

## The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Suit No. 002 of 2014

10 1. Eilor Silver

2. Epau Stephen (*administrator of the estate of the late Adotu Gastavus*) ..... Plaintiffs

Versus

1. Soroti District Local Government

15 2. Registrar of Titles

..... Respondents

3. Epecu Francis

Before: Hon. Justice Dr Henry Peter Adonyo

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Judgement1) Introduction:

The plaintiffs' case against the defendants is for declarations and they seek the following reliefs;

- 25 a) Cancellation of certificate of title issued to the 3<sup>rd</sup> defendant by the 2<sup>nd</sup> defendant for having been procured fraudulently.



- 5 b) A declaration that the purported sale and allocation of Block No. C6 & C8  
(Plot No. 7A and 7B) off Engulu road, Eastern division, Soroti Municipality by  
the 1<sup>st</sup> defendant to the 3<sup>rd</sup> defendant was fraudulent for having been  
allocated in breach of principles, policies and regulations governing the  
acquisition of the suit property and that the 3<sup>rd</sup> defendant procured and  
10 facilitated the stated breaches;
- c) A declaration that the 1<sup>st</sup> defendant acted ultra vires its powers when it  
purported to allocate the suit property to the 3<sup>rd</sup> defendant.
- d) A declaration that at the time of the purported allocation of the suit  
property by the 1<sup>st</sup> defendant to the 3<sup>rd</sup> defendant, the plaintiffs were and  
15 are sitting tenants on the suit property, and ought to have been given  
priority in allocation of the suit property.
- e) A declaration that the 3<sup>rd</sup> defendant who had full knowledge of the  
plaintiffs' unregistered interests in the suit property, fraudulently procured  
his registration in respect of the suit property in order to defeat the  
20 plaintiffs' unregistered interests in the suit property.
- f) A declaration that the purported sale and allocation of the suit property by  
the 1<sup>st</sup> defendant to the 3<sup>rd</sup> defendant is fraudulent and therefore null and  
void.
- g) A permanent injunction to restrain the defendants by themselves, their  
25 agents or howsoever otherwise from entering and using the suit property  
or from dealing with the suit property in any way without the consent of the  
plaintiff.
- h) An order for delivery up by the defendants of the duplicate certificate of  
title for purposes of cancellation

- 5 i) General damages  
j) Exemplary damages for acting arbitrarily  
k) Costs of the suit

2) The Plaintiffs' case:

According to the plaintiffs, at the time of the divestiture of the property they were  
10 sitting tenants and hence eligible to be given first priority in grant of allocation and  
purchase of the suit property. That they applied for the grant of the suit property  
which applications were rejected on the basis that they had retired and instead the  
suit property was granted to the 3<sup>rd</sup> defendant.

Accordingly, the plaintiffs seek remedies indicated in its plaint against the  
15 defendant.

3) The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' case:

The 1<sup>st</sup> and 3<sup>rd</sup> defendants (defendants) denied the plaintiffs' claim and averred that  
the plaintiffs were not sitting tenants and therefore not entitled to priority in the  
grant of the suit land. The 1<sup>st</sup> defendant avers that the suit property is its own and  
20 that it was quite different from the Central Government pool houses, having  
acquired the same from National Housing and Construction in the 1970s; therefore,  
it was not available for divestiture under the 1996 Republic of Uganda Divestiture and  
sale of Public Assets policy, Guidelines and procedures.

The Government Pool Houses were allocated to civil servants under the Ministry of  
25 Public Service and were sold way back in 1994 under a policy of the Ministry of Public  
Service by Government Pool Houses Sales Committee. The suit property being  
owned by the 1<sup>st</sup> defendant, its council, was the rightful authority and in its sitting  
of 7<sup>th</sup> May 2001 resolved to sell the Local Government Houses and the same were



5 sold in 2006 based on an appropriate procedure by the House Allocation Committee.  
The resolution to sale was passed when the plaintiffs were employees of the 1<sup>st</sup>  
defendant, but at the sale in 2006, the plaintiffs had retired and therefore ceased to  
be employees; consequently, they were not eligible to buy the suit properties.  
That the 3<sup>rd</sup> defendant rightly applied and was granted the suit property by the 1<sup>st</sup>  
10 defendant. The 1<sup>st</sup> defendant contends it followed the right procedure in granting  
the suit land to the 3<sup>rd</sup> defendant.

