



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-LD-CS-093-2020**

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MAJOR (RTD) BENEDICTO KYAMANYWA ----- PLAINTIFF

VERSUS

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- 1. MBARARA DISTRICT LAND BOARD**
- 2. DEPARTED ASIANS PROPERTY CUSTODIAN BOARD**
- 3. M/S SHILLING STAR LTD ----- DEFENDANTS**

BEFORE: Hon. Justice Nshimye Allan Paul M.

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JUDGEMENT

REPRESENTATION

The plaintiff was represented by M/S KGN Advocates, the 1st and 2nd defendants were represented by the Attorney General's chambers, while the 3rd defendant was represented by M/S Ngaruye Ruhindi, Spenser & Co Advocates.

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INTRODUCTION

The plaintiff states in his pleadings that the suit is in respect to land formerly comprised in Leasehold Register Volume 482 Folio 11 Plot 35 Constantino Lobo Road situate at Kakoba in Mbarara Municipality. That the land was registered in the names of Habib Mohamed Prebtan, Dolatkham Habib Mohamed Prebtani and Hashan Nanji Tajan, all Asians, which led to it being placed under the Departed Asians Property Custodians Board (DAPCB). The plaintiff's case is that he was allocated the suit property by letters from the Uganda Peoples Defence Force (UPDF) dated 22nd March 2013, Ministry of Defence & Veteran Affairs dated 19th

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March 2020 and later the suit property was allocated to him by the DAPCB as a rent paying tenant **(see paragraph 5(iii) of the Plaintiff)**. That the 1st defendant fraudulently acquired a freehold of the land when the plaintiff was in occupation **(see paragraph 11 of the Plaintiff)**. He prayed that the title comprised in Freehold Register Volume MBR 678 Folio 19 Plot 35 Constantino Lobo Road be canceled along with other reliefs listed in the plaint.

The 1st defendant filed a written statement of defence, wherein they stated that in the 1960's the suit land was leased to Habib Mohamed Prebtan, Dolatkham Habib Mohamed Prebtani and Hashan Nanji Tajan for 49 years. That around 1972 the said proprietors renounced Asian citizenship and were cleared as Ugandan citizens **(see paragraph 3 (a) &(b) of the 1st defendant's written statement of defence)**. That the 2nd defendant mistakenly and erroneously dealt with the property as an expropriated property and made temporary allocations to the Ministry of Defence which in turn allocated the suit property to the plaintiff as a mere tenant **(see paragraph 3 (c) of the 1st defendant's written statement of defence)**. That the 2nd defendant (DAPCB) gave clearance to the 1st defendant to deal with the property when they became aware that the property was not subject to the Expropriated Properties Act **(see paragraph 3 (d) of the 1st defendant's written statement of defence)**. That the 3rd defendant applied for a freehold from the 1st defendant after the lease of the former owners expired **(see paragraph 3 (e) of the 1st defendant's written statement of defence)**. The 1st defendant prayed that the suit be dismissed.

The 2nd defendant filed a written statement of defence, wherein they stated that they made a temporary allocation of the property to the plaintiff, but the allocation was subject to be renewable on temporary terms stipulated in the tenancy **(see paragraph 3 (a) of the 2nd defendant's written statement of defence)**. That in 2018 the plaintiff applied to the 2nd defendant for legal interest in the suit land, but the application and valuation did not amount to an offer or any legal interest in the suit land **(see paragraph 3 (d) of the 2nd defendant's written statement of defence)**.

The 3rd defendant filed a written statement of defence and a counter claim. The 3rd defendant stated in their pleadings that Habib Mohamed Prebtan, Dolatkham Habib Mohamed Prebtani and Hashan Nanji Tajan are Ugandans of Asian origin, and

their property was never a subject of the Departed Asians Property Custodians Board (DAPCB) (see paragraph 5 of the 3rd defendant's written statement of defence). That the owners of the suit land never renewed their lease when it expired, so the 1st Defendant (Mbarara District Land Board) regained reversionary interest which it legally sold to the 3rd defendant (Ms Shilling Star Ltd) (see paragraph 6 of the 3rd defendant's written statement of defence). The 3rd defendant therefore seeks orders that the land belongs to it, a declaration that the plaintiff is a trespasser and an eviction notice against him, among other orders listed in its defence / counter claim.

