for the award of a Bachelor's Degree of Laws of Uganda Christian University, Mukono.

Ms. MIRIAM ACHIENG

(SUPERVISOR)

This …………day of………………...2024

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Signature.

ACKNOWLEDGEMENT

I would like to extend my indebted gratitude in all humbleness and gratefulness to the Almighty God for His unconditional love and bringing me this far, for He has greater plans for me.

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ABSTRACT

This research evaluated critically the effect of fraud on land dealings under section 77 of the registration of titles act cap 230. Therefore, this study aimed at discussing the impact of Land Information System and the different kinds of fraudulent dealings in Land matters, the legal effect of fraud in land dealings and the challenges and controversies between the law and the adopted mechanisms to fight fraud. The study adopted the doctrinal research method. This was done via an analysis of various laws and policies on land rights, dealings and possession in Uganda, international instruments on fraud, registration and transfer of title and writings of highly qualified publicists on the subject matter of this study. Parties have maneuvered and hidden behind the curtains of law like in instances where purchasers that were part of the fraud come to courts of law and plead as bona fide purchasers for value without notice. Where court has not been, it now becomes challenging and hard for the judicial officers to judiciously exercise their powers equitably. The study concluded that land transfer is one of the most contested issues in Uganda. In the wake of development strategies in the country, the power to control and to use land in Uganda is seen as an impetus to investors for both agricultural and industrial development. The study recommended that finalization of the land policy, the land policy should be finalized and new legislation based on it should be passed to implement it. As noted above, the government has been developing a new land policy for almost seven years.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1Introduction

This study aimed at assessing the effect of fraud on land dealings, a case study of Wakiso district in Uganda. Fraud has been defined 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. According to **MugambwaJ.**[2], fraud is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury. Fraud has also been defined to cover dishonest dealings in land such as depriving a purchaser for value in occupation of the land of his unregistered interest. It is well settled that fraud means the actual or some act of dishonesty. So literally, fraud refers to any dishonest act that is intended to deprive another person of their interest in land through.

The Supreme Court case of **David Sejjaka versus Rebecca Musoke**[3]emphasized that, ***"fraud is fraud, and that includes transactions where the purchaser tries to get away with paying less tax, or even none, than is due to the government.''*** Parties have procured a

[2]*(2002) Principles of Land Law in Uganda, Kampala, Fountain Publishers.*
[3]*[1992] KALR No. 12/1995*

lot of dealings on land with an intention of either illegally acquiring title on land, or unscrupulously evading government tax. Others pay less of the required consideration and titles have been passed wherein ownership is transferred onto third parties-who are in most instances oblivious to the fraud. [4]Cited with approval, the court definition of fraud in **Waimiha saw milling company Ltd v Waione Timber Company Ltd**[5]is an act of dishonesty.

1.2Background to the Study

Land is one of the most important assets for people. In the Ugandan context, Article 237[6] , vests land in the hands of the citizens.

The system of registration of titles is based on the Torren system. Torren system has two essential features that distinguish it from other systems of conveyance that is title by registration as well as indefeasibility of title. The essential idea of the Torrens System is to individualize property in land by determining and specifying its physical and juridical components.

The concept of indefeasibility of title is enshrined in Section 59[7]. It means "that once a person is registered as proprietor of an estate or interest in the land, the government guarantees that his or her title cannot be divested or attacked by rival claims to the land except as prescribed

[4]*(civil Appeal 44 of 2017) [2021] UGHC 13 (25 February 2021).*

[5]*[1923] NZLR 1137*
[6]*The Constitution of the Republic of Uganda, 1995 (as amended)*
[7]*Registration of Titles Act cap 230*

under the Registration of titles Act."

Justice Stephen Mubiru in **Adrabo Stanley v Madira Jimmy**[8] observed that under the principle of indefeasibility, a title that is indefeasible cannot be defeated, revoked, or made void hence giving it a clear meaning as being indestructibility or inability to be made invalid.

Section 59[9] is to the effect that the certificate of title shall be conclusive evidence and the person named in the certificate regarded as the one in the possession of the estate. In the same line, Section 64[10] thereof, subject to the exceptions provided for therein, the estate of the proprietor registered under the Registration of titles Act overrides any other unregistered claim over the land.

Furthermore, **Section 176[11] and Section 181**[12] provide for protection of a registered proprietor against any form of ejectment or damage except as expressed in the said provisions hence upholding the fact that mere holding of certificate of title is ideally conclusive evidence in regards to the ownership of the land at hand.

As a matter of fact, the application of the principle of indefeasibility can be well illustrated in the case of **Lwanga v the Registrar of titles**[13],Odoki Ag J, (as he then was) upheld the registrar's ground of

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[8]*(Civil Suit No. 0024 of 2013) [2017] UGHCLD 102.*
[9]*Registration of Titles Act Cap 230*
[10]*ibid*
[11]*ibid*
[12]*ibid*
[13]*(1980) HCB 24*

refusing to transfer the title of the said land into Lwanga's name on grounds that Salongo was a bonafide purchaser for value hence bringing into play Section 181 of the Registration of Titles Act.

Despite progress made to address land-related legislative issues, the land sector in Uganda faces several challenges that include fraudulent acts, insecurity of tenure, overlapping and conflicting land rights, and glaring inequity in access to and ownership of land, corruption, ignorance of the law etc. Conflicts that are a consequence of colonial legacy are exacerbated in the majority of cases by competition over access, use and transfer of scarce land and natural resources, ever increasing population densities, largely driven by the high population growth rate, unsustainable agricultural practices, and policy and institutional weaknesses.

1.3Statement of the Problem

Despite concerted efforts to improve land administration systems, fraud remains pervasive in land dealings in Uganda, causing numerous adverse effects such as economic losses, social conflicts, and displacement. These fraudulent activities, which include forgery of documents, illegal land sales, and bribery of officials, undermine economic development and erode public trust in land governance. The persistence of these activities raises critical questions about the effectiveness of current anti-fraud measures and the underlying factors that allow such practices to continue. Existing research often highlights immediate impacts but fails to capture the broader, long-term consequences on economic stability and public confidence. Additionally, the factors perpetuating land fraud, such as socio-economic disparities and traditional land tenure systems, are not fully understood. This research seeks to address these gaps by examining the full impact of land fraud and identifying strategies to mitigate its negative effects, aiming to provide insights that can inform more effective policy reforms and interventions.

1.4 Objectives of the Study

1.4.1 General Objective

The general objective of the study was to assess the effect of fraud on land dealings**.**

1.4.2 Specific objective, focused on the following;

i. To discuss the impact of Land Information System and the different kinds of fraudulent dealings in Land matters.

ii. To discuss the legal effect of fraud in land dealings.

iii. To investigate the challenges and controversies between the law and the adopted mechanisms to fight fraud.

iv. To formulate recommendations for mitigating and preventing fraud in land dealings in Uganda

1.5 Research Questions

The research sought to answer the following questions:

i) What is the impact of Land Information system and the forms of fraud in land?

ii) What is the legal effect on fraud in land dealings?

iii) What are the challenges and controversies between the law and the adopted mechanisms by the authorities in fighting fraud?

iv) What recommendations can be proposed to mitigate and prevent fraud in land dealings in Uganda?

1.6 Significance of the Study

The rate at which innocent parties are losing possession of land as a result of fraudulent land dealings in Uganda today is so alarming; this research provided solutions on how this problem can be reduced considering the legal provisions of the law. The findings of this research will also provide valuable information to the government, the Ministry of Lands, Housing and Urban Development and various stakeholders on how to minimize unlawful dealings on land in Uganda. The research will also be of importance to academicians interested in the subject under study.

1.7 Conceptual Framework

The key independent variable of this research is the legal and regulatory framework on land fraudulent dealings in Uganda and the dependent variable include the unlawful and multiple of possession of titles which is so rampant in Uganda due to the gaps in the legal and regulatory framework on land registration which among others create overlapping interests between land owners and interest holders, there is no mandatory requirement as to notice before change or registration of title, limited and poor enforcement of the law etc. The researcher will also consider other independent variables such as ignorance of the law, poverty, corruption, poor land governance, bribery among others which have also escalated unlawful dealings and possession of land in Uganda.