Arising from the above assertions, the defendant avers that this suit ought to be  
dismissed with costs.

4) Material facts agreed upon:

15 From the Joint Scheduling Memorandum filed in this court on 04<sup>th</sup> June 2021, the  
parties agreed to the following:

a) Agreed facts:

- The plaintiffs were formerly civil servants attached to the 1<sup>st</sup> defendant and  
are in occupation of the suit land.
- 20 - The 3<sup>rd</sup> defendant is the registered proprietor of the suit land whose interest  
the plaintiffs are challenging on grounds of fraud.
- The suit property was sold off to the 3<sup>rd</sup> defendant by the 1<sup>st</sup> defendant which  
sale the plaintiffs are challenging on grounds of fraud.
- A resolution and modalities guiding the sale of the suit property were passed  
25 by the 1<sup>st</sup> defendant's agents.
- By the time of passing the resolution, the plaintiffs were still in active civil  
service and by the time of issuing notice/modalities of sale, the plaintiffs had  
retired from civil service.

5 b) Disagreed facts:

- The issuing of the suit property to the 1<sup>st</sup> defendant was tainted with fraud.
- The plaintiffs were sitting tenants on the suit property and entitled to priority in purchase of the suit property.
- The 1<sup>st</sup> defendant was a sitting tenant on the suit land.
- 10 - The suit property was not part of the central government pool houses.

5) Representation:

M/s Engwau & Co. Advocates represented the plaintiffs, while the Attorney General's Office, Soroti, and M/s Ewatu & Co. Advocates jointly represented the 1<sup>st</sup> and 3<sup>rd</sup> defendants.

In proof of their case, the plaintiffs led Eilor Silver as PW1 and Epau Stephen as PW2.

The defendants led Oketayot Christopher James – the Deputy Chief Administrative Officer Soroti District Local Government, as DW1 for the 1<sup>st</sup> defendant and Epecu Francis as DW2 for the 3<sup>rd</sup> defendant.

20 6) Issues:

Four issues were agreed upon to resolve the dispute, and these are;

- a) Whether the plaintiffs or the 3<sup>rd</sup> defendant were sitting tenants on the suit land and eligible for 1<sup>st</sup> priority?
- b) Whether the suit property was part of the Central Government Pool houses?
- 25 c) Whether the 3<sup>rd</sup> defendant fraudulently obtained his registration as proprietor on the suit land?

5 d) What remedies are available to the parties?

7) Burden and Standard of Proof:

Section 101 of the Evidence Act, Cap 6, 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.**

2) **When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**

Section 102 of the Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Also, Section 103 of the Evidence Act provides that the burden of proof as 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.

This being a civil suit, the burden of proof lies with the plaintiff (See: Sections 101 and 102 of the Evidence Act, Cap 6) to prove their case on a balance of probabilities.

Also see: ***Nsubuga vs Kawuma [1978] HCB 307.***

In the case of ***Erumiya Ebyetu v. Gusberito [1985] HCB 64***, it was held that;

***"where the plaintiff leaves his case in equilibrium, the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."***



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8) Submissions:

Counsel for the plaintiffs and the defendants filed written submissions on the court record. The court is thankful to the parties for the submissions considered herein accordingly.

9) Resolution of issues:

10 Before I resolve the issues, the 2<sup>nd</sup> defendant did not file its written statement of defence despite an affidavit of service filed on 27<sup>th</sup> April 2021 on the court record showing that they were served with summons to file a defence but did not.

The plaintiffs' counsel argued issues 1 and 3 jointly and issues 2 and 4 separately; however, I will resolve issues 1, 2 and 3 concurrently.

