

5

**THE REPUBLIC OF UGANDA,
 IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
 CIVIL APPEAL NO 233 OF 2015
 ARISING FROM HCT – 02 – CV – CA – 0030 – 2013)
 (ARISING FROM CIVIL SUIT NO 71 OF 2010)**

10

(Coram: Kakuru, Musota, Madrama, JJA)

1. DINA OKIDI}
2. OKIDI ANGOL}APPELLANTS

VERSUS

GEORGE WILLY ODWONG}.....RESPONDENT

15

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

The appellants being dissatisfied with the whole Judgement and orders of the High Court sitting as an appellate court, in the judgment of her Lordship Hon Lady Justice Margaret Mutonyi delivered on 30th October, 2015 appealed to this court.

The trial court had allowed the appellant’s suit which sought to impeach the title of the respondent in respect of the suit property and the respondent appealed to the High Court. The High Court, sitting as the first appellate court allowed the appeal and set aside the Judgement of the lower court and dismissed the suit in the lower court with costs. The respondents then further appealed to this court on the following grounds:

1. The learned Judge erred in law when she decided that the appellants/respondents were not licensees with possessory interest in the suit land.
2. The learned Judge erred in law when she held that the respondent had not committed acts of fraud in acquisition of the suit land.
3. The learned Judge erred in law thereby occasioning a miscarriage of justice when she failed to hold that the respondent/appellant had departed from his pleadings.

- 5 4. The learned Judge failed to properly evaluate the evidence on record and thereby reaching a wrong decision and occasioned a miscarriage of justice.

At the hearing of this appeal, the appellants were represented by learned Counsel Mr. Lloyd Ocorobiya while learned Counsel Mr. Jordan Kinyera represented the respondent.

10 The appellants counsel submitted that the appellants were plaintiffs in the Chief Magistrate's Court and claimed ownership of the suit land as licensees with possessory interest. The respondent was a defendant and asserted his right as the registered proprietor under the Registration of Titles Act Cap 230 (RTA). The appellant contended that the father of the 1st appellant was a chief in Palabek and who was deposed by the colonial government. The said Chief was deported and later was not allowed to go back
15 to Palabek but settled under a licence from the colonial government on the suit land in 1953. He lived there with his family until 1974 when he died leaving his wives and the 1st appellant, his daughter, on the suit property. The said people continued to occupy and reside on the suit land from 1974 up to 1986. Further, that on that basis the appellant acquired possessory interest. Counsel submitted that the claim of the respondents fell
20 within the ambit of bona fide occupancy. On a question put by court whether a licence was transferable, the appellants counsel conceded that it was not. The question to be addressed was what interests the appellants had in the suit property under the law. The appellant's counsel submitted that what was crucial is that the appellants remained in occupation of the suit property.

25 Counsel further cited the case of **Kampala District Land Board and George Mitala v. Venasio Babweyaka and 5 others Supreme Court Civil Appeal No 16 of 2002**. He submitted that in that case it was established that the respondents had actually purchased the suit land from earlier occupants who had been on this land previously from the 1970s. They did not have any interest known in law because at that time it was
30 the Public Lands Act and the Land Reform Decree that applied but because they had been in occupation of this land, the High Court, the Court of Appeal and the Supreme Court found that they had an interest in this land. It was difficult to define exactly what that interest was.

35 On the issue of fraud the appellants counsel submitted that the respondent, at the time he made his application for the suit land conceded that there were no neighbours, there was no inspection that was carried out, there was absolutely nobody. So how was he acquiring this land without anybody around to show which dimensions and how big the

5 land was supposed to be and he did not encroach on other people's land. In the process the principles of natural justice were not followed.

The appellate Judge in the High Court held that the respondent had not committed any acts of fraud when he applied for the suit land. Counsel submitted that by the time the respondent was applied for the suit land, there were no neighbours to contest the application in contravention of the rules of natural justice that required that interested parties to be present at the time of the proceedings so that objections could be entertained.

In reply Mr. Jordan Kinyera counsel for the respondent submitted that the definition of a license and a licensee as defined by **Black's Law Dictionary** at page 164 on page 2 is one who is expressly or impliedly permitted to enter another's premise, to transact business with the owner or occupant or to perform an act benefiting the owner or occupant. He submitted that this license if any was granted to the 1st appellant's father and the purpose thereof was to be incarcerated there. That kind of licence is defined as a bare license which is a license in which no property interest passes to the licensee who is merely not a trespasser (See Black's Law Dictionary 9th edition).

