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The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Civil Suit No. 0027 of 2014

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- 1. Aleu Mark
 - 2. Egaru Richard
 - 3. Odongo Thomas
 - 4. Eculu Vincent
 - 5. Anoku Alex
 - 6. Ekeu Joseph
- :..... Plaintiffs

15

Versus

- 1. Amuria District Land Board
 - 2. Fr. Joseph Ipurale Ocom
 - 3. The Registered Trustees of Soroti Catholic Diocese
- :... Defendants

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Before: Hon. Justice Dr Henry Peter Adonyo

Judgement:

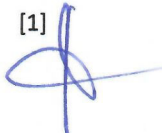
1. Introduction:

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Aleu Mark, Egaru Richard, Odongo Thomas, Eculu Vincent, Anoku Alex and Ekeu Joseph (hereinafter jointly referred to as “the Plaintiffs”) jointly and severally brought this suit against Amuria District Land Board, Fr. Joseph Ipurale Ocom and The Registered Trustees of Soroti Catholic (hereinafter jointly referred to as “the defendants”) jointly and severally for declarations, permanent injunction, damages and costs of the suit.

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The plaintiffs seek for the following orders;

[1] 

- 5 a) A declaration that the plaintiffs severally are the customary owners
of the suit land,
- b) A declaration that the grant of freehold by the 1st defendant to a non-
existent entity is illegal and unlawful,
- 10 c) A declaration that the grant of freehold by the 1st defendant to a non-
legal entity infringed the provisions of the law on customary land
ownership and the conversion of land ownership from customary
tenure to freehold tenure,
- d) A declaration that the grant of freehold tenure by the 1st defendant
was done?
- 15 e) A permanent injunction restraining the 1st, 2nd, and 3rd defendants
whether, by themselves, servants, workers and agents including but
not limited to, the members of the Parish Council, from:
- 20 i). Registering and granting a certificate of freehold land
ownership in favour of St. Peter Canisius – Orungo, a
non-legal entity, in respect of land customarily owned by
the plaintiffs severally.
- ii). Trespassing upon the plaintiffs' land,
- iii). Evicting the plaintiffs from the suit property,
- iv). Unilaterally planting survey mark stones on land
25 customarily owned by the plaintiffs without their
knowledge and consent,
- v). Alienating the plaintiffs' land by fencing off parcels of
land unlawfully being used/occupied by the 2nd
defendant.
- 30 f) In the alternative to paragraph e(i) above, an order for cancellation
of the certificate of freehold title granted to St Peter's Canisius,
Orungo,
- g) General damages,

- 5 h) Costs of the suit
i) Interest on (c) and (d) above at court rate from the date of filing till full payment.

2. Background:

a. The Plaintiffs' case:

10 The plaintiffs case is that they have at all material times been the owners and occupants of different parcels of land held and owned under the customary land tenure system as per the prevailing practices in the area at Morungatuny in Ococia parish, Morungatuny sub-county in Amuria district.

15 That around 1994, the late Etengu Honorat the deceased father of the 1st plaintiff granted permission to the Catholic Church to establish a church, an health centre and primary school on the land belonging under the customary practices of the Imoratok clan of the Iteso tribe which the defendants made it theirs through the Morungatuny sub-county Area
20 Land Committee which failed to exercise its mandate impartially and judiciously when it erroneously recommended that the said suit land be titled in the names of the 1st defendant which act result ed in a total infringement of the plaintiffs' constitutional right to own property per the prevailing customary practices.

25 The plaintiffs aver that the Area Land Committee acting on behalf of the 1st defendant and working in cahoots with the 2nd defendant misled the 1st defendant in determining, verifying and marking of the boundaries of all interests in the suit land when they used people who were not the immediate neighbors to the suit land and therefore disregarded the
30 interests of the plaintiffs illegally and through fraud.

5 Additionally, it was the case of the plaintiffs further that the 2nd defendant together with the Area Land Committee members which was acting on behalf of the 1st defendant, misled the 2nd, 3rd, 4th, 5th and 6th plaintiffs as to the purpose of the different meetings on the land, the survey and boundary visits and obtained their purported 'consent' yet the latter were
10 illiterates resulting in the Area Land Committee writing a report to the 1st defendant, erroneously recommending the grant of freehold in favour of a non-existent entity on whose behalf the 2nd defendant purported to act for.

The plaintiffs state that following the recommendations of the Area Land Committee, a survey and planting of boundary mark stones was
15 unilaterally and indiscriminately executed without the knowledge, consent or participation of the plaintiffs, whose interests as customary land owners were grossly infringed upon/violated without a fair hearing and thereby enabling the 2nd defendant, acting through a non-existent legal entity to illegally alienate land customarily owned by the plaintiffs
20 severally.

The plaintiffs aver that the 1st defendant upon receipt of the Area Land Committee report, did grant to St Peter's Canisius Orungo, a non-legal entity, freehold land measuring approximately 52.766 hectares, in respect of land customarily owned by the plaintiffs severally and which has never
25 belonged to the District Land Board, thereby unlawfully and permanently depriving the plaintiffs of their land in total breach of their constitutional rights to individually own the land per the prevailing customary practices.

The plaintiffs aver that the 1st defendant did further write to the Commissioner of Land Registration, authoring the preparation of the
30 freehold documents in favour of St Peter's Canisius Orungo, presented the 2nd defendant, as regards land described as Block 1 Plot 39, Amuria district which land is customarily and severally owned by the plaintiffs.

5 That the 2nd defendant has in addition further unilaterally alienated land
belonging to the 1st plaintiff by carrying out various activities on the 1st
plaintiffs' land with intent to permanently deprive the 1st plaintiff of his
legal and equitable ownership to the land, to wit; constructing a road on
the plaintiffs' land and closing off hitherto used public access road;
10 fencing off various parcels of land belonging to the 1st plaintiff to carry out
unauthorised permanent developments thereon among other activities.

The plaintiffs aver that the actions of the 2nd defendant in the
circumstances amount to fraud and as such all actions and decisions made
by the same are tainted by fraud.

15 The plaintiffs contend that they are the lawful customary land owners of
the suit land and that the defendants' actions are illegal, high handed and
constitute trespass and unlawful interference with possession and
customary land ownership by the plaintiffs. That these illegal actions have
occasioned loss and damage to the plaintiffs.

20 b. The Defendants' case:

The 2nd and 3rd defendants contend that the plaintiffs have no cause of
action against him and therefore pray that this honourable court
dismisses the suit with costs.

The 2nd and 3rd defendants contend that at all material times, Soroti
25 Catholic Diocese (St Peter Canisius Catholic Church) has been the lawful
and rightful owner of the suit land measuring approximately 20
acres/gardens it allotted to Ococia Girls S.S for its development since
1997. The uncle of the 1st plaintiff, the late Opoi Yuventino donated part of
his land measuring 4 acres, now North West of the disputed land, to the
30 Catholic church of St Peter Canisius.

5 The 2nd and 3rd defendants contend that the rest of the land measuring approximately 48 acres/gardens was donated by the late Okori Yuventino (East) measuring approximately 8 acres, late Elurugu (North East) measuring approximately 5 acres/gardens, late Okello Donato (North) measuring approximately 4 acres/gardens, late Enyagu (North) measuring approximately 5 acres, late Ebongu Yowana (West) measuring approximately 6 acres/gardens, late Liko Yasoni (South West) measuring approximately 10 acres/ gardens, and the late Eculu Yonosani measuring approximately 10 acres/gardens.

15 The 2nd and 3rd defendants contend that the said persons donated the suit land to the church for its occupation, use and development without a restrictive clause. The plaintiffs are now shamelessly claiming 20 acres of the said land without any colour of right.

20 The 2nd and 3rd defendants contend that the Catholic Church went ahead and demarcated boundaries on the suit land. The said demarcation of the suit land was advertised through a public notice on 3rd September 2010, which was then pinned in all conspicuous places. That the suit land was surveyed with the knowledge and consent of all the plaintiffs.

25 The 2nd and 3rd defendants contend that on or about 1997, Ococia Girls S.S was built on the suit land, the 1st plaintiff, a nephew to the late Opio Yuventino who donated part of the church land was the 1st headteacher of the school, he is now misleading the other plaintiffs in pursuit of grabbing the church land and yet the late Opio Yuventino is survived by a son, Obiria who was at the time of demarcation the immediate neighbour.

30 All plaintiffs are relatives of the deceased donors of the suit land to the church and their actions are illegal and unlawful.

5 A *locus in quo* was conducted on 25th February, 2022. Its report is on record.

3. Representation:

In this suit, M/s Omongole & Co. Advocates represented the plaintiffs while M/s Ewatu & Co. Advocates represented the 2nd and 3rd defendants.

10 In making their case, the plaintiffs adduced evidence of eight witnesses and these were Aleu Mark, PW1- (The first plaintiff), Eculu Vincent, PW2 - (The fourth plaintiff), Anoku Alex, PW3 - (The fifth plaintiff), Ekeu Joseph, PW4-(The 6th plaintiff, Okello John Michael, PW5 - (A paternal cousin to the 4th plaintiff), and Anyango Phoebe, PW6 - (The mother to
15 Odongo Thomas- (The 3rd plaintiff), Oleja Joseph, PW7 - (The LC1 Chairperson of Obur village), and Euku Musa, PW8-(The General Chairman of Imoratok clan where the 1st, 2nd, 4th, 5th, and 6th plaintiffs are members).

