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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
[Coram: Richard Buteera, DCJ, Hellen Obura & Cheborion Barishaki, JJA]
CIVIL APPEAL NO.193 OF 2014
(Arising from Mbale High Court Civil Suit No.008 of 2012)

KACHRA INVESTMENT COMPANY LTD.....APPELLANT

VERSUS

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1. MBALE MUNICIPAL COUNCIL LOCAL GOVERNMENT
2. ABDU SALAAM LUBOWA
3. MASH INVESTMENTS LTD

}.....RESPONDENTS

25

JUDGMENT OF RICHARD BUTEERA, DCJ

Introduction

25 This is an appeal from the decision of Hon. Justice Stephen Musota dated 22nd August 2014 in the High Court of Uganda at Mbale in H.C.C.S No.0008 of 2012.

Background to the appeal

30 The 3rd respondent sued the appellant in the High Court of Uganda at Mbale vide civil suit No.008 of 2012. The 3rd respondent's claim was for a declaration that it is an equitable owner of the land comprised in Plot 15A Bishop Wasike Road, Mbale Municipality and that the said Plot is different from Plot 20, Malukhu Road, Mbale Municipality. It prayed, inter alia, for a permanent injunction restraining the defendant/appellant from trespassing on the suit Plot i.e. Plot 15A, Bishop Wasike road, general damages for trespass and costs of the suit.

35 According to the plaint, the cause of action arose when the plaintiff (3rd respondent) purchased the suit Plot 15A, Bishop Wasike Road, from the 2nd respondent who had acquired the same from the 1st respondent Mbale Municipal Council in 2010.

5 It was the 3rd respondent's case that the 1st respondent, Mbale Municipal Council, acquired the said Plot 15A, Bishop Wasike Road in 1959 and had been in possession of the same undisturbed until it was sold to the 2nd respondent, Abdu Salaam Lubowa, who in turn sold it to them.

10 The 3rd respondent accused the appellant of disguising the suit property as Plot 20, Malukhu road whereas it is Plot 15A, Bishop Wasike Road and laying an unlawful claim over its ownership thereby preventing transfer of the same.

The appellant, Kachra Investment Company Ltd filed a defence and counter claim
15 against the 3rd respondent in the lower Court. It contended that it was the rightful owner of the suit property and had obtained a lease from Mbale District Land Board with effect from 1st January 1998.

The appellant's case was that after approval of its application vide min.DLB.1/98 (a) 39
20 of 8/01/1998 the council requested for a survey of the land in question on behalf of the appellant. That the request for survey was done in April 1998.

It was the appellant's contention that there is no supporting document which caused the Plot number of the suit property to change from Plot 20 Malukhu road to Plot 15A
25 Bishop Wasike Road and the reference on the cadastral sheet to Plot number 15A is either erroneous or fraudulent. The appellant further stated that Plot 20 Malukhu road was created and registered earlier in time than the plaintiff's Plot 15A Bishop Wasike road which is yet to be registered.

30 The appellant argued that upon coming into force of the 1995 Constitution on 8th October, former statutory leases to urban authorities such as the one allegedly granted to council in or about 1959, ceased to exist. That therefore the 1st respondent council had no authority to dispose of any land. It was argued that the 3rd respondent had no equitable or legal interest in the suit land.

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The appellant counter-claimed inter alia for declarations that Plot 15A Bishop Wasike Road in Mbale Municipality does not exist and is actually Plot 20 Malukhu road in Mbale Municipality. They sought a declaration that the 1st respondent's purported sale and disposal of the land or lease complained of was illegal, fraudulent and void ab initio.

10

The respondents denied all the allegations of fraud and illegality as alleged by the counter-claimant/appellant in the counter-claim. The respondent's case in the counterclaim, was that the appellant had fraudulently obtained a lease on the suit property from Mbale District Land Board and that the re-naming of the property as Plot 15 20 Malukhu road was irregular. It was argued that the 1st respondent's lease that was granted in 1959 was still valid when the appellant was granted an additional lease by the Land Board. The 2nd respondent contended that he had been a sitting tenant on the suit property and was offered an option to purchase which he assigned to the 3rd respondent. The 3rd respondent therefore maintained that it is the rightful equitable 20 owner of the suit property.

