

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, HOLDEN AT JINJA

HCT-03-CV-CS-0049-2007

TEEFE PAUL:::PLAINTIFF

VERSUS

1. GASITAFAS KAKAIRE

2. AMUNONI WANUME

3. AUSI MUGABE:::DEFENDANTS

***Land Case:** Recovery of land, Declaration that the Defendants are trespassers, an eviction order to restrain the Defendants, their agents and /or servants from forcefully occupying or using the suit premises, permanent injunction and general damages.*

***Held:-** The Plaintiff has proved his claims against Defendants and awarded the reliefs sought.*

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

JUDGMENT

The Plaintiffs Teeffe Paul Muwonge filed this suit against the Defendants **Gasitafas Kakaire, Amunoni Wanume and Ausi Mugabe** for trespass to land and recovery of land comprised in Plots 1 -3 and 5, Bugweri Avenue, Busembatia Town, Iganga District measuring 0.345 hectares in Busembatya Township Folio 8 Volume 335. He is seeking the following reliefs:-

- i. A declaration that the defendants are trespassers on the plaintiff's land, an eviction order,
- ii. A permanent injunction to restrain the defendants, their agents and/or servants from forcefully occupying or using the suit premises for their various businesses, vandalizing, carrying out any slightest form of constructions and alterations of the physical plan of the suit property, harassing, intimidating and/or in any other way of interrupting the plaintiff's use and enjoyment of the suit premises;
- iii. General damages,
- iv. Interest thereto; and
- v. Costs of the suit.
- vi. Any other remedies that this honorable court deems fit.

In defence, the Defendants stated that, the defendants in their Written Statement of Defence (WSD), denied the plaintiff's claim and instead contended that it is the plaintiff who acquired the plot fraudulently and counter-claimed against the counter defendants for cancellation of the plaintiff's title to the land on grounds that the plaintiff acquired it fraudulently. They averred that the defendants together with other five to wit Mukama Mwamadi, Kitakufe Wilson, Batema Erukan, Izimba Asan and Wanume John jointly bought the suit land from the Custodian Board on 29/10/1997. That subsequently the defendant and the above named others were entered on the Register on 27th/09/1999 as legal owners.

They therefore prayed for cancellation of the plaintiff's title to the land on grounds that the plaintiff acquired it fraudulently, unlawful eviction, special **and** general damages, interest and costs of the suit.

Hearing of this case had traversed over a long period of time and was heard by various Judicial Officers.

BRIEF FACTS

The brief facts according to learned counsel for the Plaintiff are that on the 11th of April 2007, he filed **Civil Suit No. 49 of 2007** against the defendants for trespass to land, seeking a declaration that the defendants are trespassers on the plaintiff's land, an eviction order, a permanent injunction to restrain the defendants, their agents and/or servants from forcefully occupying or using the suit premises for their various businesses, vandalizing, carrying out any slightest form of constructions and alterations of the physical plan of the suit property, harassing, intimidating and/or in any other way of interrupting the plaintiff's use and enjoyment of the suit premises; general damages, interest thereto and costs of the suit.

His claim is that he legally and in good faith applied for a lease offer from Iganga District Land Board in respect of land situate at Plots 1 -3 and 5, Bugweri Avenue, Busembatia Town and the same was granted as a forty-nine (49) year lease on 7th March 2005 under Minute IDLB 25/5/14/3/2005.

The plaintiff as the new registered proprietor sought to enter possession but was and has recurrently been forcefully, violently and physically prevented by the defendants from so doing hence the suit.

In reply, the defendants in their Written Statement of Defence (WSD), denied the plaintiff's claim and instead contended that it is the plaintiff who acquired the plot fraudulently and counter-claimed against the counter defendants for cancellation of the plaintiff's title to the land on grounds that the plaintiff acquired it fraudulently. They averred that the defendants together with other five to wit Mukama Mwamadi,

Kitakufe Wilson, Batema Erukan, Izimba Asan and Wanume John jointly bought the suit land from the Custodian Board on 29/10/1997. That subsequently the defendant and the above named others were entered on the Register on 27th/09/1999 as legal owners. They therefore prayed for cancellation of the plaintiff's title to the land on grounds that the plaintiff acquired it fraudulently, unlawful eviction, special **and** general damages, interest and costs of the suit.

Further, the defendants pleaded Fraud in the counterclaim that;

- a) The original file number for plot 1-3 and 5 Bugweri, Busembatia is MP 4343/6089 and MP6088 but the plaintiff opened another file No LM 157834 for the same plots before the original one is closed.
- b) Failure to notify the legal owners of the said plots that their file number had changed to LM/157834.
- c) The plaintiff purchased the said plots 1-3 & 5 on 20th June 2005 from only 5 out of the 8 owners but acquired land title for the whole plots 1-3 & 5 (see annexure c sale agreement)
- d) Plaintiff acquiring land title for plot 1-3 and 5 Bugweri Avenue, Busembatia under instrument No. 352857 on the 13th/4/2005 before even the said land was purchased on the 20th June 2005 (see land title marked D and agreement of sale marked c)
- e) Connivance with District Land Board to issue a new land title on plot 1-3 and 5 under L.M 37834 when there was a standing caveat on the same plots under the original file no. MP. 4343/6089 and MP 6088. (see annexure E caveat)

In reply to the counterclaim, the Plaintiff/Counter Defendant disputed the allegations in the counterclaim and denied the particulars of fraud and stated that the counterclaimants are not entitled to any of the prayers sought.

It was submitted by learned counsel for the plaintiff that the brief facts of the case that the Plaintiff legally and in good faith applied for a lease offer from Iganga District Land Board in respect of land situate at Plots 1-3 and 5, Bugweri Avenue, Busembatia Town and the same was granted as a Forty Nine (49) year lease on 7th March, 2005 under Minute IDLB 25/5/14/3/2005. That subsequent to the grant of lease, the Plaintiff proceeded as by Law required to register his lease interest with the Registrar of Titles and thus secured a Certificate of Title comprised in LRV 3365 Folio 8 Plots 1-3 and 5, Bugweri Avenue, Busembatia Town, Iganga District measuring approximately 0.345 Hectares.

That the Plaintiff as the new registered proprietor sought to enter possession of his premises but was and has recurrently been forcefully, violently and physically prevented by the Defendants from so doing. That at the time of seeking to enter possession of the suit premises, the Plaintiff sought for a meeting with all the eight (8) previous occupants (the Defendants inclusive), whereupon he was persuaded as a goodwill gesture to provide some financial assistance to the said occupants for purposes of shifting their businesses to other places, but only five (5) accepted the offer thereby leaving out the Defendants.

REPRESENTATION

During the hearing of this case, the plaintiff was represented by learned counsel Mr. Kavuma of M/S. Luzige, Lubega, Kavuma & Co. Advocates while the defendants were represented by learned counsel Mr. Mangeni of M/S. Mangeni Law Chambers & Co. Advocates.

THE LAW

Both sides addressed the legal provisions governing civil matters. The position of the law and the burden of proof in Civil Cases; it is well settled per **Sections 101**, which provides that;

“(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

Section 102 provides that;

“The burden of proof in a suit or proceeding lies on that person who would fail if at all were given on either side.”

Section 103 further provides that;

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

The above was solidly reinforced in the case of **Dr.Vincent Karuhanga t/a Friends Polyclinic vs. National Insurance Corporation & Uganda Revenue Authority, HCCS No.617 Of 2002 (2008)ULR 660 at 665**, cited with approval by the Court of Appeal in **Takiya Kaswahili & A’ nor vs. Kajungu Denis, CACA No.85 of 2011**, it was held, inter alia, that;

“...The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the

burden of proof that is, his allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption.”