The defendants on the other hand led the evidence of five witnesses and
20 these were Fr Joseph Ipurale Ocom DW1 - (The 1st defendant), Okello James, DW2, Ajoli John Michael, DW3, Ariengu Paul, DW4, and Etoku Wilbert, DW5.

The 1st defendant did not file a written statement of defence despite being served with a summons for which an affidavit of service dated 7th August
25 2014 was deponed by Ikiror Berna. The then counsel for the plaintiffs – M/s Tumusiime, Kabega & Co. Advocates filed a request for an interlocutory judgement which was entered against the 1st defendant for failure to file a written statement of defence.

The remaining parties after completion of evidence presentation filed final
30 written submissions, the content of which together with the pleadings,

5 evidence adduced and locus visit report are considered herein where
necessary and relevant.

4. Issues:

The following issues were framed in the scheduling memorandum dated
17th August 2021. They are adopted by this Honourable Court for the
10 resolution of this suit.

a) Whether the plaintiffs have a cause of action against the 2nd
defendant?

b) Who is the rightful owner of the suit land?

15 c) Whether the survey and demarcation by the defendants of the suit
land was lawful?

d) Whether the defendants' actions were fraudulent?

e) What are the remedies available to the parties?

5. Resolution of the dispute by court:

a. Preliminary Objections:

20 Before I consider the substance of the dispute between the parties herein,
I am obliged to first deal with the preliminary objections raised by either
party.

From the plaintiffs' side, their counsel raised a preliminary objection in
regard to the capacity of the 2nd defendant to apply for a freehold title and
25 survey the land.

In his submissions on this point, counsel for the plaintiffs contended that
the 2nd defendant in its pleadings claims that actions in applying for a
freehold title and the subsequent survey of the suit the land was done for
and on behalf of the 1st defendant, whereas not yet he did not have powers
30 of attorney that expressly or by necessary implication allowed him to do
so.

5 According to counsel for the plaintiffs powers of attorney as defined by
Osborn's Concise Law Dictionary 11th Edition on page 315 is

“A deed by which one person empowers another to represent or act in his stead either generally or for specified purposes.”

10 That from the above definition it was required that of the 2nd defendant to have actual authority to act on behalf of the Board of the Registered Trustees of Soroti Catholic Diocese for during cross-examination , the 2nd defendant attested to the fact of not being a registered trustee of Soroti Catholic Diocese and he even named the right ones though he stated he
15 had the permission of the Trustees to represent them as a church but had no resolution or powers of attorney.

Counsel thus submitted that since the 2nd defendant did not have actual authority then he was acting on his own as his appointment was merely that of a parish priest of St. Peters Canisius which did entitle him to act on
20 behalf of the 3rd defendant since had no powers of attorney as was pointed out in *Hopkins vs Dallas Group Ltd [2004] EWHC 1379 (CL)* which was cited in *Ultra Services (U) Ltd and 2 Others vs Stanbic Bank (U) Ltd* where Lightman J held that:

25 ***“The grant of actual authority should be implied as being subject to a condition that it is to be exercised honestly and on behalf of the principal. Where the act is not in the best interest of the principal, it is not within the scope of the express or implied grant of authority.”***

30 Accordingly, counsel concluded that since the 2nd defendant did not have actual authority, his actions in having the suit land surveyed and titled was

5 his single handed act and not on behalf of the 3rd defendant. Meaning that without such power of attorney his actions were illegal.

On the other hand, counsel for the 2nd and 3rd defendants submitted that the 2nd defendant testified that he acted in respect of the survey and titling of the suit land as the head of the Parish Council of St Peter's Carnisius Catholic Church on behalf of the Parish Council and not on his own behalf
10 as the said council manages the affairs of St Peter's Carnisius Catholic Church Orungo as per DEX3 paragraph 1 (i) and that is why he signed at the bottom of the application which fact was corroborated by DW3 in cross examination who told court that whatever the 2nd defendant did was for
15 and on behalf of the Church as was equally done by him for he was at one time before also the Chairperson of the Parish Council when he sued the 6th plaintiff in that capacity as confirmed by DEX2 and so the 2nd defendant had locus to do so on behalf of the parish council.

In dealing with this preliminary objection, a scrutiny of the amended
20 plaint does not show that the plaintiffs intended to raise this particular preliminary objection, however, in the reply to the written statement of defence and counterclaim, the plaintiffs aver in paragraph 3 that the plaintiffs shall at the earliest opportunity raise a preliminary point of law on the 2nd defendant not seeking leave to amend the Written Statement of
25 Defence in joining the 3rd defendant having already filed a Written Statement of Defence and shall pray that the same is struck out.

However, I am alive to the holding in the decision in ***Ndaula Ronald versus Haji Nadduli Abdul, Election Petition No. 20 of 2006*** in which the Court of Appeal of Uganda while citing with approval the
30 statement by **Scrutton L.J.**, in ***Phillip versus Copping [1935]1 KB 15*** held that;

5 ***“It is a duty of the Court when asked to give a Judgment which is contrary to a statute to take the point although litigants may not take it”***

Further , it is aslo trite law that points of law can be raised at any stage of the proceedings whether or not they were pleaded. See: ***Mathias***
10 ***Lwanga Kaganda versus UEB CS No.124 of 2003.***

Accordingly, this preliminary objection is well within the ambit of law and so it is allowed to be raised.

On whether the preliminary objection is tenanbale, I am persuaded by the submission of counsel for the plaintiffs that the 2nd defendant did not have
15 the powers of the Board of Trustees. However, I hasten to note that the said board of trustees was registered later on making the argument that everything was done under the auspices of the Parish Council of St. Peters’ Cainisus tenable in law since the 6th plaintiff did not deny that
20 DW3 who was previously likewise a Chairperson of the Parish Council had sude him with no objection raised by him.

Therefore, this preliminary objection is answered partly in the affirmative.

The defendants likewise through their counsel raised a preliminary objection regarding the 3rd defendant who was added to the suit before it came into existence.

25 It was the submission of counsel for the 2nd and 3rd defendants that the court directed the 2nd defendant to file documents detailing the membership of the Registered Trustees of Soroti Catholic Diocese. That after the certificate of registration was filed it revealed that the 3rd defendant was registered on 24th April 2021 under the Trustees
30 Incorporation Act cap 165yet when the suit was filed in 2014, the 3rd defendant was not in existence and as such could not be part of this suit.

5 Accordingly, counsel prayed that the suit against the 3rd defendant be dismissed with costs since it was not in existence in 2014 when this suit was filed.

The scrutiny of the pleadings in HCMA No. 106 of 2016 show that an application through Chamber Summons was made in regards to joining
10 the 3rd defendants as a party and the said application was allowed with no objection by the defendants on 22nd November, 2016.

Accordingly, the defendants are now estopped from raising the same as they willingly allowed the 3rd defendant to be added as their co-defendant.

This preliminary objection is accordingly overruled. The 3rd defendant
15 remains properly a party in this suit.

I will now turn to discuss and resolve the issues framed by parties and adopted by this court one by one.

b. Whether the plaintiffs have a cause of action against the 2nd defendant?

20 On whether the plaintiffs have a cause of action against the 2nd defendant Counsel for the plaintiffs drew the attention of court **Black's Law Dictionary 5th Edition** at page 201 in regard to '**cause of action**' where it is defined to mean;

25 **"...The fact or facts which give a person a right to judicial relief. It is a situation or state of facts which would entitle a party to sustain an action and right to seek a judicial remedy on his behalf."**

Further counsel for the plaintiffs cited the case of **Tororo Cement vs Frokina International Limited SCCA No.2 of 2001** where
30 similarly '**cause of action**' was defined to mean;

5 ***“Every fact which is material to be proved to enable the plaintiff to succeed or every fact which, if denied, the plaintiff must prove in order to obtain judgement.”***

The plaintiffs’ counsel also cited the case of *Jeraj Sharif vs Chotai Fancy [1960] EA 374 at 375*, where Windham JA held that;

10 ***“ The question whether the plaint discloses a cause of action must be determined upon the perusal of the plaint alone together with anything attached so as to form part of it and upon the assumption that any express or implied allegations of fact in it are true.”***

15 Arising from the above definitions, counsel for the plaintiffs’ submitted that in respect of this suit, paragraphs 6 (a, b, c, d, e, f, g, h, i, j, k, l, m, n, o) and 7 of the plaint render facts that give rise to the cause of action for in them the plaintiffs are alluding to their being the customary owners of the suit land for which the 2nd defendant in his capacity as the Parish Priest of St Peter’s Canisius Orungo Catholic Church had applied to be granted a
20 freehold certificate of title through Amuria District Land Board without their knowledge or consent.

Thus that in light of the above cited authorities, the plaint and the attachments such as PEX1, which is the impugned application signed by
25 the 2nd defendant applied for the grant of a freehold title on behalf of St Peter’s Canisius then the plaintiffs had a cause of action.

The plaintiffs counsel prayed that court finds that the plaintiffs enjoyed a right to their property as customary owners, their rights were violated by the actions of the 2nd defendant as clearly indicated in the plaint and
30 evidence availed to the court shows that the 2nd defendant is liable.

5 The defendants (2nd and 3rd)'s counsel in their submissions contend that the plaintiffs do not have any reasonable cause of action or cause of action at all against any of the defendants and their suit ought to be rejected as such by the court.