The respondents counsel submitted that in the circumstances, there was no interest capable of being passed to the appellants who are the daughter and her husband respectively as rightly held by the Judge on 1st appeal.

At all material times, the property has been the property of the government of Uganda whether the colonial government or the central government or the district land board. When the appellants parted with possession of the land, the land remained vacant. The respondent applied to lease the land which was vacant at the time. The circumstances regarding this land predate even the grant of the license; the parties resided on that land together and were neighbours. After the appellants parted possession of the land, the respondent applied for a lease of it from the appropriate authority at the time and was given a lease offer. After inspection and due process which involved engaging potential persons with interests such as the neighbours, the lease offer was accepted and title processed in the names of the respondent. The respondents counsel submitted that there was no overriding interest or interest capable of being defeated by the respondent applying for the land.

5 Secondly, as to whether the appellants were bona fide or lawful occupants, they are precluded by section 29 (4) of the Land Act Cap 227 that says that for the avoidance of doubt a person on land on the basis of a license from the registered owner shall not be taken to be a lawful or bona fide occupant under the section. So the owner of the land at that time was the government.

10 On the question of whether the suit property was fraudulently registered in the names of the respondent, fraud as defined by several authorities including the **Black's Law Dictionary** is that it must be an intentional perversion of truth and that perversion must induce another person to rely on it and part with something valuable or part with something belonging to them. Counsel submitted that the respondent complied with
15 the law at the time, applied for the land and the application duly considered by the controlling authority after due process of law before he was granted a certificate of title. The respondent's counsel submitted that it was absurd to attribute fraud on the part of the respondent.

Further, the respondent's counsel submitted that the trial Magistrate held that it was
20 obvious that the process of acquiring a title was made easy by the fact that the plaintiffs had fled the area due to the war and could not resist the process and also due to the fact that the 1st defendant was a very powerful and influential personality in the district, being a Resident District Commissioner (RDC) appointed by the President of the Republic of Uganda. He found that this explained the fact that he did not even flee the
25 war and he concluded that the respondent must have been tightly guarded by several mean looking armed body guards.

No fraud was ever attributed to the respondent and the only attempt that was made was to show that he was a RDC and he had mean looking body guards and therefore he was automatically fraudulent, a position that is untenable in law. In **Kampala Bottlers v
30 Damanico Supreme Court Civil Appeal No. 22 of 1992**, it was held that fraud must be attributed to the transferee in title and there is no fraud here. No fraud was pleaded and no fraud was proved.

In the premises, learned counsel urged court to dismiss the appeal with costs.

Resolution of appeal

5 As a second appeal, this appeal is governed by section 72 of the Civil Procedure Act which provides that a second appeal can only be lodged on questions of law. Section 72 of the Civil Procedure Act provides that:

"72. Second appeal.

10 (1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that—

(a) the decision is contrary to law or to some usage having the force of law;

15 (b) the decision has failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits. ..."

20 Section 72 is entrenched by section 74 which provides that no second appeal shall lie on any ground other than those provided for in section 72:

"74. Second appeal on no other grounds.

Subject to section 73, no appeal to the Court of Appeal shall lie except on the grounds mentioned in section 72."

25 As a second appellate court, we are restricted in this appeal to determination of questions of law only and Rule 32 (2) Rules of this Court allows this court to appraise inferences of fact drawn by the trial court and it provides that:

30 "(2) On any second appeal from the decision of the High Court acting the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence."

We take it that the expression "trial court" refers to the court which heard the evidence originally as it is not defined by the Rules of this court. Section 2 (b) of the Civil Procedure Act, defines the word "court" as "any court exercising civil jurisdiction."

5 Similarly section 1 of the Judicature Act Cap 13 does not define "trial court." The ordinary meaning is that it is the court which exercised original jurisdiction.

This appeal arises from a decision of the High Court in the exercise of its appellate jurisdiction from the decision of a Magistrate Grade 1. In terms of the Supreme Court decision in **Kifamunte Henry v Uganda; S.C.C.A No 10 of 1997**, that once there is
10 evidence in support of a finding of fact, it is not open to a second appellate court to go into the sufficiency of the evidence or reasonableness of the finding, we are only concerned with questions of law in this appeal.

