

The Republic of Uganda
In The High Court of Uganda Holden at Soroti
Civil Suit No. 0034 of 2015

- 1. Aisu David Livingstone
 - 10 2. Ochela Yacobo
 - 3. Olaatum Peter James
 - 4. Kakwa Lawrence
 - 5. Emaat Simon
 - 6. Ogire Kupuliano
 - 15 7. Ogire Peter
 - 8. Inyalio Justine
 - 9. Okobet Vigilio
 - 10. Opolot Peter James
 - 11. Ikiring Katula
 - 20 12. Osingilio
- Plaintiffs

Versus

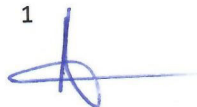
- 1. Kolir Sub County Local Government
 - 25 2. BOG of Kolir Comprehensive S.S
 - 3. Registrar of Titles
- Defendants

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

30 1. Background:

Aisu David Livingstone and eleven others, herein after referred to as the plaintiffs jointly and severally brought this suit against Kolir Sub county Local Government, the Board of Governors of Kolir Comprehensive S.S and the Registrar of Titles jointly and severally for recovery of the land comprised in Vol. HQ T8, Folio 1, Plot 231 and 232, 35 block 5, Kolir Bukedea in Bukedea district allegedly fraudulently acquired by the



5 defendants or for compensation for the same at the current market value, cancellation of the certificate of title acquired by the defendants, general damages for destruction of crops, mental torture and anguish and costs of the suit.

From this suit, the plaintiffs seek for the following orders;

- 10 a) A declaration that the plaintiffs are the rightful owners of the customary land comprised in Vol. HQ T8, Folio 1, Plot 231 and 232, block 5, Kolir Bukedea in Bukedea district,
- b) A declaration that the plaintiffs be paid compensation at current market value for the land comprised in block 5 Kolir Bukedea district, measuring approximately 21.421 hectares taken by the 1st and 2nd defendants for development without compensating the plaintiffs as required by the law.
- 15 c) A declaration that the plaintiffs are entitled to damages as a result of the defendants' actions,
- d) A declaration that the plaintiffs are entitled to interest per annum at 25% from the date of cause of action till payment in full,
- 20 e) A declaration that the acquisition of the plaintiffs' land without compensation is violation of their rights to property and livelihood,
- f) An order for cancellation/impeachment of the defendant's title on the plaintiffs' land,
- g) A declaration that the plaintiffs are entitled to costs.

25 2. The Plaintiffs' case:

The plaintiffs claim is that in or around 1920 the ancestor of the Ikatekok, Inyagai and Imukurio clans, one Omoding established a home in the vacant Kolir bush land and started utilizing the same as a residence and for farming. He died and was buried on the suit land. The descendants of Omoding who were subsequently born remained in active and continuous occupation of the same utilizing it for residential and farming purposes as well as burial site without any disturbance.

30

The plaintiffs contend that in 1969 there was a government attempt to acquire the customary land from its occupants for establishment of a cattle ranch but it received heavy resistance and the idea was abandoned.

35 The plaintiffs aver that in 2010, the defendants and the LCIII Chairman privately attempted to survey the land and plant mark stones but they faced resistance from the customary owners.

The plaintiffs state that in 2014, the defendants together with the LCIII Chairman started harassing the lawful occupants /customary owners with eviction notices and destroying their crops and trespassing on the suit land without compensating them for the same. And only then did they avail the fraudulently acquired certificate of title procured in 2013 claiming to own the said land.

40

5 The plaintiffs aver that the said certificate was acquired with notice of the plaintiffs' unregistered interest and without their involvement in survey process hence this suit for declarations and cancellation of Certificate of Title of the defendants.

3. The Defendants' case:

10 The 1st and 2nd defendants contend that the suit land is property of the 1st defendant since time immemorial and that the plaintiffs' claims are totally false and disputed. The 1st and 2nd defendants contend that they have never participated in any fraudulent acts.

15 The 1st and 2nd defendants contend that the suit land which is located in Kolir sub county was donated to government by Ikwabwai Okelebwa among others and thereafter government established structures thereon and as such the plaintiffs' case has no basis and should be dismissed with costs.

4. Representation:

20 In this suit, M/s Omongole & Co., Advocates represented the plaintiffs while the Attorney General's Chambers – Soroti Regional Office represented the 1st and 2nd defendants.

4. Legal background:

25 This is a civil suit and so the burden of proof lies with the plaintiff as is provide for by **Section 101 (1) of the Evidence Act (Cap. 6)** which provides that whoever so desires any court to give judgment as to any legal right or liability dependent on the existence of certain facts which he or she asserts must prove that those facts exist.

