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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 58 OF 2013

MARGARET SAJJABI APPELLANT

VERSUS

10 1. **WILLIAM TUMWINE**

2. **STELLA TUMWINE RESPONDENTS**

*(Appeal from the Judgment and orders of the High Court (Land Division) before
Hon. Mr. Justice Joseph Murangira dated the 18th day of December, 2012 in High
Court Civil Suit No. 213 of 2007)*

15 **CORAM: Hon. Mr. Justice Kenneth Kakuru, JA**
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

20 **JUDGMENT OF JUSTICE KENNETH KAKURU, JA**

This is an appeal from the judgment and decree of Murangira, J in High Court Civil
Suit No. 213 of 2007 at Kampala dated 18th December, 2012.

Background

25 This appeal arises from a land dispute between the appellant and the respondents,
the history which dates as far back as 1974.

The undisputed facts as agreed upon by the parties in their pre-trial scheduling
conference at the High Court and from the evidence on record are as follows:-

30 Sometime in 1974 the appellant occupied land at Ntinda, in Kampala city. The land
was bushy and unoccupied. It was a small piece of land comprising two urban plots
of less than 0.2 of an acre each Approximately 0.05 Ha.

5 She later ascertained that, the land belonged to Uganda Land Commission which has a freehold title over it. That title is comprised in Freehold Register Volume 217 Folio 9 Mengo Kyadondo. The Commission was registered as proprietor on 1st August 1962. By 1972, the Commission had subdivided the whole land into several plots. The intention was to lease the plots to the individuals. The planning of the areas was
10 designated as residential. From the deed plan attached to the Freehold title. It is evident that the Commission had by 1972 parceled out over 150 plots from its freehold title above described.

The encumbrance page of the freehold title reveals that by March 1972, lease hold titles were already being issued to buyers by Uganda Land Commission (ULC).

15 The plaintiff was able to apply for and obtain a lease in respect of plot 17 Block A Ntinda, under leasehold Register 997 Folio 21 ULC /151/638. This land is not in dispute. She occupied this land in respect of which she had and continues to have a title. She developed it with two residential houses. She also built on it a guest house. However, this guest house extended beyond the boundary of her land encroaching
20 on into the adjacent plot. This adjacent plot is plot 137 Martyrs Way Ntinda. It is one of the many plots belonging to ULC referred to above.

This is the land in dispute. In her plaint, she avers that, she started cultivating several crops on plot 137, next to her residence which was still undeveloped. She later constructed thereon a temporary structure she refers to as "*eating house*". She
25 also used it a "*lorry park*" and "*sand deport*" She contends that she set up diesel pump station with a tank and constructed thereon a public water borne toilet.

10 years later in 1984 she applied for a lease over the said plot 137, from ULC she obtained a lease offer but was unable to secure a lease. Subsequently in 2006, both respondents obtained a title to this same land. Apparently from a company named
30 Robin Establishment Ltd.

5 The appellant challenged the respondents' title to the land. She brought a suit against them contending that the title had been obtained by fraud. She also contended that, she was a *bonafide* occupant to the suit property and sought a declaration to that effect.

10 The respondents denied the allegations in the plaint contending that, the appellant had no legal claim to the suit land and that, the activities she was carrying on there were illegal. They raised a counterclaim, wherein they sought declarations *inter alia*, that the appellant had no interest in the suit property, an order of eviction, a permanent injunction, general damages and costs.

15 The High Court Judge, dismissed the suit and allowed the counterclaim. Being dissatisfied, the appellant filed this appeal on the following grounds:-

1. *The learned trial Judge erred in fact and law when he held that the appellant was not a bona fide occupant on the suit land.*
2. *The learned trial Judge erred in fact and law in holding that the respondents' certificate of title had not expired and was therefore still valid.*
- 20 3. *The learned trial Judge erred in fact and law to hold that the certificate of the respondents was not obtained through fraud.*
4. *The learned trial Judge erred in law in dismissing the appellants' suit, entering judgment for the respondents on the counterclaim and granting the various orders as detailed in the judgment in favour of the respondents.*

25 She seeks the following orders and declarations:-

- a) *The judgment and orders of the High Court be set aside.*
- b) *This appeal be allowed with costs in this Court and the High Court.*
- c) *The appellant be granted the following reliefs:*
 - i. *A declaration that the appellant is the bona fide occupant of the suit*
30 *property.*

- 5 ii. *An order cancelling the respondents' Certificate of Title for the suit land
 comprised in LRV 817 Folio 21 Plot 137.*
- iii. *A permanent injunction restraining the respondents whether by
 themselves, their agents, servants or workmen from evicting the
 appellant from possession and use of the suit property and from selling,
10 leasing, subleasing or otherwise alienating away the suit property.*
- iv. *General damages in the sum of Shs. 150,000,000/= for the respondents'
 trespass on the suit land and destruction of the developments thereon
 and loss of income since 2007 to date.*
- v. *Interest on (iii) and (iv) at 30% p.a. from the time of filing the main suit
15 till payment in full.*

Due to COVID 19 Pandemic, this appeal proceeded by way of written submissions. It is on that basis that this Judgment has been generated.

The duty of Court

20 This is a first appeal and as such this Court is required to re-appraise the evidence
and make it's to own inferences on all matter of law and fact. See:- *Rule 30* of the
Rules of this Court and *Fr. Narsensio Begumisa vs Eric Tibebaga in the Supreme Court
of Civil Appeal No. 17 of 2002.*

I shall proceed to do so.

25 **The Appellant's case**

It was submitted for the appellant that she is a *bonafide* occupant of the suit land
and she therefore has a protected right to the land under Section 29(2) (a) of the
Land Act. She concedes that, the land is not registered in her name under the
Registration of Titles Act. It was her case that, she occupied and developed the land
30 undisturbed from 1977 to 2007. Further that, the respondents admit that, the
appellant had been using the suit land until they purchased it on 24th October 2006.

5 In respect of the second issue, on the propriety of the respondent's Certificate of title, the appellant submitted that, by the time the suit land, the original lease grant to them by ULC had long expired contending that, the original lessees had failed to comply with the terms of the lease, specifically clauses 62(c) and 5, thereof. The clause required the lessee to develop the property by building thereon a residential
10 house, with 5 years of the lease. This had not been done.