1.8 Scope of the Study

The scope of the study is divided into Geographical, Time and Content.

1.8.1 Content scope

The study scrutinized fraudulent dealings in land occurring in many aspects; it's the impact on individuals and the government. This research therefore focused on analyzing the legal and regulatory framework governing registration, transfer and legal dealings on land in Uganda. The effect of fraudulent acquisition of title on all related parties and beneficiaries on the suit land were also at the center of this discussion. Determining the causes and impacts of unlawful and fraudulent dealings on land and assessing the efficacy of the legal and regulatory framework. Thereafter, the researcher proposed a few recommendations to curb the problem of fraudulent dealings on land.

1.8.2 Geographical Scope

The study looked at Wakiso district as case study. This is largely because of the numerous land fraudulent issues have been at the forefront of the community challenges.

1.8.3 Times scope

This study examines the impact of fraud on land dealings in Uganda, focusing on the periods before and after the enactment of the Land Act (1998) and the Registration of Titles Act (2004). The pre-legislation era (1980-1998) was marked by manual and inefficient processes, limited transparency, and widespread fraud and corruption. The post-Land Act era (1998-2004) saw initial reforms, including computerization and enhanced transparency, but challenges persisted. The post-Registration of Titles Act era (2004-2022) has seen significant improvements, including a centralized land registration system, enhanced security of tenure, and reduced fraud and corruption. By analyzing these periods to date, this study shall aim to understand the impact of fraud on land dealings and the effectiveness of the legislation in addressing these challenges..

1.9 Limitations of the Study

The research was limited by a myriad of factors however the major limitation of the study was limited resources in terms of time and money to enable the researcher access each and every material relevant to the study. The other limitation of this study was the prevalence of the covid-19 pandemic which has caused limited access to the LDC library where the researcher would easily access various reading materials so to assist in the study. The major research was therefore desktop research which require a lot of time to go through many publications by other scholars on a similar topic and make a review of them.

1.10 LITERATURE REVIEW

1. 10.1 Introduction:

Uganda's rapid urbanization and growing demand for land have created an environment conducive to fraudulent activities in land dealings. According to the **Uganda Land Commission report**[14], Land fraud, including forgery, impersonation, and illegal land conversion, is commonplace, with the Uganda Land Commission estimating that up to 80% of land transactions involve some form of fraud. According to **Kiyimba. A**[15] in his work “Land fraud and its impact on smallholder farmers in Uganda”, The consequences of land fraud in Uganda are severe, resulting in financial losses, legal disputes, and social inequality, particularly for vulnerable groups such as women and smallholder farmers.

[14] *Uganda Land Commission. (2020). Annual Report 2019-2020. Kampala: Uganda Land Commission*

[15] *Kiyimba, A. (2017). Land fraud and its impact on smallholder farmers in Uganda. Journal of African Studies, 49(1), 1-12.*

Despite the significance of this issue, there is a need for a comprehensive understanding of the causes, consequences, and solutions to fraud in land dealings in Uganda. This literature review aims to provide an in-depth analysis of the existing research on fraud in land dealings in Uganda, identifying gaps in the literature and areas for further investigation. By synthesizing the findings of previous studies, this review seeks to contribute to the development of effective strategies for preventing and mitigating fraud in land dealings in Uganda, promoting secure land tenure and sustainable development.

Review of the existing literature

Uganda's land sector is characterized by widespread fraud, perpetuating inequality and undermining economic development. Despite the significance of this issue, existing research has limitations in addressing the complexities of fraud in land dealings in Uganda.

Professor Christopher J. Lubogo in his book of Objection my Lord, cited the case of **Katarikawe v Katwiremu & Anor**[16]where court held that before transfer of land a buyer under contract acquires only an equitable interest. It's noteworthy that however much the above case provides that equitable interests are as good as legal interests, the one with the title always has an upper hand and when it comes to claiming the interests in land, the person whose name is shown on the title shall be presumed as the legal owner.

The indefensibility if titled can be challenged in circumstances of fraud.

[16]*(1977) HCB 210*

This is pursuant to **section 59 of the Registration of titles Act**[17] which provides that , no certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.

In the case **Obiero v Opiyo &Ors**[18] it was held that the general understanding is that the title of a registered proprietor is indefeasible against unregistered customary rights or any other subsequent claims to the land. Prima facie, once a person gets their land interest registered, they obtain perfect and indefeasible title. According **to Kalenge, Bwanika, Kimuli & company advocates in their work "review of the legal framework for land Administration**"[19], they state that one of the common criticisms of the compensation regime of the Torrens system is,

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[17]*Registration f titles Act Cap 230*

[18]*[1972] EA 227*

[19]*Kalenge, Bwanika, Kimuli & Company, Advocates, Review of the Legal Framework for Land Administration (FINAL DRAFT ISSUES PAPER - REGISTRATION OF TITLES LAW– version 2) 14 and 16, accessed on 17 May 2024 from https://mlhud.go.ug/wp-content/uploads/2019/03/Final-Draft-Issues-Paper-Registration-of-TitlesLaw-Workshop- Jan-2013.pdf*

victims losing their land while the so-called bona fide purchaser 'walks off' with the land**. According to Anthony Conrad Kakooza in his work "Land Law Reform in Uganda**"[20]he states The Torrens title system assumes that persons will register the interests they acquire in land or else take the risk of losing out at the hands of a later interest-holder who does register. The unregistered holder's remedy lies in their own hands: they can register. Of course, some interests are inherently unregistrable; and other interests, though inherently registrable, might be embodied in documents that, for one reason or another, are not in registrable form.[21]

According to **Kiyimba, A** in his work "Gender and land rights in Uganda"[22], and **Mukasa. S** in his work "Land fraud and its impact on smallholder farmers in Uganda"[23], previous studies have examined the causes of land fraud in Uganda, highlighting factors such as corruption, weak land governance, and inadequate legal frameworks. However, these studies have primarily focused on the macro-level, neglecting the micro-level dynamics and experiences of individuals and communities affected by land fraud.

Moreover, existing research has largely relied on qualitative methods, providing limited generalizability and scalability[24]. Quantitative studies

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[20]*Anthony Conrad Kakooza, 'Land Law Reform in Uganda: Exploring the Loose Ends' (2008) 10, accessed on 17 May 2024 from https://ssrn.com/abstract=1658661*

[21]*ibid*

[22] *Kiyimba, A. (2017). Land fraud and its impact on smallholder farmers in Uganda. Journal of African Studies, 49(1), 1-12.*

[23] *Mukasa, S. (2019). Gender and land rights in Uganda: A review of the literature. Journal of Gender and Development, 27(1), 1-15.*

[24] *supra*

are scarce, and those that exist have methodological limitations, such as small sample sizes and inadequate control groups[25].

Furthermore, existing research has primarily concentrated on the consequences of land fraud, including displacement, poverty, and food insecurity[26]. While these consequences are significant, there is a need to investigate the specific challenges and experiences of vulnerable groups, such as women and smallholder farmers, who are disproportionately affected by land fraud.

***However, there are gaps in existing research and they are shown below*.**

Micro-level dynamics: Existing research has neglected the micro-level dynamics and experiences of individuals and communities affected by land fraud. Existing research has neglected the micro-level dynamics and experiences of individuals and communities affected by land fraud. While macro-level analyses provide an overview of systemic issues such as corruption and inadequate legal frameworks, they often fail to capture the localized, day-to-day experiences of those directly impacted by land fraud. For instance, the ways in which local power structures, social relationships, and community-specific conflicts contribute to the perpetuation of land fraud remain under-explored. Understanding these micro-level dynamics is essential for developing interventions that are tailored to the specific needs and realities of affected communities. Such an approach can reveal how local customs, interpersonal relationships,

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[25] *supra*

[26] *supra*

and community governance practices either mitigate or exacerbate land fraud, providing a more nuanced understanding that can inform more effective and context-specific policy solutions.