On the other hand, the balance of probabilities is discharged/satisfied if there is greater than 50 per cent that the proposition is true and not 100 percent. Lord Denning, in **Miller v Minister of Pension [1947] All E R 373** described it simply as “*more probable than not*”. For the above reason, errors omissions and irregularities that are too minor and do not go to the root of the matter and occasion a miscarriage of justice may be disregarded. See **Dr. Vincent Karuhanga vs National Insurance Corporation & Anor H.C.C.S No. 617/2002 and Sebuliba v Co-Operative bank (1982) HCB 129.**

Further, in the proof of cases, unless it is required by law, no particular form of evidence (documentary or oral) is required and no particular number of witnesses is required to prove a fact or evidence as per **Section 58 Evidence Act** and **Section 133 Evidence Act.**

The **Evidence Act** defines a fact to means and includes:-

(1) Anything, state of thing, or relation of thing capable of being perceived by senses as per Section 2 1 (e) (i) Evidence Act.

Having stated the position of the law and rules of evidence, I will now turn to the substantive issues raised in this case as captured above and proceed to evaluate against the evidence on record.

ISSUES RAISED

The following are the issues that were agreed upon in this case:-

1. Whether the plaintiff is the rightful owner of the suit land?
2. Whether the defendant trespassed on the suit land?
3. What are the remedies available to the parties?

RESOLUTION OF THE ISSUES

1: Whether the plaintiff is the rightful owner of the suit land?

AND

2: Whether the defendant trespassed on the suit land?

It was submitted by learned counsel for the plaintiff that the two issues are concerning the process through which the Plaintiff acquired the Lease Title over the suit land and whether it was fraudulent. That **PW1** testified that he lawfully applied for a lease offer

to Iganga District land Board in respect of land situate on Plots 1–3 and 5 Bugweri Avenue, Busembatia Town and the same was granted as a Forty Nine Lease on 7th March, 2005 under Minute IDLB 25/5/14/3/2005. That Certificate of Title was tendered in Court and marked as **Exhibit P1** while Lease Agreement was tendered and marked as **Exhibit P2**. That **Section 59 of Registration of Titles Act** provides that a Certificate of Title is conclusive evidence of ownership. That he further testified that he carried out a search and discovered that the land was free for leasing because nobody had a running lease or any Application for Lease.

That **PW1** further testified that, after acquiring the Title he contacted the occupants for a peaceful vacant possession and 5 (Five) of them including Mukama Muhammad, Kitakufe Wilson, Batema Erukana, Izimba Asani and Wanuke John accepted to leave peacefully and were given facilitation of UGX. 2,000,000/= each while the Defendants refused thereby preventing PW1 to carryout developments as per Lease Agreement. That the Defendants themselves petitioned the office of IGG to investigate the circumstances under which the Plaintiff acquired the suit land. That a report by the office of IGG was made and it was tendered in Court and marked as **Exhibit PW3**.

Further that the objectives of investigation were to establish whether the complainants have any legal claim on Plots 1–3 and 5, to establish whether Iganga DLB followed proper procedures while allocating Plots 1–3 and 5 to Mr. Teefe Paul, to establish why a new Title was issues to Mr. Paul Teefe instead of making any entry into the old one. That the office of IGG carried out investigation and found out that there was no fraud committed by the Plaintiff when he was acquiring the suit land. That therefore, the particulars of fraud listed by the Defendants in Paragraph 7 of their defence and Counter Claim are all well answered by report of IGG whose mandate is to investigate complaints against Public Officers under **Article 225 and 230 of the Constitution of Uganda**. That the Defendants failed to list any defect in the process through which the Plaintiff acquired the suit land.

ISSUES 3 and 4:

It was submitted for the plaintiff that the report of IGG (**Exhibit (P3)**) investigated whether the Defendants had any legal interests in the suit land. That the finding (I) of IGG's Report clearly indicated that, the complainants Mr. Gasitafasi Kakaire, Mr. Mugabe Ausi and Mr. Wanume Kibedi Amunomi do not have any legal claim over part of Plots 1-3 and 5 Bugweri Avenue, Busembatia because their lease expired and they did not renew it. That **DWI** himself told Court that their lease had expired and the record indicate that, they purchased the lease hold interest from custodian board in 1997 and got an extension which according to Exhibit PW3 expired in March, 2000.

That both **Section 2(2)(b) of the Expropriated Properties Act and Regulation 13 of Expropriated Properties (Repossession and Disposal) SI-87-8** provides for an extension of leases acquired under the Act for a period of 2 (Two) years or a period equivalent to the unexpired period of the lease. That the Defendants were given an extension of 2 (Two) years as per the requirement of the Section which expired in 2000. That court should note that after expiry of extension of 2 (Two) years, the Law does not give more rights to the lessee and such land become available to any member of the public to compete unless a further extension is considered which was not the case here. That therefore, by 2005, when the Plaintiff got the lease over the suit land, the Defendants had no interest and they were just tenants at sufferance who could be evicted any time without any notice.

That a tenant at sufferance is defined as a person who enters on land by a lawful Title and after his Title has ended, continues in possession without statutory authority and without obtaining the consent of the person then entitle. (**Hulsbury's Laws of England 4th Edition**, See also ***Havinder vs. Asea & Anor (Civil Appeal No. 08 of 2016 at Page (9)***).

ISSUES 5: REMEDIES

That the evidence indicates that the Defendants are nothing but tenants at sufferance who could be evicted without notice, but since they resisted eviction, its proper for this Court to issue an eviction order which can legally be enforced by Police. That a permanent injunction to restrain the Defendants, their agents and/or servants from forcefully occupying or using, carrying out any slightest form of constructions and alterations of the physical plan of the suit property, harassing, intimidating and/or in any other way of interrupting the Plaintiff's use and enjoyment of the suit land.

That the Plaintiff was granted a 49 (Forty Nine) year lease to develop the suit land in the year 2005 but now it's over 15 years nothing can be done on the suit land which is still illegally occupied by the Defendants. That the Plaintiff has not benefited from the suit land for the last 15 (Fifteen) years. That they therefore prayed that UGX. 200,000,000 is sufficient as general damages with interests at Court rate from 2015 up to the time of vacant possession. That costs follow the event and as such they prayed for costs of the suit.

In reply, learned counsel for the defendants addressed only one issue of whether the plaintiff obtained the land title fraudulently? They submitted that the plaintiff contends the he applied for a lease over the suit land from Iganga District Land Board and the same was granted to him and consequently he got the land title in his name.

That the IGG investigated the matter and discovered there was no fraud and that the defendant had no interest in the suit land whatsoever because their lease had expired

and they had not renewed the same. That the plaintiff testified that the defendant purchased the suit land from the Custodian Board in 1997 and got an extension on the lease expiring in March 2000. Therefore the defendants had no interest to protect and or defend the matter before court.

That **DW1 & DW2** confirmed that they purchased the suit land from Government in 1997 and got registered in 1999. That **DW1** told court that he doesn't remember the period which was left for the lease to expire and after realizing that the lease was due to expire had to apply for renewal. That **DW2** testified that the suit land is for the defendants and that the lease had not expired. That **DW2** told court that the suit land was jointly owned and it was wrong for the above five named people to sale the property without their authority or consent. That **DW2** testified that it was wrong for their colleagues to sale the property. That the evidence of **DW2** was corroborated by the evidence of **PW1** in cross examination in which he admitted that he bought the suit land from the above mentioned 5 people in 2003 as evidenced in annexure 12 and annexure 14 as stated in IGG report dated 2nd of June, 2003 exhibited as **PEX3**.

They further testified that **DW2** also testified that they lodged a caveat on 12th/09/2003 on the original title after discovering that Pw1 had bought the Suitland without their consent. Refer to annex 5 attached to Igg report exhibited as **PEX3**. That the submission that the lease had expired is not true and that the defendants contend that the lease had not expired. That in 1972, the Government of Uganda enacted a decree to wit immigration, cancelation of entry permit and certificate of Residence Decree on 9th/08/1972. That said decree rendered the Asians unwanted persons in Uganda forcing them to leave the country as per that decree.