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SCHEDULING

The parties filed a joint scheduling memorandum on 31st October 2022, and scheduling was done on the same day.

ISSUES

The parties framed seven issues as follows;

1. Whether the Plaintiff has a cause of action against the Defendants.
2. Whether the Plaintiff has priority of any grant to the suit property.
3. Whether the subject matter was available for a grant of freehold to the 3rd Defendant against the subsisting physical occupancy of the property by the Plaintiff.
4. Whether the subject matter was available by the 1st Defendant or any authority for a grant to anybody without consulting or involving the Plaintiff.
5. Whether the 1st, 2nd and 3rd Defendants are jointly and severally guilty of fraud in the issuance of the grant of freehold to the 3rd Defendant.
6. Whether the Plaintiff is validly occupying the suit premises.
7. What are the remedies available to the parties?

LOCUS VISIT

The suit land was visited by the Court on 5th June 2023. The observations made at the locus, that were put on record after being agreed upon by all the parties are that;

1. Mr Senyange stays in the boys' quarters.
2. The plaintiff stays in the main house on the suit land.
3. Pictures of the house and its environs were taken and put on court record.

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4. That Mr Francis Kyegarikye, Managing Director of the 3rd defendant has a house that neighbors the Suitland on the right.

SUBMISSIONS

5 The Plaintiff's counsel filed submissions on 29th June 2023. The 1st and 2nd Defendant's advocate filed submissions on 7th August 2023. The 3rd defendant filed its submissions on 4th August 2023.

Plaintiff's submissions

10 The Plaintiff's counsel submitted that the Plaintiff is the sitting tenant of the suit land for over 20 years and therefore, he had the *"unfettered first option to be granted a freehold or leasehold interest"* or at the very least, *"the Plaintiff had to give consent to any third party obtaining such grants."* Counsel contended that the 1st Defendant overstepped its authority by granting proprietorship to the 3rd Defendant overlooking the Plaintiff's interest in the suit property. Counsel contended that the Plaintiff was a bonafide occupant or tenant at sufferance in the suit property and relied on **KAMPALA DISTRICT LAND BOARD AND ANOTHER VS VENANSIO BABWEYAKA & 3 OTHERS [2008] HCB 22**, for the definition of fraud.

20 Counsel further contended that the procedure followed by the 3rd Defendant in acquiring proprietorship was marred by "procedural irregularities" and cited an example where it was indicated that the land was occupied by Directors of the 3rd Defendant, yet it was occupied by the Plaintiff. Counsel prayed for remedies sought for in the plaint.

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1st and 2nd Defendants' joint submissions

The 1st and 2nd Defendant's counsel submitted that the plaint does not disclose a cause of action, in support of their submission counsel cited **TORORO CEMENT CO. LTD VS FROKINA INTERNATIONAL LTD CIVIL APPEAL NO.2 OF 2001**. On the second issue, counsel argued that there is a difference between a periodical tenant and a sitting/bonafide occupant; that a periodical tenancy exists under a landlord – tenant relationship (see **PARDHAN JWRAJ VS WHELPADALE (1920-29) 3 ULR 193** as cited in **MARGARET WAMULUGWA VS BUGISU COOPERATIVE UNION CIVIL APPEAL NO. 62 OF 2016**), while a sitting/bonafide occupant is enshrined in Section

29(2) of the Land Act Cap 227 and **ISAAYA KALYA AND OTHERS VS MOSES MACEKENYU IKAGOBYA CIVIL APPEAL NO.82/2012**. That since the Plaintiff does not fall under the ambit of Section 29(2) of the Land Act, then he cannot claim to have first priority.