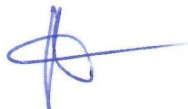
This position of the law was confirmed in the case of ***Nsubuga vs. Kavuma [1978] HCB 307*** where it was held that in civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities.

30 The standard of proof in civil cases is on a balance of probabilities. The standard of proof is the level of certainty and the degree of evidence necessary to establish proof in a criminal or civil proceeding. The standard of proof to convict is proof beyond a reasonable doubt.

The preponderance of the evidence is the least demanding standard of proof and is used for most civil actions and some criminal defenses (as insanity).

35 Clear and convincing proof is a more demanding standard of proof and is used in certain civil actions (as a civil fraud suit).

Proof beyond a reasonable doubt is the most demanding standard and the one that must be met for a criminal conviction to result.



5 5. Issues:

During scheduling, the following issues were agreed upon;

- a. Who is the rightful owner of the suit land?
- b. Whether the defendant fraudulently acquired title to the said land and if so, whether the same should be cancelled or impeached.
- 10 c. Whether the defendant compulsorily acquired the land without compensating the plaintiffs.
- d. Whether the plaintiffs' rights were violated in purported acquisition.
- e. What remedies are available?

15 6. Evidence:

a. The plaintiff evidence:

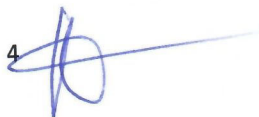
20 PW1, Aisu David Livingstone testified that he owns about 20 gardens of the suit land which approximates to 152.421 hectares and had been in possession of that piece since 1977. That in 2014 by the LC3 team and others entered upon his part of the suit land and cut trees adjacent to his house by force which left him with no option but to institute a criminal case of criminal trespass and malicious damage but that during the follow-up of this action he was informed by the police that there were titles to the land he was claiming. That arising from the said information he got shocked as to how the land he was in had been registered without his knowledge, consent or even his participation in its survey.

25 That as far as he knew, all the plaintiffs had a sentimental and emotional attachment to the suit land since part of it is a burial ground for their deceased relatives.

30 During cross-examination he told court that he grew up in Kumi District and moved to Kolir in 1977 as a teacher on transfer from Ongino Primary School and this is when he entered the suit land. He told court that he belonged to Ikatekok clan which is found partly in Kumi, Mukura, Ngora and Kolir. That it was his ancestor called Omoding who allocated the suit land to him through his relative called Imodot.

35 That amongst the plaintiffs he shared clan relationship of Ikatekok with only Inyalio while the rest of the plaintiffs belonged to different clans. He accepted that the suit land was initially a bush but was surrounded by several clans including his own and that he was given a portion of that bush land in 1977.

40 He also told court that not all the plaintiffs could have settled on the suit land before due to the insurgency. He confirmed not knowing when the suit land was surveyed or indeed that it had been surveyed by one Isiagi in 1969 but was aware from the information circulating around that at that particular time a proposed cattle ranching scheme was being hatched but was opposed and rejected by the late Ilemukan Ponsiano and others because of the fact that the suit land was too narrow and so

4 

5 according to him nothing took place with Isiagi's project failing and even he did not get a title to the land in question.

That by 1969 he was a headmaster somewhere else and so he did not expect to be consulted about the suit land but as for the titling in 2014 he expected to be consulted before any title could be issued.

10 That though he had been on his land since 1977, he left the suit land in 2002 for Ongino leaving his first wife there and it is currently his son who was on the suit land. That when the sub-county came to cut down trees on the suit land claiming it was theirs it did not write to them eviction notices to them but merely orally informed them that they were to be evicted.

15 PW2 Ochela Yakobo testified that he owns 30 acres out of suit land which he inherited from his late father Opule Paulo who died in 1969 and was buried on the suit land together with over 20 other people. That his family moved on the suit land in 1947 to start a home and they embarked on clearing it as it was a bush. That he was informed by Aisu David Livingstone (PW1) that the land they reside and cultivate on was titled
20 in the names of the defendants. He informed court that the land could not be for the defendants without them ever being in possession and utilizing the same and so he was shocked when he was informed that the land had been registered without their knowledge, consent or even participation yet he had been in its possession for over 70 years without any interference.

25 During cross-examination he and Olaatum (the 3rd plaintiff) his younger brother were from the Ikomoro clan and that his father entered Kolir in 1945 from Kakere Bukedea as the land in Kolir was a forest which had few people and was vacant that all the people were neighbours to the suit land which was in the same village and were utilising it as theirs by 1970 people. He did not know that Isiagi had surveyed the suit land in 1969.