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a) Issues 1, 2 and 3:

- *Whether the plaintiffs or the 3<sup>rd</sup> defendant were sitting tenants on the suit land and eligible for 1<sup>st</sup> priority?*
  - *Whether the suit property was part of the Central Government Pool houses?*
  - *Whether the 3<sup>rd</sup> defendant fraudulently obtained his registration as*
- 20 *proprietor on the suit land?*

It is not disputed that the plaintiffs worked for the 1<sup>st</sup> defendant and ceased to be employees of the 1<sup>st</sup> defendant, having retired from its service on 31<sup>st</sup> July 2005 for the 1<sup>st</sup> plaintiff and 31<sup>st</sup> December 2005 for the 2<sup>nd</sup> plaintiff.

25 In the plaint, they averred that they were allocated during their active service Block No C6 & C8 (Plot No. 7A and 7B) off Engulu road, Eastern division, Soroti municipality, respectively.

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5 In evidence, PW1 testified that he lost the allocation letter, whereas PW2 testified that he had deponed an affidavit in that regard, though he told the court that the CAO did not certify it. The plaintiffs testified that upon their retirement, they continued staying in the suit property because their severance payments had not yet been paid by the time of retirement and PW2 even testified that, up to date, the retirement benefits of his father had not yet been paid.

The contention of the plaintiffs, which this court must resolve, is between the 3<sup>rd</sup> defendant and the plaintiffs, who was entitled to first priority of purchase of the suit property and did the current owner, the 3<sup>rd</sup> defendant, obtain the ownership fraudulently?

15 PW1 and PW2 testified that the suit property belongs to the 1<sup>st</sup> defendant. They testified that the resolution to sell the suit property was passed before they both retired, that is, on 7<sup>th</sup> May 2004 (PEX54) Resolution 11 of which reads;

***"The Council resolved that houses at Oderai Housing Estate be sold off. The modalities be drawn by the technical team."***

20 According to the minutes, this resolution arose from a communication from the CAO of the 1<sup>st</sup> defendant calling for the privatisation of the Oderai Housing Estate in line with the Government policy of divesting from owning houses as a local government.

The Soroti District Local Government House Allocation Committee, on behalf of the 1<sup>st</sup> defendant, came up with modalities in a letter dated April 13, 2006 – PEX47.

25 The modalities for the sale of the district administration houses listed terms and conditions for the intending applicants to purchase the house ought to have met.



5 PW1 testified that according to the modalities, he was not eligible to purchase the suit property.

The plaintiffs agree that they did not hand over the keys to the suit property on retirement, in line with Public Service Standing Orders upon retirement but retained the houses while awaiting their retirement benefits.

10 Each plaintiff also testified that they did not apply to purchase the suit properties immediately before or immediately after retirement but that they did so later.

It is further a equally agreed fact that the plaintiffs still occupy the suit properties even when they did not have tenancy agreements to the same and that they continue occupying the same well even after retirement.

15 PW2 told the court that he did not dispute the modalities made by the 1<sup>st</sup> defendant. PW2 testified that he applied to purchase the suit property (PEX59) whereas that is not the case as it is clear that he was merely reminding the 1<sup>st</sup> defendant of his intention to purchase the same.

The plaintiffs, as witnesses, told the court that they applied to be allocated or  
20 purchase the suit properties but that their applications were rejected because they were no longer in active public service of the 1<sup>st</sup> defendant by the time of the modalities were issued.

They, however, stated they deemed themselves still sitting tenants arising from a valuation report by the Chief Government Valuer in a letter dated 6<sup>th</sup> January 2006  
25 which listed them so.

5 My close perusal of the Letter of the Chief Government Valuer – PEX45 indicates that there was an inspection date was between September 2005 and on the 4<sup>th</sup> of November 2005. At that time the plaintiffs were still in active service and so their listing as sitting tenants was well expected, though the Chief Government Valuer did not indicate on which specific dates he inspected the suit properties. However, that  
10 document PEX45 alone is, in my view, not reasonable to use to assert being sitting tenants as Section F-d of the Government Standing Orders provides that at retirement, a civil servant must hand over the government properties, unless held with permission, which was not in this case.

This position is confirmed by DW1 who testified that according to Section F-d of the  
15 Government Standing Orders, the plaintiffs on retirement ceased to be employees of the 1<sup>st</sup> defendant.