Counsel cited the case of **Cooke vs Gull LR 8E.P 116, & Read vs**
10 **Brown 22 QBD 31** which defined a cause of action as every fact which if denied, the plaintiff must prove in order to obtain a judgement.

Counsel contended that whereas they agree with the plaintiffs that to determine a cause of action the court must look at the pleadings with that position only being true where the non disclosure of a cause of action is
15 raised as a preliminary matter before any evidence on record.

Counsel averred that where the parties have adduced evidence, court is obliged to consider both the pleadings and the evidence on record to ascertain whether a cause of action is made out against a defendant as was held in **Kebirungi vs Road Trainers Ltd and 2 ors [2008]**
20 **HCB 72**, **Kapeeka Coffee Works Ltd vs NPART CACA No. 3 of 2000** and **Wabwire Robert vs Kazoora Robert Civil Suit No. 187 of 2019** where it was stated that the question of whether a plead discloses a cause of action must be determined upon perusal of the plead together with anything attached so that forms part of it with the elements that
25 constitute a cause of action being that the plaintiff enjoy or enjoyed a right, that the right is/was violated, and that the defendant is liable for the violation of that right.

According to Counsel for the defendants, it should be clear from paragraphs 6 (b), (c) and (d) of the plead that the ownership of the suit
30 land was granted in 1944 to the 3rd defendant church for religious, education and health activities as its own yet now the plaintiffs were now claiming that the 3rd defendant was only granted those rights to the suit

5 land short of any authority to convert it into its own freehold yet 2nd
defendant stealthily through the 1st defendant, and without the
knowledge or consent of any of the plaintiffs, went on to start the
conversion process, without the consent of the customary owners of the
10 suit land who held the said land under the customary practices of the
Imoratok clan of the Iteso tribe.

Counsel for the defendants averred that from the pleadings , it was clear
that non of the plaintiffs was born/around or present in 1944 when the
suit land was granted to the church as they would want the court to
believe. That not even the 4 witnesses called by the plaintiffs, that is, PW5,
15 PW6 and PW7 had born or was present in 1944 to corroborate the
contents of paragraphs 6 (b) and (c) of the pleadings making the contents
of the document dated 19th March, 2014 which is to the effect that the clan
of the Imoratok through their chairperson (PW8) purporting to officially
allocate land measuring approximately 15 to 20 acres to Ococia Integrated
20 Primary School ineffectual given the fact that said school was established
by the church (3rd Defendant) way back in 1944 which fact disparaged
PW8 testimony that by 1944 the land had not been officially allocated to
the school by the Imoratok clan yet he was not present then to confirm so
and neither did he bring any minutes of the 2014 meeting or its attendance
25 list which would prove his assertions that his ancestors did not give the
land for the school to the church officially and so in 2014 the clan was thus
doing so officially.

That this is more so confirmed by PW3 who testified that no evidence of
service of the expunged resolution to the management of Ococia Primary
30 School or to those copied were evidently anywhere making the alleged
fresh allocation of the suit land to Ococia school imaginary.

5 Counsel for the defendants submitted that all the plaintiffs in their
respective evidence in chief on court record made a great departure from
their pleadings in paragraph 6 (a), (c) and (d) in that none of them
testified about the suit land having been granted to the church for
religious, education and health purposes and that it was not intended to
10 converted to freehold ownership without their knowledge or consent as
the customary owners as alleged in paragraph 6 (b), 6 (b) and 6 (d).

The defendant's counsel stated that the plaintiffs instead in their evidence
in chief turned round to allege trespass by the defendants on what they
purport was not given to the church by their ancestors as can be garnered
15 from the written evidence of PW1 at paragraph 3, PW2 at paragraph 2,8,4,
PW3 at paragraphs 4 and 5, PW4 at paragraphs 4 and 6.

Counsel stated that in the aforesaid paragraphs, the four (4) plaintiffs
individually confirm the church owned land which is fenced.

Counsel for the defendants contends that the question would then be;

20 ***"Did the ancestors grant the suitland to the church and
retain its ownership or it was a gift to the church without
any restrictive clause?"***

Counsel for the defendants contends that the suitland was a gift without
any restrictive clause that would require knowledge or consent of
25 Imoratok clan members like the plaintiffs to convert its tenure.

Counsel implored the court to find that the customary land practice of the
Imoratok clan of Iteso was illegal or void abnatio because it contravened
Article 2 (2) of the Constitution of the Republic of Uganda.

Counsel for the defendants contends that the application of the customary
30 practices of the Imoratok clan of Iteso to the suitland which was acquired

5 in 1944 without any condition by the donors is an attempt to mislead the court to justify the grabbing of the church land by the plaintiffs.

Counsel submitted that this is a grave contradiction by the plaintiffs and in the case of *Bahema Patrick and Another vs Uganda SCCA No. 1 at page 7* it was held that;

10 ***“Where contradictions or discrepancies are found in evidence to be serious or grave unless reconciled will result in rejection of evidence. In regard to the instant case, counsel invited court to consider the contradictions and inconsistencies pointed out which are serious to***
15 ***reject the plaintiffs’ evidence.”***

The counsel for the defendants submitted that the plaintiffs’ pleadings other than indicating at paragraph 6 (b) of the plaint that approximately 20 acres of the suitland belongs to the 1st plaintiff, it is silent on the total size of the land claimed by the plaintiffs or what size of land each
20 individual plaintiff claims.

Counsel submitted that, however, as an afterthought, the plaintiffs in their respective witness statements sworn in 2018, which was ten (10) years after the plaint was filed, attempt to allot the sizes to the suit land, to wit, 1st plaintiff at paragraph 39 states of 11 acres, 2nd plaintiff at paragraph 21
25 states of 4 acres, 3rd plaintiff at paragraph 16 states of $1\frac{1}{4}$ acres, 4th plaintiff at paragraph 20 states of 20 acres, 5th plaintiff at paragraph 14 states of 3 acres and the 6th plaintiff at paragraph 16 states of 3 acres, all of which totals to $42\frac{1}{4}$ acres.

Counsel for the defendants avers that it is surprising that the 1st plaintiff
30 whose claim against the defendants is approximately 20 acres as per paragraph 6 (b) of the plaint would without shame turn around to claim 11

5 acres as per paragraph 39 of his sworn witness statement which is admitted as his evidence in chief.

Counsel for the defendants submits that this is confirmation of total/serious departure from the pleadings which the court should be pleased to treat as a fishing expedition by the plaintiffs as such reject their
10 evidence.

Counsel for the defendants submits that **Order 6 rule 7 of the Civil Procedure Rules SI 71-1** provides that no pleading shall not, being a petition or application except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous
15 pleadings of the party pleading that pleading.

In making this assertion, Counsel cited the case of **Jani Properties Ltd vs Dar es Salaam City Council [1966] EA 281** and **Struggle Ltd vs Pan African Insurance Co., Ltd (1990) ALR 46,47** where it was held that;

20 ***“ The parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and moreover the court itself is also bound by what the parties have stated in their pleading as to the facts relied on by them. No party can be allowed to depart from its pleadings”***
25

According to counsel, since the departure by the plaintiffs amounts to grave inconsistencies/discrepancies and contradictions and given the position of the law in that respect and since the said grave inconsistencies,
30 have not been satisfactorily explained then the evidence of the plaintiffs in that respect should be rejected as was pointed out by Hon. Mr. Justice

5 Stephen Musota in *Mujune Joshua vs Uganda HCT 04 CR CN 003 2011*) judgement of at page 8.

Regarding the counterclaim, the counsel for the defendants submitted that the defendants in their defence denied the claim of the plaintiffs and instead plead that the suitland was donated to the church in the 1940s by
10 the ancestors of the plaintiffs as per paragraphs 2 (a), (b) and 2 (c) of the counterclaim as corroborated by the evidence in chief of all the defendants' witnesses; DW1, DW2, DW3, DW4 and DW5 at paragraphs 2, 3, 4, 5, 6, 7, 8 and 14 of their respective evidence in chief admitted on court record.

15 Counsel for the defendants submitted that DW2 and DW4 testified in evidence in chief that they are sons of the late Ebongu Yowana, one of the donors. That in cross examination, they confirmed to court that their late father told them that he donated 4 acres of the suitland and even showed them the boundaries with the church that already had sisal planted as
20 boundary marks.

Counsel for the defendants submitted that DW3 testified in cross examination that the 1st plaintiff became an immediate neighbor to the church after Obirai James Peter sold his land to him (PW1) which is next to the church after the demarcation exercise.

25 Counsel for the defendants submitted that during *locus visit*, the remains of Obirai's former house, which was broken down to allow the expansion of the 1st plaintiff's school, was vividly visible in the immediate neighborhood of church land.

Counsel submitted that this evidence corroborates the evidence in DEX5
30 and that of PW1's who during cross-examination testified that when he testified that Obirai James and his wife Itumo Josephine were present and

5 that they witnessed the demarcation and survey exercise of the church land that he simply ignored and did not take any action.

Counsel for the defendant submitted that the failure by PW1 to take action against Obirai James and his wife Atumo gives credence to the testimony and evidence of the defendants and their witnesses that Obirai James was
10 the immediate neighbor to the church at the time of demarcation and survey before passing over ownership of the same to PW1.

Counsel for the defendants submitted that the 2nd plaintiff Engaru Richard attended and witnessed the demarcation exercise as per DEX5, signed as No.2 for Alelo Dinah at page 21 of the trial bundle, the said Alelo is
15 indicated as a neighbour on the map at page 20 of the trial bundle.