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Counsel argued the third and fourth issues together and submitted that it is fallacious for the Plaintiff to assume a legitimate expectation to acquire the suit property basing on the fact that he was a tenant of the 2nd Defendant and reiterated the fact that the Plaintiff was not entitled to any priority. On the fifth issue, counsel reiterated averments made by DW2 and DW4 in their witness statements and submitted all lawful procedures were followed before making a grant to the 3rd Defendant and thus there was no fraud. On the sixth issue, counsel submitted that the 3rd Defendant's legal proprietorship overrides the Plaintiff's temporary allocation and thereby the Plaintiff is occupying the suit land unlawfully. For the last issue, counsel prayed for Court to find that the Plaintiff is not entitled to any of the remedies he sought.

3rd Defendant's submissions

The 3rd defendant submitted that the Plaintiff has no cause of action because he does not have any right or interest over the suit property, counsel relied on the decision in **TORORO CEMENT VS FROKINA (supra)**. On the second issue, counsel contended that the Plaintiff violated terms of his temporary allocation when he brought a subtenant onto the suit land. Counsel added that by the Plaintiff paying rent and water dues regularly, does not make him a tenant at sufferance or bonafide occupant of the suit land. Thereby he did not have any priority under the law.

Counsel argued issues 3 and 4 together and reiterated his submissions on issue 2. He added that the 3rd Defendant followed the due process of the law to acquire proprietorship. On issue 5, Counsel relied on **FREDRICK J.K. ZAABWE VS ORIENT BANK LTD AND OTHERS SCCA NO.4 OF 2006** for the definition of fraud and argued that a tenant has no locus standi to bring such a suit let alone a claim of fraud when they do not have a legal nor equitable interest over the property. On the 6th issue, counsel submitted that the 3rd Defendant is the lawful owner of the property and

the Plaintiff acted unlawfully in not vacating the land after being served with an eviction notice. He contended that the Plaintiff is actually a trespasser on the suit property. For the last issue, counsel prayed for the dismissal of the Plaintiff's suit and for the grant of remedies prayed for in the 3rd Defendant's counter claim.

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I have considered the submissions of the parties in the preparation of this Judgement.

DETERMINATION

10 **Issue 1: Whether the Plaintiff has a cause of action against the Defendants.**

In principle when court is determining whether a plaint discloses a cause of action, it must only look at the plaint and its annexures as was held by the Court of Appeal in **KAPEKA COFFEE WORKS LTD VS NPART CACA NO 3 OF 2000.**

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A cause of action was defined in **AUTO GARAGE -VS- MOTOKOV (NO. 3) (1971)**

EA. 514. That the plaint must show that:

- (i) The plaintiff enjoyed a right;
- (ii) The right has been violated; and
- 20 (iii) The defendant is liable.

In the plaint, the plaintiff avers that he along with his family have been in occupation of the suit land located at Plot 35 Constantino Lobo road for more than 18 years (**see paragraph 5 (i) of the plaint**). That he was shocked to learn that a grant of freehold was made to the 3rd defendant (**see paragraph 7 of the plaint**). He alleged that his interests as an occupant of the suit land were not considered prior to the grant (**see paragraph 10 (i) of the plaint**) and the 3rd respondent was through fraud and connivance given a grant in disregard of his unregistered interests (**see paragraph 10 (iv) of the plaint**).

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Annexure A4 to the plaint is survey questionnaire from the 2nd defendant (Departed Asians Property Custodian Board) dated 12 September 2018 that lists the plaintiff as the occupant of the suit property. **Annexure A9** to the plaint is a search certificate by the Commissioner Land Registration dated 14 August 2020

shows that the 3rd defendant (Shilling Star Limited) is the proprietor of the suit property.

