

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

CIVIL SUIT NO. 0008 OF 2012

**MASH INVESTMENTS LTD.....PLAINTIFF
VERSUS
KACHRA INVESTMENT COMPANY LTD.....DEFENDANT**

AND BY WAY OF COUNTER CLAIM

**KACHRA INVESTMENT COMPANY LTD....DEFENDANT/COUNTER
CLAIMANT**

VERSUS

- 1. MBALE MUNICIPAL COUNCIL
LOCAL GOVERNMENT**
- 2. ABDU SALAAM LUBOWA**
- 3. MASH INVESTMENTS.....(ALSO PLAINTIFF IN THE SUIT)**

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

The Plaintiff, Mash Investments Ltd through its lawyers M/s Mutembuli & Co. Advocates filed this suit against Kachra Investments Co. Ltd represented by M/s Madaba Modoi & Co. Advocates and Solicitors.

The plaintiff's claim against the defendant is for a declaration that Plot 15A Bishop Wasike Road, Mbale Municipality is property of the plaintiff and is different from plot 20, Malukhu Road, Mbale Municipality if it exists.

The plaintiff also prays for a permanent injunction restraining the defendant from evicting and trespassing on the plaintiff's suit plot 15A Bishop Wasike Road, general damages for trespass and costs of the suit.

According to the plaint, the plaintiff's cause of action arose as herein below:

- a) The plaintiff purchased the suit plot 15A Bishop Wasike Road, Mbale Municipality from **Abdu Salaam Lubowa** in 2010.
- b) The said **Abdu Salaam Lubowa** also purchased the same from Mbale Municipal Council, the registered proprietor of the property.
- c) Mbale Municipal Council acquired the said plot 15A in 1959 and has been in possession of the same undisturbed until it disposed it of to **Abdu Salaam Lubowa** who also sold it to the plaintiff.
- d) That before the said property was transferred into the names of the plaintiff, the defendant started claiming ownership of the same by disguising it as Plot 20 Malukhu Road whereas it is plot 15A Bishop Wasike Road.
- e) That the plaintiff has equitable interest in the said property having purchased it pending transfer into its name.
- f) That the plaintiff upon purchase of the suit property, it immediately took possession and it has partly developed it yet the defendant is threatening to demolish the same.
- g) That the plaintiff has been inconvenienced as a result of the defendant's unlawful actions for which the plaintiff claims general damages.

The plaintiff prays for judgment against the defendant for;

- (i) A declaration that Plot 15A Bishop Wasike Road is different from Plot 20 Maluku Road (if it exists).
- (ii) A declaration that Plot 15A Bishop Wasike Road is property of the plaintiff company.
- (iii) A permanent injunction restraining the defendant from evicting/trespassing and claiming for Plot 15A Bishop Wasike Road under the disguise of Plot 20 Malukhu Road, Mbale Municipality.

- (iv) General damages; and
- (v) Costs of the suit.

The defendant, Kachra Investment Company Ltd filed a defence and counter claim against the plaintiff. It avers that it is and has always been the registered proprietor of the land comprised in a Certificate of title described as Leasehold Volume 2722 Folio 22 also known as Plot 20 Maluku Road in Mbale Municipality since 1st January 1998. That the said title was issued under authority of Mbale District Land Board on 4th June 1999 for a 49 year lease w.e.f. 1st January 1998. That the board has never made any decision to remove this land from the defendant and allocate it to one **Abdu Salaam Lubowa** or the plaintiff or any other person. That after approval of the defendant's application vide min. DLB.1/98 (a) 39 of 8/1/98 the Council requested for a survey of the land in question on behalf of the defendant. That the request for survey was done in April 1998 under 1/s MM 2078 and plotted in Mbale where number 20 was assigned to the plot. That there is no supporting document which caused the plot number to change to 15A and the reference on the cadastral sheet to plot number 15A is either erroneous or fraudulent.

The defendant further avers that plot 20 Maluku Road was created and registered earlier in time than the plaintiff's Plot 15 Bishop Wasike Road which is yet to be registered. That upon coming into force of the 1995 Constitution on 8th October, former statutory leases to urban authorities such as the one allegedly granted to council in or about 1959, ceased to exist. That therefore, the council had no authority to dispose of any land stemming therefrom to **Abdu Salaam Lubowa** or the plaintiff. That the plaintiff has no equitable or legal right or interest in the land complained of in the suit.

The defendant prays that the suit be dismissed with costs and also filed a counter claim against.

1. Mbale Municipal Local Government Council.
2. Abdu Salaam Lubowa and
3. Mash Investments Ltd the plaintiff.

The counter claim is for the following declarations.

- a) That Plot 15A Bishop Wasike Road in Mbale Municipality does not exist.
- b) That the land or lease complained of both in the suit and counter claim is actually plot 20 Maluku Road, Mbale Municipality and is the property of the defendant.
- c) That the 1st Respondent's purported sale and disposal of the land or lease complained of both in the suit and counter claim to the 2nd Respondent was illegal, fraudulent, null and void *ab initio*.
- d) That the 2nd Respondent's purported sale and disposal of the land or lease complained of both in the suit and counter claim to the 3rd Respondent was illegal, fraudulent, null and void *ab initio*.
- e) That the 3rd Respondent's purported purchase and acquisition of the land or lease complained of both in the suit and counter claim from either the 1st Respondent or the 2nd Respondent or otherwise howsoever was illegal, fraudulent, null and void *ab initio*.
- f) That the past, present and prospective dealings and other activities of the Respondents complained of in the counter claim amount to contempt of lawful court process of which they were dully notified or fully aware of at all relevant times.
- g) The defendant counter claimant also prayed for an order authorising the defendant/counter claimant or its attorneys, agents and servants to evict the

respondents, their agents, servants, associates and/or assignees from the land complained of.

- h) An order of permanent injunction to restrain the Respondents, their agents, servants, associates and/or assignees from continuing to deal in the land or lease complained of both in the suit and counterclaim or otherwise howsoever from interfering with the property rights of the defendant/counterclaimant.
- i) Special, general and aggravated and punitive damages.

The defendant/counter claimant made an elaborate outline of facts constituting the counter claim as if it was making written submission for judgment. It outlined particulars of illegality, by the 1st Respondent, particulars of fraud by the 1st Respondent, particulars of illegality by the 2nd Respondent, particulars of fraud by the 2nd Respondent, particulars of illegality by the 3rd Respondent, particulars of fraud by the 3rd Respondent and measure of damages. Finally the defendant counter claimant made 17 prayers.

The defence and counter claim has attached on it a host of documents (exhibit D.1-D.33 respectively).

In the plaintiff's reply to the written statement of Defence and counter claim together with the 2nd Counter Respondent's reply to the counter claim, it relied on the contents of paragraph 3-8 of the plaint. The plaintiff denied the contents of paragraphs 1-23 of the counterclaim and avers that it purchased the suit plot in good faith and it is not aware of or part to any fraud if any.

The 2nd Counter Respondent avers that he did not know of any adverse claim to his plot on which he has been since 1995 when it was allocated to him by the Mbale

Municipal Council for purposes of establishing a recreational centre which exists todate and is known as Resort Village house on Plot 15A Bishop Wasike Road.

That the plaintiff was interested in purchasing the suit plot when it was advertised by Municipal Council and had been offered to Mr. Lubowa for purchase. That the plaintiff approached Mr. Lubowa as sitting tenant on the said plot and they agreed and the plaintiff paid him 60 million as compensation of his interest/structures on the plot. The 2nd Counter Respondent avers that he agreed to work with the plaintiff in partnership to ensure that the latter acquires the suit plot from Mbale Municipal Council which had a running lease for 5 years since 2010.

The 2nd Counter Respondent further pleads that since he was in occupation of the suit plot he enjoyed priority to purchase the same from Mbale Municipal Council and as such he applied for the same. An agreement was signed by the parties. Thereafter he agreed with the plaintiff to pay the purchase price of shs. 403,000,000/= to Mbale Municipal Council. Further he contends that the period he had spent on Plot 15A Bishop Wasike Road, he had not known the same as Plot 20 Maluku Road and had never seen any document to that effect nor did the counter claimant challenge his stay on the suit plot. That the counter claimant has never been in possession or occupation of the suit plot and the receipts attached are forged and of no legal consequences as far as ownership of the suit plot is concerned. Finally, that Plot 15A Bishop Wasike Road has never been changed to Plot 20 Maluku Road and if there was any change then it was done fraudulently.

The 1st Respondent on the counter claim, Mbale Municipal Council through M/s Dagira & Co. Advocates filed its defence saying that the counter claimant's certificate of title to the suit property is no longer valid as it expired and the same has

never been renewed by any competent authority. That the counter claimant is not a registered proprietor of that land. That even if the counter claimant was/is the registered proprietor of the suit land, the title thereto was illegally obtained by the counter claimant and the same is/was null *ab initio*.

The first respondent on the counter claim listed particulars of illegality as;

- i) Applying for and obtaining lease interest in the suit land when he knew or ought to have known that the 1st respondent had a running lease over the same land.
- ii) Misrepresenting and/or causing the suit land to be Plot 20 Maluku Road, Mbale when the counter claimant knew or ought to have known that the same was plot 15A Bishop Wasike Road Mbale.
- iii) The interim Mbale District Land Board purporting to grant a lease in favour of the counter claimant that was parallel to the existing lease to that of the 1st Respondent without first consulting with and obtaining the approval of the 1st Respondent.