Furthermore, counsel for the defendants submitted that Odongo James, the 3rd plaintiff opted not to prosecute the case and on 23rd September, 2014 after writing an apology to the church after the suit was filed for which a prayer to dismiss the suit with costs is made.

20 Counsel for the defendants further submitted that the 4th plaintiff testified during cross -examination that he once had a case over the suitland before the LIII Court of Morungatuny with the church represented by the Chairperson Parish Council, DW2 which was decided against him and that decision remains unchallenged todate by either appeal or revision of
25 the said decision, therefore, his instant case is an abuse of court process.

Counsel for the defendants argued that the 5th and 6th plaintiffs are beneficiaries of the estate of Okello Donato which was divided on 24th April, 2014 per DEX10. That the 5th plaintiff signed at page 35 while the 6th plaintiff signed at page 41 of the minutes for the division of the estate.
30 That the division of the estate was after 4 years and 5 months from when the demarcation and survey of the church land took place.

5 That the family was represented during the demarcation with the church by Okello Solex as per DEX5 No.2 (i) at page 21 and he was shown on the map as an immediate neighbor at page 20.

Counsel for the defendant submitted that the 5th and 6th plaintiffs cannot retrospectively claim what had not been apportioned to them by 21st
10 September, 2010.

Counsel for the defendants concluded that all the plaintiffs led no evidence to prove that the suit land was a grant not a gift as contended by the 2nd and 3rd defendants as such that they did not enjoy any right, thus the action of the 2nd defendant did not violate their rights.

15 Counsel further submitted that the plaintiffs had failed to prove that they have a cause of action against the defendants.

I have had the benefit to consider all the pleadings, evidence adduce by parties and the arguments of counsel.

20 Arising from paragraphs 6 (a, b, c, d, e, f, g, h, i, j, k, l, m, n, o) and 7 of the plaint, the facts which gave rise to the instant cause of action is fittingly exposed.

The history of this dispute is that the grand parents of the plaintiffs made a donation of land to the Catholic Church way before the plaintiffs were born which the 2nd defendant in his capacity as the Parish Priest of St
25 Peter's Canisius Orungo Catholic Church, a non legal entity applied to the relevant authorities through Amuria District Land Board for the grant a freehold certificate of title. The plaitiiff aver that this act was done without their knowledge or consent yet they were the customary owners of the land which was the subject of the freehold application.

30 The plaitiffs further contentd that the process of application for the freehold tittle was marred with irregualrities for they as interested parties

5 and neighbours were never consulted and neither did they consent to the said process which even was in excess of the boundaries beyond the land which the the 3rd defendant had originally been granted.

Guven the acontention by the plaintiffs' that they customary owners of the suit land which they claim they acquired through inheritance and enjoyed
10 that right which rigths were violated then I would conclude that the plaintiifs have a cause of action in that respect accordingly.

c. Who is the rightful owner of the suit land?

Counsel for the plaintiffs submitted that the plaintiffs' claim is that they are the customary owners of land at Morugatuny in Ococia parish,
15 Morugatuny subcounty in Amuria district held and owned under the customary tenure system in accordance with the prevailing customary and practices in Teso sub region.

Customary land tenure is one of the land tenure systems recognised in Uganda by **Article 237 (3) (a) of the Constitution of the Republic**
20 **of Uganda, 1995**. That recognition is further re-echoed by **Section 2(a) of the Land Act, Cap 227**.

Section 3 (1) of the Land Act, Cap 227 provides for eight (8) ingridients for a land tenure system to be considered as falling under the customary land tenure system and it provides such a system must;

- 25 (a) Applicable to a specific area of land and a specific description or class of persons;
- (b) subject to section 27, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;
- (c) applicable to any persons acquiring land in that area in
30 accordance with those rules;

5 (d) subject to section 27, characterised by local customary regulation;

(e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;

10 (f) providing for communal ownership and use of land;

(g) in which parcels of land may be recognised as subdivisions belonging to a person, a family or a traditional institution; and

(h) which is owned in perpetuity.

15 In *Atunya Valiryano vs. Okeny Delphino*, HCCA No. 0051 of 2017, Hon. Justice Stephen Mubiru restated the nature of customary land tenure thus;

20 ***“ Customary tenure is characterised by local customary rules regulating transactions in land, individual, household, communal, and traditional institutional ownership, use, management and occupation of land, which rules are limited in their operation to a specific area of land and a specific description or class of persons, but are generally accepted as binding and authoritative by that class of persons or upon any persons acquiring any part of that specific land in accordance with those rules. Therefore, a person seeking to establish customary ownership of land has the onus of proving that he or she belongs to a specific description or class of persons to whom customary rules limited in their operation, regulating ownership, use, management and occupation of land, apply in respect of a specific area of land or that***

25

30

5 he or she is a person who acquired a part of that specific
land to which such rules apply and that he or she
acquired the land in accordance with those rules. The
onus of proving customary ownership begins with
10 establishing the nature and scope of the applicable
customary rules and their binding and authoritative
character, and thereafter, evidence of acquisition in
accordance with those rules, of a part of that specific land
to which such rules apply.

15 Proof of mere occupancy and use of unregistered land,
however long that occupancy and use may be, without
more, is not proof of customary tenure (see: Bwetegeine
Kiiza and Another v. Kadooba Kiiza C.A. Civil Appeal No.
59 of 2009; Lwanga v. Kabagambe, C.A. Civil Application
20 No. 125 of 2009; Musisi v. Edco and Another H.C. Civil
Appeal No. 52 of 2010; and Abner, et al., v. Jibke, et al., 1
MILR 3 (Aug 6, 1984).)”

Mubiru , J in the above case , however, cautioned that;

25 “ Possession or use of land does not, in itself, convey any
rights to the land under custom. That occupancy should
be proved to have been in accordance with a customary
rule accepted as binding and authoritative.

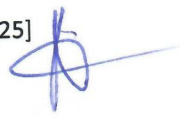
30 Evidence of communal ownership of land is to be found
in; (i) a system of governance that enforces exclusive use
and occupation by the community, the exclusivity being
related to the rights exercised by the community and not
to individualised rights. The indigenous community must
have had exclusive occupation of the land from time

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immemorial; (ii) an established uniform system or set of customary norms that regulate possession and use of the land, which, although they may be highly flexible, are certain, considered as binding and are frequently followed by members of the community. These may be practices, customs, and traditions that are integral to the distinctive culture of the group claiming the right. All decisions pertaining to the land must be made by the community; (iii) beneficial occupation and use of the subject land i.e. personal and usufructuary rights (inclusivity), forming part of their inclusive communal activities; (iv) and that the usufructuary rights in issue are not irreconcilable with the nature of the community's attachment to the land. It is for the latter reason that land held as communal customary land may not be alienated without the consent of the specific community."

25
30

Relating the above position of the law to the instant case, Counsel for the plaintiffs asserted that the plaintiffs had led sufficient evidence to show that the suit land was held by them by virtue of customary tenureship given the fact that they had inherited the same from their late fathers, who also inherited from their forefathers. That the plaintiffs had proved that the belong to Imoratok clan and the belong to that clan as testified to by PW6 who told court that she, by virtue of marriage to her late husband , belonged Irarak clan and so does her son. PW1 and PW3 testified they belonged to the Imoratok clan and that they even settled on the land which fact was confirmed during locus for these two showed court their homes, the seasonal crops which they were cultivating, graveyards and all other evidence required for the establishment of customary ownership in compliance with the holding in the case of **Kampala District Land**

[25] 

5 **Board & anor vs Venansio Babweyaka & 3 ors Civil Appeal No. 2 of 2007**; where it was stated that;

10 ***“Customary tenure is a system of land regulated by customary rules which are limited in their operation to a particular description or class of persons of which are prescribed in section 3.”***

15 Counsel for the plaintiffs further submitted that the plaintiffs' claim were claiming for the land that was originally donated to the church but for the land which the defendants encroached upon when the defendants, who did not have a right to survey and demarcate the suit land, let alone applying for the grant of a freehold went ahead to have surveyed and An application for a freehold title made for land which included those of the plaintiffs which were customarily occupied and utilised by them as was testified to by PW8 during cross-examination who told court that the plaintiffs wre not claiming for the land which was donated to the school because the clan had endorsed the same (PEX9) and there was no dispute about it and PW3 in re-examination who similarly told court that the land donated by his grandfather to the church was not part of the disputed land.

25 According to counsel for the plaintiff, the plaintiffs squabble with the defendants related to the defendants illegally surveying attempting to secure thereon a freehold over and above the fenced off land to include gardens into the said fence land yet the latter was not part of the church land but was only used by the church officials on borrowed basis for cultivation only and nothing else as testified to by PW3, PW5 and PW7.

30 According to Counsel for the plaintiffs, the defendants's testimonies in respect of the suit land should be considered largely contradictory and inconsistent statement in regard to the size of the land owned by the

5 church as can be confirmed from the testimony of DW1 who through
DEX3) which is an application for grant of a freehold indicate in that
document that the church owned apply for 60 acres yet in his witness
statement he talks of 52 acres. According to counsel for the plaintiffs, the
10 same contradiction is manifested by the the testimony of DW2 who at one
point testified that the church land was 52 acres but when put to task
changed his testimony and said the church applied for a grant of freehold
for about 60 acres with DW3 testifying that the church owns 52 acres.