Quantitative methods: There is a scarcity of quantitative studies, and those that exist have methodological limitations. There is a scarcity of quantitative studies, and those that exist have methodological limitations. Many existing studies on land fraud in Uganda rely heavily on qualitative methods, such as interviews and case studies, which, while insightful, do not offer the breadth and statistical power necessary for generalization across the broader population. Quantitative research, which can provide robust data on the prevalence, distribution, and patterns of land fraud, is limited. When quantitative methods are used, they often suffer from issues like small sample sizes, which do not adequately represent the population, and lack of proper control groups, which undermines the validity of the findings. To address this gap, future research should incorporate large-scale surveys and statistically rigorous methods to provide comprehensive and generalizable data. Such studies could quantify the economic impact of land fraud, identify high-risk areas, and evaluate the effectiveness of various anti-fraud measures on a national scale.

Vulnerable groups: Existing research has not adequately addressed the specific challenges and experiences of vulnerable groups, such as women and smallholder farmers. These groups are disproportionately affected by land fraud due to factors like discriminatory customary practices, limited legal literacy, and reduced access to resources and support systems. For example, women may face legal and cultural barriers that prevent them from securing land titles in their names, making them more susceptible to fraudulent claims and expropriation. Smallholder farmers, who rely on their land for subsistence, are particularly vulnerable to fraud, which can result in loss of livelihood and increased poverty and food insecurity. Research to date has primarily focused on the general consequences of land fraud without delving into the specific impacts on these vulnerable populations. Addressing this gap requires targeted studies that explore the unique experiences and needs of these groups, leading to the development of policies and interventions that specifically protect their rights and enhance their land security. This could involve participatory research methods that engage these communities directly in the research process, ensuring that their voices and perspectives are integral to the development of solutions.

This study aims to address the gaps in the literature by:

Conducting a mixed-methods study: To address the gap in understanding both macro- and micro-level dynamics of land fraud in Uganda, a mixed-methods approach will be employed. This approach will combine quantitative data collection methods, such as surveys and analysis of land transaction records, with qualitative methods like interviews and focus groups. According to **Cresswell and Cresswell**[27] in their book,

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[27]*Creswell, J. W., & Creswell, J. D. (2017). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. Sage Publications.*

“Research Design: Qualitative, Quantitative, and Mixed Methods Approaches”, and also according to **Teddlie &Tashakkori[28]** in their book “Foundations of Mixed Methods Research”, Quantitative methods will allow for the collection of data on the prevalence and patterns of land fraud across different regions and demographics, providing a broad overview of the problem. On the other hand, qualitative methods will enable researchers to delve deeper into the experiences and perspectives of individuals and communities affected by land fraud, uncovering the underlying social, cultural, and economic factors that contribute to fraudulent activities. By triangulating data from multiple sources, this study will offer a more comprehensive understanding of land fraud in Uganda, capturing both the systemic issues and the lived experiences of those directly impacted.

Quantitative research. According to **Bryaman in his work “Social Research Methods”[29]** and **Creswell &Creswel[30],** employing quantitative research methods will be employed to ensure generalizability and scalability of findings. Large-scale surveys will be conducted to gather data from a representative sample of the population, allowing for statistical analysis and inference about the prevalence and correlates of land fraud in Uganda. By employing rigorous sampling techniques and ensuring adequate sample sizes, the findings from quantitative analyses

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[28] *Teddlie, C., &Tashakkori, A. (2009). Foundations of Mixed Methods Research: Integrating Quantitative and Qualitative Approaches in the Social and Behavioral Sciences. Sage Publications*

[29] *Bryman, A. social research methods. Oxford university press (2016)*

[30] *supra*

will be applicable to the broader population, providing insights into the extent and distribution of land fraud across different demographic groups and geographical areas. Additionally, quantitative methods will allow for the identification of patterns and trends in land fraud over time, facilitating evidence-based policy and intervention strategies.

Investigating the specific challenges of vulnerable groups: To address the unique experiences of vulnerable groups affected by land fraud, such as women and smallholder farmers, targeted research will be conducted. This research will employ a participatory approach, engaging members of these communities in the research process to ensure their voices are heard and their perspectives are central to the study. According to **Bryman**[31] and **Teddlie &Tashakkori**[32]**,** Qualitative methods, such as in-depth interviews and focus group discussions, will be used to explore the specific challenges and experiences of these groups, shedding light on the gendered and socio-economic dynamics of land fraud in Uganda. By amplifying the voices of vulnerable populations, this study will contribute to a more inclusive and equitable understanding of land fraud, guiding the development of policies and interventions that address the needs and concerns of these marginalized groups.

1.11Research Methodology

The researcher strictly adopted the doctrinal research method. This was done via an analysis of various laws and policies on land rights, dealings

[31]*supra*
[32]*supra*

and possession in Uganda, international instruments on fraud, registration and transfer of title and writings of highly qualified publicists on the subject matter of this study. Thereafter the researcher reviewed both primary and secondary sources of law to determine whether there was compliance of the relevant laws. The use of primary and secondary sources involved the collection of relevant data that is most suitable for the research from research materials such as textbooks, articles, treatises, dissertations, panel discussions reports, case laws and productive resources found on the internet.

1.11.1 Research Design

The researcher used the qualitative research methodology together with its designs, techniques and methods. This is because the qualitative research methodology together with its designs is good for a subjective inquiry into concepts under study. This therefore enabled the researcher to subjectively examine the effect of fraud on land dealings a case study of Wakiso district.

1.11.2 Data collection methods

While conducting the research study, the researcher focused on gathering, analyzing and processing secondary data only in order to achieve the set objectives of the study.

Secondary data which was intended to facilitate this research were obtained from secondary sources of data like articles, earlier research, journal articles, treatises, dissertations, panel discussions reports, case laws and productive resources found on the internet.

1.11.3 Data analysis and processing procedures

The researcher identified the main themes emerging from the secondary collection of data. In the event of processing and analyzing the data obtained, the researcher edited the information gathered; identified any possible errors that were manifested in the data obtained.

After carrying out a thorough edit of the data, the researcher then proceeded to analyze through a content analysis procedure. The content analysis procedure of the data obtained was conducted in four main steps.

The first step of data analysis involved identifying the main themes emerging from the data obtained, the second focused on coding the main themes identified in the first step, the third step involved the classification of the main themes identified and lastly in the fourth stage, the researcher interrogated the above identified themes into a study report.

1.11.4 Chapter synopsis

Chapter one involves the introduction, background, statement of the problem, and objectives of the study, research questions, significance of the study, and scope of the study.

Chapter Two presents a general overview of the impact of land information system and the forms of fraud in land dealings.

Chapter Three discusses the legal framework governing fraud in land dealings

Chapter Four presents the challenges and controversies on fraud and land dealings

Chapter Five presents conclusions and recommendations.

CHAPTER TWO

2.0 THE IMPACT OF LAND INFORMATION SYSTEM AND THE FORMS OF FRAUD IN LAND DEALINGS

2.1 Introduction

Land information systems (LIS) have been increasingly recognized as a crucial tool for efficient land administration and management. An LIS is a digital database that stores and manages information related to land ownership, boundaries, and transactions. The implementation of an LIS can have a significant impact on the reduction of fraud in land dealings. This chapter explores the impact of LIS on fraud in land dealings and examines the various forms of fraud that can occur in the absence of a robust LIS.

Impact of Land Information Systems on Fraud in Land Dealings

The impacts of land fraud in Uganda are far-reaching and affect both individuals and the entire society. Land fraud leads to land disputes, which often result in violence and loss of lives. It also affects investment and economic development, as investors are hesitant to invest in areas where land ownership is insecure. Land fraud also undermines agricultural productivity, as farmers are unable to invest in their land for fear of losing it.

Moreover, land fraud exacerbates poverty and inequality in Uganda. The poor and vulnerable are often the most affected by land fraud, as they lack the resources and knowledge to protect their land rights. This leads to landlessness and homelessness, which further exacerbate poverty and inequality.

The National Land Registry has been in the pipeline since 2010.On 01/03/2020, approval of the Land Information System was pronounced through a partnership with a French Mapping Company. This was intended to digitalize the process of Land registration and acquisition of good title. The Main objective behind this move was to curb fraud in Land registration and Minimization of publication of illegal titles which have resulted into a number of Land vices.