5 It is my opinion that the particulars in the plaint and its annexures above bring out a cause of action, that will be interrogated after evidence to determine if the 3rd defendant was registered as proprietor of the suit land through fraud and connivance with the other defendants, in order to defeat the unregistered interests of the plaintiff as alleged in the plaint.

10 In my analysis on this issue, I disagree with the submissions of counsel for the defendants that the plaint does not disclose a cause of action. I therefore find that the plaint discloses a cause of action, which is the basis of the suit against the defendants.

15 **Having determined that the plaint discloses a cause of action, I will now determine the remaining issues in the following order, Issue 4, Issue 3 & 5 together, Issue 6, Issue 2 and finally Issue 7**

20 The resolution of the issues ought to address the following questions: Did the District Land Board have a right to deal with the suit land? were the procedures followed in the grant of freehold to the 3rd defendant? was there any fraud in the process that led to the grant of the freehold to the 3rd defendant? is the Plaintiff validly occupying the suit premises? and does any person have priority to apply for land from the District Land Board?

25 **Issue 4: Whether the subject matter was available by the 1st Defendant or any authority for a grant to anybody without consulting or involving the Plaintiff.**

30 It is the law that the District Land Boards have the mandate to hold and allocate land in the district which is not owned by any person or authority as is provided in **Article 241 (1)(a) of the Uganda Constitution and Section 59 (1)(a) of the Land Act.** The evidence on court record shows that DW4, Mr Francis Kyegarikye, Managing Director of the 3rd defendant company (Shilling Star Limited) averred in his witness statement that he wrote to the 2nd defendant (DAPCB) expressing interest to

purchase the suit land (*see paragraph 9 of DW4's witness statement*). He then states in paragraph 10 of his witness statement that the 2nd defendant (DAPCB) advised him in writing to deal with the 1st defendant the true owners of the land. The Executive Secretary of the 2nd defendant (DAPCB) made a detailed explanation
5 that since the former proprietors of the suit land had become Ugandans in the late 1970's the land was erroneously under DAPCB, and in paragraph 11 of his witness statement as DW3, he stated that *"the disputed property fell in the hands of District Land Board Mbarara"*.

10 The evidence in exhibit DEX12, the certificate of title of land formerly comprised in Leasehold Volume 482 folio 11 plot 35, shows that the land was granted to the former owners for a term of 49 years from 1st November 1959. This would imply that mathematically, the lease expired in 2008. The fact the lease expired in 2008 is corroborated by the evidence of DW2, Bakashaba innocent, The
15 Secretary to the District Land Board (2nd defendant) who confirms in paragraph 3 of his witness statement that that the lease expired on 1st November 2008.

My analysis of the above, leads me to conclude the Mbarara District Land Board (2nd defendant) had mandate to hold and allocate the suit land as provided in
20 **Article 241 (1)(a) of the Uganda Constitution and Section 59 (1)(a) of the Land Act** from 1st November 2008. In the performance of this mandate the Mbarara District Land Board is not be subject to the direction or control of any person or authority as is provided in **Article 241 (2) of the Uganda Constitution and Section 60 of the Land Act**.

25 I note that **Form 4 in the first schedule of the Land Regulations 2004** (herein after referred to as "FORM 4") requires occupants on land that is subject to application before the District Land Board to be mentioned and in **Section 6 (2)(b) of the Land Act**, the Area Land Committee is expected to interrogate
30 claims of all persons with interests in the land, who include occupants as the plaintiff claims to be as stated in his plaint.

I find on this issue that the 1st Defendant had authority to grant the freehold of the suit land to anybody, but in performance of its mandate the 1st defendant

must follow the provisions and procedures in the law that among others require the investigation of claims of occupants on the land.

Issue 3: Whether the subject matter was available for a grant of freehold to the 3rd defendant against the subsisting physical occupancy of the property by the Plaintiff.

Issue 5: Whether the 1st, 2nd and 3rd Defendants are jointly and severally guilty of fraud in the issuance of the grant of freehold to the 3rd Defendant.