15 Furthermore, counsel for the plaintiffs invited to note that the 2nd
defendant signed an application for grant of a freehold (DEX3) without
even powers of attorney. That even the sadi docment bore falsehoods for
it indicates the customary owner of the suit land as St Peter Carnisius
Orungu yet St Peter Carnisius Orungu was a church and did not belong to
any clan.

20 Additionally, counsel for the plaintiffs' submitted that even during locus
in quo visit, court discovered that while all the plaintiffs were neighbours
of the 3rd defendant and were found in possession of their respective
portions of land, the extent of encroachment into their land by the 3rd
defendant was such that boundary mark stones were seen planted on their
land including the suit land. For instance, the school of the 1st plaintiff had
25 a mark stone planted in it, for the 2nd plaintiff's a markstone was found at
the *Ekoboi* tree near the road on his land, a school toilet belonging to the
church was found inside the 2nd plaintiff's land, in the 4th plaintiff's land,
a mark stone was found at the last sisal plant, on the 6th plaintiff's land,
two markstones were found at his home with the affected land being about
30 three gardens which end at the toilet next to the fence, markstone which
was not found planted in the 3rd plaintiff yet he cultivates all his land, on

5 the 4th plaintiff's land there were 3-4 mark stones as well; all of which incidents were confirmed by the defendants.

From all these, according Counsel for the plaintiffs it was clear that the defendants had trespassed onto the plaintiffs land without their consent in the guise of surveying the church land yet they had the ill motive of
10 grabbing the plaintiffs' land which had not previously been allocated to the church by the plaintiffs forefathers.

Counsel thus from the acts of defendants by planting of sisal marks, the survey, the demarcation and the planting of mark stones on the plaintiffs respective parcels of the customary land without their consent, acts of
15 trespass was manifested as was held in *E.M.N Lutaaya vs Stirling Civil Engineering Civil Appeal No. 11 of 2002* and in *Sheikh Mohammed Lubowa vs Kitara Enterprises Ltd Civil Appeal No.4 of 1987, where the East African Court of Appeal* enumerated circumstances under which trespass occurs that;

20 ***“In order to prove alleged trespass, it was incumbent on the appellant to prove that the disputed land belonged to him, that the respondent had entered upon that land and that the entry was unlawful in that it was made without his permission or that the respondent had no claim or right or interest in the land”.***
25

Counsel noted the proof of trespass was testified to by PW1 told court that a survey stone was planted on his land without his knowledge, PW4 who told court that the defendants planted the mark stones in his compound without his knowledge and consent with PW6 testifying that the suit land
30 belonged to her and her late husband and mother in law and which she used to cultivate before the church encroached on it and planted sisal as boundary marks on it.

5 PW8 as the chairperson of the Imoratoklan confirmed the planting of the sisal on the plaintiffs' land.

Counsel for the plaintiffs submitted all that the above shows that the plaintiffs are in exclusive possession of the suitland which makes up proof of ownership by the same and he prayed that the court finds that the
10 plaintiffs are the customary owners of the suit land having inherited the same from their fathers, live on it, utilize it customarily.

Counsel for the 2nd and 3rd defendants submitted regarding this issue that the plaintiffs' claim as per paragraphs 6 (b) and 6 (c) of the amended plaint is that the church was granted the suitland in 1944 by their forefathers and
15 ancestors for religious, education and health activities and that the suit land was not to be converted into freehold ownership.

According to Counsel , by the plaintiffs in alleging that not he suitland was a grant that required their knowledge or consent before it is converted by the defendants was a departure from their pleadings which as seen from
20 the amended plaint filed in court on **13th December 2016** after paragraph 11 of the plaint had prayers from the plaintiffs wherein they were seeking from this court the following orders;

- a) A declaration that the plaintiffs severally are the customary owners of the suit land,
- 25 b) A declaration that the grant of freehold by the 1st defendant to a non-existent entity is illegal and unlawful,
- c) A declaration that the grant of freehold by the 1st defendant to a non-legal entity infringed the provisions of the law on customary land ownership and the conversion of land
30 ownership from customary tenure to freehold tenure,

- 5
- d) A declaration that the grant of freehold tenure by the 1st defendant was done?
- e) A permanent injunction restraining the 1st, 2nd, and 3rd defendants whether, by themselves, servants, workers and agents including but not limited to, the members of the Parish Council, from:
- 10
- i). Registering and granting a certificate of freehold land ownership in favour of St. Peter Canisius – Orungo, a non-legal entity, in respect of land customarily owned by the plaintiffs severally.
- 15
- ii). Trespassing upon the plaintiffs' land,
- iii). Evicting the plaintiffs from the suit property,
- iv). Unilaterally planting survey mark stones on land customarily owned by the plaintiffs without their knowledge and consent,
- 20
- v). Alienating the plaintiffs' land by fencing off parcels of land unlawfully being used/occupied by the 2nd defendant.
- f) In the alternative to paragraph e(i) above, an order for cancellation of the certificate of freehold title granted to St Peter's Canisius, Orungo,
- 25
- g) General damages,
- h) Costs of the suit
- i) Interest on (c) and (d) above at court rate from the date of filing till full payment.

5 The above pleadings must be read hand in hand with the plaintiffs pleadings in paragraphs 6 (b) and 6 (c) of the Amended Plaintiff which are that;

Paragraph 6 of the Amended plaintiff:

10 *The facts that gave rise to the cause of action arose as follows;*

15 *(b) That sometimes around 1944 the late Etengu Honorat the deceased father of the 1st plaintiff , granted permission to the Catholic Church to establish a church , health center and primary school on the land belonging to the deceased Etengu Honorat and now belonging to the 1st defendant, under Customary practices of the Imoratok Clan of the Iteso tribe.*

20 *(c) That under the said aforesaid grant, the land was never intended to be converted into freehold ownership by the church or any other entity, more specifically the non-legal entity of St. Peter's Canisius-Orungo acting through the 2nd defendant , but was only intended to promote religious, educational and health activities in the area, through the use by the church, land estimated to be approximately 20 acres belonging to the 1st plaintiff.*

25

From the above, counsel for the defendants argued that it could not be possible for the plaintiffs to allege that the area they were claiming was a grant not to be converted and therefore theirs, whereas at the same time they allege that the fenced area was merely a gift to the church from their
30 ancestors. I agree for under **Section 101(1) of the Evidence Act Cap 6** it is stipulated that whosoever desires any court to give judgement as to

5 any legal right or liability dependent on the existence of facts which he or she asserts must prove those facts exist.

This position was upheld in ***Sebuliba vs Cooperative Bank Limited [1982] HCB 129*** that the burden of proof in civil proceedings lies upon the person who alleges, therefore, to prove an allegation the burden of proof was squarely falls on the person who alleges so and in this case the
10 plaintiffs.

The considered perusal of the plaintiiffs'pleadings at paragrphs paragraphs 5 (b) and (c) of the amended plaint above show that the plaintiffs had indeed not only departed from their pleadings of trespass to the question of donating the land to the church with a restrictive
15 connotation as their major argument.

The pleadings by the plaintiffs are clear and include trespass and the plaintiffs were obliged in accordance with their pleadings to lead evidence to prove that the suit land to granted to the Catholic Mission at St Peter
20 Carnisius-Orungu had restrictive clauses to only to be used for religious, education and health activities and to not be converted and that the suitland was not gifted to the church.

In this respect, I fnd that the plaintiffs had failed to lead evidence to prove their claim of ownership of the suit land based on their assertion whereas
25 the forefathers donated the land to the church, the defendants should not convert it into freehold.

From the evidence received on record , it is clear that all material times St. Peters Canisius Catholic Church of Soroti Catholic Diocese under the registered trustees of Soroti Catholic Diocese received as a grant athe
30 suitland measuring approximately Fifty two (52) acres/gardens situated at Ajonja village, Ococia Parish, Ongolai Sub-County, Amuria District. The

5 suit land was donated to the church way back in 1940's at its inception by local christians to wit;

- a. Late Yuventino Opio, uncle to the first plaintiff/ counter defendant who gave approximately 4 acres.
- b. Late Elungu gave approximately 5 acres.
- 10 c. Late Okello Donato grandfather to 5th and 6th plaintiff/counter defendants gave approximately 4 acres.
- d. Late Enyagu grandfather to 2nd plaintiff/counter defendant gave approximately 5 acres.
- e. Late Ebongu Yoana grandfather to 3rd plaintiff/counter defendant
15 gave approximately 6 acres.
- f. Late Iiko Yosani gave approximately 10 acres.
- g. Late Eculu Yonosani grandfather to 4th plaintiff/counter defendant gave approximately 10 acres.
- h. Late Okori Yuventino gave approximately 8 acres.

20 Immediately thereafter the church took possession and established a church, a health centre and Ococia primary school with staff that cultivated the suitland to date. About 1997 Ococia Girls Secondary was established by the church on part of the suit land with the 1st plaintiff was the first head teacher of the school (secretary Board of Governors) as per
25 DEX 1 page 5 paragraph 7 and page 6. It is true that all the other plaintiffs are grandchildren of those who donated land to the the church. All the plaintiffs save for the 3rd plaintiff are members of Imorotok clan.

The understanding of the contents of paragraph 6(b) is that the suitland was originally for the 1st plaintiffs deceased father which he granted to the
30 church to establish a church, health center and primary school but retained its ownership and that it now belongs to the 1st plaintiff as a son

5 after his father's demise under the customary practices of Imoratok clan of the Iteso tribe.