In the alternative the appellant argued that, the transfer of the suit property to the respondents was tainted with fraud to which they were privy. Being aware of the appellant's developments on the land the appellant's predecessor in title ignored them and proceeded to transfer an expired title to the respondents.

15 Lastly and in further alternative, that whereas the application for consent to transfer indicated shs. 40,000,000/= as purchase price, the agreement of sale indicated shs. 85,000,000/=. This it was submitted amounted to fraud sufficiently proved as it was undisputed. This, it was submitted, was sufficient to vitiate the transfer and the registration of the respondents as proprietors. The trial Judge was faulted for having
20 failed to find so.

In support of the appellant's appeal the following decisions were cited and referred to:-Registration of Titles Act CAP 230, Land Act CAP 227, *Kampala Land Board and Another vs National, Supreme Court Civil Appeal No. 2 of 2004, Haji Abdu Nasser Katende vs Vithelides Hanides & Co. Ltd Court of Appeal Civil Appeal No. 84 of 2003*
25 and *John Katarikawe vs William Katwiremu [1977] HCB 187.*

I have taken time to read the above authorities in as far as they relate to this appeal.

The Respondents' case

Bonafide occupancy

In reply the respondents submitted that, the appellant failed to prove actual
30 occupancy on the suit land, to qualify her as a *bonafide* occupant under Section

5 29(2) (a) of the Land Act. She attempted to obtain a lease over land was an indication that she was not a *bonafide* occupant, as provided for under the Land Act. Her evidence to prove occupancy was discredited and the Judge correctly rejected it.

The validity of the respondents' title

10 In reply to the above issue it was submitted for the respondents that, the certificate of title held by the respondents is valid and has neither expired nor been cancelled. This is confirmed by the existing record at the land Registry.

Whether the title was obtained through fraud

15 It was submitted for the respondents that, the lease title to the suit land, has been in existence since 1972 before the claimed occupation by the appellant in 1974. By issuing a lease over the suit land in 1972 could not have defeated her unregistered interest in 1974.

Illegality of the transfer of title to the respondents

20 It was submitted that, the purchase price of shs. 40,000,000/= was paid in respect of the land as indicated on the consent to transfer form. However, shs. 45,00,000/= was paid for the purpose of relocating the persons who were using the land for various actions prior to its transfer to the respondents. There was thus no fraud committed in the transfer process.

Resolution

25 It appears to me that, the issues canvassed at the trial and at this appeal are relative simple. However both in their pleadings and in their respective submissions Counsel dwelt extensively on irrelevant issues. I will therefore restrict myself to what I consider to be most relevant in determining this appeal.

5 Whether the appellant was a bonafide occupant

In her own evidence and pleadings the appellant clearly shows that she applied for and was granted lease by ULC to Plot 17 Block A, Ntinda. Thereon she constructed residential houses and a guest house. It is adjacent to the suit land which is Plot 137 martyrs Way Ntinda, the land in dispute. Subsequently she grew crops on that land.
10 She later hired it out to some other persons who paid her rent.

It is evidence that, the appellant never at any one time occupied the suit land in a manner envisaged under the Constitution or the Land Act.

Bonafide occupancy is not a form of land tenure but rather a land right recognised and protected by the law. It was intended to remedy the historical wrongs created
15 by the colonial land tenure systems. Under the 'mailo' land tenure systems created between 1900 and 1955 land titles were issued to a few individuals over vast parcels of land which were already occupied by largely peasant communities. The practice of shifting cultivations, meant that peasants moved from one place to another oblivious of the ownership of the land under the 'mailo' system and the
20 Registration of Titles. In order to remedy the above, the Constituent Assembly provided for their security of "occupancy". For one to be protected under law he/she had to prove that he/she was in continuous occupation of the land without having been challenged by the registered proprietor and derived livelihood from that land at least 12 years prior 1995 when the Constitution came into force.

25 Section 29 (2) of the Land Act provides:-

(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

5 (b) had been settled on land by the Government or an agent of the Government,
which may include a local authority.

This was not the case here. This was an urban plot. In a planned urban area, Ntinda. The appellant was aware of this. She applied for and obtained a leasehold title in respect of one of the several plot available for lease to urban dwellers solely for
10 construction of residential holding. She constructed a house thereon. I must assume she did so in compliance with the Town and Country Planning Act Cap 246 and the Public Health Act Cap 281. She went ahead to encroach on the neighbouring plot by extending the guest house into it. She also started carrying illegal activities on that plot.

15 She must therefore have been aware that her activities on the suit land were illegal. They contravened the Town and Country Planning Act, Cap 246 which was in force at the material time. It was repealed by Physical Planning Act No. 2 of 2010. She did not produce at the trial a temporary occupation permit issued by ULC, or even a trading licence. She therefore failed to prove that her occupation was legal under the
20 Town and Country Planning Act, Cap 246 and the Public Health Act Cap 281.

I am unable to find that, a person who is carrying on an illegal activity on land can be declared to be a *bonafide* or lawful occupant. A person occupying a wetland a lake shore, a river bank in contravention of the National Environment Act or one occupying a forest reserve in contravention of National Forests and Tree Planting
25 Act for example cannot be declared to be a *bonafide* or lawful occupant. See: *Dorothy Nandugga Kabugo vs Attorney General, Constitutional Court Constitution Petition No.39 of 2010* and *National Forestry Authority vs Omuhereza Basaliza & 39 Others, Court of Appeal Civil Appeal No. 15 of 2019*.

A *bonafide* occupant must be one who entered the land innocently and is physically
30 occupies it unchallenged. He or she must have developed and utilised it

5 continuously for 12 years or longer prior 1995. He or she must be deriving
livelihood from it through occupation. It is the appellant's case that she hired out the
land. She was occupying and living outside the suit land on an adjacent plot.
Bonafide occupancy cannot be stretched to include constructive occupation. In the
same breath it cannot offer protection to persons carrying on illegal activities on the
10 land they occupy.

I find no merit in this ground of appeal.

The validity of the respondents' title

The respondents' title was issued by ULC on 14th June, 1972 to Samuel Bagattansi
for 49 years beginning 1st January, 1972. On 20th July, 1982, it was transferred to
15 Edward Kiwanuka. On 27th October, 2006 it was transferred to Robin Establishments
Ltd and again to the respondents. The title could not have expired, it is still valid.