On the 22nd day of August 2014, the trial Judge, Musota J, held in favour of the 3rd respondent and dismissed the appellant's counterclaim. He ruled that the suit land was Plot 15A Bishop Wasike Road whereas the appellant's title described as Plot 20 25 Malukhu Road was fraudulently and dishonestly acquired. The trial Judge therefore declared that the 3rd respondent was the rightful owner of the suit land.

Being aggrieved by the decision of the trial Judge, the appellant appealed to this Court on the following grounds: -

- 30 **1. The learned trial Judge erred in law and fact when he failed to find that the descriptions of 15A Bishop Wasike road and Plot 20 Malukhu road referred to the same Plot of land.**

- 5 2. The learned trial Judge erred in law and fact when he failed to appreciate
the effect of the 1995 Constitution on the statutory lease over the suit land
and in particular the respondents interest (s) (if any) thereon.
- 10 3. The learned trial Judge erred in law and fact when he found that the
appellant's certificate of title (the lease on the suit land) was wrongfully
obtained.
- 15 4. The learned trial Judge erred in law and fact when he found that the 3rd
respondent has an equitable interest in the suit land on Plot 15A Bishop
Wasike.
- 20 5. The learned trial Judge erred in law and fact when he granted a permanent
injunction, awarded damages and cost against the appellant and by
dismissing the appellants counterclaim.

Representation

20 At the hearing of this appeal, learned counsel, Mr. Deogratious Obedo and Mr. Mustafa
Songoni, appeared for the appellant. The appellants' Company representative, Mr.
Sadruni Allan was present in Court.

Mr. Mayoka John Bwayo appeared for the 1st respondent.

25 The 2nd respondent was not in Court and was not represented.

Mr. Mayeku appeared for the 3rd respondent.

Counsel for all the parties adopted their written submissions.

30

Submissions of counsel

Ground one

35 Counsel for the appellant submitted that there was overwhelming evidence adduced at
the trial showing that Plot 15A Bishop Wasike road and Plot 20 Malukhu road were

5 simply different Plot numbers for the same piece of land. He pointed out several pieces of evidence on record to support his arguments.

He argued that the locus visit proceedings and key technical witnesses from the land registry all supported that fact.

10 Counsel therefore submitted that the trial Judge erred when he stated and found that Plot 20 Malukhu road does not exist. He argued that the issue the trial Judge was supposed to address in issue one in the Joint scheduling Memorandum on page 59 of the record was to find out whether Plot 15A Bishop Wasike road and Plot 20 Malukhu road referred to the same piece of land but not whether Plot 20 was non-existent.

15 On the other hand, counsel for the respondents submitted that the learned trial Judge properly found that the suit property/land/Plot is Plot 15A, Bishop Wasike road and not Plot 20, Malukhu road and therefore could not be referring to the same Plot of land.

20 He submitted that during the scheduling conference, it was an agreed fact that the 1st respondent, Mbale Municipal Council was granted the lease vide title LRV 502 Folio 6 by the Governor of the Protectorate on lease which was to run from 1st July 1959 for 49 years over Plot 15A Kumi road South and that Kumi road south is presently known as Bishop Wasike road. He noted that the 1st respondent applied for a fresh lease in respect of Plot 15A Bishop Wasike road and was granted a 5 year lease on 1st August 2010 (vide certificate of title LRV 4357 Folio 13. Counsel further noted that the suit Plot as early as 1959 was Kumi road south which is now Bishop Wasike road.

25 **Ground two**

30 Counsel for the appellant contended that the lease granted to the 1st respondent in 1959 by the Governor was a statutory lease abolished by the 1995 constitution leaving it without any interest in the suit land. As a consequence, learned Counsel contended that the 1st respondent did not have an interest to sell to the 2nd respondent who later transferred his disputed equitable interest to the 3rd respondent.