The 1st Respondent contents that it was not party to the proceedings in Mbale Chief Magistrate's Court civil suit No.21 of 2008 and therefore it is no bound by the decision of that court. The first respondent also avers that monies that were received by its servants/workers as ground rent was so received under the influence of the counter claimant but there is no binding contractual relationship between itself and the counter claimant on the suit property. Whatever notice or correspondences the 1st Respondent made to the 2nd Respondent Abdu Salaam Lubowa as regards his construction was in its capacity as the planning authority and/or local authority under the laws relevant to physical planning and development and its actions did not render credence to the counter claimant's claim to the suit land at all. The 1st Respondent

further contends that whatever dealings that were entered into between the 2nd and 3rd Respondents in regard to the suit property does not bind it in as much as it was not party to that deal. That its sell of its interest in the suit land to the 2nd Respondent was proper and legal and not bogus as alleged by the counter claimant and its application for a new lease and title over among others the suit property was legal, proper, regular and since it had sold its interest to the 2nd Respondent it was perfecting its title to the suit property as trustees for the 2nd Respondent or his nominees. That what the 2nd or 3rd Respondent is doing or constructing on the suit property does not confer on the counter claimant title over the suit property.

The 1st Respondent further contends that the opinion of **Dr. Yafesi Okia** about the numbering of the suit property as Plot 15A Bishop Wasike Road, Mbale Municipality vis-a-vis Plot 20 Maluku Road, Mbale Municipality is suspect and cannot be a basis for a declaration that Plot 15A Bishop Wasike Road does not exist.

Lastly the 1st Respondent denies that it is guilty of any fraud as alleged by the counter claimant. It explains that it dealt with the suit property on the basis of the private lease to which it was successor in title i.e. LRV 502 Folio 6 and not on the basis of its former statutory lease.

In the alternative and without prejudice the 1st Respondent contends that the counter claimant has no *locus standi* to bring his claim and the plaint is *prolix* and onerous and therefore bad in law.

During the scheduling conference, all learned Counsel for the parties to the suit and counter claim made a joint scheduling memorandum and appended their respective signatures thereto.

The agreed facts are that:

- a) The suit property is in Mbale Municipality between two buildings known as Paramount Building and Ashok Cinema Building.
- b) Kachira Investment Company Ltd was granted a lease of 5 years by Mbale District Land Board with effect from 1st January 1998 and acquired title vide LRV 2722 Folio 22 for Plot 20 Maluku Road.
- c) There was Civil Suit No.21 of 2008 between Kachira Investment and Mbale District Land Board.
- d) The Lease LRV 2722 Folio 22 expired on 31st December 2002.
- e) Mash Investments Limited has been in possession of the suit land since 2011 and has constructed structures thereon.
- f) The 2nd Respondent Abdu Salaam Lubowa has always been on the suit land as of 1st January 1998 and he constructed a building known as Resort village on part of the suit land.
- g) There were transactions between the plaintiff/3rd Respondent Mash Investment Ltd and the 2nd Respondent Abdu Salaam Lubowa over the suit land and a sale agreement over the suit land dated 11th February 2011.
- h) Mbale Municipal Council was granted a lease vide LRV 506 Folio 6 by the Governor of the Protectorate to run from 1st July 1959 for 49 years over Plot 15A Kumi Road South.
- i) Kumi Road South is presently known as Bishop Wasike Road.
- j) Mbale Municipality applied for a fresh lease in respect of Plot 15 A Bishop Wasike Road and was granted a 5 year lease on 1st August 2010 vide title LRV 4357 Folio 13.

The agreed issues are:

1. Whether the suit land is Plot 15A Bishop Wasike Road or Plot 20 Maluku Road.
2. Whether the lease granted to the 1st Respondent, Mbale Municipal Council was a statutory lease or private lease.
3. Whether the Defendant/counter claimant, Kachra Investments Company Ltd was granted a lease in respect of the suit land.
4. Who owns the suit land?
5. What remedies are available to the parties?

Several documents were agreed upon by both sides and were marked as follows:

For the plaintiff/3rd Respondent they are marked Exhibit P.1 to P.12 respectively.

For the Defendant/counter claimant, they are marked as Exhibit D.1 to D.24 respectively. Documents for the 1st Respondent were admitted as MMC 'A', MMC 'B' and MM'C'. The 1st Respondent, Mbale Municipal Council were to rely on the plaintiff's documents, Exhibits i.e. letter of Bid and of Attorney General to the Town Clerk.

The 2nd Respondent was to rely on the exhibited documents i.e. an agreement of 11.02.2011 and the Bid acceptance as well as a letter from the Town Planner to him dated 29.10.99 marked 'X'.

PW.1 was **Francis Mashate** the Deputy Executive Director of Uganda Bureau of Statistics and Managing Director of Mash Investments Ltd which was formed in 2005. He testified that although he knows **Abdu Salaam Lubowa**, he does not know Kachra Investments Company Ltd. He came to know the latter when it wrote a letter evicting him from Plot 15A Bishop Wasike Road. That Lubowa, the 2nd Respondent approached him in April 2010 saying he was a sitting tenant on Plot 15A Bishop

Wasike Road and Mbale Municipal Council was selling the land to him as a sitting tenant. PW.1 made an inquiry whether Lubowa was a sitting tenant and whether Mbale Municipal Council was selling the land and owned it. That he found it had title it got in 1959 for 49 years which expired in 2008 and it wanted to renew it. Indeed Mbale Municipal Council had requested for renewal. PW.1 then proceeded to discuss and buy the property jointly with Lubowa. The latter had a letter of notification to sale by Mbale Municipal Council.

Both **Lubowa** and **Mashate** the Director of the Plaintiff agreed that after purchase the latter would take **Lubowa**'s interest which was valued at 60,000,000/=. An agreement to that effect was made (Exhibit P.2).

After paying Lubowa, PW.1 proceeded with the sale arrangements with Mbale Municipal Council after Lubowa gave him Powers of Attorney (Exhibit P.3) which allowed PW.1 to pay for the land at shs. 403,000,000/=. PW.1 testified that he first deposited 65,000,000/=: then another 65,000,000/= followed by 70,000,000/= and finally 203,000,000/= making a total of 403,000,000/=. These payments were made on Exhibit P.6, P.7, P.8 and P.9 respectively. That all these payments were in respect of Plot 15A Bishop Wasike Road.

By a memorandum of understanding Lubowa ceded his interests in the land to the plaintiff and instructed Mbale Municipal Council to transfer the title to Mash Investments Ltd as per Exhibit P.1 dated 04.12.2011.

PW.1 further testified that he took possession of the land awaiting renewal of title by Mbale Municipal Council and eventual transfer to Mash Investments Limited.

In the meantime, PW.1 wrote to Mbale Municipal Council to allow him erect temporary structures for 3 years as he awaits the renewal of title and transfer. The request was approved and the temporary structures were constructed.

In the process, Mbale Municipal Council (MMC) revealed that it had renewed title and were in the process of transferring to Mash Investments Ltd. It was at this moment that PW.1 received notice from bailiffs saying they wanted to evict them from the suit land because it belonged to Kachira Investments. They referred to the plot number as plot 20 Maluku Road which PW.1 did not know of.

That the defendant counter claimant company went ahead to destroy the temporary structures on the land assisted by bailiffs.

PW.1 further testified that by the time the plaintiff took over, the land had an entertainment Hall, trees and a green garden and was partially fenced. It was at that point that he sought legal counsel and came to court because the suit land has two titles. That when he consulted the Ministry of Lands about existence of both plots he established that Plot 20 Maluku Road did not exist. This was contained in Exhibit PE.5 written by Commissioner Mapping and Surveys one **Kajumbula**.

That Exhibit P.10, a letter from MMC to **Opio Henry** Senior Land Officer dated 26.09.2012 reveals that Plot 20 Maluku Road is not on record and was fictitious Exhibit P.10 has attached to it copies of the title for Plot 15A Bishop Wasike Road.

PW.1 further testified that he saw minutes of allocation of Plots 25-27 Maluku Road to Kachra Investment (with no letter 'i') under Minute DLB Min.1/98 (a) (39) of 8.1.98. That Kachira with 'i' is the name on the title Folio 22 Volume 2722 for Plot

20 Maluku Road issued on 1st January 1998 for 5 years. That the said lease is by the urban authority under Minute DLB/1/98 (a) 39 of 8.1.98.

PW.1 sought a declaration from this court that Plot 15A Bishop Wasike Road exists and not Plot 20 Maluku Road and to prevent any disturbance by the defendant/counter claimant and his agents. That court declares Mash Investments the owner of Plot 15A Bishop Wasike Road. He asked for costs as well.

When examined by **Mr. Dagira** for the 1st Respondent PW.1 testified that the bailiffs showed him a court order dated way back in 2010, Exhibit D.2. That the parties to the suit were Kachira Investments Ltd vs. Mbale District Land Board CS.21/08. That Kachira Investments Ltd has never sued Mash Investments Ltd.

Referring to exhibit P.11 a letter from **Robert Nyombi** to the Secretary Mbale District Land Board dated 31.07.2012. PW.1 testified that it was a clarification to the Town Clerk Mbale Municipal Council that Plot 20 was erroneously made and super imposed on Plot 15A Bishop Wasike Road because a later title cannot stand the test of time.

In cross-examination by **Mr. Semakadde** learned Counsel for the Defendant/Counter claimant, PW.1 revealed that while dealing with Lubowa he did not go into legalities. That he could not sue Mbale Municipal Council because he bought the land from it. That he knew nothing about Kachira owning land. That he inquired from Lands and found that Plot 15A Bishop Wasike Road existed. That there is no way he could mix Plot 15A and 20. He touched and saw the title for Plot 15A Bishop Wasike Road. It was given by the Town Clerk. That he does not know where Plot 20 Maluku Road is and he did adequate inquiries before getting involved.