This is a second appeal, the trial having taken place before a Chief Magistrate's Court in Kitgum at Kitgum in Civil Suit No 71 of 2010 and the decision of the trial court was
15 appealed to the High Court. The crux of the appeal arises from paragraph 5 of the plaint in the trial court wherein the first defendant sought a declaration that they were licensees with possessory interest of an un-surveyed piece of land off Uhuru Drive Road, Kitgum Town Council. The suit sought inter alia the cancellation of the first defendant's certificate of title obtained fraudulently, general damages for trespass, a permanent
20 injunction restraining the first defendant, his agents and workmen etc from interfering with the plaintiff's quiet enjoyment, mesne profits, interests and costs of the suit.

The facts set out in the plaint are that in the year 1939, the Uganda Protectorate government dismissed and deported the chief of Palabek one Rwot Oloya Umari, a father in law of the second plaintiff and father of the first plaintiff, to Kitgum Town
25 where he was allocated a large piece of land. The said chief lived on the land with his family until he passed away and was buried in the suit property. The plaintiffs as licensees who had possessory interest took over control and management of the whole land and constructed thereon both permanent and temporary structures as well as carried out cultivation. However in 1986 the plaintiffs and the family were forced to
30 leave the suit property and sought refuge in Palabek Kal due to insurgency in Kitgum Town. Sometime in 1995, the plaintiffs returned to Kitgum town but did not venture to the disputed property because their belongings thereon had been destroyed. When the second plaintiff attempted to clear the suit land, he was stopped by the respondent on the ground that the property had been allocated to him by Kitgum town Council. The
35 appellants established that around 1990, the first defendant acquired a lease to the suit property measuring approximately 7.23 hectares from the original large swath of land.

The suit was determined by the magistrate grade 1 who issued the following orders:

- 5 (a) The plaintiffs (particularly the first plaintiff) own an unregistered but registrable interest in the suit land.
- (b) Secondly, the first defendant fraudulently acquired a certificate of title for the suit property.
- 10 (c) Thirdly, a permanent injunction restraining the first defendant, his agents or workmen from interfering with the plaintiff's enjoyment of the suit land.
- (d) Fourthly, each party was to meet their own costs. The grade 1 magistrate further ordered that the file be placed before the High Court for consequential orders directing the second and third defendants cancel the lease title granted to the first defendant who is the appellant in this appeal.

15 The first defendant appealed to the High Court on four grounds of appeal; as follows:

1. The learned trial magistrate erred in law and fact in failing to evaluate the evidence on record properly thereby arriving at a wrong conclusion, hence, occasioning a miscarriage of justice.
- 20 2. The learned trial magistrate erred in law and fact in failing to consider and weigh the evidence of the appellant's witnesses against that of the respondent and holding that the respondents are the owners of the suit land whereas not thereby occasioning a miscarriage of justice.
- 25 3. The learned trial magistrate erred in law and fact in holding that the appellants land title was acquired fraudulently as to compulsorily deprive the respondents of the land whereas fraud had not been proved.
4. The learned trial magistrate erred in law and fact when he failed to conduct the locus in quo of the disputed land.

On appeal two facts were agreed upon which is that the first defendant/appellant is the registered proprietor of the land in dispute and secondly that the land is located in Kitgum Town. The following issues were framed for determination of the appeal:

30

1. Whether or not the plaintiffs were licensees with possessory interest on the suit land?
2. Whether or not the first defendant acquired title fraudulently?
3. What were the remedies available?

35 On the first issue, the High Court established that the land in question was not customary land but was held by the government at the time the respondents father

5 acquired it. On the other hand, the appellant's case is that he applied for the property to
Kitgum Town Council, the land was surveyed and he got a land title in 1996. All the
proceedings of the town Council relating to the property were held in 1990. The
appellant first obtained a certificate of title in 1996. The learned Judge found that the
10 land belonged to the local government which had authority to allocate it to the
appellant. She found that the land in dispute did not form part of the estate of the
deceased Yakobo Oloya who was on land owned by the colonial government and which
was handed over to the government of the Republic of Uganda at the time of
independence. No document permitting the deceased to use the property as a licensee
was tendered in evidence.

15 On the issue as to whether the appellant acquired property fraudulently, the learned
Judge established from the minutes of the meetings of Kitgum Town Council that the
appellant had obtained the title deed regularly. The learned first appellate court Judge
held that all the grounds of appeal were based on failure to analyse and evaluate the
evidence thereby arriving at the wrong decision and erring in law and fact.