5 Counsel for the respondent's argued that the lease in favour of the 1st respondent was not a statutory lease but rather a private lease. They disagreed with the trial Judge's finding that the lease to the 1st respondent was a statutory lease. In Counsel's view, statutory leases were defined by the Supreme Court in *Kampala District Land Board & Another vs. National Housing and Construction Company, Supreme Court Civil Appeal No.2 of 2004* and *Horizon Coaches Ltd vs. Edward Rurangaranga, Supreme Court Civil Appeal 14 of 1999*.
10

Counsel contended that the trial Judge erred in holding that the suit land had been subject to a statutory lease. However, they maintained that this error had no bearing on the final decision.

15 **Ground three**

It was argued for the appellant that the trial Judge wrongly imputed fraud on part of the appellant and held that its certificate of title granted by Mbale District Land Board was wrongly obtained. Counsel laboured to justify the manner in which the appellant obtained a lease from Mbale District Land Board over the suit land. He contended that
20 the trial Judge had no sufficient basis in law and fact to query the appellant's certificate of title described as Plot 20 Malukhu road.

Counsel for the respondent's argued that the trial Judge correctly arrived at the finding that the appellant's title was wrongly and fraudulently obtained. They reiterated their earlier submissions on ground one and further highlighted numerous alleged
25 irregularities in the appellant's acquisition of the suit land. They submitted that the suit land has always been Plot 15A Bishop Wasike road and the same has never changed to Plot 20 Malukhu road. They argued that the minutes referred to by the appellant were for Plot 44 Nkokonjeru Court and Plots 25-27 Malukhu road but not Plot 20 Malukhu road. Counsel emphasised that the appellant's lease offer and certificate of title were
30 wrongly obtained as they did not adduce genuine evidence of the minutes from the Land Board from which the said allocation was made to prove its validity. They contended

5 that the appellant simply procured registration to defeat an existing unregistered interest. Counsel further contended that there was a running lease over the suit land and therefore another lease could not have been allocated to the appellant over the same plot of land.

Ground four

10 Counsel for the appellant faulted the trial Judge's finding to the effect that the 3rd respondent had an equitable interest in the land. He argued that the 2nd respondent was a mere licensee on the suit land and therefore had no interest to assign to the 3rd respondent. Further, counsel submitted that the assignment between the 2nd and 3rd respondents required consent of Mbale District Land Board which was never sought.

15 Counsel for the respondents maintained that the 3rd respondent had an equitable interest in the suit land especially in view of its undisturbed occupation of the suit Plot from 2011 having acquired the same from the 2nd respondent.

Ground five

20 Counsel for the appellant faulted the trial Judge for failing to assess damages that he would have granted if the appellant's counterclaim had succeeded. He cited the Supreme Court decision in *Construction Engineers and Builders (U) Ltd vs. Attorney General, Civil Appeal No.34 of 1994* in support of that proposition. He therefore made prayers for special, general and exemplary damages in case the appeal succeeds.

25 Counsel for the respondents submitted that there was no need for the trial Judge to assess any damages especially having found that the counterclaim was baseless. However, they contended that the appellant did not plead and specifically prove any damages.

5 **Consideration of the appeal**

This is a first appeal and this Court is therefore required to re-appraise the evidence and make its own inferences on all matters of law and fact. See **Rule 30** of the Rules of this Court and *Fr.Narsensio Begumisa vs. Eric Tibebaga, Supreme Court Civil Appeal No. 17 of 2002.*

10 I have carefully studied and considered the Court record and the appellant's Supplementary record that includes additional evidence which was admitted by this Court. I have also studied the submissions of counsel for all the parties and the relevant available authorities.

I will therefore proceed to review the evidence and make my own conclusions in light
15 of the grounds of appeal.

I will resolve grounds 1 and 5 separately while grounds 2, 3 and 4 shall be resolved together.

Ground 1

It was the appellant's contention that the learned trial Judge erred in law and fact when
20 he failed to find that the descriptions of Plot 15A Bishop Wasike Road and Plot 20 Malukhu road referred to the same piece of land. Counsel argued that the difference in the name ought not to be attributed to the appellant as done by the trial Judge. On the other hand, the respondents agreed with the trial Judge that the descriptions of Plot 15A Bishop Wasike Road and Plot 20 Malukhu road do not refer to the same piece of land.
25 They argued that the suit Plot is 15A Bishop Wasike Road and not Plot 20 Malukhu road.