That in December the Government of Uganda passed the **Law Assets of Departed Asian Act in 1973** which required the departed Asian to declare their property to the Government of Uganda. Others departed Asians declared their property while others did not. So by 1972 when the original owner left the country, the lease was remaining with four years to expire. It was to expire in 1976. That under **Section 2 of Expropriated Property Act** the lease stopped running until the property is dealt with by the minister of finance. The minister of finance dealt with the property when he issued a certificate of purchase on 27th /10/1997 and according to **Jaffa Brothers LTD vs Muhamad Majid Bagalaaliwo and others Court of Appeal Civil appeal No. 43 of 1947** court held that in order for the time to start running for the lease relating to expropriated property, is when the minister issues a repossession certificate. And that's the time when the lease starts to run.

Furthermore, that the time started running for the lease when the minister issued Repossession Certificate on 29th/10/1997. That by calculation the four years ended on the 29th/10/2001. A further extension of two years, four months and 22 days would

make the lease to expire in 2004. That the submission of counsel for the plaintiff that the lease expired in 2001 is wrong and the entry made by the Registrar on the land title on 21st/Dec/1999 that lease extended for a further period of two years four months and 22 days from 29th/October/1997 was also wrong as it was contrary to Expropriated Property's Act and once an illegality is brought to attention of court anything including any admission becomes null and void. ***See the case of Makula International vs His Eminence Cardinal Wamala Nsubuga 1981 (HCB) at page 13.***

That notwithstanding the above submission, **Sec 54 of Registration of Titles' Act** provides that no instrument until registered in the manner herein provided shall be effective to pass any interest in any land under the operation of this Act. In ***Morgan Musisi Kiwanuka vs. Asia Chand the Supreme Court civil appeal No. 14 of 2002*** held that a certificate issued under Expropriated Property's Act does not confer ownership or assignment under the registration of Titles Act. The Court observed that its effect is no more than the deed of transfer/assignment under the RTA. ***See section 6 (a) of the Expropriated Property's Act.*** That relating to the above provision of the law, one would legally urge that the defendants got registered as the legal owners of the suit land on 27th/09/1999 hence the four years as per **Section 2 of Expropriated Property's Act** ended on 27th/09/2003. A further extension of two years, four months and 22 days would make the lease to expire in 2005.

That the submission by the plaintiff that the lease expired in 2000 cannot stand due to the above submission. That the Plaintiff's submission is grounded on the registration of the defendants in 1999 and the extension was for two years dating from 1997 as per the land title which is on court record. That the registrar of land title committed illegality by stating that the title lease expired in 1997 whereas not because the lease was still running. That the plaintiff purchased the suit land when the lease for the defendants was still running and his purchase is null and void. That he purchased the suit land on 18th of May 2003 from Mukama Mwamali, Kitakule Wilson, Izimba Erukana, Wanume Asan John respectively. The said purchase is null and void because the property was jointly owned as per the land title which is on court record. Ref to annexure6 and annexure 12 of the **PEX3**.

They also relied on **S.56 of the Registration of Titles Act** which states that where two or more persons who are registered as joint proprietors of land shall be deemed to own the land as joint tenants. That from the decision of ***Burton vs Camden LBC (2002)2 AC 399*** in this kind of tenancy, each of the tenants is equally and wholly entitled on the whole estate. Further that a joint tenancy is able to exist as legal or equitable interests or both. That the purchase of the suit land by the plaintiff as reflected in the annexure 12 and 14 on **PEX3** cannot stand because the suit property

was jointly owned and the defendant never consented to such sale. That the defendants testified in the counter claim that the plaintiff committed acts of fraud, purchasing the suit land which had a caveat, buying the suit land without the authority or the consent of the defendants.

They added that closing the original title and opted for the new file for the purpose of defeating the caveat lodged on the title. That the above evidence was never challenged by the plaintiff and in cross examination the plaintiff admitted to have purchased the suit property from the above stated people hence nullifying his submissions that he applied for the suit property after the expiry of the lease. That fraud is defined by **Osborn's Concise Law Dictionary, 8th Edition, at page 152,** as the obtaining of the material advantage by unfair or wrongful means. It involves making a false representation knowingly or without belief in its truth or recklessly.

They also cited the case of ***John Katarikawe & Anor (1977 HCB 172)*** it was held that fraud thought not defined in the **RTA** covers dishonest dealings in land. It is attributed either directly or by necessary implication to the transferee, that is, the transferee must be guilty of the fraudulent act or known of the fraudulent act by somebody else, and has benefited or taken advantages of it. That in the instant case the defendants submit that the registration of the suit land into the plaintiff's name is void for fraud as it was held in the case of ***Betty Kizito vs David Kizito Kanonya & others SCCA No. 8 of 2018.***

That it should be noted that when the Amin Government expelled the Asians in 1972, the lease was remaining 4 years. The four years started running from the time they appeared on the title in 1999. That so four years started from 1999 end in year 2003 plus the two years extension. That legally speaking the lease expired in 2005. That for the sake of argument if one says the repossession certificate was issued on the 29th October 1997 four years would end on 29th October 2001. That an extension of two years four months and 20 days would make the lease to expire in 2004. That thus the plaintiff committed acts of fraud and illegality when he purchased the suit property which had caveat stopping any transaction on the caveated property until the consent of the caveator is sought. That the lease was still running.

They further submitted that the plaintiff is not the owner of the suit land because of the doctrine of joint tenancy as provided under **Section 56 R.T.A** and once an illegality is brought to the attention of court it overrides everything inclusive of any admission. The defendants submitted that there cannot be two titles held by different proprietors on the same land. That the registration of the plaintiff was through fraud. That it is the established law that two titles can be properly issued over the same land. That the title issued earlier in time supersedes the subsequent one: which must be cancelled. That this is the position which was taken in the case of ***Livingstone M. Sewanyana vs.***

Martin Alier, SCCA No. 40 of 1991/1992) KARL 116; and they prayed that the plaintiff's title be cancelled.

That the plaintiff has not proved his case on the balance of probability and we pray that this suit be dismissed with costs. They prayed that judgement on the counter claim be entered in favor of the defendants with costs declaring that the suit land is owned by the defendants.

According to the evidence led in this case, the Plaintiff **Teefe Paul, a male adult aged 53 years, Administrator with Makerere University and resident of Fig Tree Lane Plot 127 (hereinafter referred to as PW1)** admitted knowing the defendants and testified that this suit land is Plot 1, 3 and 5 measuring 0.345 hectares in Busembatya Township Folio 8 Volume 335. That in 2003, he went to Iganga Land Board and inquired whether they had land in Busembatya for sale. That they told him to go back after week and he did so.

That while there, he was shown documents showing that the suit land title has expired and that he should apply for it. That it had eight (8) people including the defendants.

That he applied for a lease after going to verify the land and found dilapidated iron sheet buildings and also the eight (8) people and talked to them. That they told him that they had no capacity to develop the land and that he should go ahead and apply for the lease and he did so in February 2004.

That he was given a lease after subsequently he processed the title and the lease offer was for 49 years. That he got the lease agreement and title. He identified the title registered on 1/05/2005 in his names and admitted as **PEXBT.1** and the lease agreement dated 7/03/2005 admitted as **PEXBT. 2.**

Further, that after getting the land title, he went to Busembatya and told the occupants to vacate and that he was ready to give them some money. That 5 out of 8 accepted his offer and the 3 refused saying that he could stay with them. That the 5 who accepted moved off after giving them shs.2, 000,000/= each. That the 3 refused to vacate and insisted to stay in the place. That he came to court to have them declared as trespassers.