20 I have carefully considered the facts and circumstances of this appeal, the submissions
of counsel as well as the law and I am of the considered opinion that the appeal
revolves on the question of what kind of interest, if any, the appellants have. The
appellants counsel submitted that the appellants have possessory interest. He conceded
that they did not have customary tenure. The question of what "possessory interest" is
25 was not clear. Secondly, it is submitted that the appellants had a licence which was
originally granted to the father of the first appellant was a chief from Palabek who had
been given a licence to occupy the land in Kitgum town Council. The appellants
continued in occupation of the property until when the chief passed away sometime in
1974. Furthermore, the appellant lost possession of the suit property in 1986 due to war.
30 When they came back, the respondent had applied for a lease of the suit property.

It was an error to use the word "licence" to define and base the interest of the
appellants thereon. A licence in law in relation to land is permission granted by the
landlord to the licensee to use it for a specified purpose or for purposes which are
included in the licence. In this case no evidence was adduced as to the written licence
35 granted by the colonial government and therefore there are no written terms of such a
licence or even evidence of the grant.

5 Several dictionary definitions of the word "licence" can be considered. According to the **Oxford Dictionary of Law Fifth Edition, Oxford University Press Reissue 2003**, a license is: "...

10 1. Formal authority to do something that would otherwise be unlawful. Examples include a driving licence, a licence for selling intoxicating liquor, and a licence by the owner of a patent to manufacture the patented goods.

15 2. In land law, permission to enter or occupy a person's land for an agreed purpose. A licence does not usually confer a right to exclusive possession of the land, nor any estate or interest in it: it is a personal arrangement between the licensor and the licensee. A bare licence (i.e. gratuitous permission to enter or occupy the licensor's land) can be revoked at any time and cannot be assigned by the licensee to a third party. A contractual licence cannot be revoked during the period the parties intended it to last. Neither type is by itself binding on third parties acquiring the land from the licensor. However, if the licence is coupled with a grant of property or of an interest in land, the licence may be irrevocable and binding on the licensor's successors in title..."

20

In **Words and Phrases Legally Defined Volume 3: K – Q** at page 43 a licence is:

25 "... normally created where a person is granted the right to use premises without becoming entitled to exclusive possession of them, or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no interest in the land. If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control, the agreement will operate as a licence, even though the agreement may employ words appropriate to a lease.

30 A mere licence does not create any estate or interest in the property to which it relates; it only makes an act lawful which without it would be unlawful.

A right to enter on land and enjoy a profit *a prendre* or other incorporeal hereditament is a licence coupled with an interest, and is irrevocable...."

35 "The word licence has a well recognised significance in English law. According to our law a licence properly so called is merely a permission granted to the person

5 to do some act which but for such permission it would be unlawful for him to do.
Being in its nature a mere personal privilege and nothing more than a mere
personal privilege – the privilege personal to the individual licensee – such a
licence cannot be transferred by him to anyone else and it dies with the person to
whom it is given... (Russel v Ministry of Commerce for Northern Ireland [1945] NI
10 184 at 188, 193, per Black J...)"

According to **Halsbury's Laws of England Fourth Edition Reissue Volume 27 (1)**
Paragraph 10:

15 "A mere licence does not create any estate or interest in the property to which it
relates; it only makes an act lawful which otherwise would be unlawful. A person
cannot grant a licence to himself, nor to himself jointly with another. A purely
personal licence is not assignable. A gratuitous licence is revocable by notice at
any time, and is revoked by the death of either party or by an assignment of the
land over which the licence is granted."

20 The chief to whom such a licence was allegedly granted passed away in 1974. He could
not assign a licence to others neither could it be inherited. If the appellant acquired any
interest, it would be in their own right as occupants of the property. However the
property belonged to Kitgum Town Council at the material time. Furthermore between
1986 and 1990 – 1995 when a lease was granted to the respondent, the property was
dealt with by the controlling authority. At the material time, the appellants were not in
25 possession of the premises, having fled the town.

Dealing with the question of interest, the expression "possessory interest" does not fall
under any right recognised by the Constitution of the Republic of Uganda 1995 or the
Land Act 1998 unless such "possessory interest" falls within the parameters of bona fide
occupation recognised in the Constitution.