PW.1 further said that the temporary structures he erected have lasted for 1 ½ years (by the time of testimony).

When cross-examined by **Mr. Obedo** co-counsel, PW.1 testified that he bought **Lubowa's** interest in the suit land because Lubowa had the goodwill as a sitting tenant. That Lubowa had authority as such. When Mbale Municipal Council asked them to show commitment, they started paying for the land. The payments were receipted. That Exhibit D.2 only required an explanation which was given by Mbale Municipal Council. That the Exhibit D.2 was a notice of intent to cancel title.

In re-examination by Mr. Mutembuli learned counsel for the plaintiff, Exhibit P.13, General receipt 1341 was tendered as Exhibit P.13, PW.1 explained that he went ahead to buy the suit land because he knew that if one's title expires, he/she has a right of renewal. That by the time he bought, there was no public notice on the property and he did not know of any other claim on the property. PW.1 denied having a shopping mall on the land and Mbale Municipal Council has never written to him to destroy any structure.

PW.2 was Abdu Salaam Lubowa, the 2nd Respondent who testified that he knows **Mashate (PW.1)** and Mash Investments Ltd but did not know Kachira Investments Ltd. He testified that he has been operating a business on Plot 15A Bishop Wasike Road a land belonging to Mbale Municipal Council (MMC) since 1995. That the land was allocated to him when he applied for it as it was neighbouring his Plot 22 Maluku Road where he operated a restaurant and entertainment Hall. PW.2 explained that Plot 15A Bishop Wasike Road was a garbage dump. That he asked for it to open a play ground for children entertainment. That he was allocated the plot on a temporary basis. Mbale Municipal Council allocated plot 15A Bishop Wasike

Road in writing dated 6.3.1995 (Id.I). He removed the garbage and started planting and developing the area. The neighbouring plots to the land are as follows:

- To the East is Bishop Wasike Road.
- To the North is Ashok Cinema owned by **Bakari**.
- To the West is Fiat Garage on Maluku Road.
- To the South is paramount Hotel owned by **Toskin** and **Kulany**. This is Plot 15B Bishop Wasike Road.
- Plot 22 owned by the Witness is on the South also.

PW.2 further testified that when he complied with the conditions he was given he applied and was allowed to put a building under Min. 61/96. That the building is still there and is fenced with a metallic fence with 2 gates. That Exhibit 'X' written on 29.10.1999 was instructing what to do on Plot 15A Bishop Wasike Road. That he was permitted to build. He started operating under minute 92/95. Later in time an Indian called **Nurali** (the director of the counter claimant) complained that PW.2 was playing loud music disturbing occupants of his lodge on plot 15B Bishop Wasike Road. Mbale Municipal Council wrote to PW.2 ordering him to reduce on the loud music and follow the rules governing noise. PW.2 says he made improvements and put sound proof.

PW.2 went on to testify that around 2011 or 2012, police confronted him saying he sold Plot 15A Bishop Wasike Road. That when MMC offered to sell Plot 15A to PW.2, he approached **Mashate (PW.1)** to assist in the purchase. After showing PW.1 the papers they came to an agreement in June 2010 for PW.1's company to buy. That the land belonged to MMC. PW.2 sold his interest in the land at shs. 60,000,000/= . He also gave PW.1 a go ahead to pay MMC dues for Plot 15A Bishop Wasike Road through a Power of Attorney (Exhibit P.3) dated 25.6.2010. This was

after PW.2 bid and was allowed to buy the plot at 403 million shillings (as per Exhibit DE.6 and 7). MMC told PW.7 to pay 130 million shillings and other instalments. That the money was paid by **Mashate (PW.2)** in the names of Mash Investments (Exhibit P.13). Thereafter an agreement was made with MMC (Exhibit D.4) dated 11.02.2011.

PW.2 handed all documents relating to the land to PW.1 and a memorandum of understanding, Exhibit P.1 dated 4.12.2011 was given by which Mash Investments Ltd took possession.

PW.2 denied ever selling land to Kachra Investments Company and said the latter is making false claim. He prayed that the defendant counter claimant's claim be dismissed with costs.

In cross-examination by **Mr. Semakadde**, PW.2 revealed he was councillor from 1994 to 1997 and is no longer employed by MMC. He also denied being a contractor with MMC. That he did not have title to Plot 15A Bishop Wasike Road but has title for Plot 22 Maluku Road. That his authority of ownership was with MMC papers he had. MMC could take the land anytime. That he complied with orders in Exhibits P.2 and D.12.

DW.2 further testified that the IGG gave orders about the place and it was closed for one year. When the orders by IGG were complied with, the place was re-opened. He stated he started Resort village business in 1995 at Plot 22 Maluku Road. He put a restaurant when Plot 15A Bishop Wasike Road was still a garbage dump and clarified that Resort village did not encroach on plot 15A Bishop Wasike Road. That

development on Plot 15A are different and he used to pay for a Temporary occupation license at 60,000/= per year since 1995.

PW.2 further said that the notice to sale Plot 15A Bishop Wasike Road was put on the Notice Board for MMC. That after the plaintiff bought, MMC promised to transfer the land.

When cross-examined by **Mr. Nabende**, PW.2 testified that he was a tenant on Plot 15A and he sold his interest to **Mashate** on 15.6.2010. That the notice to sale was in 2010 after which MMC gave conditions. It was after this that PW.2 approached **Mashate** (PW.1). PW.2 made the bid then approached **Mashate** after.

In re-examination, PW.2 clarified that what the IGG ordered was demolition of a grass thatched house in Plot 22 and a perimeter wall which was over 1 metre high. PW.2 was also told to open the gate every Sunday. That the Municipal Council never demolished any building. That **Nurali** occupied Plot 15B Bishop Wasike Road (paramount building) after **Toskin** left and he never claimed Plot 15A.

PW.3 was **Hannah Nakayenze** the Ag. Secretary Mbale District Land Board (MDLB). By the time of testimony she had acted for 1 year 4 months. She had never come into contact with Mash Investments Ltd. She testified that Plot 15A Bishop Wasike Road is among a series of plots owned by Mbale Municipal Council as per Leasehold Register Vol. 502 Folio 6. That this plot is serial number 8 Kumi Road South in the names of Mbale Town Council issued on 12.12.1960 for a lease of 49 years from 01.07.1959. The lease expired in 2008. After expiry PW.3 saw a document from the Town Clerk asking for extension. That no one else has even applied for Plot 15A Bishop Wasike Road and she has never found any record in respect of Plot 20 Maluku Road.

When shown Exhibit D.1, PW.2 read its contents and doubted Minute DLB/1/98 Article (A) 39 of 8/1/98 referring to Plot 20 Maluku Road. She said that minute 5 is for Plot 25-27 Maluku Road belonging to Kachira Investments. Referring to Exhibit P.10, PW.3 testified that it is shown under item 39 as being for plot 25-27 Maluku Road MMC.

When examined by **Mr. Dagira** PW.3 testified that on Exhibit MM A, Plot 15A is described as being on Kumi road South which is currently Bishop Wasike Road, the same plot on Exhibit D.1. That Exhibit MMC B talks about the same plot and the owner of Plot 15A Bishop Wasike Road is MMC with a running lease for 5 years from 1st August 2010.

When cross-examined by **Mr. Semakadde**, PW.3 acknowledged receipt of a letter from the Commissioner land Registration for intended alteration of the Register. That the Commissioner referred to a background based on information that the MDLB gave out a lease of 5 years w.e.f 1.1.98 to Kachra Investment Company registered under LRV 2722 Folio 22 which expired (Exhibit D.24). That Exhibit D.24 gave intention to cancel title for Plot 20-26 Lions Drive and Plot 15A Bishop Wasike Road.

PW.3 said she was not aware of road renaming from Kumi South Road to Bishop Wasike Road. She said Plot 15A Bishop Wasike road was not applied for therefore it was irregular to include it. PW.3 is not aware of what the Commissioner decided later on the issue because she did not receive the decision. PW.3 further testified that neither MMC nor Kachra Investments Ltd own what they claim because ownership of MMC of LRV 4357 Folio 13 was cancelled and Kachra's lease on Plot 20 Maluku Road expired. Referring to D.2, PW.3 testified that Madaba & Co. Advocates

applied for extension of the lease for plot 25-27 Maluku Road but Mbale District Land Board differed the application because there was inclusion of Plot 20 Maluku Road which had a minute that had not given it to Kachra Investments Ltd.

Regarding Exhibit D.25, PW.3 explained that it is a lease offer issued on 28.1.998 and it has Plot 15A Bishop Wasike Road which was cancelled and replaced by Plot 20 Bishop Wasike Road, which was also cancelled and replaced by Plot 20 Maluku Road stamped and counter signed.

PW.3 further explained that Minute DLB.1/98 (a) 40 of 8.1.98 is not in respect of Kachra Investment Company. That the Mbale District Land Board did not extend the lease offer to Kachra Investment Company Ltd because it could not issue a lease over an existing lease. That the documentation for Plot 15A and 20 are one and the same.

When cross-examined by **Nabende** PW.3 testified that she has no specific file for plot 20 Maluku Road.