That they went and complained to the IGG who investigated, the IGG interviewed the plaintiff and the Secretary to the Land Board, Kakaire (defendant) also made a statement. That the IGG considered all the available evidence and their application for extension of lease and decided that the defendants have failed to prove any legal claim on the suit land. The copy of the report dated 2/6/2009 and admitted as **PEX3.**

During cross-examination, PW1 answered that there were 8 people who were occupants at the time the plaintiff applied for the land and all of them had kiosks on

the land. That he talked to them before and after. That they did not put it in writing that he could apply as they had no capacity to develop the land. That he did not buy the property from the 8 people, his application is dated 20/2/2004 it says that he bought from 5 people namely; Mukama, Mwamadi Wanume John and 2 others. That it refers to Plots 1, 3 and 5 Volumes 3365- Folio 8 the suit land.

That there is no Sale Agreement and that he did not attach the Sale Agreement when he submitted the application. That he was advised by the Land Board that the occupants had no legal capacity as the occupants lease had expired. That the Land Board accepted the application; and there is a document he executed with the 5 other people dated 20/05/2005 for Plot 1-3 and 5 it is for good will they wrote and thumb printed. That the Folio Number in this agreement is 24 Volume 70.

That they are not the same as these on the land title that he was given; and that the 3 only changed their minds later.

He further answered that on 20/2/2004 he only got consent from the 5 people excluding the 2 defendants. But the third had originally not objected to file acquisition by the plaintiff. That **Annexure E** had expired and the District issued a new title that is why they issued him with the new title. That he paid the necessary dues though he does not remember how much, it's a long time, however, if given time he can find them.

That he was aware that the caveat was of no consequences since the title has expired accordingly to the advice of the Land Board; they had no legal interest and that he is aware this property fell under Custodian Board until it moved to the District. That he is also aware that the defendants purchased it from Custodial Board, but was not aware they had applied for extension of the lease.

In reexamination, he confirmed that he was aware their lease had expired; and that there was no application for extension at the time of his application. That his lease has a different Volume Number because the District had to create another file as the original one had got lost.

The plaintiff closed his case with one witness.

In their defence, the defendants presented two witness. The first to appear was **Gastas Kakaire, aged 81 years old of Busembatya Town Council Butandire zone in Iganga District, cultivator/peasant/businessman (green vegetables), working in Busembatya Town Council (hereinafter referred to as DW1)**. He knew Amunani Wanume very well as his biological son, Ausi Magabi as a son to his sister called Ausi Mutesi and testified that he got to know Teeffe Paul (Plaintiff) at the time he grabbed his land and claimed ownership of the same. That the plot is in Busembatya Town Council on Bugweri Avenue-it is plot 1-5.

That he got this plot from an Indian called Hussein in 1971, he even has an agreement to that effect in the name of Hussein and that the agreement has his full names. That in 1971 the GASTAS Brand was selling and Hussein gave him a letter for purposes of buying the suit property. That he started staying on the plot from 1971 to date and has been in continuous occupation of the suit land. That he occupies the land with the two defendants Amunoni Wanume and Mugabi. That he bought this land in 1997 from Custodian Board and it has 8 of who purchased the suit land. They are;

1. Mwamadi Mukama
2. Gastafas Kakaire
3. Amunoni Wanume Kitedi
4. Mugabe Ausi
5. John Wanume
6. Batema Erukana
7. Kikakufe Wilson
8. Asan Izimba

That they paid twelve million shillings (12 million) and got clearance. That they paid the money to Custodian Board and the Board then gave them a clearance form-a Certificate and Land Titles and he has the documents on him. That after receipt of this documents, they placed a caveat on the land, he does not remember the exact date but he has the documents. That as they started on the process of registering with the Registrar of Titles Jinja, they were told that another person claimed ownership over the same piece of land and they were advised to sort out these differences with him; and go to court before they go back to the Land Office and the person was Teeffe Paul (Plaintiff).

That they instituted a suit in Jinja Court which is ongoing to date and Plaintiff still disturbs them and even throws their property because he wants obtain vacant possession.

That before this matter they did not talk to Teeffe Paul because they did not know him. That the other persons that he listed as buyers are in their homes and it is only Kikakufe Wilson who passed away. That they heard here in Court that the other 5 persons had sold to him their portions of land, but they did not do that. That he did not show them any document of purchase and that as a Company, they had given him permission/ written document to allow him purchase their land/authorizing purchase of their land.

He further testified that Teeffe has never approached /consulted them about purchase of their land. That the problem for Teeffe and **DW1** is that Teeffe claims to have bought the whole piece of land but **DW1** does not know how he acquired the land and they

have never authorized him in writing. That he is not a trespasser that land is theirs. That since 1971 to date, he has been in occupation on the land with other and even Custodian Board indicated that the land belongs to eight (8) persons. That he has that document here dated 27/10/2006 addressed to Iganga District Land Board in respect of Plot 1-3-5 Bugweri Avenue admitted as **DE2**.

That about Teeffe's contention that **DW1**'s title expired, is true it has expired, but it remained his title; and as he processed the title, he was advised to stop by the Land Board because someone did claim ownership. That the loss he has suffered is a lot because of this suit; firstly, he demolished the building on the said land. That it was with Police Intervention that he was stopped to demolish further. That the plaintiff claimed that he had a court order of vacant possession and as a result he came and evicted them; and threw out their household property which was stolen by thieves and he did not recover this property.

That he lost his property that was in the house/merchandise in the shop- it was destroyed at demolition. That he had a shop at the demolition, he had a general merchandise shop like salt, sugar, clothing and several items and he has lost from that time to date; and suffered loss of his business which was paralyzed and he has failed to revive it to date. That he has continuously threatened him and has suffered psychological torture from the plaintiff.

They prayed that this court carefully studies and determines it in his favor and against the Plaintiff who claims that he is a trespasser. He also prayed for compensation of the loss of property and of all that time, he has lost for the time the matter has dragged in court; and for all the expenses during this time. He also prayed for cancellation of the Certificate of Title which is in the plaintiff names and reinstate him in the Certificate of Title; and order the plaintiff to stop his threatening them and order him to permanently stop trespassing on their land.

During cross-examination, DW1 answered that he said he was in occupation of the land from 1971, but in Freehold from Custodian Board in 1997. That on the land, he found buildings which belongs to the former owner and nothing else. That from 1971, he was a tenant of the Asian called Hussein and he was confirmed as owner in 1999.

That in 1999 there was two (2) years remaining to expiry of the lease, he does not remember when exactly, but he knows it was about to expire and embarked on the exercise of renewal. That he made the application in 2003 and it was then that the Land Officer informed him that a person had a Certificate of Title and he was advised to first resolve that conflict before he could go to back to apply for extension. That he was the one handling the exercise of extension and his plan for the other is that he

would sit with the other five (5) and see a way forward. That the other five (5) are not on the land; and they do not have anything on the suit land.

The second defence witness was **Amunoni Kanume Kibedi, a male adult aged 52 Busembatya Zone Busembatya, Bugweri District, peasant /businessman trader in Busembatya (hereinafter referred to as DW2).** He testified that he has a shop and knows Teefe Paul as he came claiming his premises that are his. That 2003 is when he first knew him. That Kakaire Gastafasi is known to him as one of persons that he purchased the building with Custodian Board in 1997 and they gave them a Certificate for Value of shs.12 million. That it was eight (8) of them tenants who purchased namely;

1. Mwamad Mukama
2. Gastafas Kakaire
3. John Wanume
4. Wilson Kitakufe
5. Ausi Magabi
6. Erukana Betema
7. Assan Izimba
8. Amunoni Wanume Kibedi.

That the building is Busembatya Town Council on Bugwere Avenue Plot 1, 2 and 5. That they requested for their Certificate of Purchase immediately after purchase and they went as eight (8) tenants in 1999 were registered as 8 joint sitting tenants. That the rest were bought off by Teefe. They are: -

1. Mwamadi Mukama
2. Asan Izamba
3. Wilson Kitakufe
4. John Wanume
5. Erukana Batema

That from 2003, the five are not in the building; the problem is that he is entitled in 2007 saying he brought a case in court when Teefe says that he succeeded in a suit; and court issued an eviction and so they were evicted. That the plaintiff came here to the Court to Registrar and **DW2** and others heard of this suit against them.