The land digitization process has brought the Land Ministry's services closer to the population and it will minimize output of fraudulent titles because all the data entered into the National Land Information System is subjected to very thorough check and vetting process. In the process, all new land titles bare barcodes, making it difficult to forge signatures.

However, ownership of title is at times affected by the mode through which the possessor acquired it of the way it was transferred to any bonafide possessor of the same title. In **Mitigating the Risk of Fraud in**

Land Transactions in Uganda; a guide For Land Purchasers[33], fraud is regarded as the false representation of a matter or fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another person so that he or she shall act upon it to his or legal inquiry does affects title. Fraud in land matters has escalated and grows day by day, [34][35][36]reported that most of the cases that were handled during his tenure 75% were fraud related cases depicting fraud as a rampant vice throughout the land sector.

Regardless of the fact that many Journals have been published on the process of registering and ensuring that the purchaser gets a good title, acquiring land and a valid land title is very easy when one follows the right procedure.

In most cases, buyers don't ensure due diligence which culminates into land vices.

For a considerable time, statutes have existed which require the registration of deeds, third party encumbrances, affecting land or title to the land itself. In general, the sanction for non-compliance with these registration requirements is that a purchaser for valuable consideration takes free from any interest which should have, but has not, been registered. Throughout the period when registration statues have been in

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[33]*Kampala Associated Advocates accessed on 17th May 2024.*
[34]*Dr. Andrew Bashaijja a former head of Land Division Kampala High Court*
[35]*Lubaproperties.ug, accessed on 17th May 2024.*
[36]*Registration, Fraud And Notice By M. P. Thompson volume 44, No. 2 (July 1985), pp 280-302.*

force, a tension has existed between literal compliance with them on the one hand, and seeking to read into them general equitable principles on other hand.

The effect of introducing these principles is to bind a purchaser by notice of an unregistered interest that is not protected in the appropriate manner by registration.
The most popular method of achieving this result has been to apply the maxim; Equity will not allow a statute to be used as an instrument of fraud. The maxim is one of the most antiquities.
Such maxims come in to protect the bonafide purchasers whose title may not be good in law but when the mode of acquisition is within the required pipeline and identifies some source of fraud in Land Matters to

2.2 Theft of certificate of title

Theft of Certificates of Title. In such instances; individuals' Certificates of Title have disappeared without knowledge of the primary owners. In a long run, it so comes out that on the same Land, there was a purported Lawful transfer of Title to one or numerous parties who may or may not bare any knowledge on how such title came into the hands of the transferee. This can happen out of forgery.

2.3 Purchase

This is where an individual the primary owner loses his or her title unknowingly to any other individual who has neither equity nor Legal interest in the same property. This other party is therefore said to fraudulently acquired the title. The chain now moves on the third party who now buys the Land from the fraudulent purchaser though without notice of the fraud. In this circumstance, one party loses out. Courts have over the years come out with different conclusions based on two differing concepts of indefeasibility, that is to say immediate and differed.

In applying the Doctrine of deferred indefeasibility in the early days of Torrens system, the primary owner of the title who unknowingly lost it to another party would be favored

2.4 Fraud by law involves criminal conduct. This is associated to theft of the duplicate certificate of title or the fraudulent obtaining of the same. In most suggestions exhibited by journals, reducing the availability of duplicate certificates of title equally reduces on opportunities to commit fraud. This can only happen if Uganda abandons issuance of the duplicate certificate of title to adopting of a paperless register.

Innocent purchasers are also put at risk of proving either ownership or unintended purchase to support the fraud. Under numerous circumstances, such people fail to prove the latter and end up losing both money and title. This applies to the primary owners to who fail to prove prior ownership to court.

In conclusion, the ministry of lands needs to embrace the digital form of land data capture and registration to curb the different forms of fraud in land transfers and dealings as discussed.

CHAPTER THREE

3.0 THE LEGAL FRAMEWORK GOVERNING FRAUD IN LAND DEALINGS

3.1 Introduction

The RTA does not define what amounts to fraud. However, fraud has been defined 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 of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury, as held in the case of **Fredrick Zaabwe v Orient Bank Ltd**.[37]

3.2 Types of fraud

Fraud attributable to the transferee is actual, imputed or constructive. The case of **Kampala Bottlers Ltd v Damanico (U) Ltd**[38] discussed the different types of fraud. It was further discussed that fraud must **be attributable either directly or by necessary implication, that is the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.** A person becomes privy to a fraudulent transaction either by being an active participant in its perpetration by action or omission, or when

[37]*Civil Appeal No. 4 of 2006*
[38]*CA No. 22 of 1992*

having acquired knowledge of its perpetration by others or third parties, knowingly and willfully seeks to take benefit from it.

Therefore, in the case of **David Sejjaka v Rebecca Musoke**[39], court held that where there are a series of subsequent transfers, for the title of the incumbent registered proprietor to be impeachable, the fraud of the previous proprietors must be brought home to him…A fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents.

The principle that fraud is attributable to the transferee actually or by necessary implication requires a mention of some incidents that can result in fraud.

3.2.1 Actual fraud

Fraud is said to be actual where the registered proprietor engaged in a dishonest act during the process of execution the transfer e.g

(1) Forgeries

(2) Under declaration of the value of the land.

In **Mudiima Isa & 5Ors V Elly Kayanja & 2 Ors*[40]*,** the defendants had declared that the suit land measuring about130 acres in the suburbs of Kampala city had been purchased for only UGX 10 million. Evidence was led to show that the cost of an acre in the area was between15million to 25 million. The court held that the defendants had intentionally undervalued the land with the intention of cheating government of the fax

[39]*supra*

[40]*H.C.C.S No.232 of 2009*

revenues payable on such transaction and therefore their title was void because of fraud.

In **Samuel Kizito Mubiru and Anor v W. Byensiba and Anor**[41]where the plaintiff inserted shs.500,000 in the sales agreement as purchase price for land when in fact he paid shs. 2,400,000. The court held inter alia, that the mode of acquisition of the title in question was tainted with fraud and illegality because bona-fide included without fraud or without participation in wrong doings. That by the plaintiff undervaluing the suit land; the design was to defraud the government of its revenue by way of paying less stamp duty. Court further held that by public policy any transaction designed to defraud the government of its revenue is illegal, and that the effect of the illegality was to prevent the plaintiff from recovering under a contract which he seemed illegal was therefore void because of fraud. However, where the under declaration was innocent, the same amount to fraud and the court won't impeach the title except on other reasons. The purchaser will be required nonetheless to pay the difference.

3.2.2 Constructive notice

The registered proprietor is considered to have been constructive fraudulent per the decision in **VivoEnergy (u) limited v shire petroleum company limited and 2 Ors**[42]if they had. Justice Mubiru stated that

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[41]*H.C.C.S No.513 of* 1982
[42]*H.C.C.S No.8 of 2016*

constructive notice applies if a purchaser knows facts which made it imperative to seek an explanation because in the absence of an explanation it was obvious that the transaction was probably improper.

The court further stated that, a purchaser is put on constructive notice where he/she required knowledge of circumstances which would put an honest and reasonable man on inquiry and yet he/she did not undertake the necessary inquires.

Where a person willfully abstains from inquiry to void notice, such a person cannot claim to have acted in good faith. The fraud in such a case would be ascribed to them. In **David Sejjaka Nalima v. Rebecca** M**usoke**[43], court held inter alia that if it is shown that a purchaser's suspicions were aroused and that he abstained from making inquiries for fear of leaning the truth, the case is very different and fraud may be properly ascribed to him.

In **Nabanoba Desiranta and Anor v Kayiwa Joseph &Anor**[44]cited in **Mudiima Isa And 5 Ors V Elly Kayanja and 2 Ors**[45]**,** Opio AweriJ stated that as the law stands a person who purchases an estate which he knows to be in occupation of another person other than the vender is not a bonafide purchaser without notice. He further held that the defendants failed to make reasonable inquires of the persons in possession and as such their ignorance or negligence formed particulars of fraud.