It is trite that registration of title to defeat an unregistered interest on the land amounts to fraud as was held by the supreme court in **KAMPALA DISTRICT LAND BOARD & CHEMICAL DISTRIBUTORS VS. NATIONAL HOUSING & CONSTRUCTION CORPORATION SUPREME COURT CIVIL APPEAL NO. 2 OF 2004.**

The law in Section 12 (1) of the Land Act provides:

“12. Procedures for application for freehold tenure.

*(1) The committee **shall**, subject to this section, in respect of an application made under Section 9 or 10, **comply with all the procedures set out in section 6**”.* (bold emphasis mine)

The law in Section 6 (1), (2) & (3) of the Land Act that is supposed to be adhered to by the committee provides:

“6. Procedures for application for certificate of customary ownership.

*(1) The **chairperson of a committee shall be responsible for ensuring that the procedures to be followed by the committee as set out in this section and any other procedures that may be prescribed are complied with.***

(2) Where an application has been submitted to the committee, a notice in the prescribed form shall be published and posted in a prominent place in the parish and on the land which is the subject of the application—

(a) specifying the location and approximate area of the land;

*(b) **requiring all persons who claim any interest in the land or in any adjacent land which may be affected by the application, including in respect of any adjacent land claims as to the***

boundaries of that land, to attend a meeting of the committee at a specified time and put forward their claims; and the time specified shall be not less than two weeks from the date on which the notice is published and posted as required by this subsection.

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(3) On the date specified under subsection (2), the committee shall hear and determine all claims made under that subsection.” (bold emphasis mine)

10 The evidence on court record contained in FORM 4 exhibited as DEX4, which is an APPLICATION FOR CONVERSION FROM CUSTOMARY TENURE TO FREEHOLD TENURE/GRANT OF FREEHOLD shows that;

1. The application for the land was made by Shilling Star Limited (3rd defendant) in 2017.
- 15 2. The applicant stated that it is the only one in occupation of the land.
3. The application was signed by directors of the 3rd defendant who are, Francis Kyegarikye, Francis Ishanga and Monica Ishanga.
4. The application stipulates that the neighbours of the land are; Francis Kyegarikye, Molly Kashemerewa and Jack Bugingo.

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It is a legal requirement that all occupants of land that is subject to an application for grant for freehold have to be stated in the application (**See Form 4 in the first schedule of the Land Regulations 2004**). The applicant while completing FORM 4, has to fill in the answers to the questions in paragraph 6 of the FORM which are:

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***“6. a) Is the land occupied?YES/NO
b) If occupied, by whom?
c) Claims of occupiers”***

30 In my analysis of the law in **Section 6 (1), (2) & (3)** as well as **12 (1) of the Land Act**, when applied to the evidence in **Form 4 in the first schedule of the Land Regulations 2004** that was completed and signed by the directors of the 3rd defendant, it is clear that the said application contained in FORM 4 was silent about

the plaintiff occupying the suit land. In fact, in the FORM 4, the 3rd defendant states that it is the one that is in occupation of the suit land, which is a falsehood.

The fact that the plaintiff was in occupation of the suit land despite what the 3rd defendant stated in FORM 4, is well documented in the evidence on court record as follows,

1. Paragraph 1 to 3 of the PW1 (Major (Rtd) Benedicto Kyamanywa) is to the effect that he is in occupation of occupation of the suit land situate at Plot 35 Constantino Lobo road.

2. DW5, Juma Muricho, Local Council chairman, who confirms in paragraph 3 and 8 of his witness statement that the plaintiff is in occupation of the suit land.

3. DW4, Mr Francis Kyegarikye, wrote a letter as the Managing Director of the 3rd defendant company (Shilling Star Limited) addressed to the Benedicto Kyamanywa (plaintiff) exhibited as DEX19 in which the 3rd defendant acknowledges that Benedicto Kyamanywa and his family are in occupation of Plot 35 Constantino Lobo road. This evidence on record establishes that occupation of the plaintiff on the suit land.