In re-examination by Mr. Mutembuli learned counsel for the plaintiff/3rd Respondent PW.3 explained that the minute on the lease offer on DE.5 is DLB.1/98 (a) 40 of 8.1.98 and the minute on D.1 lease document is DLB 1/98 (a) 39 of 8.1.98. Then the annexure to P.10 has Minute DLB 1/98 (a) 39 of 8.1.98 in respect of Plot 25-27 Maluku Road. That these are not the same minutes and the difference is in article 40 for Plot 20 but the lease document talks of Article 39. That the minute for Plot 25-27 Maluku Road is under article 39.

That minute 40 does not exist and Mbale District Land Board cannot renew a lease which does not exist. PW.3 confirmed that Exhibit MMC A existed. She clarified that usually surveying comes before allocation but in respect of Exhibit P.4, the

survey came after allocation. That nothing shows that Exhibit MMC B has been cancelled. PW.3 further clarified that MMC had interest in the suit land because it had a title before and Kachra Investments Company Ltd has no ownership on Plot 20 Maluku Road.

This was the plaintiff's/3rd counter Respondent's case.

DW.1 was **Yafesi Okia**, a Surveyor with Ministry of Works and Assistant Commissioner on interdiction. He testified that he was contacted by the defendant/counter claimant through State house and CIID to investigate a land title existing over another title. That he found that the 2nd title for Plot 15A Bishop Wasike Road was fraudulently got although signed. The 1st title was for Plot 20 Maluku Road. That the investigation was to find how Plot 20 Maluku Road changed to Plot 15A Bishop Wasike Road. That it was concluded that there was no official request to change from Plot 20 to 15A. That DW.1 signed a deed plan but did not officially change Plot 20 to Plot 15A. That the meeting in which the issue was discussed resolved to revert the plot number to the old 20. Thereafter he wrote Exhibit D.8.

Regarding how plots are named, DW.1 explained that for urban areas it is done in Entebbe although a number of people can gather and give a plot a road name. That in rural areas the District gives the plot and Block number. However, at times in case of urban areas the District is consulted. DW.1 further testified in reference to Exhibit D.9 that plot 20 was initially Plot 15 Bishop Wasike. That when you move left there is Plot 15 with a small 'B' when you move more to the left you get Plot 15-17 Bishop Wasike Road. That in catography Plot 15-17 includes 15B and even 15 mentioned

above. That there was repetition of naming the plots that is why Mbale District decided to change from 15 to 20.

When cross-examined by Mr. Mutembuli DW.1 denied being interdicted for fraudulent actions. He said that surveying comes before allocating a plot although in his letter it is indicated that allocation came before surveying which was irregular because it was approved by the allocation. The witness made reference to instruction to survey is I/SMM 2078 for Plot 20, then another document is 2078 addressed to United Surveyors Entebbe signed by **E.K. Mbyetsiza** for survey of plots 25A, 25 and 27 Maluku road for Kachra Investments Company Ltd which do not refer to Plot 20 although DW.1 put it in his letter Exhibit D.8.

The second instruction to survey was marked Exhibit D.8. DW.1 further explained in cross-examination that plotting is first done in a District for example Mbale then it goes to Entebbe for checking and approval.

When asked about Exhibit P.16 the application for town plot, DW.1 testified that the defendant/counter claimant applied for plot 15A Maluku Road then Plots 27 and 25 without road names. He acknowledged that Exhibit P.16 has nothing to do with Plot 20. That although Mbale District changed Plot 15 to 20 it did not have authority to do so. The witness denied ever seeing a title for Plot 15A Kumi South Road.

When cross-examined by **Dagira, DW.1** boasted of vast experience in surveying. He revealed that Entebbe is overall on matters of survey and mapping. In reference to Exhibit MMC 'A', DW.1 said the said title is for several lands and was issued in 1959. That he does not know if Kumi Road South ever existed. He said plot 15A is the same as Plot 20. In reference to Exhibit D.9 a letter with a print attached to it at pages 58 and 59, DW.1 testified that on the print the road is called Bishop Wasike

Road. That Kumi Road South is the same as Bishop Wasike Road although DW.1 has never come across any document which changed Kumi Road South to Bishop Wasike Road. He said that on the prints there is plot No.15. Then he said there is Plot 15A and 15B. That the colonial plot number was Plot 15 Bishop Wasike Road.

Regarding I.S on Exhibit P.15, DW.1 testified that it was for Plot 25A, 25 and 27 yet Plot 25A Maluku Road is not in Mbale. That it is not in the records. That instead the surveyor surveyed Plot 25-27 and 15 Bishop Wasike Road. That there was in separate is plot 15 Bishop Wasike road. That what DW.1 knows is Plot 15 is the one which is 20 Maluku Road and 15A Bishop Wasike Road.

DW.1 acknowledged that he signed the deed plan which highlights plot 15A Bishop Wasike Road, Mbale. That by signing he confirmed that Plot 15A Bishop Wasike Road exists. That you cannot have a plot 15A Bishop Wasike road named as another plot on another road.

In reference to Exhibit MMC 'A' marked P.1, DW.1 said it gives the registered proprietor as Mbale Town Council. The same is for Exhibit MMC 'B'. That MMC'A' was for 49 years which expired in 2008. That Exhibit D.1 is for plot 20 Maluku Road which DW.1 said was on Bishop Wasike Road for 5 years from 1998.

DW.1 further explained that two leasehold titles cannot run on the same land concurrently. That whatever he supplied was at Entebbe.

In re-examination by **Mr. Obedo** DW.1 said the change of plot number from Plot 20 Maluku Road to Plot 15A Bishop Wasike Road was not officially made. That the application in Exhibit P.16 was for Plots 15A, 27 and 25 and was recommended by the Town Clerk Mbale. That instruction to survey in Exhibit P.15 was for Plots 25A, 25 and 17.

DW.2 was **Mr. Kakerewe Yusuf** a Registrar of titles Jinja Zonal office. He testified that his office received complaints from State House about plots 15A Bishop Wasike Road and Plot 20 Maluku Road Mbale District. That there existed a statutory lease comprised in LRV 502 Folio 6 registered in the names of Mbale Municipal Council a body of persons incorporated under the Urban Authority Ordinance 1958- the title was registered under Instrument 148804 of 12th December 1960 at 11:00A.M.

DW.2 also found a 5 year lease granted to Kachra Investments Company Ltd commencing from 1st January 1998 between Mbale District Land Board (MDLB) registered under leasehold Reg. Vol. (LRV) 2722 Folio 22 for Plot 20 Maluku Road. That another lease was for an initial period of 5 years commencing 1.8.2010 comprised in LRV 4357 Folio 13 in respect of Plot 30-36 and 15A Bishop Wasike Road between MDLB and Mbale Municipal Council. That when he perused to register, DW.2 found that the lease granted to Mbale Municipal Council as per the Ministry of Land Board was in respect of Plot 30-36 Bishop Wasike Road and Plot 15A Bishop Wasike Road.

DW.2 further testified that when he perused the register it was established that the lease granted to Mbale Municipal Council was in respect of Plot 30-36 Bishop Wasike Road and not Plot 15A Bishop Wasike Road. That it was irregular for Plot 15A to have been included on the title for Mbale Municipal Council had not applied for it. That on 20.9.2012, they went ahead and issued a notice to effect changes in the Register to the Municipal Council as per MMC Exhibit D.24. The witness said they received a response from MMC dated 26.9.2012 (Exhibit P.10) but they were not convinced with the response. That changes were effected in the Register by cancelling the leasehold title in LRV 4357 Folio 13 following S.91 of the Land

Amendment Act which gives Commissioner special powers to effect change on the register. The letter cancelling title is dated 29.10.2012 (Exhibit D.26).

DW.2 further testified that Mbale District Land Board was informed. In reference to Exhibit MMC 'A' DW.2 testified that it has a lease for 49 years for a statutory lease from 1st July 1959. That before 1995, MMC was the controlling authority but after 1995 statutory leases were abolished and control devolved to the District Land Boards. That with the abolition of statutory leases, there was nothing owned by MDLB but the District Land Boards became the controlling authority and MMC ceased to be the authority to grant leases to former public land. Mbale District Land Board succeeded MMC as the controlling authority.

When cross-examined by **Mr. Dagira**, DW.2 explained that a statutory lease is one created by an act of Parliament vesting power in an organ of government. That the said power include allocation of land, leases and management of land on behalf of the government. That statutory leases had expiry times. That nowhere on Exhibit MMC 'A' is it stated that the lease is a statutory lease and nothing talks about premium but rent. That statutory leases began in 1958 under the Urban Authorities Ordinance.

That once an illegality is brought to the attention of DW.2's office it cannot be left on the register book. DW.2 further testified that Mbale District Land Board did not lodge any complaint. That before cancelling the title for MMC, the latter did not attend or make any response. DW.2 acknowledged that Kumi Road South changed to Bishop Wasike Road after replanning. That in the event that suit land was not a statutory lease, then it (MMC'A') would expire in 2008.

DW.2 further said that Plot 15A Kumi Road South is the same as Plot 20 Maluku Road although it is not proper to create another lease a running lease. That Plot 20 Maluku Road was granted to Kachra under Min.DLB/1/98 (a) 39 of 8.1.98. When shown the minute, DW.2 testified that he did not see reference to Plot 20 Maluku Road. That the minute in Exhibit P.10 is for Plot 25-27 Maluku Road for commercial use given to Kachra Investment Limited. That since the title given to Kachra expired in 2003 nothing could be done to it. That the lease of 1959 expired in 2008. DW.2 further opined that of the two titles for both MMC and Kachra, the one of 1998 takes precedence for the lessee acquired an equitable interest but if the lease expired in 2008, the lessee would have an equitable interest.