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[43]*C.A No.12 of 1985*
[44]*H.C.C.S No.496 of 2005*
[45] *supra*

Okello JA in **Sir John Bageire V Ausi Matovu**[46], emphasized the value of land and the need for thorough investigations before purchase and he held that lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations not only of the land but of the sellers before purchase.

3.2.3 Imputed fraud

Justice Mubiru in **Vivo Energy (U) Limited V Shire Petroleum Company Limited And 2 Ors**[47]stated that at common law, imputation charges a principal with the legal consequences of knowledge of a fact known by an agent when knowledge of the fact is material to the agent's duties to the principal and the principal's legal relations with 3rd parties. The knowledge of the agent in handling the transaction, whether actual or constructive is imputed to the principal. Therefore, the actual or constructive fraud of an agent is imputed on the principal.

The registered proprietor must be party or privy to the fraud.

According to **Section 77 of the RTA**, any certificate of title entry, removal of encumbrance or cancellation in the register book procured or made by fraud is void as against all parties or prices to the fraud.

[46]*CA No.07 of 1996 at page 2B*
[47]*supra*

The fraud must be driven to the transferee whose title the person seeks to impeach. In **Kampala BottlesLtd V Damanico (U) Ltd[48],** Wambuzi CJ held that fraud must be attributable to the transferee whose title one seeks to impeach. It must be attributable either by guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

It is suffice to note that the exception to fraud in land transactions rests in the doctrine of bona fide purchaser for value without notice. The doctrine entitles a bonafide purchaser in some situations to retain ownership of a given piece of land or enforce any other interests on the land against persons who could otherwise assert superior right. As was held by OdokiJ in **Lwanga V The Registrar of Titles[49],** once the registered proprietor is established to be a bonafide purchaser for value, under S.189 (now 181) his/her title cannot be impeached or cancelled notwithstanding that he acquired his or her title from a fraudster. The doctrine of bonafide legitimizes an otherwise void transaction for fraud and thus the bonafide purchaser for value obtains good title irrespective of the fraud. The defence is provided for under Section 181 of RTA.

The elements of bona fide purchaser for value without notice were laid out in **Sempa Mbabali V Kidza And Ors[50]**, and they include the following;

a) Registered interest

[48] *supra*
[49] *Misc CauseNo.7a of 1977 (1980) HCB 24*
[50] *(1985) HCB 46*

b) Acquisition of the interest was in good faith.

c) Interest was acquired for valuable consideration.

d) Purchaser had no notice of any other interests

3.3 Manifestations of fraud

Fraud is clearly manifested in the following dimensions;

3.3.1Acquisition of special certificates of titles under false pretence;

Section 70[51] provides; 'If the duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, the **persons having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land or the title to the land to the best of the deponents' knowledge, information and belief; and the registrar if satisfied as to** the truth of the statutory declaration and the bona fides of the transaction may issue to the proprietor a special certificate of title to the land, which special certificate shall contain an exact copy of the certificate of title in the Register Book ….'

This section gives a right to anyone who has custody of a title and knows the circumstances surrounding its loss to apply for a special certificate of title. This section has been misused by fraudsters to obtain special certificates of title for other people's properties and eventually transfer them to their names and then sell to third parties.

[51]*Registration of Titles Act Cap 230*

Due to many complaints and unnecessary litigation, Ministry of Lands, Housing & Urban Development (MLHUD) came up with a strict rule that the applicant of a special certificate of title must be the registered owner who must also avail an LC Letter introducing him/her as the owner of the land and a police letter confirming the loss of the title. In addition to availing this documentation, the registered owner is required to physically appear before the registrar of titles for identification and verification before the application for a special certificate of title is approved.

It is therefore important for any person interested in purchasing land held under a special Certificate of Title to carry out some due diligence around the circumstances regarding the application for and issuance of a special certificate of title.

3.3.2Administrators/executors transferring land to their individual names or third parties without the consent of the beneficiaries;

In the case of **Silver Byaruhanga vs Fr. Emmanuel & Anor[52],** Court held that an administrator or executor under the law is the legal representative of the estate of the deceased. As such, he or she is duty bound to administer the estate on behalf of the beneficiaries. An administrator or executor is registered on the titles as a trustee and not as a personal proprietor.

[52]*SCCA No. 9 of 2014*

There are many incidents where administrators of estates transfer land that belongs to an estate of a deceased to themselves in their personal capacity or to third parties without the consent of all the beneficiaries or even without the involvement of all the administrators (where there are joint administrators). Whereas it is nearly impossible to ascertain all the beneficiaries of an estate, the duty to conduct due diligence on the property falls on the interested buyer.

When dealing with deceased's estates, the interested buyer must verify the letters of administration/probate with the respective court and obtain consent of the beneficiaries before purchasing the property. However, purchasing such properties is risky because of the uncertainty of the rightful beneficiaries and the risk of the property being caveated by an unknown beneficiary after the purchase.

i. **Forging powers of attorney with intention to defraud;**

Section 146 (1) of the Registration of Titles Act provides;

The proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney….

This section empowers a holder of powers of attorney to act on behalf of a registered owner. These powers are often misused and forged too. The supreme court decision of **Fredrick Zaabwe vs Orient Bank & others** (supra) was relied on in **Konda Mathias Zimula vs Byarugaba Moses & Anor**[53] to cancel a certificate of title where the second defendant had taken the plaintiff's duplicate certificate of title, used forged powers of attorney purported to have been signed by the plaintiff to transfer the suit property into her names and later on into the names of the first defendant.

The above case is just one of many where duplicate certificates of title have been cancelled because they had been issued due to forged powers of attorney. It is therefore important for any one dealing with a donee of powers of attorney to verify with the donor of the powers and confirm if such are valid and if the Donee is acting within his scope.

Most land offices have made it a requirement to have the donor of the powers of attorney appear at the respective registry for identification and to confirm the sale before effecting the transfer of property.

ii. **Concealment of true consideration of the transaction;**

In an attempt to defeat payment of stamp duty or paying less of it, most purchasers of land usually disclose the value of the land which is less than the true consideration paid to the seller. Such act of dishonesty amounts to fraud.

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[53] *HCCS No. 66 of 2007*

Recently the Supreme Court in the case of **Betty Kizito vs David Kizito &Ors**[54], held that undervaluation of the land amounts to fraud.

Instances of concealment of the true consideration of the transactions are rampant. It is important that the intending purchaser fully and truly discloses the true value for purposes of ensuring that such a transfer is not impeached on account of defrauding the Government through the false/under declaration of the land value for purposes of stamp duty assessment and payment.

iii. **Double titling of land;**

The existence of more than one title on the same piece of land is an incident of fraud that cannot be missed. This fraud is usually committed within the land registry which is mandated to issue duplicate certificates of title. In most cases, the land registries while acting on forged documents submitted by the clients may erroneously issue more than one title on the same piece of land. Unfortunately, such fraud may only be detected once the true owner raises a complaint with the land office.

In the case of **St. Mark Educational Centre limited vs Makerere University**[55] where two certificates of title were issued on the same piece of land, the court of appeal upheld the finding of the high court and noted that the fraud committed was not the type a purchaser or even his

[54] *SCCA No. 8 of 2018*
[55] *CACA No. 40 of 1997*

advocate could discover during an ordinary search at the registry. The fraud was committed on the register and the register being a Freehold title from which another register of a mailo title was created.

iv. **Forging land titles;**

There are many cases where innocent purchasers acquire forged titles from fraudsters only to be surprised at the land registries when they are retained and cancelled on submission to effect a transfer. Many have been victims of such scam. The forged titles appear as authentic as the titles issued by MLHUD. There are reports that this form of land fraud through the issuance of forged documents has been aided by corrupt lands officials as explained by George Musisi, a lawyer at the Foundation for Human Rights Initiative, a charity that offers legal aid services, "when you look at the forged titles, sometimes it even has the seal of the land office".

v. **Illegal removal of caveats;**

Fraudsters have taken advantage of **Sections 140 and 202 of the Registration of Titles Act** which provide for removal of a caveat by the Registrar issuing to the Caveator a notice to show cause why the caveat should not be removed. The notice is sent to the Caveator by post. In most cases, the notices are never posted. As long as there is a receipt from post office, this is evidence enough for the registrar to remove the caveat on expiry of the 60 days. Unfortunately, the Registrar of Titles cannot be blamed because he/she is following the law.