My understanding of the contents of paragraph 6(c) and 6(d) is that the suitland measuring approximately 20 acres for the 1st plaintiff was never intended to be converted into freehold ownership by the church or any
10 other entity more specifically the non-existent entity of St. Peters Canisius-Orungo acting through the 2nd defendant but was only intended to promote religious, educational and health activities in the area through use by the church without the knowledge or consent of any of the plaintiffs who are customary owners of the land comprised in the land the subject
15 of the application.

The implication of paragraphs 6(b), 6(c) and 6(d) is that the ownership of the land which was granted in 1944 to the church now the suitland did not pass to the church and that the church was meant to merely use the land in dispute for religious, education and health activities without
20 converting it into freehold ownership by the church or any other non-legal entity through the 1st defendant without the knowledge or consent of any of the plaintiffs who are its customary owners under the customary practices of the Imoratok clan of the Iteso tribe.

By 7th September 2018 when the plaintiffs made sworn witness statements
25 the 1st plaintiff was 65 years old, the 2nd plaintiff was 40 years old, the 3rd plaintiff was 27 years old, the 4th plaintiff was 56 years old, the 5th plaintiff was 54 years old and the 6th plaintiff was 47 years old. From the sworn testimonies of the plaintiffs it means that they were born in in 1953, 1978, in 1991, in 1962, in 1964 and in 1971, respectively.

30 This acknowledgment means that none of the plaintiffs was born/around or present in 1944 when the suitland was granted to the church as the plaintiffs would want this Honourable Court to believe.

5 The plaintiffs also presented 4 witnesses, to wit, PW5 Okello John
Micheal 64 years, PW6 Anyango Phoebe 55 years, PW7 Oleja Joseph 48
years and PW8 Euku Musa 56 years who swore their respective witness
statements on 7th September 2018. Their assertions means that PW6
Anyango Phoebe was born in 1963, PW7 Oleja Joseph was born in 1970,
10 PW5 Okello John Michael was born in 1958 and PW8 Euku Musa was
born in 1962. None of these four (4) witnesses was born/around or present
in 1944 to corroborate the contents of paragraphs 6(b) and (c) of the
pleadings.

Exhibit PE9 was tender in court in a futile attempt to corroborate the
15 unbelievable allegations in paragraphs 6(b) and (c) of the plaintiffs
pleadings. It was authored by the chairperson of the Imoratok Clan who
testified as PW8 one Euku Musa. The contents of this document which is
dated 19th March, 2014 is to the effect that the clan of the Imoratok
through their chairperson was officially allocating land measuring
20 approximately 15 to 20 acres to Ococia Integrated Primary School. PW8
Euku Musa testimony to the at effect cannot be accepted for while during
cross examined he wanted court to believe that through Exhibit PE9 the
Imoratok clan suddenly became wise and gave the land to the school on
19th/3/2014, that aspect of his testimony was a complete lie and cannot be
25 taken seriously for the said school had already been established by the
church way back in 1944! In my considered opinion, Exhibit PE9 was a
forgery by the plaintiffs with the hope as to pervert the cause of justice by
pretending that the suit land was just recently givne to the church yet it
was as a matter of fact true that the church had been granted the suit land
30 way back in the 1940's when none of the plaintiffs were yet born for
religious, educational and health purposes. This document is thus
considered an afterthought brought in an effort to grab land by land
grabbers in a futile effort to try to make believe that by 1944 the suit land

5 had not officially allocated to the school by the Imoratok clan to the
catholic church mission yet evidence which is not controverted show that
the said catholic mission was donated land by various persons including
the ancestors of the plaintiifs who wanted established services for the
established for the development, general good and welfare of the
10 population in Ajonja village, Ococia Parish, Ongolai Sub-County, Amuria
District. The various persons who donated the land to the church belonged
to Imoratok clan. Their siblings or issues would thus have no any colour
of right to distort their wishes.

Furthermore, a look at Exhibit PE9 show that there were no minutes of
15 the said impugned clan meeting and even no attendance list of the said
impugned clan meeting with PW8 giong ahead to confirm that there was
no evidence of service of the expunged resolution to the management of
Ococia primary school or those copied, that the expunged resolution was
even not addressed to anybody, that there is no evidence that the school
20 accepted the management purported offer of land, that the expunged
resolution was not intended to justify grabbing church land as pleaded in
paragraphs 6(b) and 6(c) of the plaint.

It is settled law that the burden of proof in civil cases lies on the party who
alleges. This position of the law is provided for under **Section 101 of the**
25 **Evidence Act Cap.6** as was pointed out in the case of **J.K. Patel Vs**
Spear Motors Ltd SCCA No.4 of 1991. In civil matters the standard
of proof is on the balance of probability. **Section 101 (1) of the**
Evidence Act Cap.6 specifically provides that the burden of proof as to
the legal right or liabilities is on whoever asserts that those facts exist.

30 In respect of this matter all the plaintiffs in their respective evidence in
chief on court record made a great departure from the pleadings in
paragraph 6(b), 6(c) and 6(d) and none of them testified about the

5 suitland having been a grant to the church for religious, education and health purposes and that it was not intended to be converted to freehold ownership without their knowledge or consent as the customary owners as alleged in paragraph 6(b), 6(c) and 6(d).

10 The plaintiffs instead in their evidence in chief turned round to allege trespass by the defendants on what they purport was not given to the church by their ancestors as gleaned from PW1 at Paragraph 3, 10 PW2 Eculu Vincent at paragraph 2, 8, 4, PW3 Anoku at paragraphs 4 and 5, PW4 Euku Joseph at paragraph 4 and 6. In all the aforementioned paragraphs all the 4 plaintiffs individually confirm the church owned land
15 which is fenced.

The question then would be,

“Did the ancestors grant the suit land to the church and retained its ownership or it was a gift to the church without any restrictive clause?”

20 The answer definitely is that the suitland was a total voluntary gift by the donness without any restrictive clause that would require the knowledge or consent of anybody or Imoratok clan members for that matter in order for its tenure conversion to be made. If that was the case then such a custom where one voluntarily donates with one hand freely and then later
25 on put restrictions to such a donation would be, if it is a custom is allegedly practiced by the Imoratok clan of Iteso, not only strange and illegal or void ab initio but that would contravene **Article 2(2) of the 1995 Constitution of the Republic of Uganda As Amended.**

30 However, from what I have discussed and found above, I am of the firm view that the alleged custom is not the customary land practices of the Imoratok clan of Iteso but an attempt by the greedy plaintiffs who have no

5 any colour of rihtg to try to change what their ancestors had done to grab
the church land which had been donated way back in 1944 by the
ancestors as a free donation without any condition.

This is a grave contradiction by the plaintiffs as in the case of ***Bahema
Patrick & Another Vs Uganda SCCA No.1 at pg7***, where it was held
10 that;

***“Where contradictions or discrepancies are found in
evidence to be serious or grave unless reconciled will
result in rejection of evidence”.***

In the instant case, I would reject the plaintiff's evidence as it is not only
15 contradictory but diversionary from the principal claim of the plaintiffs
which relates to encroachment/trespass which also unfortunately has also
not been aligned with the issue at hand as indicarted in the plaintiffs.

Also surprisingly, the 1st plaintiff whose claim against the defendants is for
approximately 20 acres as per paragraph 6(b) of the plaint without shame
20 goes on to claim 11 acres as per paragraph 39 of his sworn witness
statement which was admitted as his evidence in chief and which is on the
court record.

This, in my considered opinion is a serious departure from the pleadings
which I treat as a fishing expedition by the plaintiffs and accordingly reject
25 their evidence in this respect for Order 6 Rule 7 of the Civil Procedure
Rules S.I-71 stipulates that no pleading shall, not being a petition or
application except by way of amendment, raise any new ground of claim
or contain any allegation of fact inconsistent with the previous pleadings
of the party pleading that pleading.

30 This position was reiterated by Justice Bashaija K. Andrew in ***Painento
Semalulu Vs Nakitto Eva Kasule (Civil Appeal No.4 Of 2008)***

5 **[2017] UGHCLD 49** and re-affirmed in **Jani Properties Ltd Vs Dar Es Salaam City Council [1966] EA 281** and **Struggle Ltd Vs Pan African Insurance Co.Ltd (1990) ALR 46, 47,**

The departures by the plaintiff's from their pleadings do amount to grave inconsistencies and contradictions for the law governing
10 inconsistencies/discrepancy and contradictions is that grave inconsistencies if not satisfactorily explained will usually result in the evidence of the witness being rejected as grave inconsistency goes to the root of the case

Accordingly I do find the plaintiffs made a departure from their pleadings
15 as a result of grave inconsistencies or contradictions which have not been explained and accordingly reject their evidence in this respect.

On the other ahnd , I am inclined to believe the evidence of the defendants that the suitland was donated to the church way back in 1940's by the ancestors of the plaintiffs as per paragraph 2 (a), (b) and 2 (c) of the
20 counterclaim as corroborated by the evidence in chief of all the defendants witnesses to wit; DW1, DW2, DW3, DW4 and DW5 at paragraphs 2,3,4,5,6,7,8 and 14 of their respective evidence in chief admitted on court record.

Indeed, I would find that the 2nd defendant and all the other defendants' witnesses' consistent and corroborated each other's evidence in all
25 particulars specifically that the suit land was a donation. This is more so for DW2 and DW4 testified that they were indeed sons of late Ebongu Yowana, who was one of the original donors. These witnesses even in cross-examination, confirmed to court that their late father told them he
30 donated 4 acres of the suitland and that their father even showed them the boundaries with church that already had sisal planted as boundary marks.