The appellant and the respondents claim for the same piece of land but with different descriptions.

5 The appellant referred to it as Plot 20 Malukhu road while the 1st respondent (Mbale Municipal Council) referred to it as Plot 15A Bishop Wasike Road.

The evidence on record demonstrates that the suit property was historically known as Plot 15A Kumi South Road. The 1st respondent originally acquired a 49 years lease to the same Plot then known as Plot 15A Kumi South Road in 1959. In the 1990's, the
10 street name was changed to Bishop Wasike Road in memory of the late Bishop who was murdered during the military regime hence the change of name to Plot 15A Bishop Wasike Road.

The trial Judge evaluated the evidence on record as a whole and found that Plot 15A Bishop Wasike road existed before Plot 20 Malukhu road. He declared that Plot 15A
15 Bishop Wasike Road is different from Plot 20 Malukhu road and that the suit plot is Plot 15A Bishop Wasike Road. I find no fault in the trial Judges findings.

The suit plot is therefore described as Plot 15A Bishop Wasike Road.

Ground 2, 3 and 4

The appellant hinges his argument of having valid title for Plot 20 Malukhu road on the
20 fact that by the time it acquired its title in 1998, statutory leases had been abolished by the 1967 Constitution of Uganda.

The confusion over different Plot numbers in respect of the same piece of land appears to have resulted from the attempts by Mbale District Land Board to assert control of the suit land using different Plot numbers. Certainly, this raises concerns of fraud on part of
25 one of the parties but the dispute over mandate to control the suit land and the rightful lessee still remains a legal question irrespective of the correct Plot number.

The trial Judge found that the suit land was a statutory lease but still found in favour of the 1st respondent Council which had a lease running from 1959. Consequently, the dispute over control of the suit land between the 1st respondent and Mbale District Land

5 Board can only be settled by fully addressing the law on the consequences of the abolition of statutory leases such as the lease between the Colonial Government and the 1st respondent in 1959.

10 It is not in dispute that the 1st respondent, Mbale district Municipal Council, was granted a lease by the Governor in 1959. The respondents maintain that the said lease was a private lease. The trial Judge found that it was a statutory lease. The respondents disagree with the trial Judge but they did not file any cross appeal or a notice of grounds for affirmation of the decision of the lower Court. **Rule 92 (1) of the Rules of this Court** provide:

15 **“A respondent who desires to contend on an appeal in the Court that the decision of the High Court should be affirmed on grounds other than or additional to those relied upon by that Court shall give notice to that effect, specifying the grounds of his or her contention.”**

Consequently, the respondents would not be heard to dispute findings of the trial Judge when they have not cross-appealed on the issue.

20 However, owing to the importance of this legal question in determining the appeal, it is still imperative to determine whether the trial Judge correctly found that the suit land was a statutory lease and if so, whether his finding that the 1st respondent retained interest in the suit land despite abolition of statutory leases is unassailable.

25 It is not in dispute that **Article 286 of the 1995 Constitution of Uganda**, before repeal, revoked statutory leases in the following terms;

“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.”

5 The trial Judge relied on the decision of the Supreme Court in *Kampala District Land Board & Another vs. National Housing Corporation, Civil Appeal No.02 of 2004* to hold that the rights of the 1st respondent, Mbale Municipal Council, could not have been extinguished because of the abolition of statutory leases.

The trial Judge determined that the suit land was a statutory lease. He held as follows;

10 *“When the 1967 Constitution of Uganda came into effect it declared land in Uganda to be Public Land and provided for the Uganda Land Commission to manage and control such land. Thereafter the Public Lands Act 1969 was enacted and it came into effect on 28th March 1969. S.51 thereof in effect amended S.4 of the Municipality of Mbale Act. Under S.51 (2) thereof the land*
15 *in Mbale Municipality which hitherto vested in the president was thereby vested in the Uganda Land Commission. That being the position it means that if any statutory lease was ever granted to Mbale Municipal Council then it must have been granted by the Uganda Land Commission pursuant to S.23 (2) of the Public Lands Act 1969 and not before that...*

20 *In my view and I agree with the preposition by Mr. Dagira that with the coming into force of the 1969 Public Lands Act, it was presumed that a statutory lease was granted or deemed to have been granted to Mbale Municipal Council under S.15(3) of the Public Lands Act 1962. Therefore by 1995, the lease held by Mbale Municipal Council was a statutory lease.”*

25 I do not fault the trial Judge’s finding above.

In my view, the finding on the status of the lease on the suit land does not, in fact, determine the rights of the parties. Even if the suit land was not subject to a statutory lease, the rights of the appellant and the 3rd respondent to the land would still have to be determined one way or the other.