That the Registrar wrote a letter informing them that Teefe has never won a case; and he only instituted a suit and extracted summons. That the Registrar wrote to DPC Iganga and they were restored to the premises and they have been in occupation since.

That Teefe says he bought from five (5) but his purchase from (five) 5 was in error. That it is because they purchased as joint tenants, so if they were to sell it was all of them

joint tenants to agree and that was not done. That their lease expiry is a lie by Teeffe the lease was still running. That on threatening Teeffe, they have never threatened him but it is him who promised to bring machines and raze their building.

That the lease had not expired the building on purchase lease was to run from 1929 for 49 years and was to expire in 1976. That they were told that on expulsion of the Indians in 1972, the period of lease would remain constant on stopped running so when they got ownership from 1999, that is when they started running for 4 more years as that was period left after 1972. That this took them to 2003. That they applied for extension of the lease and they were given 2 years 4 months and 22 days. That this in total took them to 2006.

That when Teeffe said the building was his, they placed a caveat on the title in 2003 the year Teeffe started claiming he was processing his title; he did not use the Area Land Committee, but used the LC.I Committee of the area and that is illegal. That he did not follow lawful process, Teeffe's title is fraudulently and illegally allocated to him because he did not go to Area Land Committee, neighbors should sign. That as one of the purchasers should be attached and that he has no Purchase Agreement.

That the land Sale Agreement in the red document was placed in the document later. That this is the Good Will document which he calls Land Agreement; and that he illegally obtained the Certificate of Title because they are joint owners and should have down any thing together. That the Sale Agreement was only with a portion of the owners, not all of them.

That they suffered loss as business men, were evicted they destroyed their properties sales like shop stock sugar, posho, soap, crates of soda, mattresses and TV.

During cross-examination, DW2 answered that by this time they bought, they know the period left for expiry of the lease was 1999; in fact in an application for extension, they were given 2 years it has ending in 2003. That before application was granted this dispute arose nothing happened to the application.

That this dispute arose and his recommendation was made by Land Board as a result, he did not go to the Land Board to check on documents tendered by Teeffe. That the facts used by their co-tenants after Teeffe purchased in fact people to destroy the building. Those facts are abandoned and they were 3 plots the three of them occupy plots 1 and 5.

That he knows that a lease expires. That they bought the building, but did not construct. That the plaintiff got a purchase Certificate from the Ministry of Finance. That they have instituted a suit against the District Land Board, they went to IGG and reported is on court.

That he heard of the IGG findings recommended that they first get in touch with District Land Board and see how they retain the building. That they were summoned at the District Headquarters, but the outcome was not good; that is why they came to court. That they do not pay rent to anybody as the building was theirs.

In order to resolve these issues, I have carefully examined the pleadings filed by both sides at the commencement of this case, the evidence led in court and written submissions of both sides.

My first findings are that it is not in dispute that both parties are claiming ownership of the suit property situate at Plots 1 -3 and 5, Bugweri Avenue, Busembatia Town, Iganga District. The Plaintiff relied on a lease offer for 49 years and subsequently he processed the Certificate of Title registered in his names on 1/05/2005. This was admitted as **PEXBT.1** and the lease agreement dated 7/03/2005 was admitted as **PEXBT. 2.**

Both learned counsel addressed the law on a certificate of title in their written submissions, I agree with them and emphasize that as far as the law is concerned, land ownership in Uganda is spelt out in **Article 237 (3) of the Constitution of the Republic of Uganda.**

Article 237 (3) (d) specifically mentions leasehold land ownership as a form of land tenure system in Uganda; reinforced in **Section 4 of the Land Act 1998 (as amended).**

On the other hand, **Section 101(1) of the Evidence Act** places the onus to prove his/her interest in the suit land on the plaintiff. After the evaluation of the evidence, a number of findings have clearly emerged which have profound bearing on the parties' respective claims.

Section 59 of the Registration of Titles Act Cap 230 provides that;

“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.”

The defendants on the other hand relied on a lease offer document dated 27/10/2006 addressed to Iganga District Land Board in respect of Plot 1-3-5 Bugweri Avenue admitted as **DE2**.

Regulation 10 of The Public Lands Rules S.I 201-1 (revoked in March 2001 by rule 98 of The Land Regulations, S.1. 16 of 2001), being the law in force at the time, provides that an offeree of a lease on public land was a mere tenant at sufferance and he could only acquire interest at registration. It provided that: *“Any occupation or use by a grantee or lessee of land which the controlling authority has agreed to alienate shall until registration of the grant or lease be on sufferance only and at the sole risk of such grantee or lessee”*.

The expression ***“shallbe on sufferance only”*** as used in that rule was not defined. The common law definition of a tenancy at sufferance is the situation which arises where a tenant, having entered upon the land under a valid tenancy, holds over at the end of the tenancy, without the landlord’s assent or dissent. (***See Remon vs. City of London Real Property Co. Ltd., [1921] 1 KB 49, 58. Halsburys Laws of England (4th Edition)***) says this of tenancy at sufferance;

The above means that a person who enters on land by a lawful title and, after his title has ended, continues in possession without statutory authority and without obtaining the consent of the person then entitled, is said to be a tenant at sufferance.

Further, at common law, a tenancy at sufferance arises where a tenant, having entered upon the land under a valid tenancy, holds over without the landlord’s assent or dissent (***See Remon vs. City of London Real Property Company Limited [1921] 1 KB 49 at 58***). Within the context of the rule, until registration of the lease is completed, a person receiving an offer of a lease from a Controlling Authority was in a position akin to that of a tenant holding over demised premises at the end of a lease without the landlord’s assent and whose occupancy therefore could be terminated at will. The implication of **Rule 10 of The Public Lands Rules** therefore was that an offeree of a lease by a Controlling Authority did not acquire an interest in the land so offered until actual registration of that lease. At common law a tenancy at sufferance may be terminated at any time and recovery of possession effected.

The law also provides that whereas it is trite that upon the expiry of a lease, the land reverts to the lessor, a lessee who remains in occupation after a lease term has expired, but before the lessor demands the lessee to vacate the property, is a tenant at sufferance (***see See Remon vs. City of London Real Property Co. Ltd., [1921] 1 KB 49, 58) and Halsbury’s Laws of England (4th Edition) Vol. 18 para. 16***).

The above implies that a tenancy at sufferance arises by implication of law not by contract; and acquires no interest in the land he or she occupies.

Relating the above to this case, it is clear that the two defendants in this case alleged that they were joint tenants on the suit land with five others. This is not disputed by the Plaintiff who testified that he found eight (8) people on the property and negotiated with them and other than the two in court, the rest accepted Good Will Compensation and vacated the suit property.

Joint tenancy is provided for under **Section 56 of the Registration of Titles Act, Cap (RTA)** which refers to Joint tenants and tenants in common. It provides that:-

“Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares”.

In order to prove his claim, the plaintiff **PW1 Teeffe Paul** testified that he lawfully applied for a lease offer to the Iganga District Land Board in respect of the land situate on Plots 1-3 and 5 Bugweri Avenue, Busembatia Town (**hereinafter referred to as the suit land**) and was granted a forty-nine (49) years lease on 7th March, 2005 under Minute No. IDLB 25/5/14/3/2005 which was tendered in court which is in **PE3**.

The Certificate of title was tendered in court and marked as **Exhibit P1** while Lease agreement was tendered and marked as **PE2**. He further testified that after obtaining the land title (**PE1**), he went and contacted the occupants to vacate the property. He further testified that he entered into peaceful vacant possession and five (5) of them including Mukama Muhammad, Kitakufe Wilson, Batema Erukana, Izimba Asani and Wanuke John accepted to leave peacefully and were given facilitation of UGX. Shs. 2,000,000/= each, while the two defendants refused thereby preventing **PW1** from carrying out developments as per lease agreement.