In reality, communication through postal services is the most archaic mode of communication. Many people use fictitious postal addresses or postal addresses that do not actually belong to them. Whereas the postal services are available, most Ugandans do not utilize them because of the e-communication.

If a Caveator is not vigilant enough to resolve whatever issues that arise from the property or to check on the property more often to confirm if an application to lift the caveat has been lodged, his or her interest will be extinguished without his or her knowledge. Recently the Supreme Court in **Saul Kisiribombo Rumanda v Emmy Tumwine**[56] found that the Respondent's caveat had been irregularly removed by the Appellant in connivance with officials in the MLHUD.

It is therefore prudent for Caveators to constantly check on the status of their interests at the land registry with a view to confirm if their caveats are still intact on the land register.

vi. **Real Estate Companies/dealers giving Bibanja Holders unreasonable offers;**

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[56] *[2020] UGSC 43*

Real Estate Companies have a tendency of identifying customary land or unregistered land and entering unreasonable agreements with the squatters by offering them less consideration for their land or forcefully taking over their property. The said real estate dealers will then process the title to the land, subdivide the same and eventually sell to innocent buyers who will never take quiet possession of the land because of the unresolved issues with the squatters.

It is therefore an important duty on the purchaser to have made sufficient inquiries before getting registered on the land. The need for carrying out inquiries has been emphasized by court in various decisions. The position of the law is that, a person who purchases an estate which he knows or should have known to be in occupation and use of another other than the vendor without carrying out the due inquiries from the persons in occupation and use commits fraud. Therefore, the failure to make reasonable inquiries of the persons in possession and use of land or the purchaser's ignorance or negligence to do so forms particulars of fraud. Knowledge of other people's rights or claims and the deliberate acquisition of an interest in the face of such knowledge is fraud.

3.4 Effect of fraud

I have elaborately explained that fraud is an exception to the indefeasibility of title. This means that once fraud is proven before courts of law, the transferee's title would be cancelled. It was held in the case of **Fam International Limited and Ahmad Farah versus Mohamed El Faith**[57] that fraud is such a grotesque monster that the courts should hound it wherever it rears its head and wherever it seeks to take cover behind any legislation. Fraud unravels everything and vitiates all transactions".

3.5 Conducting due diligence/ search

The first step in acquiring land is to carry out inquiries on the land to ascertain the status of the land in relation to the risk of existing competing and overlapping interests.

There is a famous quotation in the legal fraternity by Okello J. A as he then was in ***Sir John Bageire vs. Ausi Matovu***[58], emphasizing the value of land property and the need for thorough investigations before purchase;

"Lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations; not only of the land but of the sellers before purchase."

57 *[1994] KALR 307*
58 *CACA No. 07 of 1996 at page 26*

The question of conducting a search is further discussed in **Uganda Posts and Telecommunications v Lutaaya**[59]where Court held that a mere search on the register is not enough. The person ought to inquire beyond the register. That the law is very clear that if a person purchases an estate which he knows to be in the occupation of another other than the vendor, he is bound by all the equities which the parties in such occupation may have in the land.

In the case of **Asiimwe vs Mukirania**[60] **t**he failure to inspect the land for purposes of being brought under the Registration of Titles Act is a fatal irregularity and the purchaser would be found to have acted fraudulently by processing the title well knowing he had not followed proper procedure. The title could be impeached and cancelled for lack of an inspection report that is so crucial in the process of obtaining a title.

3.5.1 In conducting a search, a prospective buyer must do the following;

i. **Particulars of the land;**

The intending purchaser should be availed with the particulars of the subject land in terms of description. It must have a block and plot, the details of the registered owner, location of the land, the area/acreage etc. The purpose of the particulars is to enable an intending purchaser to

[59]*CA 36 of 1995*
[60]*HCT-01-LD-CA-002 of 2017*

cause a search at the relevant land registry to confirm not only the proprietorship but also the existence of a white page/registry file with corresponding particulars like those on the certificate of title. In the recent past, it is now possible to actually compare not just the names but also the physical likeness of the proprietor, as passport size photos are used these days and helps to weed out fraudsters using forged land titles albeit with the same name.

ii. **Site visit to the Land/Property;**

A site visit is significant not only because it familiarizes the purchaser with the property in question and the neighborhood that it is located in, but because it offers one the opportunity to gather some information which may not be accessible through the land registry regarding the history of the property. Some of the information can only be got from the locals around the area who know the owner of the property very well. Physical attributes of land are part of the due diligence that the law expects of one. A search at the registry though critical is not sufficient in itself.

During a site visit, the intended buyer may interact with the LC of the area to confirm ownership of the property and if there are any disputes in relation to the land.

Also the intending purchaser should find out whether the land is subject to spousal consent or if there are any equitable interests on the land.

iii. **Boundary opening;**

Registered land is generally a subject of a specific delineation and specification as to the boundaries and area size.

It is therefore important that an intending purchaser engages a surveyor to ascertain the size of the property and confirm its true description. The intending purchaser must conduct a boundary opening to confirm whether the boundaries are in tandem/consistent with the particulars of the land. This is necessary in case of fraud and also where there is a mistake/error on the title.

iv. **Conduct a search at the Land Registry Office;**

This step can often be carried out by the Purchaser's lawyer (if he/she has one) to help confirm the authenticity of the title in question. The search goes on to aid the buyer in ascertaining the right property ownership, its genuineness, establish its existence plus identifying the conditions, pending rates or encumbrances on the title.

It is also advisable to present the land title for the land subject to a sale before a registrar of titles for verification before entering into any agreement. The registrar is able to verify if the title is authentic. It should be noted that newly issued titles bear a QR code which confirms the authenticity of the title once scanned.

With the computerized lands system, the buyer can verify the seller's details at the land registries including his appearance to avoid impersonation.

v. **Appoint a Lawyer to help you through the whole process;**

Lawyers generally have the knowledge to guide the buyer on acquiring good title. They are able to advise on the 'dos' and 'don'ts' of entering land transactions.

vi. **Preparation of the sale agreement and transfer of title;**

Once the buyer is satisfied with the findings of the due diligence and is ready to proceed with the purchase, a sale agreement has to be prepared by a lawyer, preferably the buyer's lawyer. The buyer's lawyer will ensure that his/her client is protected at whatever cost. The sale agreement must entail among other clauses, a clause on indemnity incase the seller misrepresents or passes on a defective title. The intended buyer is encouraged to make payments through a Bank.

Once the sale is concluded, the seller must execute and handover a transfer form, his/her passport size photo and copy of the national ID to the buyer. In case the seller is a company, it must handover the executed transfer form, registered resolution to sell, photos and IDs of the directors.

It is a requirement of the law that the intending transferee discloses the consideration paid in the transfer instrument and consent form and any under valuation of the property by the transferee may amount to fraud if it was intended to defraud government of its revenue.

The intended buyer should entrust his lawyer to handle the process of transfer of title to his/her names. Upon registration, a person whose name appears in the title is deemed to be a registered proprietor.

Having followed the above, the purchaser can claim to have acquired a valid interest in land that cannot be impeached and in case of impeachment his defence would be that of a bonafide purchaser for value without notice.

CHAPTER FOUR

4.0 THE LEGAL EFFECT, CHALLENGES AND CONTROVERSIES OF FRAUD AND LAND DEALINGS

4.1 Introduction

Fraud and land dealings have a profound impact on various aspects of society, extending beyond the immediate parties involved to affect the broader community and economy. The effects of fraud and land dealings can be seen in the displacement of families and communities, loss of livelihoods, and erosion of trust in institutions. Furthermore, fraudulent land transactions can lead to economic instability, as they often involve illegal activities such as money laundering and tax evasion. The social implications are equally concerning, as fraud and land dealings can exacerbate existing social inequalities and perpetuate corruption. Politically, the issue is complex, with powerful interests often at play, and a lack of political will to address the problem. This chapter delves into the intricacies of these effects, challenges, and controversies, providing a comprehensive understanding of the far-reaching consequences of fraud and land dealings in Uganda.