5 DW3 testified in cross examination that the 1st plaintiff became an immediate neighbor to the church after Obirai James Peter sold his land to him (PW1) which is next to the church after the demarcation exercise.

During locus visitation the remains of Obirai's former house which was broken to allow the expansion of the 1st plaintiffs school, that is Star Light
10 Senior Secondary School was visible in the immediate neighbourhood of church land.

This testimony corroborates the evidence in Exhibit DEX5 as per paragraph 2(iii) and DEX 7(No.4 and No.5 at page 21) of the trial bundle.

It also corroborates PW1's testimony in cross-examination when he
15 testified that when he learnt that Obirai James and his wife Itumo Josephine were present and witnessed the demarcation and survey exercise of the church land that he simply ignored it and did not take any action against them.

Therefore, I would tend to question the fact that if part of PW1's land
20 formed part the suitland, then PW1 would have taken action against and or presented the said Obirai James and his wife Atumo as his witness to testify in his favour so as to prove his ownership of part of the suitland.

By PW1 not taking any action against the two (O2), in my view is an admission on his part that they did not wrong him in anyway by
25 participating in the demarcation and survey exercise.

This failure by PW1 to take any action against Obirai James and his wife Atumo gives further credence to the testimony and evidence of the defendants and their witnesses that Obirai James was the immediate neighbor to the church at the time of demarcation and survey before
30 passing over the ownership of the same to PW1.

5 The 2nd plaintiff Egaru Richard attended and witnessed the demarcation exercise as per DEX 5, signed as No.2 (ii) for Alelo Dinah at page 21 of the trial bundle, the said Alelo is indicated as a neighbour on the map at page 20 of the trial bundle.

10 Odongo Thomas, opted not to prosecute his case. The 3rd plaintiff on 23rd /9/2014 wrote an apology to the church after this suit was filed. (See DEX11 at page 44) his suit is dismissed with costs as he opted not to prosecute his claim after realizing he has no case because of the strong evidence against him above.

15 The 4th plaintiff confirmed in cross-examination that he had a case over the suitland before the LCIII court of Morungatuny with the church represented by the Chairperson Parish Council who is DW2 with the case decided against him and which he did not challenged to date by either appeal or by seeking for revision of the decision (DEX2). Accordingly, I would find and conclude that his instant suit is abuse of court process.

20 The 5th and 6th defendants are also clearly beneficiaries of the estate of Okello Donato. The said estate was divided to the beneficiaries on 24th /4/2014 as per DEX10. While the 5th defendant Anoku Alex, wrote his name and signed at page 35 (top) and on translated version is at page 40 (second from bottom), the 6th defendant signed as No.21 at page 41.

25 This division of the estate was after 4 years and 5 months from when the demarcation and survey of the church land took place. The family was represented during the demarcation with church by Okello Solex as per DEX5 No.2 and he was indicated on the map as immediate neighbor at page 20.

30 The 5th and 6th plaintiffs cannot retrospectively claim what had not been apportioned to them by 21st /9/2010.

5 **Section 101 (1) of the Evidence Act cap 6** provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

The case of *Sebuliba Vs Co- Operative Bank Ltd [1982] HCB 129*
10 considered the above sections and it held that the burden of proof in civil proceedings lies upon the person who alleges, therefore, to prove the allegation, the burden of proof was squarely on the plaintiff and the same was reaffirmed by Justice Henry I. Kawesa in the case of *Mitti Vs Ssewagude & 3 Ors (Civil Suit No.449 Of 2016) [2019] UGHCLD*
15 **52.**

The plaintiffs claim as per paragraph 6(b) and (c) of the plaint is that the church was granted the suitland in 1944 for religious, education and health activities but not to be converted into freehold ownership.

The plaintiffs have clearly departed from the position in paragraph 6(b)
20 and 6 (e) above in their evidence in chief admitted on court record as can be discerned from testimonies of PW1 at paragraphs 3 and 10, PW2 at paragraphs 2 and 4, PW3 at paragraph 4 and 5 and PW4 at 4 and 6.

In those paragraphs the plaintiffs are alleging trespass by the defendants not that the suitland was agrant that required their knowledge or consent
25 before it is converted by the defendants.

The plaintiffs should have lead evidence to prove that the suit land was grant restricted only for religious, education and health activities and not to be converted by the defendant or that the suitland was not gifted to the church.

5 The plaintiffs therefore failed to lead evidence to prove on their claim of ownership over the suitland based on the assertion in paragraphs 6(b) and 6(c) of the plaint.

The plaintiffs at paragraph 7 allege fraud particularized as 7(a)-7(e). The plaintiffs cannot allege fraud on the part of 2nd defendant after failing to
10 prove that the suit land was a grant and the interest in it did not change from the original donor to the church.

All the plaintiffs during cross examination told court that the land owned by the church is found in the fenced area which they stated they are not claiming. The plaintiffs also told court that the fenced area was given to
15 the church by their ancestor.

DW1 and all the defendant's witnesses testified that it is only a small area of the Health Centre which is fenced. Locus visit confirmed that it is only the Health Centre which is fenced.

The plaintiffs cannot allege the area they are claiming was a grant not to
20 be converted and therefore theirs, whereas at the same time they allege the fenced area was a gift their ancestors.

The plaintiffs, herein, are relying on a strange and unknown customary land ownership practices not provided for under the Land Act. If the Imorotok Clan of the Iteso tribe rely on such customary practices as cited
25 under paragraph 6(b), 6(c) and 6(d) of the plaintiffs pleading then the such practice would contravenes Article 2(1) and specifically 2(2) of the 1995 Constitution of the Republic of Uganda as Amended and I would certainly find the said custom repugnant and void abinitio in accordance with **Article 2(2) of the Constitution of the Republic of Uganda**
30 provides that;

5 **“If any other law or any custom is inconsistent with any of
the provision of this Constitution, the Constitution shall
prevail and that other law or custom shall to the extent of
the inconsistency be void”.**

10 Furthermore, in respect to the 1st plaintiff (PW1) ALeu Mark, it was
testified in cross-examination by DW1,DW2,DW3,DW4 and DW5 that it
was his uncle Opoi Yuventino who was the immediate neighbor to the
church who donated land and that it was Obirai James the son of Opoi
Yuventino who was the immediate neighbor to the suit land at the time of
15 boundary demarcation and that the said Obirai James was present during
the exercise as per Exhibit DEX5 paragraph 2 (iii).

It was further testified by them in cross-examination that during the
survey exercise Obirai James and the 1st plaintiff's wife Itumo Josephine
were present as per Exhibit DEX7, No.4 and No.5 dated 22/11/2010.

20 In cross examination PW1 testified that although he learnt that Obirai
James and Atumo Josephine his wife attended the exercises PW1 ignored
it and opted not to take any action against them.

25 This inaction on his part that the actions of Obirai James and Itumo did
not wrong him at all estopps him from turning around to lay a claim over
the same while excluding Obirai James and his wife Itumo Josephine in
his suit or without presenting them to court as his witnesses.

30 As for the 2nd plaintiff Egaru Richard, he opted not to prosecute his claim.
This said Egaru attended the demarcation exercise as per Exhibit DEX5
signed the attendance as No.27 at page 23 and No.2(ii) at page 21 of the
trial bundle thereby confirming that the suitland was the property of the
church and it was a gift/donation not a grant as alleged in paragraphs 6(b)

5 and 6(c) of the plaint. His claim cannot thus be sustained and as such it dismissed with costs.

For the 3rd plaintiff Odongo Thomas, he also opted not to prosecute his claim having apologized to the 2nd defendant as per DEX11at page 44 of the trial bundle thereby confirming that the suitland is property of the church and that it was a gift not a grant as alleged in paragraphs 6(b) and 10 6(c) of the plaint. Also his claim be dismissed with costs.

The 4th plaintiff in cross-examination confirmed having been dragged to LCIII of court of Morungatuny over the suitland by Okello James (DW2), the then Chairperson Parish Council. The 4th plaintiff who testified as 15 PW4 confirmed in cross-examination that he did not appeal nor revised the decision of Morungatuny LCIII court dated 25th /10/2010 marked as DEX2 pages 7-16 of the defendants trial bundle. The 4th plaintiff further confirmed in cross-examination that the said decision has remained unchallenged to date. Accordingly, his claim of the same land in this suit 20 is considered abuse of court process.

As for the 5th plaintiff, during cross examination, he admitted signing on the document dated 24th/4/2014 at page 40 when the estate of their grandfather Okello Donato was being divided.

Also during cross examination the 6th plaintiff confirmed that his elder 25 brother, the 5th plaintiff witnessed/was present when the estate was divided. He also confirmed he was present and signed as No.21 at page 41.

Accordingly, the 5th and 6th plaintiffs cannot thus turn round to claim that their piece of land was trespassed on during demarcation exercise of the 21st /9/2010 yet they had not yet been allocated shares from the estate of 30 late Okello Donato by the clan of Imoratok.

5 The 6th plaintiff Ekeu Joseph on the 27th /7/2015 as per Exhibit DEX 13 also wrote an apology to the church. The implication of this is that he agreed that the suit land is property of the church not a grant as alleged in paragraph 6(b) and 6(c).