In re-examination by **Mr. Obedo**, DW.2 testified that Exhibit P.16 is an application for Town Plot by Kachra Investment Company Ltd. The minute on it is DLB 1/98 (a) 39 of 8.1.98 signed by the Town Clerk and on it is noted “highly recommended”. The plot applied for therein one 15A Maluku Road, 27 and 25. That exhibit D.1 has the same minute as in the application.

In re-examination by **Mr. Obedo** DW.2 testified that Exhibit MMC ‘A’ is a statutory lease because it was between the Governor and the Town Council. It included public utilities.

In re-examination by **Mr. Semakadde**, DW.2 testified that the statutory lease could not run upto 2008 because statutory leases were abolished in 1995. That a statutory lease could not be extended or converted. That renewal of leases if through fresh applications.

DW.3 was **Ochieng Edward Sunday** an Assistant private secretary to the President for political affairs. He testified that he received a complaint from Kachra Investment

Company Ltd, Exhibit D.27, and he communicated to the relevant authorities to take action. He admitted he is not qualified on land matters.

DW.4 was **Sadrudin Virji Alani**, manager and Director of Kachira Investments Company Ltd the defendant/counter claimant. He testified that he is in court because of Plot 20 between old paramount Hotel and Ashok Cinema which he owns. That the plot extends from Maluku Road to Bishop Wasike Road and he bought it in 1998 from Mbale District Land Board. Mbale District Land Board granted a lease of 5 years which was to be extended to 49 years. The land was acquired under the names of the defendant/counter claimant. That the defendant was granted a title for Plot 20 Maluku Road Exhibit D.1. At the time nobody complained. That DW.4 knows nothing about minutes. That it is the board which knows minutes. The witness referred to a lease offer D.25 which has a minute DLB 1/96 (a) 40 of 8/1/98 and Exhibit p.16 an application for a town plot and said the application was for Plot 15A Maluku Road and Plot 27-25. That they also own Plot 15B Bishop Wasike Road and Plot 5 Cathedral Avenue. That Plot 15B neighbours the disputed land. That Exhibit P.16 has a minute i.e. DLB.1/98 (a) 39 of 8/1/98. That by the time he applied for the suit land, Plot 20 Maluku Road was empty and the Town Clerk recommended the same to them. He planned to build a hotel but could not because neighbours encroached on it by putting Resort village owned by Mr. Lubowa. DW.4 complained to MMC but no action was taken. He then complained to the IGG who instructed the encroachers to be removed from the land. That the encroachers could not be removed because MMC was in league with Mr. Lubowa.

That when the lease was coming to an end, DW.4 applied for renewal but in vain and he sued the District Land Board and got an *ex parte* judgment. That the defendant was offered alternative land but it was not identified. That in Court Mbale District

Land Board never defended its actions. When judgment was taken to Mbale District Land Board, it was ignored. The matter, was then referred to police to investigate. He later discovered that Mr. Lubowa had a temporary occupation permit from Mbale Municipal Council dated 10.10.2006 Exhibit D.33.

DW.4 made complaints to several offices in vain. He prays for vacant possession and compensation for all the loss he has suffered including loss of income for 14 years and suffering he has gone through as well as costs of the litigation.

When cross-examined by Mr. Mutembuli, DW.4 testified that he applied for Plot 15A Maluku Road and 22-25. The witness has no idea where Plot 15A is on Maluku Road. Later he applied to have Plot 20 Maluku Road surveyed but he does not recall this being done. He has seen many documents in respect of Plot 15A Bishop Wasike Road. DW.4 identified Exhibit D.25 as the offer he was given and the beneficiary was Kachira Investment Company Ltd under Minute DLB.1/98 (a) 40 of 8/1/98 but Exhibit P.43 a lease document has a different minute DLB 1/98 (a) 39 of 8/1/98. That by the time he got the land Lubowa was not on the land but he encroached later. DW.4 has never sued Lubowa or Mbale Municipal Council.

That he is aware Bishop Wasike Road was Kumi South Road. That the letter from the IGG to Town Clerk Mbale Municipal Council Exhibit D.30 does not refer to Plot 20 Maluku Road.

DW.4 further testified that he has never submitted any building plans to Mbale Municipal Council yet his lease expired. By 5 years he had not developed the land. That when he applied for Plot 15A he was instead given Plot 20 Maluku Road.

In reference to Exhibit D.25, DW.4 said the lease offer was for Plot 15A Bishop Wasike Road which was crossed to 20 Maluku Road.

When cross-examined by **Mr. Dagira**, DW.4 testified that Plot 15A Bishop Wasike Road was open space as well as Plots 25-27 Maluku Road and there was a walkway to go either side.

DW.5 was **Georgina Wachemba** a Senior Office Supervisor of the Chief Magistrate's Court Mbale. She gave the history of how the file came from the Land Tribunal to Court. She said in the Tribunal, the plaintiff was "Kachra" in Civil Suit 86/2006 but in the file in the Chief Magistrate's Court the name is Kachira. She could not tell why the names differ. In some documents, the word company is missing and in others company limited is missing. This was the close of the evidence for the defendant/counter claimant.

For the counter/1st Respondent i.e. Mbale Municipal Council (MMC), the first witness RW.1 was **Situuma Fredrick** a Senior Procurement Officer Mbale Municipal Council. He handled the disposal of Plot 15A Bishop Wasike Road upon a request by the Town Clerk Mbale Municipal Council around July 2010. The disposal was to the sitting tenant Abdu Salaam Lubowa. Plot 15A had been valued by one **William O. Kibenge** for the Permanent Secretary, MMC 'D'.

RW.1 submitted the papers to the Contract's Committee Mbale Municipal Council for consideration and in its meeting of 9.7.2010 the disposal was approved for Plot 15A Bishop Wasike Road under Minute MIN. MMC 325/2010 disposal reference No. MBAL 760/0910/00002 Exhibit MMCE.

Thereafter the sitting tenant Lubowa was invited to submit his bid. He did and he offered to buy the Plot at 403 million shillings. After getting **Lubowa**'s offer RW.1 submitted the papers to the evaluation committee to assess the bid and make recommendations. The committee approved the award to Mr. Lubowa under Minute MIN EC 04/08/2009 (MMC 'F'). The papers were then submitted to the Contracts Committee for approval which did so under Minute MIN MMC 337/2010 item (a) (MMC'G'). Thereafter the notice for contract award was displayed on the Notice Board on 10.8.2010 in order to notify the public and Abdu Salaam Lubowa that the contract was awarded (exhibit MMC'H').

Thereafter, the Town Clerk wrote to the Solicitor General requesting clearance for disposal on 10.08.2010 (MMC 'i'). After making his observations, the Solicitor General cleared the contract for signing on 10.8.2010 (Exhibit D.5) and thereafter the Town Clerk issued a letter of Bid acceptance (Exhibit D.6). Then on 11.8.2010, Abdu Salaam Lubowa wrote accepting the offer (Exhibit D.7). After the contract was signed, RW.1's role ended (Exhibit D.4).

In cross-examination RW.1 testified that Mbale Municipal Council preferred direct negotiations for the occupier who was Lubowa and it proceeded under Regulation 127 (1) (b) PPDA Regulations 2006. That the property was Council property and the Town Clerk acts on behalf of Council. The purpose for disposal was to get money to pay off a loan got from Housing Finance Bank. RW.1 said he relied on the documents submitted by the Town Clerk and Physical Planner. That there are many methods of disposal depending on the circumstances and this is determined by the committee. That because there was a sitting tenant on basis of Exhibit D.33, a direct method was used. That if Lubowa failed to pay then they would advertise. That it is

not corruption for a buyer to resale and the closeness of dates of the transaction reflects efficiency.

RW.2 was **Joy Manana** Ag. Town Clerk at the time but substantively Municipal Education Officer. She testified that as of 1998 Plot 15A Bishop Wasike Road belonged to Mbale Municipal Council. She had never seen any document disposing of Plot 15A or any letter inviting the Development Committee of Mbale Municipal Council or any agenda for discussion or letter from Town Clerk giving away the land to the defendant. Regarding the recommendation on Exhibit P.16 as “highly recommended” it lacked any legal backing of a minute to back up the recommendation.

In cross-examination, RW.2 said Plot 15A Bishop Wasike Road now belongs to Mash Investments. That when the lease expired, Mbale Municipal Council applied for renewal. That **Mabonga**’s recommendation of “Highly Recommended” has no legal backing and no attachment referred to it. That Mbale Municipal Council can buy and sale land and it was in business with Mash Investments.

When cross-examined by **Mr. Semakadde** she said she was not given every minute details of this case and she is not substantive. She never knew the defendant/counter claimant owned the land because it was Mbale Municipal Council land and an open space. That the recommendation to give away the land should have had backup documents for example signed minutes.

When cross-examined by **Mr. Nabende**, RW.2 testified that although she did not see the documents, she is aware the suit plot was sold at 403 million shillings. She does not know the extent of inconvenience because the land had no development.

In re-examination, RW.2 said she had never seen Plot 15A Maluku Road. She knows Plot 15A Bishop Wasike Road. The plot recommended by Exhibit P.16 is 15A Maluku Road not Bishop Wasike Road. That Mbale Municipal Council has never given away Plot 15A Maluku Road to either Mash Investments Ltd or Lubowa. That **Mr. Mabonga** could not have given away the land because its lease was still running.

This was the close of the counter respondents' case.

On 21.11.2013 court visited the *locus-in-quo*.

Court permitted all counsel involved in this matter to file written submissions in support of their respective cases and indeed the submissions were filed.