He testified further that Section F-d of the Government Standing Order demands that a retired officer hands over all government property in his possession, including keys to any house, where he/she is in occupation. He also testified that the refusal  
20 by the plaintiffs to hand over the keys to the suit property and their continuous occupation of government property without permission of their employer was illegal.

He told the court that the suit property was rightly allocated and consequently sold to the 3<sup>rd</sup> defendant as it was deemed vacant by the 1<sup>st</sup> defendant in compliance  
25 with Section F-D of the Government Standing Orders as three previous occupants had by law retired.



5 DW2 Epechu Francis, in his defence in cross-examination, testified that the plaintiffs' refusal to hand over the suit property to the 1<sup>st</sup> defendant upon their retirement was a breach of Section F-D of the Government Standing Orders. He told the court that he became a sitting tenant when the suit property was allocated to him.

Further that, the suit property was sold to him upon its allocation to him as a serving  
10 civil servant and not a retired one.

I note that though according to PEX47, which is the modalities used in advertising and allocating the suit property, used the term "sitting tenant", that term is not defined.

The defendants' counsel resorted the Oxford Advanced Learner's Dictionary 8<sup>th</sup>  
15 edition on page 1389 which defines a sitting tenant "*a person who is living in a rented house or flat and who has the legal right to stay there*".

The Merriam-Webster Online dictionary, similarly defines a sitting tenant as "*a person who is living in a rented house or apartment and has the legal right to stay there.*"

20 I adopt both definitions in respect of this matter and would state since the unchallenged Section F-d of the Public Standing Orders provides that "... **an officer leaving office temporarily or permanently was required to handover all government assets and equipment as the words used there is "shall handover....."** this has the implication that one must comply.

25 Thus from the evidence herein, the plaintiffs retired from civil service of the 1<sup>st</sup> defendant and were required to comply with Section F-d of the Public Standing



5 Orders and hand over the keys of the suit properties to the 1<sup>st</sup> defendant. They did not do so on top admitting that they even did not have any tenancy agreement with the 1<sup>st</sup> defendant. This means that without the authorisation of the 1<sup>st</sup> defendant for them to continue being so in the premises then they were illegally occupying the same.

10 I note that also the plaintiffs also could not benefit from condition which provided that the first priority purchase would be to sitting tenants for those which effected the sale of the houses became operational on 13<sup>th</sup> April 2006, a time when they had long ceased to be employees of the 1<sup>st</sup> defendant. They were already retired civil servants and that alone would disentitle them from being sitting tenants as the  
15 modalities required that the applicants to purchase the district administration houses be those who were in service.

Although PW1 told the court that they complained to the Permanent Secretary of the Ministry of Lands, Housing and Urban Development - PEX39, PEX40 and DEX21(c)), but the letter of the Permanent Secretary dated 4<sup>th</sup> September 2013 to  
20 the Chief Administrative Officer where there was a complaint regarding inaccurate sale of the Oderai Housing Estate and wherein the Permanent Secretary also clarified to the CAO that the rightful authority for the divesture of the government houses was the Pool Houses Committee and not the district council or land board, the 1<sup>st</sup> defendant, properly through a letter dated 10<sup>th</sup> September 2013-DEX21(c),  
25 responded to the Permanent Secretary, clarifying that the Oderai Housing Estate belongs to it and was not part of the general Government Pool Houses.

There was even no reply to the 1<sup>st</sup> defendant's letter by the Permanent Secretary; moreover, and moreover the plaintiffs were not listed as complainants therein.

5 The 1<sup>st</sup> defendant also adduced evidence to show the acquisition of land from the National Housing and Construction Corporation in the year 1979 as per DEX1-DEX20. According to PEX35, the Pool Houses Sales Committee Meeting deliberated on the appeal over the irregular sale of the Oderai Government Quarters, Soroti, by the sitting tenants by asking the Permanent Secretary to write a letter to the CAO which, according to the evidence adduced was replied to by the CAO in a letter dated 10<sup>th</sup> September 2013 claiming that the said quarters were houses belonging to the 1<sup>st</sup> defendant and not part of the government pool houses.