That Plot 1-3 and 5 Bugweri Avenue is a commercial building in Busembatia Town Council, Iganga District. The history behind it is that the property belonged to Departed Asians' Properties Custodian Board until 1995, when the Ministry of Finance, Planning and Economic Development put it up for sale. Eight (8) people (Muhammed Mukama, Gasitafasi Kakaire, Amunani Wanume, Erukana Batema, Asani Izimba, Wilson Kitakufe, John Wanume, and Ausi Mugabe) all being tenants on this building, using Mukama Muhamed as their representative jointly applied to purchase it on the 7th September 1995. The property was sold to them at UGX. 12,000,000/= and the Certificate of Purchase was issued to them on 29th October 1997.

The lease expired in the first instance; and it was extended for 2 years, 4 months and 22 days from 29th October 1997 which later also expired in March 2000. There is undisputed evidence that upon expiry of the second lease, the lessors did not renew it.

It was also the evidence of **PW1** that he carried out a search and discovered that the land was free for leasing because nobody had a running lease or any application for lease; and as an interested party, he applied for a lease upon the same property on establishing that it was vacant. That Iganga District Land Board offered him a lease of 49 years on this property with all the processes clearly followed and a Certificate of Title for the said property was duly offered to him. That it was after that that **PW1** offered to pay the eight former lessors compensation as a gesture of goodwill and five (5) of the former lessors accepted the good will but the other three (3) refused, thus the complaint.

This matter was also a subject of investigations by the IGG's Office which received a complaint from Mr. Gasitafasi Kakaire, Mr. Mugabe Ausi and Mr. Wanume Kibedi Amunoni residents of Busembatia Town Council alleging that, Iganga District Land Board (DLB) fraudulently and illegally allocated their land to Mr. Paul Teefe. This was admitted in court as **(PE3)**.

During investigations, Mr. Teefe Paul was willing to compensate the three complainants with UGX. 2,000,000/= each, but they refused and insisted that Mr. Teefe Paul leaves them with Plot 1 or they pay him back the money he paid their colleagues and they retain the whole of Plot 1-3 and 5.

In view of the above findings, the following observations and conclusions were made;

- (i) *"The complainants, Mr. Gasitafasi Kakaire, Mr. Mugabe Ausi and Mr. Wanume Kibedi Amunoni do not have any legal claim over part of plot 1-3 and 5 Bugweri Avenue-Busembatia because their lease expired and they did not renew it. A lease was duly offered to another interested party upon the expiry of the three complainants lease.*
- (ii) *Although the other joint owners namely; Muhamed Mukama, Erukana Batema, Asani Izimba, Wilson Kitakufe and John Wanume had sold their purported interest to Paul Teefe in May 2003, they too did not have any legal claim over the plots since the lease had expired in March 2000.*
- (iii) *Iganga District Land Board followed proper procedures under Regulation 22 (1), (3) and (6) of the Land Regulations 2001, when allocating Plot 1-3 and 5 Bugweri Avenue-Busembatia to Mr. Paul Teefe.*
- (iv) *A new Certificate of Title was given to Mr. Teefe Paul after he was offered the lease, because the old title had expired in March 2000 together with the lease of the complainants. Therefore the title issued to Paul Teefe was not issued fraudulently as alleged in the complaint.*
- (v) *The offer made by Mr. Teefe to compensate the complainants with Shs. 2,000,000/= each or buy for them another house was reasonable in the circumstances. However, the complainants insist that they have never agreed with*

Teefe on the sale of where they are staying and therefore Mr. Teefe should leave them with Plot 1 or if he does not want to stay with them they give him the money he gave to their counterparts so that they occupy the whole Plot 1, 3 and 5”.

In view of the above conclusions, it was recommended as hereunder;

“1. The complainants are hereby advised to accept UGX. 2, 000,000 that Mr. Teefe has offered to pay each of them as compensation, as a gesture of good will.

2. Iganga District authorities should facilitate Mr. Teefe to take possession of the premises in issue and proceed with his re- development plan”.

In their defence, the defendants presented two witnesses as captured earlier in this judgment, **Gasitafas Kakaire as DW1** who testified that they bought the land from an Indian called Hussein in 1971 and have been staying on the plot to date. However, he did not present any sales agreement to prove their claim. **DW1** also testified that they later bought the land from the DAPCB at 12 million Uganda shillings. The defendants’ claim is supported by Certificate of Purchase signed by the Minister of Finance and Economic Planning as and Leasehold title LRV M.P. 4343 6089 Volume 70 Folio.

DW1’s claim is supported by **DW2 Amunomi Kanume Kibedi** (supra) who testified that they purchased the suit land and were given a Certificate of Purchase **PE3 Annexure 4** and lease title **PE3 Annexure 5**. From the above submissions, it is apparent on the record that there are two existing certificates of title both of which were made in respect of the same plots of land held by each of the parties respectively.

PW1’s certificate of title was scrutinized and compared with the original title before it was tendered in as evidence and admitted as **PE1**, however, the title issued to the defendants was not exhibited.

Having found as I have above, I’m also alive to **Section 59 of Registration of Titles Act** (supra) and evaluating it with the IGG’s Report (**PE3**), in which it was established why a new certificate of title in the form of a Special Certificate of Title was issued and registered on 27th /09/1999 in the names of the Plaintiff because the original title was lost, I cannot fault this because such an occurrence is catered for under **Section 70 of the RTA Cap 230** which reads that:-

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

Register Book and of every memorandum and endorsement on it, and shall state why the special certificate is issued; and the registrar shall at the same time enter in the Register Book notice of the issuing of the special certificate and the date of its issuance and why it was issued; and the special certificate shall be available for all purposes and uses for which the duplicate certificate of title so lost or destroyed or obliterated would have been available, and shall be equally valid with the duplicate certificate of title to all intents; but the registrar before issuing a special certificate always shall give at the applicant's expense at least one month's notice in the Gazette of his or her intention to do so.

I have compared it with the one issued to the defendants which attached as **annexure 5** and admitted as **PE3**. According to the Certificate of Purchase as presented by the defendants, although the defendants claim that they got ownership from 1999, that is when they started running for 4 more years as that was period left after 1972, that this took them to 2003 and they applied for extension of the lease and they were given 2 years 4 months and 22 days totaling up to 2006, this is not true since it is clear that the lease expired in March 2000 and that is when the defendants ceased being the proprietors.

The above means that the suit land reverted back to the owners who have been established to be Iganga District Land Board. It is also not in dispute that the certificate of title expired with the expiry of the lease. It is trite that when a lease expires, the land automatically reverts to the lessor (see ***Dr. Adeodanta Kekitiinwa and three others v. Edward Maudu Wakida, C.A. Civil Appeal No 3 of 2007; [1999] KALR 632***).

Having made the above observations, I have arrived at an undisputed finding that **PW1** having acquired the title to the suit property on 7/03/2005 admitted as **PEXBT. 2**, it is clear that this was after the lease by the defendants had expired and there is undisputed evidence that there was no renewal of that lease at the time.

The net effect of that is that the undisputed owner Iganga District Land Board had a right under the law to offer the lease to a new applicant.

I have had occasion to examine the Plaintiff's Plea; he relied on his sole evidence and documents which were exhibited. The law provides that fraud must be particularly pleaded and particulars of the fraud alleged must be stated on the face of the pleading as per **Order 6 rule 3 Civil Procedure Rules**. Also under **O.8 rule 7 of the Civil Procedure Rules S.I. 71 -1**, a defendant who has any right or claim is mandated to raise it by way of counterclaim against the claims of the Plaintiff, so as to enable the court to pronounce a final judgment in the same action, both on the original suit and on the cross-claim by way of counterclaim. **See *Okot Nelson Ojuk vs Nyeko Esanueri Civil Appeal No.058 of 2018***)

As far as cause of action for the defendants, pleaded fraud in paragraph 7 (a), (b), (c), (d), and (e) of their WSD and paragraphs 7 (a), (b), (c), (d), and (e) of their counterclaim.