It is now incumbent upon this court to evaluate the evidence from both sides in the civil suit and counter claim and resolve the issues framed by the parties at the commencement of trial. The said issues and the agreed facts have been listed in this judgment. I do not need to reproduce them here now.

I intend to resolve the issues together because in my considered view, the issues are intertwined except for issue 5 of what remedies area available to the parties.

After a thorough and careful evaluation of the evidence on both sides and considering all the submissions by respective counsel I am of the view that resolution of this dispute revolves around the rights of the parties as at 1998 when the defendant/counter plaintiff claims to have acquired the land he claims.

From the evidence adduced at the trial, it has been proved on a balance of probabilities that indeed Plot 15A Bishop Wasike Road existed before Plot 20 Maluku road was purportedly created.

PW.1, PW.2, PW.3, RW.1 and RW.2 all testified to this land being known as Plot 15A Bishop Wasike Road which lies between Plot 13 and Plot 15B Bishop Wasike Road Mbale.

Documentary evidence Exhibit MMCA, Exhibit MMCB and Exhibit D.25, Exhibit D.31 and Exhibit D.32 refer to Plot 15A Bishop Wasike Road. PW.1, PW.2, RW.2 and DW.4 all agreed that Bishop Wasike Road was originally known as Kumi Road South. The change of names was in memory of the late Bishop Wasike who was murdered during the military regime. Exhibit MMCA refers to Plot 15A Kumi Road South. This document was issued in 1960 during the colonial times.

Since none of the parties to this suit produced in evidence any minutes which changed Plot 15A Bishop Wasike Road to Plot 20 Maluku Road, the above evidence shows that name of that road has not changed.

I have also found as a fact that by the time the defendant/counter claimant acquired Plot 20 Maluku Road there was a running lease of Mbale Municipal Council which was obtained in 1959 for 49 years. The certificate of title Exhibit MMC'A' for this title had by 1998 not been cancelled.

The said title was for leasehold Register Volume 502 Folio 6 for 10 Plots including Plot No.15A Kumi Road South which later became known as Bishop Wasike Road.

None of the parties adduced evidence to indicate that in 1998, there was any communication from any authority that the suit land was open for re-allocation.

According to the defendant/counter claimant, the lease for Plot 15A Bishop Wasike Road ceased to exist in 1995 upon the promulgation of the 1995 Constitution when statutory leases ceased to exist. The plaintiff held a different view and argued that this is not the case. That even if that was the case, it could not change Plot 15A Bishop Wasike Road to Plot 20 Maluku Road.

The law on statutory leases was elaborately discussed in the case of *Kampala District Land Board & Anor. V. National Housing Corporation SCCA 2 of 2004*. It was held by the Supreme Court that the implications of the abolition of statutory leases have not been determined and is still a gray area. That the rights of the respondent who was a tenant in possession who held adversely to the City Council were not extinguished.

Relating this holding to the rights of Mbale Municipal Council, it remains apparent that the coming into force of the 1995 Constitution did not extinguish the interest of Mbale Municipal Council which is successor in title to Mbale Town Council as of 1998. This is because prior to 1995 the Government was the lessor to Mbale Town Council and later Mbale Municipal Council (MMC). MMC had a valid interest in the land by 1998 because that interest was not extinguished by the abolition of statutory leases. The effect of the abolition of statutory leases was that District Land Boards replaced the Central Government in becoming the lessor to the existing tenants prior to the 1995 Constitution although they could not grant statutory leases anymore. MMC still had interest in the unexpired lease granted to it in 1959. Even if the lease given to Mbale Town Council succeeded by Mbale Municipal Council was a private

lease and not a statutory lease as argued by learned Counsel for the plaintiff, still, by 1998, Mbale Municipal Council had interest in the land comprised in Plot 15A Bishop Wasike Road inter alia because the lease under LRV 502 Folio 6 for 49 years was to expire on 12th December 2008.

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

“23 (1).....

.....

(2) The Commission shall grant to the urban authority of a designated urban area such lease, and on such terms and conditions as the Minister may direct; and any lease so granted shall be deemed to be a statutory lease.”

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

During that time, if the said lease was statutory (the title does not say so) then under S.59 (8) of the Land Act, Mbale District Land Board held/holds the reversion on the statutory lease and could/may exercise in relation to the lease and the reversion the powers of the controlling authority under the Public Lands Act 1969, as if that Act had not been repealed. That Act will apply to the lease or reversion with such modification as may be necessary to give effect to the Land Act and subject to the provisions of the Constitution. Although statutory leases were abolished, how they are dealt with is explained in S.59 (8) of the Land Act.

In the instant case, there is uncontroverted evidence that as Landlord, Mbale Municipal Council licensed Mr. Lubowa to use Plot 15A Bishop Wasike Road which was an open space used for dumping garbage and a crossing point to Maluku Road. By 1998, Lubowa had fenced the land and had constructed a house thereon i.e. Resort Village. The said building was shown to court during the visit to the *locus-in-quo*. Even **DW.4 Sadurudin Virji Alani** the defendant/counter claimant admitted that it was Lubowa who erected the fence on the suit land and that Lubowa received a letter from the IGG referring to illegal structures on Plot 22, Maluku road and Plot 15A Bishop Wasike Road (Exhibit DE.30, DE.31 and DE.32). All these letters show that by 1997 Lubowa was on Plot 15A Bishop Wasike Road and that is why he was being written to demolish the illegal structures thereon.

DW.4 clearly told court that he knew that Lubowa was on the suit land but went ahead to acquire a lease on the same plot and told court that he only took possession of the suit land for one day. He conceded in cross-examination that he did not take any action against Lubowa or Mbale Municipal Council.

It is in evidence that DW.4 acquired adjacent Plot 15B Bishop Wasike Road between 1968/1969- This was the period after Mbale Municipal council had acquired Plot 15A Bishop Wasike Road which is between Plot 15B Bishop Wasike Road and Plot 13 Bishop Wasike Road.

It is my considered finding therefore that Plot 15A Bishop Wasike Road existed before Plot '20' if any.

There is overwhelming evidence that Lubowa was on the suit plot since 1995 and by the time Kachira purportedly acquired Plot 20 Maluku Road Lubowa was in occupation of Plot 15A Bishop Wasike Road. DW.4 admitted that he did not apply for Plot 20-Maluku Road nor did he cause the survey thereof. Even **Mr. Okia** did not help court to show when Plot 20 Maluku Road was surveyed.

This witness struck me as a consummated liar who gave glaringly contradictory evidence. His demeanour was so poor that no reasonable court could rely on him to establish the truth.

From the evidence on record, there is a mix up in the naming of roads. The plaintiff claims that Plot 15A Bishop Wasike Road existed but the name was changed. The defendant insists it is plot 20 Bishop Wasike Road. Since Plot 15A Bishop Wasike Road existed before Plot 20, it means the names were changed according to the defendant. This raises serious questions as to who has authority to change road names and plot numbers in a location. I do not intend to delve into this since it did not come out clearly in evidence. However, on a visit to the *locus-in-quo*, the suit plot is more on Plot 15A Bishop Wasike Road since there was no access to Maluku Road. It would appear that either the corrupt officials of Mbale Municipal Council

connived with the express or implied connivance of the defendant and officials in the Land Registry to change the cadastral sheet to remove Plot 15A and replace it with Plot 20.

Now, the question is, **did the defendant/counter claimant acquire a valid lease?**

From the evidence on record, I have found as a fact that by the time, the defendant counter claimant acquired Plot 20 Maluku road in 1998, there was a running lease of Mbale Municipal Council which was obtained in 1959 for 49 years and its certificate of title had not been cancelled nor was there any communication from any authority that the plot was open for the allocation. Plot 15A Bishop Wasike Road existed before creation of Plot 20 Maluku Road and there was no evidence adduced of any minutes which changed Plot 15A Bishop Wasike road to Plot 20 Maluku Road the letter of **Dr. Yafesi Okia** notwithstanding. When Kachra Investment applied for town plots, it applied for Plot 15A Maluku road, Mbale and 27 and 25 with no road name indicated. See Exhibit P.16. The approval for the application is made under Min DLB 1/98 (a) 39 of 8/1/98 dated 15.1.98. However according to Exhibit P.10, the said minute is for allocation of Plot No.25-27 Maluku Road Mbale Municipal Council. This exhibit is an official communication to the Commissioner Land Registration wherein Mbale District Land Board says Plot 15A Bishop Wasike Road (or Plot 20 Maluku Road) has never been allocated to Kachra Investment Company Ltd as the Minute DLB Min/98 (a) (39) of 8 January 1998 is for allocation of plots Nos 25-27 Maluku Road Mbale Municipal Council.

There is no way Mbale District Land Board could allocate one plot under two different minutes and which are for different plots. This means such a plot has never been granted to the defendant and a certificate of title in respect of non-existent plot is no certificate of tile. There was no basis for **Dr. Yafesi Okia** to rename the Plot

15A as Plot 20 Maluku Road yet there has never existed such a plot since there is no instrument to survey of the same nor was it granted to the defendant by Mbale District Land Board.

According to Exhibit P.10, Mbale District Land Board quoted Land Administration Guidelines page 9 on Powers and Functions of District Land Board (section 4.2) which states that;

“in exercising the powers of a lessor, the District Land Board shall not automatically re enter a lessee’s land. Renewal and extension of leases on initial and full term for all citizens shall be automatic. “

The Land Board says that Kachira Investment Company Limited never applied for Plot 15A and it remains a puzzle how it came to be included in the minutes which allocated Plot 25-27 Maluku Road Mbale Municipal Council.