15 In PEX35, in answer to an appeal by the tenants of plots 18/20 Amberley Road and 19/21 Faraday Road, Jinja, the Committee noted that the houses were in the jurisdiction of the Jinja Municipal Council and it was the one to decide on the mode of sale just like the case here with the 1<sup>st</sup> defendant which adduced evidence beyond a balance of probabilities showing that they were the owners of the suit properties and so the 1<sup>st</sup> defendant had every legal right to deal with its properties as it deemed fit, which it did through the modalities it issued that were developed by its technical team.

20 The 3<sup>rd</sup> defendant denied any fraud in acquiring the suit properties. He told the court that when he applied for the suit property, he indicated that he was a sitting tenant in accordance with DEX 51 which was a Notice to all Intending Applicants to purchase District House from Secretary House Allocation Committee Dated 13/04/2006 and that the CAO in Paragraph 2 of DEX 50 acknowledged that DW2 was a sitting tenant of the suit properties.

DW2 testified that by the time he applied for the suit property, he had already benefited for public service sale of property at Plot 6 Lalle Road. DW2 testified that



5 he had never accessed the suit property as a sitting tenant despite having an allocation letter for the suit property -DEX40 and DEX49 which showed that he applied for allocation and was allocated the suit land on 11/05/2006.

DW2 told the court that he went ahead and paid the required premiums with the Valuation Report of Soroti District Local Government - PEX4B, indicating that on Plot  
10 7A and 7B Egalu Road, Nos. 38 and 39, there were the names of Silver Eilor – 7A and Gusta Adotu – 7B, who were in occupation at the time of the valuation.

That the suit properties' values were for 7A – 6m/- and 7B – 6m/-. DW2 testified that he paid for the suit property in instalments totalling to a total of about shs. 6m/- plus. He testified that the Valuation Report (PEX 4B) was made on 30/12/2005, and  
15 the modalities took effect on 13/04/2006.

DW2 testified that the date of his offer and allocation is 11/05/2006, and the allocation was made by the Secretary Housing Accommodation Committee, and the offer of purchase was made by the Chief Administrative Officer. He told the court that he had a letter of allocation for the suit property and that it was first advertised  
20 to all staff, and he applied to be allocated the suit property, which was for Soroti District Local Council, and he was eligible as per the criteria which was; An employee of the District, on active payroll of the District, an allocation letter and Seniority in position.

DW2 testified that one was eligible to be allocated a house according to the criteria:  
25 Employee of the District, on active payroll, having an Allocation Letter, seniority and an application for the same, among others.



5 DW2 further testified that the District Council put up a notice that the suit property was vacant and invited those eligible to apply according to their criteria. He also testified that by that time the plaintiffs had already retired and were not eligible, and their continued stay on the property was a breach of the Standing Orders of Civil Service Chapter 1 Section F – D.

10 The plaintiffs contend that the 3<sup>rd</sup> defendant was fraudulent because he applied for allocation of the suit properties well knowing that they occupied the same and that he lied about being a sitting tenant, yet he was not.

From my assessment above, correct to state that upon the retirement of the plaintiffs, they ceased to be responsible for the 1<sup>st</sup> defendant's properties and as  
15 such their continued in occupation of those properties was illegal since they were required to have handed over properties upon retirement.

I do not fault the 1<sup>st</sup> defendant to have advertised the suit properties as vacant and going ahead to allocate the same.

According to the case of *Kampala Bottlers Ltd Vs Damanico (U) Ltd, SCCA No. 22 Of*  
20 *1992*, it was held that fraud must be strictly proved the burden being heavier than one on a balance of probabilities generally applied in civil matters, it was further held that; ***"the party must prove that the fraud was attributed to the transferee. It must be attributed either directly or by necessary implication; it is the transferee who must be guilty of some fraudulent act or must have known of such act by somebody***  
25 ***else and taken advantage of such act."***

From my assessment of the facts above, it is thus my finding that fraud pleaded that the 1<sup>st</sup> and 3<sup>rd</sup> defendant committed in divesting the suit land has not been proved