Had it expired, then, it would have been canceled. It was not. ULC never exercised
it's right to revoke the lease. Clauses 4 and 5 of the lease agreement only makes the
lease voidable at the instance of the lessor. It does automatically render the lease
20 void. In order to put into effect clause 5 the lessor has to re-enter the land and or
cancel the lease. This did not happen.

I find no merit in this ground.

The propriety of the appellant's title

The appellant's case is that, the respondents and their predecessors in title could
25 not have obtained a transfer. It was contended that, the process of acquisition,
registration and subsequent transfer of the land by the first registered proprietor
could not have been intended to or resulted into the defeat of the appellant's
registered land. This is so because the land was first of all registered under the
Registration of Titles Act under freehold title. Subsequently leases were issued out
30 of it.

5 In 1972 the suit land was leased to Samme Bagattansi. The principle set out in *Katarikawe vs Katwiremu* (supra) is inapplicable here. In *Katarikawe vs Katwiremu* case, the land was unregistered. In the process of seeking registration under RTA the applicant intended to defeat the unregistered interest on the customary tenant. In this case the appellant came to the land in 1974. By that time there was already
10 an existing lease issued in 1972 to someone else, from whom the respondents derived their title.

I find no merit in this ground

Fraudulent transfer

The contention by the respondents that, the disparity between the value of the land stated in the agreement of sale and that set out on the consent transfer form was
15 because part of the money was to provide for relocation of occupants is not convincing to me. The agreement of sale does not say so. Oral evidence cannot amend or vary terms of a contract.

Be that as it may, the consent transfer form is no longer a legal requirement in the
20 process of transfer of land. It was a requirement under Section 22(5) (c) (i) of the Public Lands Act and Section 10 of the Land Reform Decree, Decree 3 of 1975. Both Acts were repealed by the Land Act in 1998. That form could not have been a requirement in 2007. However, Land Form 6 is still applicable for the purposes of assessing stamp duty. While considering a similar matter this Court in *David Kizito Kanonya & Others vs Betty Kizito, Court of Appeal Civil Appeal No. 187 of 2012*,
25 observed and held on this issue as follows:-

*“Firstly, that there is the issue of misrepresentation of the consideration of the property. The 1st appellant did not state the true consideration of the property when he stated in form exhibit P1 that it was a gift. We know it was not. The
30 purpose of stating the consideration, among others is to help determine the value of the property.*

5 *This is superfluous to say the least, as the government valuer is required to physically inspect the property in issue in every application for transfer and ascertain its value, which value is endorsed on the transfer form under his or her signature*

10 *As already noted above the value of the land or whether or not it is developed, is ascertained by the government valuer's physical inspection, irrespective of what is written on the consented or transfer form.*

See also *Haji Numani Mubi Akulamusa vs Friends Estate Ltd, Court of Appeal Civil Appeal No. 104 of 2018.*

I find no merit in this ground.

15 In the final result this appeal fails as it is devoid of any merit.

I make the following orders and declarations.

1. The appellant is not a *bonafide* occupant on the suit land under Section 29(2) of the Land Act.
2. The respondents did not obtain title to the suit land by fraud.
- 20 3. The appeal has no merit and is hereby dismissed.
4. The appellant shall pay cost of this appeal.

By majority decision of Kakuru and Kiryabwire, JJA, with Madrama, JA dissenting, this appeal is hereby dismissed with costs to the respondents.

It is so ordered.

25 **Dated at Kampala** this^{18th}.....day of ^{March}..... 2021.



.....
Kenneth Kakuru
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 58 OF 2013

- (Appeal from the decision of the High court of Uganda at Kampala (Land division) before Murangira J dated 18th day of December, 2012 in Civil Suit No.0213 of 2007)

MARGARET SAJJABI===== APPELLANT

VERSUS

1. WILLIAM TUMWINE

2. STELLA TUMWINE=====RESPONDENTS

CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA
HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Kenneth Kakuru, JA.

I agree with his Judgment and I have nothing more useful to add.

Dated at Kampala this.....^{18th}..... day of^{March}.....2021.



.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

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**THE REPUBLIC OF UGANDA,
 IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
 CIVIL APPEAL NO 58 OF 2013
 (CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)**

MARGARET SAJJABI}APPELLANT

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VERSUS

1. WILLIAM TUMWINE}

2. STELLA TUMWINE}RESPONDENTS

(An appeal from the judgment and orders of the High Court of Uganda (Land Division) by Hon. Mr. Justice Murangira, dated 18th December, 2012 in High Court Civil Suit No 213 of 2007)

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JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA and I agree with the facts and issues set out in the judgment and I do not need to repeat them here.

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I do not agree that the appeal should be dismissed and would write a separate judgment with specific focus on the specific issue of the status of the suit property in law by 2006 when the Respondents became registered proprietors thereof as lessees of Uganda Land Commission as well as the issue of limitation of actions. The suit property is also known as a lease of 49 years with effect from March 1972 granted by the Uganda Land Commission comprised in Leasehold Register Volume 817 Folio 21.

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The facts I consider material for purposes of this appeal are that the Plaintiff's action was primarily a claim against the Defendants jointly and severally for a declaration that she is the bona fide occupant of Plot 137 Martyrs Way Ntinda, Kampala and for an order cancelling the Defendant's certificate of title comprised in Leasehold Register Volume 817 Folio 21, general damages, and costs of the suit as well as a claim for interest. The Plaintiff's claim as averred in paragraph 4 of the plaint is that she occupied the suit property and another adjoining plot when it was bushy. She cleared and occupied the suit property and started utilising them for

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5 cultivation without challenge from anyone. In 1984, the Plaintiff applied for and obtained a
lease over the suit property from the Uganda Land Commission who issued her with a lease
offer for 5 years which expired. However, in May 2006, the 1st Defendant who is also the 1st
Respondent to this suit offered to buy the suit property from the Plaintiff and she declined the
request. In October, 2006 the 1st Respondent personally appeared before the Local Council
10 Chairperson to introduce himself as the purchaser of the suit property and left behind a
certificate of title.

In the written statement of defence, the Defendants who are now the Respondents to this
appeal averred that the Plaintiff on her own admission occupied the suit property without the
consent of the land owner which was the Uganda Land Commission. Secondly, she was only
15 granted a lease in respect of Plot 17, Block A at Ntinda and not the suit property. Thirdly, that
the alleged developments of temporary structures, seasonal crops and fuel pump were illegal
developments and activities not supposed to be carried out in a town area which had been
declared so by the planning authority before the interest of the Plaintiff on the suit property.
Further a lease could not be issued to the Plaintiff/Appellant because title had already been
20 issued to another person.