5 It is not in dispute that the suit land was subject to a lease of 49 years granted by the Colonial Government to the 1st respondent in 1959. All factors being constant, this lease would have expired in 2008. By then, statutory leases had been abolished and the land subject to them was under control of either district Land Boards or Uganda Land Commission.

10 The appellant contended that upon abolition of statutory leases, it obtained a 5 years lease over the suit plot in 1998 but was issued a certificate of title describing it as Plot 20 Malukhu road.

Upon expiry of the 1st respondents' lease in 2008, an application for renewal was made in 2010 upon which a 5 years lease was granted and a certificate of title was issued
15 thereafter for Plot 15A Bishop Wasike road.

In this case, the land was clearly under the control of the Mbale District Land Board. This explains why both the appellant and the 1st respondent obtained certificates of title with leases issued by Mbale District Land Board. Both parties therefore proceeded on the premise that the land was a statutory lease hence the role of the lessor had been
20 assigned to Mbale district Land Board by operation of law.

The appellant argues that with the abolition of statutory leases by the 1995 Constitution, the 1st respondent ceased to have any interest in the suit land and that the same was therefore lawfully allocated to him in 1998. With respect, this reflects a misunderstanding of the position of the law on the consequences of abolition of statutory
25 leases on existing lessees.

The Supreme Court in *Kampala District Land Board & Another vs. National Housing Corporation, Civil Appeal No.02 of 2004*, held that the rights of existing lessees were not extinguished because of abolition of statutory leases. Odoki, CJ found as follows:

30 *“The implications of the abolition of statutory leases have not been determined and in my view this remains a gray area. I am unable to hold that the rights of*

5 *the respondent as a tenant in possession who held adversely to the City Council for a long time were automatically extinguished on the abolition of the statutory lease. In my opinion, the respondent could claim the rights and benefits accruing to a bona fide occupant of a registered owner, who must be deemed to be the Kampala District Land Board under Section 59(8) of the Land Act which*
10 *provides:*

15 *"The board shall hold in trust for the citizens the reversion on any lease to which subsection (1) (c) relates and may exercise in relation to the lease and the reversion the powers of the controlling authority under the Public Lands Act 1969, as if that Act had not been repealed; but subject to the foregoing, that*
20 *Act shall in respect of any such lease or reversion, have effect with such modifications as may be necessary to give effect to this Act and subject to the provisions of the Constitution."*

25 This position has recently been unanimously confirmed by the Supreme Court in its decision in *Lutalo Moses (Administrator of the Estate of the late Lutalo) vs. Ojede Abdallah Bin Cona (Administrator of the estate of the late Cona Bin Gulu), Civil Appeal No.15 of 2019.*

30 In *Lutalo Moses'* (*supra*), Chibita JSC, reviewed the above decision in the *Kampala District Land Board* case and held at page 27 as follows:

35 *"The import of this decision is that those rights previously held under the abolished statutory leases were not automatically extinguished under article 286 of the Constitution. A party could claim the rights and benefits accruing under the abolished statutory leases."*

40 In the instant case, the 1st respondent, Mbale Municipal Council, had a statutory lease on the suit land granted in 1959 which were abolished by the 1995 constitution and the lessors replaced by the District Land Board or Uganda Land Commission in some specific cases. The land was therefore subject to the control of Mbale District Land

5 Board though, as the Supreme Court ruled in *Kampala District Land Board & Another vs. National Housing Corporation*, (*supra*) and *Lutalo Moses vs. Ojede Abdallah Bin Cona*, (*supra*), the 1st respondent still had residual rights as a lessee under the abolished statutory lease.