5 because it is evident that the 3<sup>rd</sup> defendant followed the due process and bought  
from the owner of the suit land, who is the 1<sup>st</sup> defendant who acted legally when it  
decided the modalities for sale of the suit property as its own property as per DEX  
1, DEX 2, DEX 3, DEX 4, DEX 5, DEX 6, DEX 7, DEX 8, DEX 9, DEX 10, DEX 11, DEX 12,  
DEX 13, DEX 14, DEX 15, DEX 16, DEX 17, DEX 18, DEX 19 and DEX 20 which are  
10 annexures which indicated the details of the suit properties during the purchase.  
Furthermore, whereas the plaintiff did not adduce evidence to indicate otherwise,  
the silence of the Permanent Secretary of the Ministry of Land, Housing and Urban  
Development, in its omission to respond to the letter of the 1<sup>st</sup> defendant, render  
any claim by the plaintiffs to the suit properties untenable and illegal as it is clear  
15 that the Plaintiffs did not submit any application letter to the 1<sup>st</sup> defendant as clearly  
they were no longer employees of the District, they were also no longer on the  
computerised payroll of the District, and they did not have allocation letters even if  
they were senior and were even not entitled to first priority because by the time the  
modalities were developed, it clearly excluded them because they were no longer  
20 in the employ of the 1<sup>st</sup> defendant though they claim they were yet to be paid their  
retirement benefits which is another matter altogether.

Since they did not apply for the said premises, their continued stay in them became  
illegal, without the authority of the owner, which is the 1<sup>st</sup> defendant.

Accordingly, they would be found to be illegally in occupation of the suit properties  
25 and as they were already retired, which act excluded them from participating in  
applying for the pool houses as they were strictly for those in employ of the 1<sup>st</sup>  
defendant not those who are retired and waiting the payment of their retirement



5 benefits. Because had the guidelines indicated otherwise then they would clearly be eligible as sitting tenants to apply and be considered accordingly.

All in all, it is my finding that the 1<sup>st</sup> defendant became the rightful owner of the suit property when he responded to the advert by the 1<sup>st</sup> defendant and he complied the modalities issued by the 1<sup>st</sup> in the sale of its own suit properties. No evidence  
10 was brought to court to show that the plaintiffs sought to have declared illegal those either by an administrative appeal or sought for a judicial review of the same. That is not the case.

The position of the law is that where one is aggrieved by an administrative process, one has a right to seek for redress either through administrative process and where  
15 none exists, then such a person has a right to apply to a competent court for a judicial review of the process one is aggrieved with. This is not the case here.

Thus, it is my finding that the plaintiffs ceased to be entitled to first priority to the suit properties as they had already ceased to <sup>be</sup> persons, who were according to the modalities issued by the 1<sup>st</sup> defendant, were entitled to apply for 1<sup>st</sup> defendant  
20 premises when they officially retired by the time the modalities came into play.

That being the case, the 3<sup>rd</sup> defendant is found to not have fraudulently obtained his registration as proprietor of the suit land for he rightfully applied for the suit premises, in accordance with the uncontested guideline issued by the 1<sup>st</sup> defendant. All the three issues are thus resolved in the negative.

25 b) What remedies are available to the parties?

The matter having been dismissed in favour of the 1<sup>st</sup> and 3<sup>rd</sup> defendants, the plaintiff is not entitled to the reliefs <sup>they</sup> ~~it~~ seeks.



5 10) Costs:

Section 27 (1) Civil Procedure Act, Cap 71 states that,

... the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what...

10 In this case since this suit is found to lack merits it is dismissed in the favour of the 1<sup>st</sup> and 3<sup>rd</sup> defendants. However, looking at the nature of this matter and the time it has taken in court and given the misunderstanding by the plaintiffs of what they thought were their rights yet they were, at the time their assumed cause of action arose, were no longer employees of the 1<sup>st</sup> defendant, I exercise my discretion and would order no costs in respect of this matter.

15 Further, the plaintiffs are ordered to vacate the premises, which the 3<sup>rd</sup> defendant lawfully and rightful purchased from the 1<sup>st</sup> defendant, within a period of three (3) months from the date of this judgment.

I do so order.

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.....  
Hon. Justice Dr Henry Peter Adonyo

Judge

31<sup>st</sup> January 2024

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