By way of counterclaim, the Defendants averred that they purchased the suit property from
Messieurs Robin Establishments Ltd on 24th of October 2006 for consideration of Uganda
shillings 85,000,000/= pursuant to which they were registered on the certificate of title after a
transfer had been executed in their favour. Further, they had carried out a search on the
25 certificate of title which showed that there were no encumbrances in the suit property. They
sought a declaration that the Plaintiff/Appellant had no interest in the suit property and for an
order of eviction from the suit property as well as for general damages and costs of the suit
among other orders.

In a joint scheduling memorandum, the parties agreed to the following facts:

- 30
1. The suit land is part of freehold land in Ntinda owned by the Uganda Land Commission
and registered in the Freehold Register volume 217 folio 9.
 2. The Plaintiff is the registered proprietor of Plot number 17 Block A at Ntinda
neighbouring the suit property. The Plaintiff's title is comprised in Leasehold Register
Volume 997 folio 21.

- 5 3. The Plaintiff has 2 residential houses on plot 17 Block A at Ntinda and the guest wing of this development is partially on the suit land.
4. The Defendants are the registered proprietors of the suit land and Leasehold Register Volume 817 Folio 21.

The parties further framed the following issues for determination of the suit namely:

- 10 (1) Whether the Plaintiff is a bona fide occupant?
- (2) Whether the Defendant's certificate of title expired?
- (3) Whether, if the Defendant certificate of title is still valid, the Defendants were registered through fraud.
- (4) What remedies are available to the parties?

15 The learned trial Judge, after considering the evidence resolved the issues as follows:

 On the 1st issue of whether the Plaintiff is a bona fide occupant of the suit property, the learned trial Judge considered the definition of a bona fide occupant under section 29 (2) (a) of the Land Act, cap 227 and several authorities which hold that the right to bona fide occupancy must be actual or real. That it must be based on an unchallenged right. Secondly, he found
20 that the Appellant is not envisaged in the definition of a bona fide occupant. The word "bona fide" is intended to be restricted to occupants of land that have been extensively utilised by the occupants who have lived there for the prescribed period of time. This is with the knowledge of the registered proprietor. The learned trial Judge found that a person claiming the right of security of occupancy must be in real occupation of the suit land in dispute but in
25 the instant case, after evaluating the evidence, the learned trial Judge found that the Plaintiff did not get authority to occupy the suit property from the registered proprietor. He also considered the previous registered proprietorship of the suit property and found that the Plaintiff all along knew the owners of the suit land. The learned trial Judge found there was no evidence that the Plaintiff was in effective occupation of the suit property to qualify as a
30 person falling within the definition of section 29 (2) (a) of the Land Act, 1998 as amended and that the Plaintiff failed to prove that she is a bona fide occupant of the suit property.

The learned trial Judge on the 2nd issue found that the Defendant's certificate of title had not expired because it was registered on 14th of June 1972 for 49 years. He found that the certificate of title was still subsisting. The considered lease title is derived from the freehold

5 title in the names of Uganda Land Commission and held that the Uganda Land Commission holds the title under freehold tenure which still retains the encumbrances of the valid leases that were granted and registered under it. Further that the Uganda Land Commission has not complained against the certificate of title being registered in the names of the Defendants.

10 On the 3rd issue of whether if the certificate of title was still valid, the Defendants were registered through fraud, the learned trial Judge resolved the issue in the negative.

15 In conclusion he found that the Defendants are the lawful registered owners of the suit property. Secondly, that the Plaintiff has no valid interest in the suit land as described in the suit. He further issued an order for the Plaintiff to be forcefully evicted after 30 days if she is still in occupation of the suit property. He granted an order of a permanent injunction against the Plaintiff and her agents restraining her from any interference with the Defendant's property.

The Plaintiff was aggrieved and appealed to this court on the following grounds of appeal namely:

- 20 1. The learned trial Judge erred in law and fact when he said that the Appellant was not a bona fide occupant of the suit land.
2. The learned trial Judge erred in fact and law in holding that the Respondents' certificate of title had not expired and was therefore still valid.
3. The learned trial Judge erred in law and fact to hold that the certificate of the Respondents was not obtained through fraud.
- 25 4. The learned trial Judge erred in law in dismissing the Appellants' suit, entering judgment for the Respondents on the counterclaim and granting the various orders as detailed in the judgment in favour of the Respondents.

30 Regarding grounds one, three and four, the decision of the learned trial Judge rests from the proposition that the Appellant was not a bona fide occupant of the suit property. The issue of bona fide occupancy was considered according to the terms of the definition of bona fide occupancy under section 29 of the Land Act.

I have considered the law and the fact that bona fide occupancy must be on registered property in terms of article 237 (8) and (9) of the Constitution which provides as follows:

5 (8) Upon the coming into force of this Constitution and until Parliament enacts an appropriate to 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.

(9) Within two years after the first sitting of parliament elected under this constitution, parliament shall enact a law –

10 (a) regulating the relationship between the lawful or Bona fide occupants of land referred to in clause (8) of this article and the registered owners of the land;

(b) providing for the acquisition of registrable interest in the land by the occupant.

15 It is clearly the intention of Parliament that bona fide occupants shall enjoy security of tenure until Parliament enacts a law regulating the relationship between the bona fide occupant and the registered owner of the land.

I have further carefully considered the facts from which I would consider the issue as a matter of law as to the status of the lease of the suit property by the time the suit property became the subject matter of the suit filed in the High Court on 11th April 2007. The Appellant alleged that he was in occupation of the suit property since 1974 which is a period of over 20 years. She also states that she was in unchallenged occupation of the suit property until the Defendants claimed the suit property in 2006. The evidence of the Plaintiff on record is that she cultivated seasonal crops on the suit property. Secondly, she constructed thereon temporary eating house. These were wooden structures. Thirdly she had thereon a lorry park and a sand depot. She further had developed thereon a diesel tank and pump. Last but not 25 lease she constructed on the suit property a water borne public toilet. She had several tenants on the suit property engaged in selling sand, running a restaurant and operating the diesel pump. The Appellant also adduced evidence showing that she used to pay water bills to National Water and Sewerage Corporation for water utilised on the suit property. The activities on the suit property were confirmed by DW2 Mr. Beinomugisha Benon a witness for the 30 defence and a law enforcement officer of Kampala City Council. DW2 confirmed that there was a lorry park on the suit premises and also, there was an eating place in a temporary structure, there was a fuel pump. There was a toilet and sand was sold on the plot.