10 The appellant argues that upon abolition of statutory leases, the Land Board proceeded to allocate the suit land, Plot 15A Bishop Wasike road, to the appellant in a different name described as Plot 20 Malukhu road, in 1998.

15 According to the appellant's director, DW4, Sandrudin Virgi Alani, he applied for Plot 15A Malukhu Road and 22-25. On the appellant's application for a town plot, marked as exhibit P16 on page 378B of the record, it is indicated that it applied for Plot 15A Malukhu Road, Mbale, 27 and 25 with no road name indicated. I find it necessary to note that the application form has some information crossed out and replaced with 15A and a number 20 that appears to have been crossed out, to the effect that it be read as 15A Malukhu Road. DW4 stated that in response to the appellant's application, an Offer Letter marked as exhibit D25, on page 442 of the record, was issued indicating that the
20 appellant applied for Plot 15A Bishop Wasike Road which description was then crossed out by the lessor (Mbale District Land Board) and replaced with Plot 20 Malukhu Road. Subsequently, the appellant obtained a certificate of title for Plot 20 Malukhu Road.

25 DW1, Dr. Yafesi Okia, a surveyor with Ministry of Works and Assistant Commissioner on interdiction, stated that he was contacted by the appellant through state house and CIID to investigate the issues arising from the suit property. He stated that he found that the 1st title was for Plot 20 Malukhu road and the 2nd title for Plot 15A Bishop Wasike Road was fraudulently acquired although he signed. According to DW1, the investigation was to ascertain how Plot 20 Malukhu road changed to Plot 15A Bishop Wasike Road. He referred to exhibit D8 on page 404 of the record, in which he noted
30 that a survey was done in 1998 under I/S MM 2078 and that before this survey, the suit plot had been labelled as Plot 15 and it was on Plot 15A Bishop Wasike Road. According

5 to DW1, there was another plot on the same Bishop Wasike Road which was labelled
15-17. He noted that it could have been this confusion that resulted in re-naming the suit
plot as Plot 20 Malukhu road. He further noted that there was no supporting document
that caused the plot number to change to 15A Bishop Wasike Road and therefore he
suspected that the change was fraudulent. According to DW1, they therefore reverted
10 the plot to the original Plot 20 Malukhu road.

The evidence on record clearly demonstrates that Plot 15A Bishop Wasike Road existed
before the purported creation of Plot 20 Malukhu road. It also confirms that the suit
land, Plot 15A Bishop Wasike Road was allocated to the 1st respondent.

Although DW1, Dr. Yafesi Okia, stated that Plot 20 Malukhu road existed before Plot
15 15A Bishop Wasike road, this was clearly inconsistent/contradictory with the evidence
on record as discussed earlier in this Judgment. DW1, did not adduce any evidence of
minutes that caused the purported Plot 20 Mulukhu road to change to Plot 15A Bishop
Wasike Road to validate his allegations.

DW1 also stated that when fraud was suspected, Plot 15A Bishop Wasike road was
20 reverted to the purported Plot 20 Mulukhu road. In my view, the renaming of the Plot
from Plot 15A Bishop Wasike Road to Plot 20 Malukhu Road as alleged by DW1 was
irregular in view of the evidence that Plotting is primarily done from the office of
Surveys and Mapping in Entebbe yet the purported new Plot number (Plot 20 Malukhu
Road) was created from the Mbale Land office. In any case, DW1 did not adduce any
25 evidence of minutes that would have led to the purported change of name. It is pertinent
to note that the trial Judge found DW1 as a consummated liar as he gave glaringly
contradictory evidence. The trial Judge noted that his demeanour was so poor that no
reasonable Court could rely on him to establish the truth. Upon reviewing the evidence
as a whole, I agree with the trial Judge on the finding he made.