Further, it should be noted 5th and 6th plaintiffs are brothers and according to Exhibit DEX 10 dated 24th /4/2014, the estate of their grandfather late Okello Donato from who they derive interest, had not been demarcated and divided to the beneficiaries who included 5th and 6th plaintiffs. It was Okello Selex who attended the demarcation exercise on behalf of the family of late Okello Donate.

15 Conclusively, the claims by the 5th and 6th plaintiffs would be dismissed as not proved with costs.

In view of the foregoing, the claims by the plaintiffs are seen as being unfounded but are actually the manifestations of greed and disrespect by the grandchildren of their ancestestors who had suitably donated land to the catholic mission church in perpetuity for church activities and development of the arera and were now turning around to attempt to grab the same under the pretext of the same being a grant as alleged in paragraphs 6(b) and 6(c) of the plaint and purportedly corroborated by the expunged resolution of Imoratok clan dated 19th /3/2014 as per Exhibit PEX9.

25 I find such acts shameful and which I cannot condoned at all. The ancestors of the plaintiifs clearly gave land to the church to own in 1944 unconditionally and none of the plaintiffs would have any further rights as none would persist customarily after the said donation was made and the done proceeded to utilize. The donated land from 1944 ceased to be part of any inheritance. Accordingly, I would find and conclude that the

5 plaintiffs are not the rightful owners of the suitland but the church. The
suit land thus remains that of the 3rd defendant.

d. Whether the survey and demarcation by the defendants of the suit
land was lawful?

10 Arising from my earlier findings that the suitland belongs to St Peters
Canisius, the survey and demarcation by the defendants would be ruled to
have been done lawfully since the neighbours were consulted. I would
thus find no need to discuss this issue further.

e. Whether the defendants' actions were fraudulent?

15 The plaintiffs averred in paragraph 7 of their amended plaint that the
actions of the 2nd defendant in the circumstances amounted to fraud and
that all the decisions made resulting from such actions are tainted by
fraud.

The details of fraud:

- 20 a) **Knowingly applying for a grant of freehold in favor of a
nonexistent entity, well aware of the same.**
- b) **Knowingly claiming to be the customary owners of the
land whereas not.**
- 25 c) **Knowingly omitting the immediate neighbors as owners
of the adjacent land, in the application for the grant, to
defeat their interests.**
- d) **Mobilizing non adjacent landowners to hold out as
being the owners of the adjacent land, to defeat the
interests of the adjacent landowners and the customary
land owners.**

5 e) **Misinforming some of the adjacent landowners as to the purpose and effect of the area land committee actions on the suit land.**

Black's Law Dictionary, 9th edition, page 731, defines "fraud" as a knowing misrepresentation of the truth or concealment of a material fact
10 to induce another to act to his or her detriment.

Over the years, the courts have defined "fraud" in several decisions with the case of *Elizabeth Nanteza Nabeta vs. Dr Anthony Konde HCCS No. 391 of 2010* defining fraud as the intentional perversion of the truth or false representation of a matter of fact by words, a conduct
15 aimed at deceiving another, concealment or to unfairly cheat another.

Likewise in *Fredrick Zaabwe vs Orient Bank & Others SCCA No. 4 of 2006* "fraud" was defined the intentional perversion of the truth by a person to induce another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false
20 representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or concealment of that which deceives, and it should deceive another so that he or she will act upon it to his or her legal injury.

Foremost, particulars of fraud have to be specifically pleaded, which the
25 plaintiff discharged in the amended plaint – paragraph 6.

The leading authority regarding the requirements when pleading fraud is the dicta of Lord Millet in *Three Rivers District Council vs Bank of England [2001] UKHL 16*, where he said:

30 ***'[184] It is well established that fraud or dishonesty [...] must be distinctly alleged and as distinctly proved; that it must be sufficiently particularised; and that it is not sufficiently particularised if the facts pleaded are consistent with innocence [...]. This means that a plaintiff***

5 *who alleges dishonesty must plead the facts, matters, and
circumstances relied on to show that the defendant was
dishonest and not merely negligent, and that facts,
matters, and circumstances which are consistent with
negligence do not do so.*

10 *[185] It is important to appreciate that there are two
principles at play. The first is a matter of pleading. The
function of pleadings is to give the party opposite
sufficient notice of the case which is being made against
him. If the pleader means 'dishonestly 'or' fraudulently',
15 it may not be enough to say 'wilfully 'or' recklessly'. Such
language is equivocal. [...]*

*[186] The second principle, which is quite distinct, is that
an allegation of fraud or dishonesty must be sufficiently
particularised, and that particulars of facts which are
20 consistent with honesty are not sufficient. This is only
partly a matter of pleading. It is also a matter of
substance. As I have said, the defendant is entitled to
know the case he has to meet. But since dishonesty is
usually a matter of inference from primary facts, this
25 involves knowing not only that he is alleged to have acted
dishonestly, but also the primary facts which will be
relied upon at trial to justify the inference. At trial, the
court will not normally allow proof of primary facts
which have not been pleaded, and will not do so in a case
30 of fraud."*

According to the decision above, which I find persuasive, it is not open to the court to infer dishonesty from facts which have not been pleaded or from facts which have been pleaded but are consistent with honesty. There

5 must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.'

In *Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992*, it was held that;

10 ***“fraud must be strictly proved, the burden being heavier than one on the balance of probabilities generally applied in civil matters.”*** It was further held that; ***“the party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such an act by***
15 ***somebody else and taken advantage of such act.”***

The tenets of fraud are the intentional perversion of the truth or false representation of a matter of fact by words, conduct aimed at deceiving another, concealment or to unfairly cheat another and it must be
20 attributable to the transferee.

Counsel for the plaintiff submitted that mark stones planted illegally on peoples' land is evidence of trespass with intent to fraudulently acquire the same.

Counsel for the plaintiff cited the case of *Tifu Lukwago vs Samwiri Mudde Kizza and Anor Civil Appeal No. 13 of 1996 SC* where it
25 was held that;

“A cause of action on fraud must be specifically pleaded particulars thereof provided, and the claim proved at a higher balance of probabilities.”

30 Counsel for the plaintiffs submitted that the plaintiffs led evidence to the effect that the 2nd defendant applied for a grant of a freehold title in the names of St Peters Canisius, a nonexistent entity which has never been

5 registered under the laws of Uganda. That in law, the same is to be represented by a Board of Trustees, but then the said Board of Trustees of St Peters Canisius had never been registered by the time of the application, not until January 2022.

10 Counsel submitted that the said application (PEX1) shows that it was made in the names of St Peters Canisius, Orungo and it was signed by Fr Joseph Ipurale Ocom on 2nd September 2010 yet he was and has never been part of the Board of Trustees and neither was he authorized to do so.

15 The plaintiffs counsel submitted that the 2nd defendant also claimed that St Peters Canisius, Orungo is the customary owner of the suit land whereas not (paragraph 2 of the counterclaim).

The suit land ownership ceased to be for those who donated them in 1944 and thus reverted to the donee and as such ownership changed with no residual customary holding left and as such no claim based on custom would no longer be entertained in a court of law as non existed.

20 Since I have already ruled that the suit land is not property of the plaintiffs but property of the 3rd defendant, then I do conclude that the actions of the defendants in dealing with the suit land the way they did is found to be not fraudulent.

f. What are the remedies available to the parties:

25 I have dismissed wholly the plaintiffs claim in regard to the suit land with costs as being legally untenable.

Section 27(2) of the Civil Procedure Act, Cap.71 provides for costs which are discretionary and to follow the event. In the case of *Banco Arabe Espanol Vs Bank Of Uganda, Supreme Court Civil*

5 ***Appeal No.8 of 1998***, it was held that it is a trite law costs should follow the event. That is a restatement of the position of the law.

Also the successful party is normally entitled to costs from court as was held in the case of ***Roko Construction Co.Ltd Vs Uganda Co-Op. Transport Union Supreme Court Civil Application No. 32 of***
10 ***1998***.

The plaintiff's suit has been dismissed against the defendants and judgment entered in their favour. The suit land has also been decreed to the defendants. Accordingly, the defendants, being the successful parties would invariably be entitled to costs of this suit.

15 6. Conclusion:

In the final result, I find that the plaintiffs, by bringing this suit , intended to use the judicial system so that they could grab land belonging to the 3rd defendant on a false and bogus claim that the suit land was customarily held and having been inherited. That claim has been found wanting and
20 has been dismissed with costs. A court of law cannot allow greedy persons to come up and alleged custom when none exists.

Furthermore, since the defendants filed a counterclaim, which they have proved to the satisfaction of this court, the counterclaim succeeds accordingly.

25 7. Orders:

a) This claim brought by the plaintiffs against the defendants has not been proved on a balance of probability. It is thus dismissed accordingly.

b) The counterclaim by the defendants is proved and judgment is
30 entered in favour of the defendants.

c) Arising from b) above, it is thus hereby declared that the suit land as shown from the demarcation in the map exhibit DEx.5 belongs to Soroti Catholic Diocese (St Peters Carnisius, Orungo).

10 d) A Permanent injunction is hereby issued restraining the plaintiffs/counter defendants and / or their authorized agents from interfering with the counterclaimants' /defendants' occupation, possession and enjoyment of the suit land.

e) No award of general damages is made to the counterclaimants' /defendants' as non is proved.

15 f) The the costs of the suit in the counterclaim is awarded to the counterclaimants' /defendants' as against the counter defendants/ plaintiffs.

I so order.



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

20

14th October 2022