Again, the law under **s. 176 (c) Registration of Titles Act** specifically gives locus to any person deprived of any interest in land by fraud to bring an action to recover that interest in the land against the person registered as proprietor of that land through fraud, or against a person deriving title otherwise than as a transferee bonafide for value through fraud.

The above is beefed up in the cases of ***Waimiha Saw Mills Co. Ltd v Waione Timber Co. Ltd (4) [1926] AC 101 (Privy Council)*** and ***David Ssejaaka Nalima v Rebecca Musoke CA No. 12/1985 per Odoki JA.***

The law also specifies that if the facts as alleged in the pleading are such as to create a fraud, it is not necessary to allege fraudulent intent; what is important is that the acts alleged to be fraudulent must be set out, and it should be stated that those acts were done fraudulently. See ***B.E.A Timber Co. v Inder Singh Gill [1959] 463 per Forbes, V.P at page 469.***

Further, whereas **S. 59 of the RTA Cap.230** provides that a certificate of title is conclusive evidence of ownership of title, however, **Section 77 of Registration of Titles Act** states:-

“Any Certificate of Title, entry, removal of encumbrance, or cancellation, in the Register Book, procured or made by fraud, shall be void as against all parties or privies to the fraud.”

I have critically analysed the plethora of authorities cited by both counsel a on what constitutes fraud; and I entirely agree with those authorities. The Supreme Court in the case of Katureebe JSC as he then was, in ***FJK Zaabwe vs. Orient Bank & 5 Ors S.C.C.A No. 4 of 2006*** (at page 28 of the lead judgment). Relying on relied on the definition of “fraud” in **Black’s Law Dictionary (6th Ed) at page 660**, which goes as follows;

“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

Anything calculated to deceive, whether by a single act or combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture...

A generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or by suppression of truth and includes all surprise, trick, cunning dissembling and any unfair way by which another is cheated.

“Bad faith” and fraud are synonymous and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness etc. As distinguished from negligence, it is always positive intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo by speech, or by silence by word of mouth or by look or gesture”.

Secondly, in **David Sejjaaka vs. Rebecca Musoke, Civil Appeal No. 12 of 1985**, it was held that “fraud must be attributable to the transferee, either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of such act by somebody else and participated in it or taken advantage of it”.

Further, fraud was also defined in the case of **Edward Gatsinzi and Mukasanga Ritah vs Lwanga Steven Civil Suit Number 690 of 2004** as:- “Intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination or by suppression of the truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture. A generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or suppression of truth and includes all surprise, trick, and cunning dissembling.....”

Again the law governing the burden of proof in cases of fraud requires that proof of fraud requires a standard beyond the balance of probabilities. The case of **Bugembe Kagwa Segujja vs Steven Eriaku & Alvin Ssetuba Kato** with approval referred to the case of **Sebuliba vs Coop Bank Ltd (1987) HCB 130** where court stated that ‘the

standard of proof in fraud cases is beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases.”

This court is acutely aware that the standard of proof in fraud cases is heavier than on the balance of probabilities generally applied in civil matters. See **Kampala Bottlers Ltd vs Damanico (U) Ltd CA No. 22/1992** it was held inter alia, that fraud means actual fraud, an act of dishonesty and that fraud must be attributed to the transferee either directly or by necessary implications; and **Ntege Mayambala vs Christopher Mwanje CA No. 72/93 [1994] 1 KALR 67.**

The Plaintiff pleaded that he was in good faith applied for a lease offer to Iganga District Land Board in respect of the suit land; and was a bonafide purchaser for value. A bonafide purchaser for value was defined in the case of **Haji Abdu Nasser Katende vs Vithalidas Haridas & Co. LTD, Court of Appeal (Civil Appeal NO. 84 of 2003);** and this Court while discussing the doctrine of a *bonafide* purchaser for value without notice stated the position of the law at pages 21-22 of the lead Judgment of L.L M. Mukasa-Kikonyogo (DCJ) as follows ;-

“It suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchase to successfully rely on the bona fide doctrine as was held in case of Hannington Njuki vs William Nyanzi H.C.C.S NO. 434 / 1996 must prove that;

- (1) he holds a certificate of title*
- (2) he purchased the property in good faith*
- (3) he had no knowledge of the fraud*
- (4) he purchased for valuable consideration*
- (5) the vendors had apparent title*
- (6) he purchased without notice of any fraud*
- (7) he was not party to the fraud.*

A bonafide purchaser of a legal estate for value without notice has absolute, unqualified and answerable defense against the claims of any prior equitable owner. The burden to establish or prove the plea lies on a person who sets it up. It is a single plea and is not sufficiently made out by proving purchase for value and leaving it to the opposite party to prove notice if he can.” (Emphasis added)

Further, that under section **176 (c)** of the **Registration of Titles Act Cap.230**, “no action of ejectment or other action for the recovery of any land shall lie or be sustained

against the person registered as proprietor under this act, except in the case of a person deprived of any land by fraud as against a person deriving otherwise than as a transferee bonafide for value from or through a person registered through fraud”.

Relating the above to this case, **PE1** clearly throws more light on how the Plaintiff acquired the certificate of title to the suit land. This only goes a long way to reinforce the finding that this was after the expiration of the defendants’ lease.

Having carefully analyzed the submissions of learned counsel for the Defendants on the law on fraud and examined both the WSD and their counterclaim, where they alleged that the plaintiff acquired his certificate of title fraudulently because their lease was still running, I have found that there is no concrete evidence to support these allegations.

In the result, having found as I have in these two issues and on the basis of the all the evidence that was presented by both parties before this court, I can only arrive at a finding that the plaintiff has led enough evidence to convince this court that there was no fraud in this case that can be attributed to him or anyone else.

My conclusions are that I agree with the submissions of learned counsel for the plaintiff are that there is no iota of evidence that would lead this Honorable Court to make a finding that the Plaintiff in this case was involved in Fraud or acted fraudulently in acquiring the suit land. Accordingly, it is the final decision of this Honorable Court is that on a balance of probabilities, the allegations of fraud have not been proved by the defendants against the plaintiff.

Instead, it is my finding that the Defendants’ continued claim on land comprised in LRV 3365 Folio 8 Plots 1–3 and 5, Bugweri Avenue, Busembatia Town, Iganga District measuring approximately 0.345 Hectares is indeed illegal and cannot be sanctioned by court; and I so hold.

The Counter Claim made by the Defendants therefore FAILS.

ISSUE 2: Whether the defendants trespassed on the suit land?

In resolving this issue, I have carefully examined the Plaintiff, he sought for a declaration that the defendants are trespassers on the suit land, an eviction order, a permanent injunction to restrain the defendants, their agents and/or servants from forcefully occupying or using the suit premises for their various businesses, vandalizing, carrying out any slightest form of constructions and alterations of the physical plan of the suit property, harassing, intimidating and/or in any other way of interrupting the plaintiff’s use and enjoyment of the suit premises; general damages, interest thereto and costs of the suit.

On the other hand, the defendants in their counterclaim sought for cancellation of the plaintiff's title to the land on grounds that the plaintiff acquired it fraudulently, unlawful eviction, special and general damages, interest and costs of the suit.

Trespass to land is defined by **Halsbury's Laws of England 3rd Edition Vol. 38** as: -
"Trespass to land is unauthorized entry upon land. A trespasser gives the aggrieved party the right to bring a civil law suit and collect damages as compensation for the interference and for any harm suffered".

The above was elaborated upon law on in the case of **Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company Civil Appeal No. 11 of 2002 (SC)** as follows:

"Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed, not against the land, but against the person who is in actual or constructive possession of the land. At common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass."

Trespass to land occurs where a person directly enters upon another's land without permission, or remains upon the land, or places or projects any object upon the land. A continuing trespass is a failure to remove an object (or the defendant in person) unlawfully placed on land. It will lead to a new cause of action each day for as long as it lasts as was held in **Holmes v. Wilson and others (1839) 10 A&E 503**.