30 PW3, Hannah Nakayenze, the Ag. Secretary to Mbale District Land Board and RW2,
Alice Joy Manana Nakayenze, the Mbale Municipal Ed. Officer and Ag. Town Clerk,

5 both confirmed that the suit plot is Plot 15A Bishop Wasike road but not Plot 20
Malukhu road and that it was allocated to the 1st respondent. Both witnesses could not
confirm the grant of a lease to the appellant to the suit land. The witnesses had no
knowledge of Plot 20 Malukhu road because the plot that the appellant was allocated by
the Mbale Land Board under minute DLB/1/98(a)39 of 8/1/98 was Plot 25-27 Malukhu
10 Road but not Plot 20 Malukhu road or Plot 15A Malukhu road as argued by the
appellant.

Further, the allocation of the purported Plot 20 Malukhu road to the appellant was itself
riddled with several other omissions and irregularities that the trial Judge found to
constitute fraud. The most glaring irregularity is that the purported Land Board minute
15 under which the lease was issued to the appellant was in respect of a different piece of
land. The appellants lease for Plot 20 Malukhu road, included minute DLB/1/98(a)39
of 8/1/98 as the minute from which the Mbale District Land Board took the decision to
allocate the suit property to the appellant. Minute DLB/1/98(a)39 of 8/1/98 on page 321
of the record, however, indicates that the appellant was allocated Plot No.25-27
20 Malukhu road for a 5 years lease but not Plot 20 Malukhu road. This does not correspond
to the appellant's lease to which the minute is attached and the certificate of title issued
thereafter for Plot 20 Malukhu road.

Upon thorough evaluation of the evidence and facts, I agree with the trial Judge there
were elements of dishonesty amounting to fraud, in the way the appellant alleged to
25 have acquired title in the purported Plot 20 Malukhu road which in actual fact is Plot
15A Bishop Wasike Road.

In any case, the lease for the purported Plot 20 Malukhu road for the appellant was
clearly granted in violation of the law since the existing lessee was the 1st respondent.
The 1st respondent's 49 years lease obtained in 1959 was still running as of 1998 when
30 the appellant obtained its lease.

5 The abolition of statutory leases did not leave Mbale District Land Board with absolute discretion to disregard the interests of the existing lessees such as the 1st respondent, Mbale Municipal Council, on the suit land. The lease to the appellant was therefore invalid for this reason as it was granted when there was a subsisting lease of Mbale Municipal Council.

10 The 1st respondent had an interest in the suit land which was recognised by the Land Board when it granted it a renewed lease in 2010. At any rate, the Land Board erred in granting a lease for the purported Plot 20 Malukhu road to the appellant on the same piece of land where the 1st respondent had a running lease, without hearing the 1st respondent. This error appears to have been occasioned by the fact that the lease granted
15 to the appellant described the suit land as Plot 20 Malukhu road.

In my view, the Land Board did not intend to dispossess the 1st respondent of its interest in Plot 15A, Bishop Wasike Road. There is no evidence on record that Mbale District Land Board intended to take away the suit land from the 1st respondent and grant it to the appellant. The appellant strongly contends that this is what happened since the
20 abolition of statutory leases entitled the successor lessor, the Land Board, to deal with the land as it pleased. This is not correct.

The Land Board did not have powers to do so under the guise of abolition of statutory leases. This argument from the appellant who implicitly recognises that its rights to the land are affected by the lease previously held by the 1st respondent does not hold. The
25 Land Board could not wantonly disregard the interests of the 1st respondent.

The 1st respondent having had valid title and a running lease over the suit land, sold its interest to the 2nd respondent who later assigned the same to the 3rd respondent.

The appellant faulted the trial Judge for finding that the 3rd respondent had interest in the suit property.

5 Since the appellant's sole argument over the suit land hinged on the argument that abolition of statutory leases left Land Boards with absolute discretion to allocate the land to fresh applicants, this argument does not hold in view of the Supreme Court authorities in *Kampala District Land Board & Another vs. National Housing Corporation, Civil Appeal No.02 of 2004* and *Lutalo Moses (Administrator of the*
10 *Estate of the late Lutalo) vs. Ojede Abdallah Bin Cona (Administrator of the estate of the late Cona Bin Gulu), Civil Appeal No.15 of 2019*, highlighted earlier. This Court is bound by the two Supreme Court decisions earlier cited to the effect that abolition of statutory leases did not extinguish the rights of existing lessees.