30 After careful consideration of the submissions of the appellants counsel as to what he
meant by "possessory interest" we have come to the conclusion that it can only fall
under the provisions dealing with "a bona fide" occupants. That notwithstanding, we
have considered the law under the Constitution and the Land Act Cap 227.

35 The Constitution of the Republic of Uganda, article 237 (3) thereof provides that land in
Uganda shall be owned in accordance with the following land tenure systems:

- 5 (a) customary;
- (b) Freehold;
- (c) Mailo; and
- (d) leasehold

10 The appellants did not own any Customary, Freehold, Mailo or Leasehold interest and claimed to be lawful occupants of bona fide occupants. Surprisingly, the appellants counsel conceded that the interest of the appellants does not fall under the Land Act. We shall nonetheless consider the categories provided for under the current constitutional dispensation. The terms lawful or bona fide occupants are firstly provided for under article 237 (8) of the Constitution of the Republic of Uganda which provides
15 that:

"Upon the coming into force of this Constitution and until Parliament enacts an appropriate law under clause (9) of this article, the lawful or bona fide occupants of Mailo land, Freehold or leasehold land shall enjoy security of occupancy on the land."

20 The Constitution of the Republic of Uganda 1995 was promulgated on 8th October, 1995. Article 237 (8) caters for occupants of certain recognised and registered interests in land namely of Mailo, Freehold or leasehold. The article deals with the bona fide or lawful occupants of Freehold or leasehold land in as far as the land is situated in Kitgum. The appellants could only be bona fide or lawful occupants of Kitgum town Council
25 which is presumed to own a statutory lease of 199 years granted to urban authorities under the law which we shall examine here under. Article 237 (8) is not about occupancy in land owned under customary tenure but only deal with occupancy on registered property.

30 Parliament enacted the Land Act Cap 229 in 1998 (hereinafter referred to as the Land Act) to regulate the relationship between the lawful or bona fide occupants of Mailo land, Freehold land or leasehold land under Article 237 (9) of the Constitution.

The Land Act reproduced in part article 237 (3) under the definition section 2 thereof on the forms of land ownership in Uganda. The terms "lawful occupant" and "bona fide occupant" are defined by section 29 of the Land Act and is reproduced herein for ease
35 of reference:

"29. Meaning of "lawful occupant" and "bona fide occupant".

- 5 (1) "Lawful occupant" means—
- (a) a person occupying land by virtue of the repealed—
 - (i) Busuulu and Envujjo Law of 1928;
 - (ii) Toro Landlord and Tenant Law of 1937;
 - (iii) Ankole Landlord and Tenant Law of 1937;
 - 10 (b) a person who entered the land with the consent of the registered owner, and includes a purchaser; or
 - (c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.
- 15 (2) "Bona fide occupant" means a person who before the coming into force of the Constitution—
- (a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or
 - (b) had been settled on land by the Government or an agent of the Government,
20 which may include a local authority.
- (3) In the case of subsection (2) (b)—
- (a) the Government shall compensate the registered owner whose land has been occupied by persons resettled by the Government or an agent of the Government under the resettlement scheme;
 - 25 (b) persons resettled on registered land may be enabled to acquire registrable interest in the land on which they are settled; and
 - (c) the Government shall pay compensation to the registered owner within five years after the coming into force of this Act.
- 30 (4) For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section.

5 (5) Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act."

Section 29 (1) (a) of the Land Act does not apply to Kitgum since it deals with land tenure in the former kingdom of Buganda, Ankole and Toro. Presumably this section 29
10 (1) (b) could have qualified the appellants, because the predecessor of the appellants or the person through whom they claim an interest entered the property with the consent of the colonial government hence the government of the Republic of Uganda. However by using the term "licensee", their rights would be restricted because it was under a licence. Did the predecessor in title of the appellants enter the land with the consent of
15 the registered owner? This is a matter of evidence that required a document to be adduced as held by the learned first appellate court Judge.

On the other hand if the appellants the predecessor in title were bona fide occupants, it had to be proved that they had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for 12 years or
20 more. Under section 29 (2) (b) of the Land Act it had to be established that they had been settled on the land by the government or an agent of the government or a local authority. The provision envisages the existence of a registered owner who is not the government or a local authority.

The case of the appellants is unique because the property was granted under a lease to
25 the respondent within the period 1990 – 1995. Secondly, the appellants were not in possession of the premises at the time the lease was processed. In the trial court, the appellant's case was that they derived their rights from the late Chief who passed away in 1974. In other words, they were not claiming in their own right as occupants. Last but not least, the respondent was granted a lease under the Public Land Act, Act 13 of 1969
30 before it was repealed under the 1995 constitutional dispensation.