Citing with approval the case of **Wuta-Ofei v Danquah (1961) 3 All E.R. 596 at p.600**, his lordship held that for purposes of the rule cited in **Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company** (supra) above, possession did not mean physical occupation; rather, the slightest amount of possession would suffice.

I have also relied on the case of **Ocean Estates Ltd vs Pinder [1969] 2 A.C 19** it was held that; *"Where the owner is suing a person allegedly in possession, even the slightest acts by the owner indicating his or her intention to take possession are enough to maintain the action. This is analogous to saying that the Defendant's cannot sustain his claim against the Plaintiffs regardless of whether or not he was in actual possession of the suit land"*.

Again in **Bumbakali vs. Muhairwe & Others Civil Suit No. 36 of 1999**, court observed that trespass to land consists of any unjustifiable intrusion upon or interference with the land in possession of another and can be one of the following:

- i. Entering upon a land in possession of another without permission.

- ii. Remaining on land entered with permission after request to move has been made (e.g. being sent away by a property owner and you refuse to go away, it is trespass to land).
- iii. Placing or throwing away any object upon it without any lawful justification.

Further, the Court of Appeal in ***Sheikh Muhammed Lubowa vs Kitara Enterprises Ltd CA No. 4 of 1987*** observed that in a claim of trespass, one must prove;

- i. That the disputed land belonged to the Plaintiff.
- ii. That the Defendant had entered upon it, and
- iii. That entry was unlawful in that it was made without permission or that the Defendant had no claim or right or interest in the disputed land.

Further, in the case of ***John Katarikawe vs. William Katwiremu [1977] HCB 210 at 214***, Byamugisha J. (as she then was) observed that interests in land, in particular, include registered and unregistered interests. Further, in ***Ojwang vs. Wilson Bagonza CACA No.25 of 2002***, Byamugisha J further observed that for one to claim an interest in land, he or she must show that he or she acquired an interest or title from someone who previously had an interest or title thereon.

Having elaborated on the position of the law and relating the above to the evidence presented during the hearing, it is clear as elaborately found in the 1st issue that the plaintiff genuinely acquired the suit land and this makes him the legal owner of the suit property.

I therefore see no need to labour this point further, save to declare that it is the final decision of this Honourable Court that on a balance of probabilities that the plaintiff can maintain a cause of action in this case in trespass to land.

As a result, the two defendants who are still remaining of the suit property are hereby found to be trespassers on the plaintiff's land; and I so hold.

ISSUE 3: What are the remedies available to the parties?

Having found that the evidence on record indicates that the Defendants were nothing but tenants at sufferance who could be evicted without notice, by the time the plaintiff acquired the suit property,; and it is clear that the two have since resisted a peaceful handover of the suit property to its lawful owner, it's proper for this Court to issue an eviction order which can legally be enforced against them.

The plaintiff also prayed for a permanent injunction to restrain the Defendants, their agents and/or servants from forcefully occupying or using, carrying out any slightest form of constructions and alterations of the physical plan of the suit property, harassing, intimidating and/or in any other way of interrupting the Plaintiff's use and enjoyment of the suit land.

The Plaintiff was granted a 49 (Forty Nine) year lease to develop the suit land on 13th April 2005 situate on Plot 1-3 and 5 Bugweri Avenue, Busembatia , Iganga District (suit land). On the other hand, the Defendants and 5 others had initially purchased the suit land on the 7th of September 1995, and they acquired a Leasehold Certificate of Tittle on the 29th of October 1997 for a lease of only 2 years. After the expiration of the initial 2 years, it was extended for an additional 2 years, 4 months and 22 days. This means that this lease expired in March 2000.

The Defendants did not renew this Leasehold Certificate of Tittle from the year 2000

The above means that by the time the Plaintiff was granted ownership of the suit land and issued with a Leasehold Certificate of Title on 13th April 2005, for 49 years the Defendants Leasehold Certificate of Tittle had long expired by 4 years.

The current suit was filed in Court on 11th April 2007, it was already 2 years after the Plaintiff had been granted his Leasehold Certificate of Title. To date, it's over 16 years and the Plaintiff has not benefited from the suit land which is rightfully his as can be concluded from the above facts. They prayed that UGX. 200,000,000/= is sufficient as general damages with interests at Court rate from 2015 up to the time of vacant possession.

The settled position is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. See: **James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe v. Isaac Patrick Matovu & A'nor H.C.C.S. No. 177 of 2003 per Tuhaise J.**

Also, in the assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered. See: **Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305.** A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong. **See: Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992.**

The party claiming general damages is expected to lead evidence to give an indication of what damages should be awarded on inquiry as the quantum. **See: Robert Cuossens v. Attorney General, S.C.C.A No. 8 of 1999; Ongom v. Attorney General. [1979] HCB 267.**

In the instant case, the plaintiffs have satisfactorily demonstrated that they suffered great inconvenience at the instance of the defendant. I therefore agree with learned counsel for the plaintiffs and find that they are entitled to general damages. An amount of Shs. Two Hundred Million Only (200,000,000/=) Million Only has been found sufficient in this case.

On the other hand, **section 27 (2) of the CPA** makes provision for interest on claims for monetary payment. Further, it is now well established law that costs generally follow the event. See ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)*** and ***Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35***. Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, the plaintiffs have succeeded in their claim, and I find no find any compelling and or justifiable reason to deny them costs of the suit. Accordingly, it hereby ordered as follows;

I also award them interest on the general damages from the time of this judgment until full payment. A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. In that regard I would consider a commercial rate of interest of 23% per annum to be just and fair. It shall be applicable to the general damages.

Taking into account the inconvenience suffered by the plaintiff as a result of the defendant's acts, I am persuaded to award UGX. 200,000,000 (Two hundred million shillings) as general damages to the plaintiff with interest at Court rate from the date of this judgment till payment in full.

Applying the decisions arrived at in the above cases, and for the reasons I have given in this judgment, it is the final decision of this court that judgment is entered for the Plaintiffs against the Defendant with the following orders:-

Accordingly this court orders that;

1. A declaration is hereby issued that the Plaintiff is the lawful owner of the suit property comprised in Plots 1 -3 and 5, Bugweri Avenue, Busembatia Town, Iganga District measuring 0.345 hectares in Busembatya Township Folio 8 Volume 335. Defendants are trespassers on the Plaintiff's land.

2. The Plaintiff is declared a lawful purchaser for value for the property comprised in Plots 1 -3 and 5, Bugweri Avenue, Busembatia Town, Iganga District measuring 0.345 hectares in Busembatya Township Folio 8 Volume 335.
3. The Counter Claim made by the Defendants in this Suit FAILS.
4. A permanent injunction is issued to restrain the Defendants, their agents and/or servants from forcefully occupying or using the suit premises for their various businesses, vandalizing, carrying out any slightest form of constructions and alterations of the physical plan of the suit property, harassing, intimidating and/or in any other way of interrupting the Plaintiff's use and enjoyment of the suit premises.
5. The Defendants are jointly and severally liable to pay the Plaintiff General Damages of UGX. Two Hundred Million Only (200,000,000/=) for the loss occasioned to him by their illegal occupation of the suit land.
6. The court also awards the Plaintiff interest on the General Damages above at court rate from the time of Judgment till payment in full.
7. The court also awards the Plaintiff full Costs of the suit from the time of filing till Judgment.
8. The Leasehold Certificate of Title issued to the Defendants which has long expired is hereby canceled and a consequential order doth issue to the Commissioner Land Registration Jinja/Iganga Zonal Area for the rectification of the title by removing the same.

I SO ORDER.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
30/08/2023

This Judgment shall be delivered by the Honorable Magistrate Grade One attached to the Chambers of the Senior Resident Judge Jinja who shall also explain the right of appeal against this Judgment to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
30/08/2023