4.2 The legal effect of fraud in land dealings.

In Uganda, the Registration of Titles Act cap 234 has been designed and modified time to time for purposes of suiting the new dealings on land as developed and adopted by the people to beat the walls of the law.

It is to the effect that a signature of a registrar can be substituted for a seal in certain circumstances and in case any issue arises in court; such signature shall be judiciously recognized as judicial notice by any presiding judge in such matter. Sections 53 and 51 of the Registration of titles act[61] provides that the general rule is that a registered title cannot be challenged and a certificate of title is conclusive evidence. Section 55 of the registration for titles Act[62] Provides that no instrument shall be considered to be legally dealt with if such instrument is not properly and accordingly brought to the recognition of the Act through registration' provides that any registered proprietor has to possess a title of the instrument clarifying his or her ownership of the same. Therefore, for a person to claim ownership of a certain instrument, they should be in possession of a title to the same.

The 59 of the Registration of titles Act[63] conclusively recognizes a proprietor with a certificate of title and where a grievance arises in the courts of law, any party that produces a certificate of title shall be recognized. Clarifies the above as it considers a certificate of title to be the conclusive evidence; this was further held in the case of **Best Kemigisha V Komuntale**[64],court upheld the wording of Section 56 by then which is 59 of the Registration of Titles Act and confirmed that certificate is conclusive evidence of ownership of land except for fraud.

[61] Registration of titles Act cap 230
[62] supra
[63] supra
[64] Civil Suit No. MFP5/1998,

However, while upholding and interpreting the law, it should be noted that fraud is an exception.

Section 59 of the RTA provides where a person is fraudulently deprived of his or her right of possession, then the title acquired will be bad in law and therefore will not be conclusive evidence since it is now subject to questions. Section 177 of the Registration of Titles Act[65] is also pertinent. It is to the effect that any certificate of title, entry in the register book, procured or made by fraud shall be void as against all parties or privies to the fraud. The cancellation is strictly done before the courts of Law.

The registration of titles act doesn't define fraud specifically, however the same has been discussed and specifically defined by Court in the case of Fredrick **Zaabwe Vs Orient Bank**[66], citing the Black's Law Dictionary as an intentional perversion of truth for the purpose of including another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right and fraudulent means acting willfully and with specific intent to deceive or cheat, ordinarily for purposes of either causing some financial loss to another or bringing about some financial gain to oneself.

Basing on the definition above, the party making the fraud should be intentionally depriving the victim of a right or taking away what belongs to another with an intent of earning from the same. In the case of Land, 'A may willfully with negative intentions of unlawfully taking possession

[65]Supra

[66] J.K.Zaabwe V Orient Bank & 5 Others SCCA NO. 4/2006

of B's for purposes of selling it off without the knowledge of B. A therefore illegally plots to acquire B's certificate of title of the intended land to which he succeeds and later on effects transfer without the consent and permission of the registered owner who is B in this case. A succeeds in the transfer and then sells it off to gain money from the illegal transaction. Such dealing by A would amount to fraudulent dealing on Land and the law forbids the same under the Registration of Titles Act Cap 230.
It is therefore suffice to note that a certificate acquired out of fraud as a void one. To reflect it here "Any certificate of title, entry, removal of encumbrance, or cancellation, in the register book, procured or made by fraud, shall be void as against all parties or privies to the Fraud".

The law therefore forbids anything initiated on land as a result of fraud. In relation to encumbrances, this is associated with the mortgage Act 2009. The Act creates numerous mechanisms of acquiring a mortgage on a registered title. In regards to section 3 of the Mortgage Act[67], only a person holding land under the land tenure systems as provided under Article 237 of the 1995 Constitution as amended and Section 3 of the Land Act. These include Customary, Freehold tenure, mailo tenure and Leasehold Tenure. These interests qualify a party to acquire a mortgage. The Act describes and provides for fraudulent acts that amount to offences in Land dealings as follows;

[67] Mortgage Act 2009

Where a person willfully makes any false statement or declaration in any application to bring land under the operation of the Act, this may include circumstances where a party

In any application under part V of the Act when a person is claiming title by possession, where a person is claiming that he or she has acquired a title by possession to land registered under the Act, this person may apply to the registrar for an order vesting land in him or her for an estate in fee simple or the other estate claimed. This was stated in the case of **Aida Najemba V Esther Mpagi** [68]court held that application for a vesting order must be made to the registrar of Titles. In the case **Asher Kiwanuka Nteyafa V William Musoke** [69] the defendant sold land and refused to sign transfer forms authorizing ownership to plaintiff, Court held that the chief registrar of Titles cancels the names of the defendant from the register books and register plaintiff as the proprietor of the Land.

Where a party, in an application to bring the land under the RTA as a proprietor of any land, lease or mortgage, suppresses or conceals or assists or joins in or is privy to the suppressing, withholding or concealing from the registrar of any material document, fact or matter of information, willfully makes any false affidavit or signs any false certificate required under the authority or made or signed in pursuance of the Act. By doing this, the party acts contrary to the directions of the law.

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[68] Civil Appeal NO. 74 of 2005,

[69] (civil suit NO. 218 of 1993)

This can be intended to beat the rights of a certain party or unlawfully deprive the government of its revenue. This was held in the case of **Mubiru v G.W Byensiba& Anor**[70] court held that a buyer is not a bonafide purchaser where he inserts a lesser figure on the transfer for s consideration when he actually paid more in order to defraud government of revenue.

This means that when effecting transfer on a title, section 92 of the RTA should be adhered to. The provision is to the effect that consideration for the preferred transfer should be indicated on the form of transfer, that is to say, if its money, then the amount should be declared with the word sum and if the consideration is in any other form, then the same should be reflected as well stating the rightful value of the consideration to avoid illegalities.

Court in **Senkungu V Yakobo**[71] held in reference to the provision of section 92 of the Registration of Titles Act that failure to include the property by the 1st respondent that was to replace the word "The Sum" was a breach of Legal Duty.

The other circumstance is where a person in the course of his or her examination before the registrar willfully or corruptly gives false evidence or if any person fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or instrument.

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[70] Supra

[71] Supra

In regards to the above, the person commits an offence and is liable on conviction to imprisonment and for a period not exceeding three years or to a fine or both such imprisonment and fine, any certificate of title, entry, erasure or alteration so procured or made by fraud shall be void as against all parties or privies to the fraud. This was held in **Betty Kizito v David Kizito Kanonya& 7 Ors**[72], Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, with whom all the other four justices agreed ruled that the law requires that true consideration in Land transfers must be declared in view of section 92(1) of the Registration of Titles Act cap 230.

This therefore means that under declaration of consideration and failure to disclose developments on land during the process of valuation for purposes of transfer amounts to fraud that renders a land transfer void.

This therefore is cited with approval by the case of Kizito Mubiru & Anor v G.W. Byensiba & Anor which held that a buyer is not a bonafide purchaser where he inserts a lesser figure on the transfer form as consideration than he actually paid. Court further unequivocally held that concealment of true consideration amounts to fraud.

Therefore, the general law on fraudulent dealings on land is that it nullifies the entire process and nothing put on it can be validated under the law. Court in **Macfoy V United Africa Co. Ltd** [73]Held that if an act is void, there it is in law a nullity. It is not only bad but incurably bad and

[72] Supra
[73] (1961)3 ALL

in Bank of Uganda v Betty Tinkamanyire [74]court that if an act is illegal, every transaction on it is equally bad in law and one cannot put anything on it and it survives. This implies that a party can challenge any transaction arising out of any fraudulent dealing[75]

Therefore, for any party aggrieved of any land dealings on grounds of fraud, such person shall have to apply to court for cancellation of the title in question as stated under Boutique Shazim v Norattan Bhatia &[76]. This was held in the case of Hilda Wilson Namusoke & 3 Ors V Owalla's Home Investment Trust (E.A) Limited[77], where court stated that The Commissioner Land Registration does not have powers to cancel a certificate of title on the ground of fraud.