What is the status of land in an urban area dealt with by the colonial government prior to Uganda's independence? Under the repealed Public Lands Act Cap 201 1964 laws of Uganda all lands where an a urban authority has jurisdiction which had been transferred to the Land Board under that repealed Act were transferred to the Urban Authority or
35 deemed to have been granted as a lease of 199 years under that Act. Section 15 of the repealed Public Lands Act cap 201 1964 laws of Uganda provided that:

5 "15 (1) Where by the operation of this Act, either at the commencement thereof
or at any time thereafter, land which is situated in an area over which an urban
authority exercises jurisdiction is vested in or transferred to a land board, it shall
be the duty of the board in or to which the land is so vested or transferred to
10 grant a lease thereof to that urban authority in accordance with the provisions of
this section.

(2) Where a lease is granted under the provisions of this section -

(a) the rent shall be one shilling per annum;

(b) the lease shall terminate on the appointed date; and

15 (c) the lease shall not contain any covenant restricting the use by the lessee of
the land thereby demised or the right of the lessee to sub-let any part of such
land.

20 (3) If within one month from the commencement of this Act (or, in the case of
land transferred to land board after such commencement, within one month from
the date of such transfer) the Land board has not granted a lease which it is
required to grant under the provisions of subsection (1) of this section, such lease
shall be deemed to have been granted upon the terms set out in subsection (2)
thereof and should be registered accordingly by the Registrar of titles under the
provisions of the registration of titles Act.

25 (4) any leasehold interest in land acquired by an a urban authority under the
provisions of this section shall be held and administered by such authority for the
benefit of the inhabitants of the area within which it is established and shall be
controlled, managed and otherwise dealt with in accordance with the provisions
of this Act.

30 (5) In this section "appointed date" means the date occurring at the expiration of
the period of 199 years from the commencement of this Act.."

Furthermore, under the Repealed Public Land Act 1969, Act 13 of 1969 where land
formerly known as Crown Land is situated in an urban area it was transferred to the
urban authority under a statutory lease to the authority. The repealed Public lands Act
Cap 201 1964 laws of Uganda, is dated 1st March 1962. Section 2 thereof subsection (1)
35 defined public land as "any land vested in or transferred to an established body or

5 public body under the provisions of the Act. "Controlling authority" in relation to public land to meant -

"(a) in the case of public land leased to an urban authority under the provisions of section 15 of this Act, the urban authority to which the lease has been made; and..."

10 The repealed Public Lands Act, Act 13 of 1969, provides in section 23 thereof that all leases granted to urban authorities are deemed to be statutory leases. It provides that:

Section 23 (1) "any lease granted or deemed to have been granted in accordance with the provisions of section 15 of the repealed Act to an urban authority of a designated area shall continue in force but subject to the provisions of this Act.

15 (2) the Commission shall grant to the urban authority of a designated urban area such lease and on such terms and conditions as the minister may direct; and any lease so granted shall be deemed to be a statutory lease.

Former administration is defined by section 13 subsection 2 of the repealed public lands Act chapter 201 or 1964 laws of Uganda to mean "an African local government
20 established under the provisions of the African Local Governments ordinance or a district council established under the provisions of the District Administration (district councils) ordinance 1955. Last but not least "statutory leases" are defined by the Public Lands Act, Act 13 of 1969 to mean:

25 "a lease granted or deemed to have been granted in pursuance of section 15 of the repealed Act.

The public lands Act, Act 13 of 1969 and the interpretation section 54 provides that:

In this Act, unless the context otherwise requires,

"controlling authority" means,

30 (a) in relation to land held on a statutory lease, the designated authority by which the land is so held;

(b) in relation to land vested in freehold in the Commission and not let on a certain lease, the commission;

5 (c) in relation to land held in statutory freehold or freehold, the commission;

The term "designated authority" means:

"A city council, municipal council, town council or Town board, established in a designated urban area;

10 "designated urban area" means an urban area mentioned in Schedule 3 to this Act or any area declared by the minister responsible for urban administration by statutory instrument to be a town;

"urban area" means a city, municipality, or a town.