4. DW1, Bizibu George William, the Executive Secretary of the 2nd Defendant states in paragraph 3 and 4 of his witness statement that in 1993 the suit land was allocated to the Ministry of Defence and in 1999 the Suitland was allocated to the plaintiff.

5. PEX4, a questionnaire by the 2nd defendant (DAPCB) administered in September 2018, captured the plaintiff as the occupant of the suit land and the questionnaire was signed by Mr Muricho Juma, the Kihindi Cell LC1 Chairperson and Mr Mugisha Ali, the Kakoba Division LCIII Chairperson, who both wrote in their handwriting that the plaintiff has been a sitting tenant for 18 years.

My analysis of the above evidence is to the effect that the plaintiff has been on the suit land since 2000, that is why the LC1 and LCIII Chairpersons all confirmed in 2018 that he had been on the suit land for 18 years (*see PEX4*).



The evidences shows that the plaintiff had been on the suit land for 17 years when the 3rd defendant made the application for the land in 2017 (*see DEX4*). He had also been on the suit land for 17 years by the time the Area Land Committee visited the land for a hearing on 25 October 2017, the date stated in the Public Notice (*see DEX5*).

I conclude, from the above that the Area Land Committee did not adhere to the provisions in **Section 6 of the Land Act** since they failed to record that the plaintiff was in occupation of the suit land, and as such it did not comply with the dictates of the law in **Section 12 (1) of the Land Act**.

On the part of the 3rd defendant, I find that they completed the **FORM 4** exhibited as DEX4, which is an APPLICATION FOR CONVERSION FROM CUSTOMARY TENURE TO FREEHOLD TENURE/GRANT OF FREEHOLD in which they lied that it was them in occupation of the land. It is also fundamental to note that Mr Francis Kyegarikye, a director of the 3rd defendant is listed in the FORM 4 as a neighbour of the land, and indeed during the locus visit it was confirmed by court that he is a neighbour to the suit land. Mr Francis Kyegarikye omitted to state in FORM 4 that the plaintiff was in occupation of the suit land, yet he was in position to know as a neighbour that the plaintiff was in possession of the suit land, a fact he withheld and instead chose to tell lies in the FORM 4 that it was the 3rd defendant in occupation, which is not true.

I find that the 3rd defendant acted fraudulently when it's directors completed FORM 4 that was tainted with deliberate falsehoods made by them, yet they knew that what they stated therein was false. The falsehoods were meant to mislead the Area Land Committee, to procure registration.

I also find that the Area Land Committee did not carry out its job in accordance with the dictates of the law as such the procedure of processing the application for the freehold title of the suit land was riddled with lies and it did not conform to the dictates of the law.



Having found that the 3rd defendants' application was tainted by falsehoods I need to determine whether the plaintiff had any rights on the suit land.

5 The evidence on court record discussed above shows that the plaintiff has been in occupation of the suit land from around the year 2000, living and utilising the land undisturbed by anybody up to 2019. This implies that after 12 years of occupation that matured in 2012 he had acquired bonafide occupant rights protected by the law in **SECTION 29(2) OF THE LAND ACT CAP 227**.

10 The argument put up by counsel for the 1st and 2nd defendants that the plaintiff had a periodical tenancy under a landlord – tenant relationship with 2nd defendant, must be analysed as against the 2nd defendant's evidence by its staff who testified as DW1 and DW3, that the DAPCB erroneously managed the suit land as an expropriated property, yet the proprietors were Ugandans, they later
15 communicated to the 1st defendant and 3rd defendant that the suit land was under the mandate of the 1st defendant.