DW3 Tumwine William testified in cross examination that when he purchased the suit property, there were some lorries there, there were heaps of sand and a makeshift eating 35 place and a fuel pump at the entrance. He was the Assistant Town Clerk and stated that the Plaintiff/Appellant had come to his officer for permission to construct a diesel pump but he never gave permission.

5 The learned trial Judge considered this evidence and found that the Plaintiff/Appellant had no lease to the suit land. He found that they temporary developments belonged to other people who hired the place. The learned trial Judge found that the Plaintiff failed to prove that she was a bona fide occupant of the suit premises.

10 As far as the title is concerned, the Uganda Land Commission had freehold title to the suit property issued in 1962. In 1975 and under the Land Reform Decree, all land in Uganda was vested in the Uganda Land Commission which had authority to deal with land as it deemed fit according to the law and the land policy of Uganda at that time. The title of Uganda Land Commission was issued on 1st August 1962 out of Crown land prior to independence of Uganda from colonial rule on 9th October, 1962. The freehold title was issued under the Public
15 Lands Ordinance. The encumbrance page shows that the land was leased out to a private owner from the freehold title by the Uganda Land Commission and the suit property has been transferred to three other persons since the lease was issued in 1972. The lease title of Plot 137 (the suit property) was issued on 14th June 1972 and the lease agreement is dated 14th June 1972. I do not want to dwell on the transactions by way of transfer of the registered
20 ownership of the lease to successive registered proprietors. I would instead handle a matter of law as to the legal status of the suit property and the mother title from the time of independence of Uganda in 1962.

The status of land held by Uganda Land Commission in an Urban Area.

25 The status of land in an urban area which had been dealt with by the colonial government prior to Uganda's independence is determined by law and not necessarily by production of a freehold title issued to Uganda Land Commission in 1962 as the freehold title could be encumbered by a statutory lease to the urban authorities in some instances stated in the law. The law is that under the repealed Public Lands Act Cap 201 1964 laws of Uganda land which had been transferred to a Land Board under that repealed Act were transferred as a statutory
30 lease to the Urban Authorities or deemed to have been granted a lease of 199 years to the urban authority under that Act.

The Public Lands Act cap 201 commenced application on 1st March, 1962 and section 11 of thereof vested land in the Land Commission and the Land Boards and Public Bodies and provides as follows:

35 11. (1) subject to the provisions of the Constitution and this Act, Crown lands which immediately prior to the commencement of this Act –

5 (a) had not been demised by way of a lease under the provisions of the Crown Lands Ordinance;
and

(b) were occupied by the government for public purposes,

shall be vested in the Land Commission in freehold to be held and enjoyed, sued for, recovered,
maintained, dealt with and disposed of in the manner provided by the Constitution and by this Act

10 (1) Subject to the provisions (1) this section, any right, title, estate or interest in land of all which
immediately prior to the commencement of this act the Government was seized, possessed or
entitled shall be vested in the Land Commission to the same extent and the same estate or interest
as the same was previous vested in the Government.

15 (3) For the purposes of this section, that area of Crown lands within the Municipality of Kampala
which has been declared under the provisions of the Forests Act to be a central forest reserve shall
be deemed to be Crown land to which the provisions of subsection (1) of this section apply.

The Freehold Title in evidence shows that it was vested in the Uganda Land Commission
under the Public Lands Ordinance. The above provision is subject to some exceptions
stipulated in section 12 and 14 of the Public Lands Act. Section 12 of vested land in the
20 Buganda land board and states as follows:

12. Subject to the provisions of the Constitution and of this Act –

25 (a) all Crown lands in Buganda, other than the Crown lands to which the provisions of sections 11
and 14 of what this Act apply, shall be vested in the Buganda land board in freehold to be held and
enjoyed, sued for, recovered, maintained, dealt with and disposed of in the manner provided by the
Constitution or by this Act; and

(b) any right, title, estate or interest in land of all to which immediately prior to the commencement of
this Act the Kabaka's Government was seised, possessed or entitled shall be vested in the Buganda
land board to the same extent and for the same estate or interest as the same was previously vested
in the Kabaka's Government

30 Section 14 vested the sit in Crown lands which had been registered in the public body to be
to remain vested in the public body in freehold. Section 15 of the repealed Public Lands Act
cap 201 1964 laws of Uganda provided that:

35 "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 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 -

- 5 (a) the rent shall be one shilling per annum;
- (b) the lease shall terminate on the appointed date; and
- (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.
- 10 (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.
- 15 (4) any leasehold interest in land acquired by an 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.
- 20 (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..."

The import of section 15 (3) (supra) is that if within a month from the commencement of the Act such land had not been transferred to the urban authority, the urban authority is deemed to have been granted a lease of 199 years from the commencement of the Act. Secondly, section 2 (4) provides that any leasehold interest in land acquired by the urban authority 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 provisions of the Public Lands Act cap 201.

If the land was held by a land board, by operation of law, the suit property would have been deemed to have been vested in Kampala City Council or its land board under a statutory lease of 199 years from March 1962. Land held by Uganda Land Commission was meant for the purposes stipulated in the Constitution and the Public Lands Act. The Commission could lease out land for the fulfilment of its functions under the Constitution and the Public Lands Act. Subsequently the Uganda Land Commission is established by the Constitution of the Republic of Uganda 1967 and article 108 thereof which provides as follows:

- 35 "108 (1) There shall be a Land Commission for Uganda.
- (2) The Land Commission shall consist of not more than 5 members who shall be appointed by the President.

5 (3) The land Commission shall hold and manage any land vested in it by this Constitution or any other law or acquired in Uganda by the Government of Uganda and shall have such other powers and duties as may be prescribed by Parliament.

...