The naming of the plaintiff in the transactions concerning the suit plot raise eyebrows as well. Exhibit D.1 (Certificate of title LRV 2722 Folio 22) is in the names of Kachira Investment Company Limited. The Defendant/Counter claimant is a company limited by shares that was incorporated on 12th September 1997. There is no evidence to link Kachra Investment Company Limited the defendant with Kachira Investment Company Limited which appears on Exhibit D.1 as registered proprietor of Plot 20 Maluku Road. DW.4 did not explain the difference in the two names i.e. Kachra and Kachira Exhibit D.1 quoted Min. DLB/1/98 (a) 39 of 8th January 1998 as the authority for granting the defendant/counter claimant a lease of 5 years over the suit property. However Exhibit P.10 (inclusive of a certified copy of the Mbale District Land Board Minutes) shows that under that minute M/s Kachira Investment Company Limited was granted a 5 year lease on Plot 25-27 Maluku Road Mbale.

This minute does not include Plot 15A Bishop Wasike Road or Plot 20 Maluku Road yet Exhibit D.25 the lease offer to Kachira Investment Company Limited (Not Kachra) refers to Minute Min DLB 1/98 (a) 40 of 8th January 1998 as the authority for grant of a 5 year lease on Plot 20 Maluku Road. But Exhibit P.14 tendered in court through PW.3 shows that the lease granted under Min DLB 1/98 (a) 40 of 8th January 1998 was in respect of Plot 44 Nkokonjeru Court Mbale to one **Wamukwe Kadiri**. There was no evidence to linked **Wamukwe Kadiri** or Plot 44 Nkokonjeru Court to the suit land.

It is my considered view therefore that the above revelation insinuates a fraudulent transaction through which the defendant/counter claimant came to acquire Plot 20 or Plot 15A Bishop Wasike Road through a non-existent minute.

It was argued by the plaintiffs that the defendant counter claimant could not have acquired a valid lease at the time he acquired it. That notwithstanding, the said lease existed and it can only be impeached on proof of fraud. Under S.59 RTA, a certificate of Title is conclusive evidence of ownership. As I have held above, by the time the defendant got title in 1998 the lease for Mbale Municipal Council was still running and had been granted earlier. It was held in the case of **Kristopher Zimbe v. Kanza (1952-56) 7 ULR 68** that;

“The first to Register legal interest shall take priority.”

This means that Mbale Municipal Council which had registered interest first takes precedence in the case under consideration.

What amounts to fraud?

What amounts to fraud in land dealings includes:

a) Where there is some act of dishonesty or actual fraud.

This in my view may include, like in the instant case, using a minute for a particular land to acquire different land.

b) Forgery of signatures.

c) Failure to follow requisite procedure.

d) If there are a series of transactions, fraud at one stage is enough to vitiate the transaction.

e) Any intent to defeat an interest on land.

In the instant case, by acquiring a lease over an existing and running lease by the defendant/counter claimant, he had the intention of defeating Mbale Municipal Council's interest on the land as Mbale Municipal Council title was still running by the time the defendant acquired the lease. There was no way Mbale Municipal Council could have consciously given away its interest in a running lease to the defendant.

I have therefore found that the facts and evidence before me prove that there was dishonesty which amounted to fraud in the way the defendant purported to acquire Plot 20 Maluku Road which in actual fact is Plot 15A Bishop Wasike Road. Using a minute meant for other plots was an act of dishonesty and amounted to fraud.

When it was discovered that Plot 20 was not on the cadastral sheet yet the defendant went ahead and sought political remedies to superimpose it on Plot 15A Bishop Wasike Road was an act of dishonesty and amounted to fraud.

Acquiring a lease on land which had a running was an act of fraud or collusion to defraud and was intended to defeat a known interest on the land.

What are the effects of fraud?

It is trite law that fraud negatives proprietorship and any certificate of title issued based on fraud is void.

Under Section 77 of the Registration of Titles Act;

“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.”

It was held in ***Fredrick Zaabwe v. Orient Bank & Others SCCA 4 of 2006*** that; the effect of fraud is to make the whole transaction a nullity.

Was there any illegality in the transaction in this suit?

Illegality is one of the grounds for challenging a certificate of title. According to Black’s Law Dictionary P.769, illegality is;

- 1) An act that is not authorised by law,
- 2) The state of not being legally authorised
- 3) The state or condition of being unlawful.

It is trite law that a court of law cannot sanction an illegality. Once illegality is brought to the attention of court it overrides all questions of pleading including admissions made thereon ***Makula International v. His Eminence Cardinal Nsubuga & Anor [1982] HCB 11.***

Having concluded that Mbale Municipal Council’s lease was subsisting when the defendant/counter claimant purportedly acquired its lease in 1998, then the

defendant/counter claimant acquired the lease illegality since the law can only allow one lease over a specific portion of land at a time. Any subsequent lease would be a sub-lease which only the lessee can grant. The land purportedly acquired by the defendant/counter claimant was not available for leasing in 1998 and as such the defendant/counter claimant's purported lease was invalid in law since Mbale District Land Board had no powers to grant it to the defendant at the time because the lease for Mbale Municipal Council was still running.

Having held as above, I will go ahead and determine whether the plaintiff/counter respondent has any interest in the suit land.

According to the submissions by learned counsel for the plaintiff/counter respondent the question of how it acquired the suit land is not material but what is relevant is whether the suit land is Plot 15A Bishop Wasike Road or Plot 20 Maluku Road.

According to the plaintiff it purchased the land upon realising that Mbale Municipal Council had a lease offer granted in 2010 and after advertising the suit land for sale. That the lease purportedly issued to the defendant for Plot 20 Maluku Road was for 5 years and could only be extended upon fulfilment of certain conditions and not for 49 years. That when the title for Mbale Municipal Council expired, the latter applied for extension and was given more 5 years from 2010 to 2015. The plaintiff further asserts that it was not aware of any 'bogus' agreement or fraud involved in acquisition of Plot 15A Bishop Wasike Road by Mbale Municipal Council and first acquired interest of Lubowa who was sitting tenant at Shs. 60,000,000/= and used Lubowa to acquire the same from Mbale Municipal Council because he was recognised by Mbale Municipal Council. That the plaintiff purchased the suit plot in good faith without knowledge of the defendant's counter claim.

The 2nd Counter Respondent agrees with the Plaintiff and says he never received any claim from the Defendant/Counter Claimant that the suit land belonged to it. That he had been on the suit plot since 1995 and upon advertisement by Mbale Municipal Council to sell the suit plot the plaintiff was interested in buying the land and he indeed bought it at 403,000,000/=. This summary and much more in the evidence on record can help this court to determine the interest of the Plaintiff/3rd Counter Respondent in the suit land.

According to Osborne's Concise Law Dictionary a person has an interest in land when he has rights, titles, advantage and liabilities connected with the land whether it be present, future, ascertained or potential provided they are not remote. The same Black's Law Dictionary 9th Edition, defines interest to mean a legal share in something or part of a legal or equitable claim to or right in property. An interest may be contingent or equitable. Contingent interest is an interest the holder may enjoy only upon the occurrence of a condition precedent while equitable interest is an interest held by virtue of an equitable title or claimed on equitable grounds such as the interest held by a trust beneficiary.

An interest in land must be one capable of surviving the parties and must be recognisable to the whole world. See *National Provincial Bank v. Anisworth [1965] A.C.1175*.

Relating the above definitions to the instant case, it is clear from the evidence that Mbale Municipal Council offered to sale Plot 15A Bishop Wasike road to one Lubowa the 2nd Respondent who was at the time its licensee on the same land. But since Lubowa was not a man of means but had accepted the offer to buy the land on which he was a licensee, he sourced funds from the Plaintiff first as one would source

funds from a Bank and managed to pay for the land at Shs. 403,000,000/=. Lubowa did this by an agreement with the Plaintiff through a Power of Attorney. He subsequently agreed to transfer his interest to the Plaintiff/3rd Counter Respondent upon effective transfer from Mbale Municipal Council to him. Since the Plaintiff/3rd Counter Respondent was a purchaser of **Mr. Lubowa**'s interest in the land, he has an equitable interest in the land that is recognisable to the whole world and capable of surviving the parties. The property in the land had passed to Mr. Lubowa upon purchase and the same was passed to Mash investments who now has an equitable interest until Mbale District Land Board deals with it. *Habre International v. Bantariza [1999] KALR 490*. It was held in *Katarihawe v. Katwiremu & Anor. 1977 HCB* that a contract of sale of land is not perfect until an effective transfer of title has been made, but failure to do so does not affect the contract until the land is transferred. Before a transfer is done, the purchaser acquires only an equitable interest in the land under a contract of sale.

In the instant case, it is not disputed that the said Lubowa purchased Plot 15A Bishop Wasike Road from Mbale Municipal Council and subsequently agreed to transfer the same to the plaintiff. As such the plaintiff acquired an equitable interest in the land.

Upon purchase, Lubowa took possession of the land which is decisive evidence of a contract to part with ownership of the land on the part of the payee (Mbale Municipal Council) and operates as a notice to anyone dealing with the land. Therefore by Lubowa being in possession of the land, it was decisive evidence to show that indeed Mbale Municipal Council had a contract to part with the land to Mr. Lubowa. By the time Mbale Municipal Council had a renewed title to the land albeit that it was subsequently cancelled.