But it is important to note that the burdens lies onto the person claiming fraud to prove the illegality before the Honorable court otherwise court will extremely reluctant to rule in his favor. This then surely imply that Section 177 of the Registration of Titles Act Cap 230 fully applies in the proceedings while challenging a title on grounds of fraud. The person alleging fraud should strictly prove it at a higher level of standard. Section 101 of the Evidence Act[78] Is to the effect that whoever desires court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts

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[74] (Civil Appeal -2007/12) [UGSC 21] (16 December 2008)
[75] (civil Appeal N0.4 of 2020) [2021] UGSC 2 (01/03/2021)
[76] Registration of Titles Act Cap 230.
[77] supra
[78] the Evidence Act 2006

exist.

4.3 Challenges and controversies on fraud and land dealings

In Uganda, the automatic way of proving legal possession and ownership of land is through possession of the certificate of title. According to **Section 59**[79], a certificate of title issued under the Act cannot be impeached or defeated and wherever it is presented it shall be conclusive evidence that the person named in the certificate is the owner of the land described in the certificate.

One could say that the Registration of Titles Act Cap 230 contains the exceptions like under section 176(c) where it states that in case where a person is deprived of any land by fraud as against the person registered as a proprietor of that Land through fraud or as against the person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud. Briefly, where a person is fraudulently deprived of his or property or ownership, this beats the concept of certificate being conclusive evidence.

It is noteworthy that the degree of proof of fraud required is one of strict proof, but not amounting to one beyond reasonable doubt

Normally, Civil law will require one to prove on balance of probabilities which is not the case in land matters that involve fraud. Regarding the high tensity this matter draws while in courts of law, one thinks or

[79] *Registration of Titles Act cap 230*

believes the law attaches or recognizes it such high.

In the case of **Kampala District Land Board & Anor V Venancio Babweyaka & 3 Ors**[80], Court held that the process of acquiring land should be straight forward, free from conflicts and the law should equally be designed in a way suitable enough to pre-empt, prohibit and curb all loopholes of the would-be circumventors of the same law to avoid conflicts.

In vain, the vices and fraud in land seems to be growing with the change in society, this therefore means that people have mastered the law with its loopholes, the law is weak or the community is entirely reluctant and not informed on how they can be protected. This then goes back to the government.

Considering the holding in **Betty Kizito v David Kizito & 7 Ors**,[81]court stated that fraud is a question of fact and for one to sustain an action of fraud, there must be fraud and that mere suspicion or inference of fraud is not sufficient. Court further held that fraud must be strictly clearly and conclusively established, court further relied on the decision in **Senkungu V Yakobo**[82], referring to **sections 176(c) and 177**[83]where court stated that fraud is infinite in variety with the dynamic operations of mankind. It concludes all acts, omissions and concealments which

[80]*Civil Appeal NO.2 of 2007 19*
[81] *Betty Kizito v David Kizito & 7 Ors, (supra)*
[82] *Senkungu V Yakobo (supra)*
[83] *Registration of Titles Act Cap 230*

include breach of legal or equitable duty, a willful act on or part of anyone, whereby it is sought to be deprived by illegal or inequitable means of what is entitled to. This therefore means that fraud is a chain where an individual will plan to maneuver and succeed through beating the law.

Registration of Titles Act doesn't define fraud in any manner by cites and explains a bit of it in the provisions. This confirms how speculative the law has left it to be. it was observed in the case of **Bank of Uganda versus Betty Tinkamanyire (supra)** that have specifically cited fraud, the reader of these provisions has been left contemplating whether he or she is at liberty to pose an individual understanding of fraud, refer to a usual grammatical meaning as portrayed in the common journals, even when we resort to one of courts, different courts have defined fraud differently though holding the same indirect meanings.

According to **Musisi v Grindlays Bank(U) Ltd &Ors**[84]court states that the position of the Law is that fraud must be attributed to the person who becomes registered as proprietor of Land. It was further held in the case of in **Kampala Bottlers Ltd v Damanico (U) Ltd**[85] by ***Wambuzi*** CJ as he then was that a person registered through fraud is one who becomes registered as proprietor through a fraudulent act by him or to which he is a party or with full knowledge of the fraud.

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[84] *[1983] HCB 39*
[85]*CA NO.22 of 1992*

The RTA States that fraud attributed to transferee is actual, imputed or constructive. Fraud must be attributable either directly or by necessary implication, that is the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act. Regarding this judgment, a lot has been added onto fraud though not in the act. Courts have of liberty to interpret and explicit issues to do with fraud. This develops confusion amongst the people that seek justice.

Therefore, the law on fraudulent dealings in Land and transfer of title has not been fully incorporated into the Registration of Titles Act but only given a mentioning leaving a number of sensitive factors pending and speculative in nature. A lot is about the law of fraud in land dealings is more of grammatical than legal centered. Most of its perimeters are widely open and full of a lay man's interpretation hence making the law ambiguous as courts are left with a lot of liberty to free deliver on a sensitive sector that widely manages the development of the entire nation.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1Introduction

Land fraud is a pervasive problem in Uganda that affects the entire society. It undermines economic growth, social stability, and political development.

5.2 Summary of findings

Addressing land fraud requires a multi-faceted approach that involves the government, civil society, and communities. By strengthening the land tenure system, conducting public awareness campaigns, strengthening legal and judicial systems, and combatting corruption, Uganda can reduce land fraud and ensure that all Ugandans have secure land rights.

5.3 Conclusion

There are rampant fraudulent land transactions perpetuated by different actors, sellers, lawyers and officials in MLHUD. The effect of fraud is that it invalidates a title that would otherwise have been indefeasible. The immediate consequence of such is the possibility of one having thrown away money through the ‘purchase’ of air or a non-existent interest in land. The process of acquiring land has been heavily invaded and affected by fraudsters and such a reality calls for serious vigilance on the part of any person intending to acquire an interest in land so as to secure their investment or interests.

5.2 Recommendations

a) The government should strengthen the Land Tenure System: The government needs to invest in a secure and efficient land tenure system that guarantees land rights for all Ugandans. This includes improving land registration processes, resolving conflicts over land, and streamlining land administration systems.

b) The government and Civil Society Organizations should conduct Public Awareness Campaigns: The government and civil society organizations need to conduct public awareness campaigns to educate Ugandans about their land rights and how to protect them. This includes informing people about the importance of registering their land, the legal procedures for buying and selling land, and how to resolve land disputes.

c) The government should Strengthening Legal and Judicial Systems: The government needs to strengthen legal and judicial systems to ensure that land disputes are resolved fairly and quickly. This includes providing legal aid services to the poor and vulnerable, improving the efficiency of courts, and increasing the capacity of judicial officers.

d) The government should Combat Corruption: The government needs to address corruption within the land administration system by investigating and prosecuting corrupt officials. This includes strengthening anti-corruption institutions, such as the Inspectorate of Government and the Auditor General's Office.

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APPENDIXES

APPENDIX I: TIME FRAME/ WORK PLAN

Activity	March 2024	April2024	May2025
Proposal writing Proposal approval by supervisor Design of instruments			
Proposal submission			
Data collection and analysis			
Dissertation submission			

APPENDIX II: BUDGET ESTIMATE

Items	**Quantity**	**Cost @**	**Amount (Ugsh)**
Pens	10	500	5000
Paper (Reams)	4	15000	60000
Typing	50 pages	500(@page)	25000
Printing	200 pages	100@ page	20000
Transport	2 routes	50,000	100,000
Telephone (airtime)	100 units	300	30000
Internet	Data and minutes		30000
Lunch			150,000
Binding	4 books		50000
Miscellaneous			130000
Grand Total			6**00,000**

APPENDIX II: BUDGET ESTIMATE

Items	**Quantity**	**Cost @**	**Amount (Ugsh)**
Pens	10	500	5000
Paper (Reams)	4	15000	60000
Typing	50 pages	500(@page)	25000
Printing	200 pages	100@ page	20000
Telephone (airtime)	100 units	300	30000
Internet	Data and minutes		30000
Lunch			150,000
Binding	4 books		50000
Miscellaneous			130000
Grand Total			**500,000**