(5) For the purposes of clause (3) of this article, land vested in the land Commission shall include,

10 (a) every official estate held by a Corporation Sole by virtue of the provisions of the Official Estates Act;

(b) any land which immediately before the commencement of this Constitution is vested in the land board of the Kingdom or a District,

15 and accordingly all rights, interests and other estates in any such land shall vest in the land Commission and any monies accruing from the land so vested under paragraph (a) of this clause shall be paid to such authority as Parliament may prescribe.

20 The land Commission is supposed to hold and manage any land vested in it by the Constitution or any other law or acquired by the Government of Uganda. Pursuant to the 1967 Constitution of the Republic of Uganda, the Public Lands Act 1969, Act 13 of 1969 was enacted vesting land which used to be vested in the land Commission in the Uganda Land Commission under section 1 thereof. Section 8 of the Public Lands Act 1969 and now that the Uganda Land Commission to sell, lease or otherwise deal with land held by it for the purposes of performing its functions under the Constitution and the parent Act.

25 The repealed Public Lands Act Cap 201 1964 laws of Uganda, is dated 1st March 1962 and section 2 subsection (1) defines public land as "any land vested in or transferred to an established body or public body under the provisions of the Act. "Controlling authority" in relation to public land 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..."

30 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.

5 (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.

The literal reading of section 23 (2) (supra) clearly stipulates that the Commission shall grant to the urban authority such lease and on such terms and conditions as the Minister may direct
10 and the lease shall be deemed to be a statutory lease.

A "statutory lease" is defined by the Public Lands Act, Act 13 of 1969 to mean:

"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,

15 "controlling authority" means,

(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 statutory lease, the Commission;

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

20 The term "designated authority" means:

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

"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;

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

Schedule 3 of the Public Lands Act, 1969 designated Kampala as an urban area. The purpose of granting statutory leases was to enable the city authority or City Council to manage the covenants in any sub lease granted to any person out of the statutory lease. On the other hand, the purpose of the controlling authority in an urban area has something to do with the
30 planning of the urban area and regulation of the buildings and developments therein. What is envisaged is captured by section 22 (1) of the Public Lands Act which stipulates as follows:

5 “(1) Without prejudice to the right of the Commission to grant a lease of public land in a designated urban area to be disconnected authority, a controlling authority shall not grant a lease of public land in an urban area for a term exceeding 99 years.

10 (2) in the absence of any special provision to the contrary contained in the lease of public land, the rent reserved in any such lease granted after the commencement of this Act shall, at the option of the controlling authority, be subject to reassessment at intervals of not less than 10 years.

 (3) Where the controlling authority on a reassessment under the provisions of the immediately preceding subsection fixes a rent in excess of the rent so reserved, the increase of rent shall not exceed one twentieth part of the unimproved value of the land at the time of the reassessment.”

15 Granted it may be submitted that the term “controlling authority” in relation to land vested in freehold in the Commission and not let on a statutory lease, means the Commission. However, the function of the Commission is not to let out land to individuals in a designated urban area. That is the function of the urban authorities.

20 From the above law, it is clear that freehold title vested in the Commission was meant to be granted to the urban authority as a statutory lease under terms of section 23 (2) of the Public Lands Act, 1969. Any freehold held by the land Commission ought to have been the subject to a lease deemed to have been granted to the urban authority.

25 In the circumstances of this appeal, the freehold title of the Uganda Land Commission by 1972 was valid but contains an anomaly in which the Uganda Land Commission purported to grant a lease to a private person in 1972 when the schedule fell under the designated urban authority of Kampala. It ought to have been granted as a statutory lease to Kampala City Council which was the authority designated to deal with the land on behalf of the people who inhabited or occupied the property (subject of course, to the laws affecting urban planning and public health, which are not in consideration on the issue of title).

30 The Public Lands Act, 1969 Act 13 of 1969 did not change the law. Section 1 provided that all rights, titles, estates and interests and all other rights claims, obligations and liabilities vested in the Commission immediately before the commencement of the Act, shall upon such commencement continue to be so vested as to the estate or interest and to the same extent as they were previously vested. The status of freehold land held by Uganda Land Commission in urban areas is that it ought to be granted as a statutory lease to an urban authority for a period of 199 years unless otherwise required for a public purpose. The Public Lands Act, 35 1969 did not change the status. Section 22 of the Public Lands Act provides as follows:

5 22 (1) Without prejudice to the right of the Commission grant of in a lease in an urban area to the designated authority, the controlling authority shall not grant a lease of public land in an urban area for a term exceeding 99 years.

Section 22 (1) clearly envisages the grant of a lease in an urban area to the designated authority and such leases would be deemed to be statutory leases.

10 Further section 23 of the Public Lands Act provides that:

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

15 (2) the Commission shall grant to the urban authority in 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.

The overall policy was that the lease of public land in urban areas could only have been issued out of a statutory lease granted to the urban authority unless held for the Government or for a public interest by the Uganda Land Commission. In the circumstances of this appeal, the leasehold title of the suit property is issued by Uganda Land Commission. The first registered leasehold owner was registered on 14th of June, 1972 and is Mr. Samuel Bagattansi. There is no evidence whatsoever showing that he ever acquired vacant possession of the suit property at any one time. The second registered owner of the suit property is Mr. Edward Kiwanuka who was registered on the certificate of title to the suit property on 20th of July, 1982. There is also no evidence that he ever took possession of the suit property. The third registered owner was registered on 27th October, 2006 as Robin Establishment Ltd. The lessee under the lease agreement agreed to observe all the conditions and covenants implied by law and those in the agreement. The covenants presupposed possession by the lessee. For instance, the lease was meant for the erection of residential premises and for residential purposes.

Subsequent evidence of attempts to evict the Appellant demonstrate that the company was which sold lease to the Respondent was never in possession of the suit property. The registration of Robin Establishment Ltd was entered on the leasehold certificate of title at 9.42 AM and at 9.45 AM on the same date; the Respondents to this appeal were registered as the leasehold owners of the suit property on 27th October 2006. The agreement leading to the transfer is dated 24th October 2006. All the above matters were based on the assumption

5 that Uganda Land Commission had the authority to issue the said leases out of its freehold title.

From the point of law that Uganda Land Commission ought to have granted the lease to the designated urban authority the lease granted in the circumstances is questionable. The authority of the Respondents to have the Appellant evicted from the suit property is therefore also questionable. The evidence demonstrates that the Appellant was in occupation of the suit property and was carrying out some businesses on the suit property. In the circumstances of the appeal therefore, it was error of law to find that the Respondents were the lawful registered owners of the leasehold without considering the functions of the Land Commission in a designated urban area.