The 3rd respondent therefore had an equitable interest in the suit land by virtue of the
15 fact that the 1st respondent had a valid title and a running lease over the suit land before it sold its interest to the 2nd respondent who later sold it to the 3rd respondent.

The trial Judge correctly held that the 1st respondent's interest in the suit land had not been extinguished by the abolition of statutory leases and consequently, the lease title issued to the appellant was irregularly and unlawfully granted as there was a subsisting
20 lease over the same land.

In the result, **grounds two, three and four** of the appeal are disallowed. In my view, this disposes of the appeal for lack of merit.

Ground 5

The appellant faulted the trial Judge for dismissing its counter-claim and granting the
25 respondents/plaintiffs a permanent injunction and awarding damages and costs against the appellant.

The trial Judge held; *“For the reasons I have endeavoured to give in this Judgment, the plaintiff/3rd Counter respondent is entitled to general damages for the inconvenience encountered during this litigation. I will enter judgment as follow:*

- 5
1. *The certificate of title issued to the defendant was wrongfully issued. Luckily enough it has expired.*
 2. *Plot 15A Bishop Wasike road Mbale Municipality is different from plot 20 Malukhu road the suit land is Plot 15A Bishop Wasike road Mbale.*
 3. *The plaintiff has an equitable interest in the suit land on Plot 15A Bishop*
10 *Wasike road Mbale.*
 4. *A permanent injunction is issued against the defendant, its servants and those who derive from it against interfering with the suit land or trespassing on Plot 15A Bishop Wasike road.*
 5. *The plaintiff/3rd Counter respondent is awarded shs. 50,000,000/= as general*
15 *damages against the Defendant/Counter claimant.*
 6. *The plaintiff shall get the costs of the main suit.*
 7. *The Counter claim is dismissed with costs to the Counter Respondents.*
 8. *A certificate of two (2) counsel is issued in respect of the Plaintiff/3rd counter respondent this having been a case of extreme complexity.”*

20 From the above portion of the trial Court Judgment, the trial Judge having found in favour of the respondents/plaintiffs used his discretion to award damages, costs and other reliefs as he deemed fit. I do not find fault in the above findings as made by the trial Judge. They are hereby upheld. Ground 5 therefore fails.

25 In the result, I would order that the appeal be dismissed. The appellant is to bear the costs of this appeal and those at the High Court. The Judgment and orders of trial the Judge are hereby upheld.

Dated at Kampala this 25th day of .. Aug 2021

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Richard Buteera
DEPUTY CHIEF JUSTICE

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

CIVIL APPEAL NO. 193 OF 2014

CORAM: Richard Buteera, DCJ, Cheborion Barishaki, Hellen Obura, JJA.

KACHIRA INVESTMENT COMPANY LTD:.....APPELLANT

VERSUS

MBALE MUNICIPAL COUNCIL LOCAL GOVERNMENT & 2

OTHERS:.....RESPONDENTS


JUDGMENT OF CHEBORION BARISHAKI, JA

I have had the benefit of reading in draft the judgment prepared by Hon.

Justice Richard Buteera, the Deputy Chief Justice and I agree that this appeal should be dismissed for the reasons he has ably advanced.

I also agree with the Order made as to costs.

Dated at Kampala this.....^{25⁺}.....day of.....^{Aug}.....2021



Cheborion Barishaki

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Richard Buteera, DCJ, Cheborion Barishaki & Hellen Obura, JJA)

CIVIL APPEAL NO. 193 OF 2014

(Arising from Mbale High Court Civil Suit No.008 of 2012)

KACHRA INVESTMENT COMPANY LTD.....APPELLANT

VERSUS

- | | | |
|--|----------|------------------------|
| 1. MBALE MUNICIPAL COUNCIL LOCAL GOVERNMENT | } | |
| 2. ABDU SALAAM LUBOWA | } |RESPONDENT |
| 3. MASH INVESTMENTS LTD | } | |

JUDGMENT OF HELLEN OBURA, JA

I have read in draft the judgment of my Lord Hon. Justice Richard Buteera, DCJ and I concur with his conclusion that the appeal be dismissed with costs.

Dated at Kampala this 25th day of Aug 2021.



Hellen Obura

JUSTICE OF APPEAL