Subsequently, Mr. Lubowa granted Mash Investments possession of the land on Plot 15A Bishop Wasike Road which was also decisive evidence that indeed Mr. Lubowa had a contract to part with the ownership of the land to the plaintiff. Since the plaintiff acquired an equitable interest from Lubowa, it had a right to sue on the same and has liberty to process ownership through due process.

Now, given the above scenario what was the interest of the Defendant/Counter Claimant at the time?

I have already found that whereas the Defendant/Counter Claimant had title which under normal circumstances would be considered indefeasible, it acquired the same dishonestly and fraudulently since by the time of acquisition, the earlier title for Mbale Municipal Council was still running.

In determining ownership as at 1998, the title granted to Mbale Municipal Council in 1959 was superior and took precedence over the Defendant/Counter Claimant's title who acquired one in 1998. In any case according to DW.1 **Dr. Okia Yafesi** the instrument No. 1/SMM 2078 he referred to as allowing survey of Plot 20 Maluku Road was in respect of different plots and not Plot 20 Maluku Road and the defendant did not apply for Plot 20 Maluku Road. In the absence of an application by the Defendant for Plot 20 Maluku Road and in absence of any evidence that Plot 20 Maluku Road has ever been surveyed and given the fact that Mbale District Land Board has never granted the suit land to the Defendant, it is clear that the Defendant has no claim whatsoever in the suit land.

Consequently in the instant case, I will find that;

- (1) The Certificate of title issued to the Defendant was wrongfully obtained. Luckily enough it has expired.

- (2) The Plaintiff has an equitable interest in the suit land on Plot 15A Bishop Wasike Road. Its future interest is contingent upon transferring it to Mash Investments Ltd.
- (3) I will declare that Plot 15A Bishop Wasike Road is different from Plot 20 Maluku Road.
- (4) The Defendant's prayer for dismissal of the Plaintiff's suit cannot be granted.

COUNTER CLAIM

In the counter claim, the Defendant repeated what it averred in paragraphs 3, 4, 5, 6, and 7 of its written statement.

The Respondent's answers to the counter claim were a replica of their pleadings and submissions put forward while presenting their evidence in the main suit. What I have found and held in the main suit apply in equal force to the counter claim by the Defendant/Counter Claimant.

After evaluating the evidence and submissions by respective counsel, I agree with the submissions by learned Counsel for the Plaintiff and Respondents in the counter claim that the Plaintiff/Counter Claimant i.e. Kachira Investments Company Ltd has miserably failed to prove on a balance of probabilities that **Lubowa** did trespass and fraudulently or illegally transacted with Mbale Municipal Council and Mash Investments Ltd because the said **Lubowa** did not have any transactions in a non-existent Plot 20 Maluku Road. **Lubowa** dealt in Plot 15A Bishop Wasike Road which at the time belonged to Mbale Municipal Council which offered to sale the said Plot to **Lubowa** as a sitting licensee who had possession and had developments on the land.

These developments were confirmed during the visit to the *locus-in-quo*.

PW.3 the Secretary District Land Board Mbale clearly told court that the Board has never allocated Plot 20 Maluku Road to Kachira Investments and the minute purportedly under which Kachira acquired the title for Plot 20, Maluku Road were for Plot 25-27 Maluku Road and Plot 44, Nkokonjeru Court as per Exhibit P.10, DE.25 and P.14. Therefore the Defendant/Counter Claimant has no legal claim or interest in land which does not exist.

It is my finding that the Defendant/Counter Claimant Kachira Investments Company Ltd did not apply for Plot 20 Maluku Road nor did it apply for Plot 15A Bishop Wasike Road and Mbale District Land Board has never allocated the suit land to Kachira since no evidence to that effect has been adduced.

Exhibits P.15, P.16, D.10, D.12, D.14, D.25, D.30, D.31 and D.32 or alleged payment of ground rent do not confer any ownership of the suit plot to the Defendant and the Defendant/Counter Claimant cannot rely on the same to claim the suit plot. Learned counsel for the Defendant/Counter Claimant argued that since Mbale District Land Board was ordered by Mbale Chief Magistrate's Court in Civil Suit No.21/1998 to renew and/or extend the leasehold title of the Defendant then it is the owner of the suit plot. I do not agree with this preposition.

It has been established by evidence that Plot 20 Maluku Road does not exist, the Defendant/Counter Claimant did not apply for it, it was not surveyed. It also has to separate minutes allocating the same yet according to Mbale District Land Board records the minutes are in respect of different plots. Therefore conferring ownership of the suit land to the Defendant/Counter Claimant in such circumstances was an illegality created by the lower court. This court cannot sanction an illegality once it has been brought to its attention. Had the trial Magistrate in Civil Suit 21 of 2008 known of the illegality he would have dismissed the suit but because the suit was

heard *ex parte* the Defendant/Counter Claimant took advantage of such proceedings and won the case nevertheless. It is noteworthy that **Lubowa**, the 2nd Respondent was not party to Civil Suit 21/2008 and therefore the Counter Claimant cannot rely on the same to challenge the 2nd Respondent's lawful occupation and possession of the suit land which spanned 16 years without challenge. Section 5 of the Limitation Act protects **Lubowa**.

The defendant/counter claimant cannot challenge the transaction between Lubowa and Mbale Municipal on the one hand and Lubowa and Mash Investments Ltd which were in respect of Plot 15A Bishop Wasike Road. Those transactions did not concern the non-existent Plot 20 Maluku Road. The transactions on Plot 15A Bishop Wasike Road were legal and binding to the parties involved and any other person.

The evidence of RW.1, RW.2, PW.1 and PW.2 revealed the process of the procurement/disposal of the suit land. There is ample evidence by PW.1, PW.2, RW.2, RW.2, RW.3 and documentary evidence that shows that the 2nd Respondent (Lubowa) was on the suit land as a licensee of the 1st Respondent its Registered owner at the time. During the visit to the *locus-in-quo* court observed that the 2nd Respondent had constructed on and a building called 'Resort Village'. The court noted that the Counter Claimant had never been in actual or constructive possession of the suit land.

I cannot fault the 1st Respondent (Mbale Municipal Council) for fast tracking the disposal of the suit land because it got clearance from the Solicitor General and the purpose for disposal was to use the proceeds to pay off a loan. The procurement laws and Regulations were designed for situations such as those in the instant case.

The Defendant/Counter Claimant adduced no evidence to prove any allegations of fraud against the 3rd Respondent because the building complained of was a temporary structure allowed to be constructed by Mbale Municipal Council. In any case Mbale Municipal Council, the 1st Respondent did not complain about the same yet it is the planning authority that ought to have complained. Infact the Counter Claimant only complained about noise by the 2nd Respondent and did not complain about a claim for the disputed land.

In its counter claim, the Defendant/Counter Claimant prayed for various declarations, directions and injunctions in its favour. It also prayed for general and aggravated damages. However, from my findings in the main suit as well as the counter claim, the Defendant/Counter Claimant is not entitled to those reliefs. Whereas I agree with the general principals of law for award of general damages and aggravated damages as enunciated in the court cases referred to by learned counsel for the Defendant/Counter Claimant and submitted to this court for assistance, the evidence adduced by the Counter Claimant is not convincing to warrant an award of 5 Billion Shillings as general damages.

As rightly submitted by learned counsel for Plaintiff/Respondent and from my findings hereinabove, there was no loss of benefit in the initial lease by the counter claimant because by the time the Plaintiff sued the Defendant the lease had expired. See Exhibit D.1.

DW.1 testified that the Counter Claimant had intended to put up a five star hotel on the disputed land and had mobilised money for that purpose. This claim was only in theory because no evidence was led to prove that the Counter Claimant had land in its possession for such project or that it lost business as a result of actions by the Respondents and/or its servants. There was no evidence that it submitted building

plans to the 1st Respondent for approval which were refused or that the building process was stopped by the Respondents or any of them.

As rightly submitted by learned Counsel for the Plaintiff and Respondents, there was no evidence that the Counter Claimant sued and won any case against the Respondents whose execution was thwarted by the Respondents. Further to this, there was no evidence that the Respondents were party to the denial or refusal by Mbale District Land Board to renew the lease to the defendant.

There is evidence on record by PW.3 that the District Land Board refused to renew the lease to Kachira Investment Company Ltd (not Kachra Investment Company Ltd) because in the first place there had never been a minute granting a lease to it in 1998. It is therefore not correct for the Counter Claimant to claim that the Respondents were insolent and/or malevolent.

For the reasons I have endeavoured to give in this judgment, the Plaintiff/3rd Counter Respondent is entitled to general damages for the inconvenience encountered during this litigation. I will enter judgment as follows:

1. The Certificate of title issued to the Defendant was wrongfully issued. Luckily enough it has expired.
2. Plot 15A Bishop Wasike Road Mbale Municipality is different from Plot 20 Maluku Road. The suit land is Plot 15A Bishop Wasike Road Mbale.
3. The Plaintiff has an equitable interest in the suit land on Plot 15A Bishop Wasike Road Mbale.
4. A permanent injunction is issued against the Defendant, its servants and those who derive interest from it against interfering with the suit land or trespassing on Plot 15A Bishop Wasike Road.

5. The Plaintiff/3rd Counter Respondent is awarded shs. 50,000,000/= as general damages against the Defendant/Counter Claimant.
6. The Plaintiff shall get the costs of the main suit.
7. The counter claim is dismissed with costs to the Counter Respondents.
8. A Certificate of two (2) Counsel is issued in respect of the Plaintiff/3rd Counter Respondent this having been a case of extreme complexity.

I so order.

Stephen Musota

JUDGE

22.08.2014