15 Pursuant to the 1995 Constitution of the Republic of Uganda, statutory leases were abolished and land vested in Uganda Land Commission was vested in the citizens of Uganda with a few exceptions. This land is held by District Land Boards in trust for the citizens.

The question for consideration is one of law based on undisputed facts. The lease of the suit property ought to have been granted by an urban authority but was issued by Uganda Land Commission. By 1998 and the enactment of the Land Act, 1998, land was vested in District Land Boards. The Uganda Land Commission became a former authority. The Land Act Cap 227 section 1 (m) thereof defines "former controlling authority" to mean the Uganda Land Commission or a designated authority in existence before the coming into force of the Constitution. Secondly, under section 1 (n) thereof a "former designated authority" means a City Council, Municipal Council, Town Council or, Town Board established in a designated urban area. Section 59 (1) (c) of the Land Act provides that the functions of a district land board shall inter alia be to –

"(c) take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority."

30 A City Council is a "former designated authority". Statutory leases to former designated authorities were abolished by Article 286 of the Constitution of the Republic of Uganda 1995. Though Article 286 of the Constitution has since been repealed, it was repealed after it had revoked statutory leases to urban authorities. The repeal of Article 286 of the Constitution did not revive statutory leases to urban authorities. Article 286 of the Constitution before repeal provided that:

"286. Revocation of statutory leases to urban authorities.

5 Upon the coming into force of this Constitution and subject to the provisions of article 237 (2) (a) of this Constitution, statutory leases to urban authorities shall cease to exist."

10 Since the promulgation of the Constitution of the Republic of Uganda on 8th October 1995, statutory leases granted to or deemed granted to urban authorities ceased to exist. The District Land Boards thereafter could receive fresh applications from the former lessees of the property for freehold title. They could also receive applications for freehold title from customary tenants. The Uganda Land Commission no longer had the reversionary title by way of Freehold Title to give consents for transfer of leases it had issued out of its freehold titles. This is because all land in Uganda which was formally vested in the Uganda Land Commission by virtue of the Public Lands Act 1969 as well as the Land Reform Decree 1975 were vested in the citizens of Uganda by virtue of article 237 (1) of the Constitution. Article 237 (1) of the Constitution stipulates that:

(1) Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.

20 Article 237 (1) of the Constitution the Republic of Uganda provides that land in Uganda belongs to the citizens of Uganda and shall be vested in them in accordance with the land tenure systems provided for in the Constitution. Because of the status of ownership of land in Uganda after the 1995 Constitution, article 237 (5) of the Constitution provided that any lease which was granted to a Ugandan citizen out of public land may be converted into freehold in accordance with the law which shall be made by Parliament. To make it even clearer article 237 (6) provides that for purposes of clause (5) of article 237 of the Constitution, "public land" includes statutory leases to urban authorities:

"(5) Any lease which was granted to a Ugandan citizen out of the public land may be converted into freehold in accordance with a law which shall be made by Parliament.

(6) For the purposes of clause (5) of this article, "public land" includes statutory leases to urban authorities.

30 The question was whether there was a lease of public land and the answer is that there was an apparent lease by Uganda Land Commission to a private person but none of the proprietors ever took possession of the land for over 30 years. There was therefore no valid lease subsisting as issued by Uganda Land Commission. In my judgment, the vesting of the land in the citizen does not exclude any other citizen such as an occupant of the suit property subject to the law enacted by Parliament. The Appellant was in effective occupation of the suit property. Secondly, her occupation is not being challenged by the urban authorities since

5 that is a matter that goes to the user of the suit premises and there is no evidence to decide either way. In fact, the dispute is all about ownership of the suit premises. User of the suit premises may not affect the title.

In the circumstances of this appeal therefore, the Appellant was entitled to apply for a lease or any other tenure such as freehold to the district land board by order of court on the ground
10 of adverse possession. She further proved her occupancy as against the Respondents.

Whether the Appellant is a bona fide occupant on leasehold land

In case the above proposition is erroneous and the lease in question was issued lawfully based on the freehold title in which there was reversion on the Uganda Land Commission, the question is whether the Appellant still qualifies as a bona fide occupant under section 29
15 of the Land Act Cap 227.

The first registered proprietor of the leasehold in 1972 and successors in title never challenged the occupancy of the Appellant. As against them, the Appellant had acquired any interest vested in the registered lessee which may have been validly asserted. Inasmuch as it is the Appellant who sued the Respondents, she did so, on the basis of the cause of action
20 for the act of the Respondents of threatening and attempting to evict her from the suit premises and the Appellant has a defence of limitation to the defence of the Respondents and counterclaim against her wherein the Respondents assert registered proprietorship.

The Appellant had been in possession of the suit property for more than 30 years with effect from 1974. It was the Appellant's property by prescription and she was entitled to apply for
25 registered ownership. She had a right to apply for freehold subject to any law made by Parliament for purposes of urban development under article 237 (7) of the Constitution. It would be up to anybody, even a lessee to comply with the zoning law to erect thereon a residential family house. Section 5 of the Limitation Act Cap 80 Laws of Uganda provides that:

5. Limitation of actions to recover land.

30 No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.

The cause of action to evict the Appellant is deemed to have first accrued to Samuel Baggatansi Kiwanuka after 1972. Further, a counterclaim is a separate suit and the
35 Respondents counterclaimed against the Appellant for declaration that the Appellant had no

5 interest in the suit property. Secondly, they sought an order for eviction of the Plaintiff/the Appellant in this appeal from the suit property. Thirdly, they sought a permanent injunction against the Plaintiff who is the Appellant to this appeal restraining her or her agents from interfering with the enjoyment of the suit property by the Respondents. Further the Respondents sued the Appellant for general damages, costs of the suit and other remedies.
10 In conclusion the pleadings disclose a dispute about the ownership of the suit property. Section 5 of the Limitation Act is very clear that the Respondents could not have brought an action against the Appellant after the expiration of 12 years from the date on which the right of action accrued. The right of action accrued within 12 years from 1974 but the suit was filed about 30 years from the time the cause of action first arose and the cause of action of the
15 Respondents to evict the Appellant is barred by the law of limitation.