In addition, the fact that the plaintiff was paying rent to the 2nd defendant (DAPCB) does not negate the rights he acquired by occupying and utilising the
20 suit land undisturbed for more than 12 years. He was not a tenant of the DAPCB, since the DAPCB admitted that it did not have rights over the suit land. What the DAPCB did managing land that was not subject to the Expropriated Properties Act as they admitted, amounted to an illegality, that can not be allowed to stand as was held in **MAKULA INTERNATIONAL LTD V HIS EMINENCE
25 CARDINAL NSUBUGA & ANOR (1982) HCB 11**. This means that the illegal relationship imposed on the plaintiff by the DAPCB as a tenant cannot be used to deny the plaintiff his rights as a bonafide occupant on the suit land. I therefore reject the submissions of counsel for the 1st and 2nd defendants that the plaintiff was a mere tenant. I also reject the submissions of counsel for the
30 3rd defendant that the plaintiff had not interest in the suit property.

The evidence as shown above shows that the plaintiff had an unregistered right on the suit land as a bonafide occupant from 2012. It therefore follows that when the 3rd defendant, completed the FORM 4 exhibited as DEX4, which is an

APPLICATION FOR CONVERSION FROM CUSTOMARY TENURE TO FREEHOLD
TENURE/GRANT OF FREEHOLD in which they deliberately lied that it was them
in occupation of the land, whereas it was the plaintiff, it amounted to a
deliberate falsehood engineered by the 3rd defendant to defeat the unregistered
5 bonafide occupant rights of the plaintiff, which act, amounts to fraud as was
stated in **KAMPALA DISTRICT LAND BOARD & CHEMICAL DISTRIBUTORS VS.
NATIONAL HOUSING & CONSTRUCTION CORPORATION SUPREME COURT
CIVIL APPEAL NO. 2 OF 2004**, where the Supreme Court held that *"If a person
10 procures registration to defeat an existing unregistered interest on the part of
another person, of which he is proved to have knowledge, then such a person is
guilty of fraud."*

I find that the application leading to the grant of freehold of the suit land to the
3rd defendant was tainted with fraud initiated by the falsehoods made by the 3rd
15 defendant to defeat the unregistered interests of the plaintiff in the suit land.

Issue 6: Whether the Plaintiff is validly occupying the suit premises.

It is trite that any person who occupies and utilizes or developed any land
unchallenged by the registered owner or agent of the registered owner for twelve
20 years acquires bonafide occupant rights protected by the law in **SECTION 29(2) OF
THE LAND ACT CAP 227**. The evidence on court record as discussed above shows
that the plaintiff was a bonafide occupant on the suit land from 2012, which was
way before the 3rd defendant applied for the suit land from the 1st defendant. I find
25 that the plaintiff is validly occupying the suit land as a bonafide occupant and as
such he cannot be said to be a trespasser on the suit land that he still occupies with
his family.

Issue 2: Whether the plaintiff has priority of any grant to the suit property.

30 In principle a bonafide occupant on land held by a District Land Board in Uganda
ought to be given first priority in consideration of his application for the land,
although it does not guarantee an automatic grant of a lease or freehold by the
District Land Board as was stated in **KAMPALA DISTRICT LAND BOARD AND**

ANOR V NATIONAL HOUSING AND CONSTRUCTION CORPORATION (SUPREME COURT CIVIL APPEAL NO.2 OF 2004), where the Supreme Court held that;

5 *"I have already held that the respondent was a bona fide occupant of the suit land. The respondent may not have been a registered owner but the respondent had a recognized or even registrable interest in the suit land. For this reason, it can be said that the suit land belonged to the respondent as tenant in possession.*

10 *However, the interest possessed by the respondent did not entitle it to automatic grant of a lease over the suit land. In my view the respondent was entitled to apply for a lease over the suit land and to be given the first option to lease the land. I agree that the 1st appellant had discretion in granting leases but the discretion had to be exercised fairly and justly in accordance*
15 *with the law".*

His Lordship Odoki CJ, that wrote the lead judgement, then ordered that;

20 *"An order directing the 1st appellant to give due consideration to the respondent's application for a lease over the suit land including giving it priority in granting the lease."*

25 When an application is made for land held by a District Land Board, but occupied by another person that has not made an application for the land, it is imperative that the applicant while completing the application states the person or persons in occupation of the land as is expected of the applicant in **FORM 4 in the first schedule of the Land Regulations 2004**. This would absolve the applicant of any wrongful concealment on their part in respect to completion of the form.