The lease offer form at page 47 of the record is dated 23rd of February 1995 before the promulgation of the 1995 Constitution of the Republic of Uganda. Proceedings of the committee of the Council took place between 1990 and 1995. The final lease is with effect from 2nd April, 1995 and was issued by the Kitgum District Land Board, a successor of the Town Council. It follows that, the respondent had been granted a sub lease out of a statutory lease by the Kitgum town Council. After repeal of statutory leases to urban authorities under the 1995 constitution (article 286 thereof), the succeeding district land board granted the appellant a lease. The appellants do not fall within the definition of a bona fide occupant in leased property. Paragraph 5 of the amended plaint of the appellants does not allow for any other interest of being bona fide occupants of the second release granted to the Kitgum town Council. Paragraph 5 and 6 of the plaint is as follows:

25 "5. The plaintiffs bring this claim against the first defendant for a declaration that they are/were licensees with possessory interest of unsurveyed piece of land off Uhuru drive road, Kitgum town Council, ["the suit land"], for cancellation of the first defendant certificate of title obtained through fraud, general damages for trespass, a permanent injunction restraining the first defendant, his agents, workman etc from interfering with the plaintiff's quiet enjoyment, mesne profits, interest and costs of the suit.

30 6. The plaintiffs claim against the second defendant is for orders of cancellation of a lease fraudulently granted by the second defendant's predecessor, Kitgum town Council to the first defendant.

5 The basis of this suit of the plaintiffs/the appellants in this court was a right of possession. A bona fide occupant has to occupy leasehold or freehold in Kitgum and it assumes that there is the registered owner of the property. The appellants are not customary owners of the suit property. Finally section 29 (4) of the Land Act bars a licensee from claiming to be a bona fide or lawful occupant and it provides that:

10 (4) For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section.

15 On the issue of whether the property was fraudulently allocated, the appellants had vacated the property if at all they had ever been in possession thereof and as persons claiming interest by virtue of a licence, they lost permit or licence to use the land when the controlling authority which was Kitgum Town Council at the material time, allocated the premises to the respondent. KTC was the successor landlord and could revoke the licence, if any.

20 In the premises, we do not have any basis to interfere with the decision of the first appellate court Judge because the appellant's claim is based on an interest that is not known in law. If it was a licence, it was not assignable or could not have been inherited. If it was possession, they were not in possession at the time of the application and grant of the respondent's lease. The plaint as well did not indicate that they were bona fide occupants with a right of their own under the 1995 Constitution and The Land Act. In
25 the premises there is no basis to consider the claim of the appellants as bona fide occupants of leasehold which is what the former statutory leases created to urban authorities was. If anything, Kitgum Council is deemed to be the landlord who granted the licence in issue having inherited the property from the colonial government in the form of an initial statutory lease of 199 years.

30 In the premises, grounds 1, 2, 3 and 4 of the appeal have no merit and the appellants appeal stands dismissed with costs.

Dated at Kampala the 1st day of April 2019



Christopher Madrama

Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
CIVIL APPEAL NO. 233 OF 2015

5 **1. DINA OKIDI**
 2. OKIDI ANGOL ::: APPELLANT

VERSUS

10 **GEARGE WILLY ODWONG ::: RESPONDENT**

CORAM:

HON. MR. JUSTICE KENNETH KAKURU, JA
15 **HON. JUSTICE STEPHEN MUSOTA, JA**
 HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA


JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA

20 I have had the benefit of reading in draft the judgment of my learned brother
 Hon. Mr. Justice Christopher Madrama.

I agree that for the reasons he has given and the orders he has proposed, this
appeal should fail.

Dated at Kampala this.....^{1st}.....day of ^{April}.....2019

25


.....

Stephen Musota
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 233 OF 2015

1. **DINA OKIDI**
2. **OKIDI ANGOL** **APPELLANTS**

VERSUS

GEORGE WILLY ODWONG **RESPONDENT**

(An appeal from the Judgment of the High Court at Kampala before Her Lordship Hon. Lady Justice Margaret Mutonyi dated the 30th day of October, 2015 in High Court Civil Suit No. 445 of 2011)

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Stephen Musota, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the judgment of my learned brother His Lordship Hon Mr. Justice Christopher Madrama.

I agree with him that this appeal has no merit whatsoever and ought to be dismissed with costs for the reasons he has set out in his judgment. As Hon Stephen Musota JA also agrees it is so ordered.

Dated at Kampala this^{15th} day of ^{April} 2019.

.....


Kenneth Kakuru
JUSTICE OF APPEAL