In Ahmed Abdul Karim and another v Member for Lands and Mines and another [1958] 1 EA 436 the East African Court of Appeal on the issue of when adverse possession can be proved against a tenant in common held at page 441 that:

20 It follows that, in this case, before the period of limitation can begin to run in favour of either of the Appellants, possession adverse to Fatuma must be established, and it is well settled that, as between tenants-in-common, there must be some overt act amounting to ouster before possession of a co-tenant becomes hostile.

Further I agree with the decision of the High Court in **Oitamong v Olinga [1985] HCB 86** in Civil Appeal No 104 of 1982 per Odoki J that limitation is basically a defence. It is a shield but
25 not a sword. It simply means the extinction of stated claims and rights of action are limited in point of time and are lost if not pursued within due time. Acquiescence on the other hand seems to be an equitable doctrine developed by the courts to temper the rigidity of the law and is dependent on the rule of estoppels. It prohibits a party from proving anything which contradicts his previous acts as a declaration to the prejudice of the party who relied on them
30 to alter his position. The equitable doctrines destroyed the former owner's right to a remedy. Further there is the doctrine of laches which means unreasonable delay in asserting or enforcing a right. The Appellant had settled on the suit property and was carrying out activities on it for over 30 years during the subsistence of the lease but was never challenged by the registered proprietor. As against the registered proprietor, the cause of action to evict the
35 Appellant had ceased to exist.

The facts of this appeal are very clear that the Appellant was in adverse possession of the suit property as against the registered owners who were registered as the leasehold

5 proprietors. As against the registered proprietors, the Appellant proved adverse possession. By the time of promulgation of the Constitution of the Republic of Uganda, the Appellant had by adverse possession acquired title to this suit property and was entitled to seek recognition as the owner thereof. This would be ownership of the interest reflected in the title hitherto vested in the registered owner/s.

10 The milestone in the land tenure system is that the government no longer held land except land which was held by the Uganda Land Commission under article 237 (2) which land had to be acquired in the public interest. Secondly, the government or local government was required as determined by Parliament by law to hold land in trust for the people. Under article 237 (3) land in Uganda is to be owned in accordance with the land tenure systems stated
15 hereunder:

- (a) customary;
- (b) freehold;
- (c) Mailo; and
- (d) leasehold.

20 From the facts, the 1st registered owner was Samuel Bagattansi Kiwanuka who was registered on the title on 4th June 1972. The 2nd registered owner Mr. Edward Kiwanuka was registered on 20th of July 1982. An attempt to evict the Appellant was resisted after acquisition of lease title by the Respondents in 2006. By that time, the Appellant had been in adverse possession of over 30 years by 2006. The adverse possession meant that the registered proprietors could
25 not carry out any covenants in the lease such as occupation and erection of a family house as stipulated in the lease agreement. In fact, under clause 2 (b) of the lease agreement, the lessee was supposed to erect a building of not less than 40,000 shillings with plans and specifications to be approved by the lessor.

Section 29 (2) of the Land Act defines a bona fide occupant and provides that:

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

(1) "Lawful occupant" means—

...

(2) "Bona fide occupant" means a person who before the coming into force of the Constitution—

5 (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, which may include a local authority.

(3) In the case of subsection (2)(b)—

10 (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;

(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.

15 (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) 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.

20 The Appellant clearly falls under section 29 (2) (a) of the Land Act as a person who has utilised the land unchallenged by the registered owner for a period of 12 years or more prior to the promulgation of the Constitution. The occupant need not have developed the land. The section uses the disjunctive "or" when it provides "*had occupied and utilised or developed*" it was not necessary for the Appellant to occupy the suit property by physically residing there. Occupation was by carrying out a business and being in charge of the suit land to the extent of obtaining rental income from it and cultivating crops. This Court considered the term "occupation" in **Prof. Gordon Wavamunno v Sekyanzi Sempijja; Court of Appeal Civil Appeal No 240 Of 2013** where the court stated that:

30 "Occupation is a question of fact. The occupant can put machinery or fence off the property without being resident. Effective occupation is having control over the property. According to the **Cambridge International Dictionary of English** to "occupy" means:

to fill, use or exist in

Osborne's Concise Law Dictionary Eleventh Edition defines "occupation" as:

35 (1) The exercise of physical control or possession of land; having the actual use of land.

5 (2) Taking possession of enemy territory by the Armed Forces.

Planting coffee trees and cultivating the land may amount to occupation if there is the exercise of physical control or possession of the Land."

10 In the premises, I would allow ground one of the appeal and hold that the learned trial Judge erred in fact and law when he held that the Appellant was not a bona fide occupier of the suit property. This is because as against the registered owners thereof, she had been in adverse possession of the suit property for over 30 years.

15 Ground two of the appeal is of no consequence since the certificate of title was not valid and therefore the question of whether it had expired or not expired is not material. What is material being that the Appellant was entitled to apply to the district land board for issuance of freehold or any other tenure to her.

The question of whether the certificate of title was obtained through fraud does not arise since the certificate of title is not valid. There is therefore no need to consider ground three of the appeal.

20 In the premises I would allow ground four of the appeal. The learned trial Judge had dismissed the Appellants suit and allowed the counterclaim against her. I would allow the appeal and in terms of ground 4 of the appeal make an order that the Appellant's suit in the High Court is allowed with costs and the counterclaim of the Respondents dismissed with costs.

25 Exercising the powers of this court under section 11 of the Judicature Act, I would find that the applicant is a bona fide occupant of the suit property under section 29 of the Land Act having been in adverse possession of the suit property as against the registered owner and predecessors in title unchallenged for over 30 years. The prayer for declaration that the Plaintiff is a bona fide occupant of the suit property is hereby granted.

30 Secondly, I would make a declaratory order that the Defendant's certificate of title comprised in Leasehold Register Volume 817 folio 21 is not valid and I would issue an order cancelling that title. I would further declare that the Plaintiff is entitled to apply to the Land Board for the issuance of a fresh certificate of title in freehold.

35 I would issue a permanent injunction restraining the Respondents/Defendants, whether by themselves, agents or servants from evicting the Plaintiff from possession and use of the said property and restrain them from selling, leasing, subleasing or otherwise alienating in any way the suit property.

5 I would remit the issue of general damages for assessment by the High Court as against the Respondents.

Dated at Kampala the 18th day of March 2021



10 **Christopher Madrama**

Justice of Appeal