30 The Area Land Committee is mandated to follow the law, especially the dictates of Section 6 of the Land Act, requiring all persons who claim any interest in the land to put forward their claims so that the committee shall hear and determine them while endeavouring to mediate between and reconcile parties having

5 conflicting claims. The committee would then make a report with recommendations in respect to the application for the land. The recommendation may lead to the grant of land to a third party subject to the recognition of occupants on the land enjoying whatever rights in law they may have at the time of the public hearing on the land.

10 It is my view, that once the applicant and the Area Land Committee follow the procedures in the law as detailed above, the committee may recommend that the land is granted to a third party applicant despite existence of occupants who will be protected as occupants on land granted to the applicant. I therefore disagree with the submission of counsel for the plaintiff, Adv. Byomugisha Guma that the plaintiff ought to give consent to a grant to a third party. The basis of my disagreement with the submission of counsel is premised on the fact that the law does not have a provision that requires an occupant of land, such as the plaintiff on this suit land, to give consent prior to a grant of freehold being made to a third party that has applied for land from the District Land Board.

20 I therefore find that a District Land Board is not be subject to the direction or control of any person or authority in carrying out its mandate as is provided in **Article 241 (2) of the Uganda Constitution** and **Section 60 of the Land Act**, but the Supreme court has guided in **KAMPALA DISTRICT LAND BOARD AND ANOR V NATIONAL HOUSING AND CONSTRUCTION CORPORATION (SUPREME COURT CIVIL APPEAL NO.2 OF 2004)**, that a bonafide Occupant may be given priority in consideration of their application for land.

25 I also find that priority in consideration of an application for land before the District Land Board ought to be given to an occupant, such as the plaintiff in this case, if they apply, although it is not a guarantee that the application will be granted by the District Land Board since it is independent in the execution of its mandate in the law. The obligation in the law on the Area Land Committee and the District Land Board is to interrogate all claims of interested persons that may include occupants on the land, and once this is done as provided by the law, the District Land Board may in the execution of its mandate grant the land to a third-party applicant but subject to the rights of the occupants.

Issue 7: Remedies

A title obtained by fraud initiated by the proprietor of the land, to defeat the unregistered interest of an occupant on the land in the title, ought to be cancelled as provided in the law.

I have already found that the application for the grant of the freehold of the suit land to the 3rd defendant was tainted with fraud initiated by way of falsehoods made by the 3rd defendant in the application contained in FORM4 in order to defeat the unregistered interest of the plaintiff in the suit land.

In conclusion, I order that:

1. Commissioner Land Registration is directed under the provisions of Section 177 of the Registration of Titles Act to cancel the certificate of title comprised in Freehold Register Volume MBR 678 Folio 19 Plot 35 Constantino Lobo road in the names of the 3rd defendant (Shilling Star Limited).
2. The proceedings before the Area Land Committee and the Mbarara District Land Board in respect of the application made by the 3rd defendant that led to the grant of Freehold Register Volume MBR 678 Folio 19 Plot 35 Constantino Lobo road in the names to the 3rd defendant are revoked.
3. Any person can apply to the District Land Board for land formerly comprised in the now expired Leasehold Register Volume 482 folio 11 Plot 35 Constantino Lobo Road
4. The counterclaim by the 3rd defendant is dismissed with costs.
5. The 3rd defendant shall pay the costs of this suit and the counter claim to the plaintiff.



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NSHIMYE ALLAN PAUL M.

JUDGE

01-03-2024