30 He told court that all the people on the suit land did not come to the suit land during the insurgency in the 1980s and 1990s but that he found some of them there including Omoding and Imodot Eriakimu when he finally settled on it in 1969 and that they had never been chased from the land.

35 PW3 Inyaliu Justine testified that he owned about 30 acres of the suit land which he inherited from his father Imodot Eriakimu who is buried on the suit land. That he was born on the suit land and has been living on it without interference from anyone. That in 2008 the LC3 Kolir sub county at that time Mr. Okerenyang Tomson moved around the suit land with his team but they did not know their intentions but that later in 2014 the whole team came back and cut trees from PW1's home with PW1 being informed
40 that the suit land was titled in the names of the defendants which shocked him because it had been done without his knowledge, consent or participation. That previously, his grandfather offered land to the 1st respondent and that is where they are situated and that land is not part of the suit land.

45 During cross-examination he told court that according to his knowledge the suit land was surveyed in 2013 and that he was not aware of any survey done in 1969. That his

5 father was born in Bukedea Kolir and he had land neighbouring the suit land. That the
sub-county was using part of the suit land while he was also using part of it but that
after the survey, he was left only with a small portion of land where he was currently
staying. He insisted that the land he was claiming belonged to Itekok-Inyangai clan
10 other clans including the Ichagoro, Ikomoro, Ichinilia, Itekokok Isengorai and others
were also occupying the suit land and he could show the clan boundaries. That he knew
of one Isiagi but was not aware that he had had the suit land surveyed in 1969.

During re-examination he stated that the land his grandfather gave to Kolir sub-county
is where it was currently situated which was not part of the suit land.

15 PW4 Ocai Stephen Peter, PW1's son testified that he is in occupation of his father's 20
gardens which is on the suit land. He told court that he has lived on the land for over
40 years without interference. That his elder brother and children are buried on the
suit land. During cross-examination he stated that his father went to the land in 1977,
20 he did not buy it as its clan land. That PW1 first resided at the school in 1977 but later
he got the land from the clan. His father owns land elsewhere in Kolir but it is not near
the suit land. He told court that he was not aware that the suit land had been surveyed
in 1969.

PW5 Akol Peter testified that the 11th plaintiff (Ikiring Katula) owns 30 gardens of the
suit land which she inherited from her late brother Tadeo Tole who is his father. That
25 his late father Tadeo Tole together with Amukade, Akia Edisa, Akello Teresa, Blasio
Aogon, Iromait, among others were even buried on the suit land.

That the 2nd defendant trespassed on their land and was shocked when he was
informed that their land had been registered without their knowledge, consent or
participation yet he was born on the suit land yet had lived on it for over 40 years
30 without any interference.

During cross-examination he told that 11th plaintiff (Ikiring Katula) was at home as she
had a hearing impairment.

This witness also told court that his family was from the Ikareboit clan with the 11th
35 plaintiff, Ikiring Katula, being the only elder member of this clan remaining and she
was occupying 10 gardens out of 30 gardens as the school took 20. He denied
knowledge of Isiagi or that he surveyed the land in 1969.

DW1 Okello Okwii John Justine testified that he was the LCIII chairperson Kolir sub
county and that when he went into office he found the issue of the suit land already in
court but he came to know about the land from the records in office. That he learnt
40 from the records that the land was surveyed by Mr. Isiagi in the 1969 with a view of
establishing a modern cattle ranch and that later Kolir sub county council reclaimed
the land from Isiagi in 2000 and compensated him Shs. 615,000/= which he had spent
on surveying the land. That subsequently Kolir Sub County processed a certificate of
title FRV QQT 8 Folio plot 231 and 232 Block 5 Kolir.

5 That in the 1980s due to the insurgency he sought refuge on the suit land with other persons and after the insecurity subsided they left the land but neither the plaintiffs nor their families or clansmen were in occupation of the disputed land.

10 During cross-examination he stated that he has records of the survey including a survey report. He told court that it was not true that Isiagi fully owned the suit land. He does not have document through which the sub county approached Isiagi to reclaim the suit land. With regard to the compensation made to Isiagi after reading DEX3 he stated that he thought it was the 1st and last payment and there is no other document.

15 When asked about leasing of the land to Kolir Sub county by Isiagi he stated he is not aware if the lease is there. He stated that the title was got in 2013 because before there was no clear planning and it was still under Kumi but when Kolir came under Bukedea district then they decided to get land titles. He stated Aisu, his son, Ocela Yakobo, Olaatum Peter James, Kakwa Lawrence, Inyalio Justine, Okobet Vigilio and Ikiring Katula are the only plaintiffs on the suit land, the rest are not. He continues to state
20 that some entered the land before the insurgency from early 1980s and others during the insurgency as most were neighbouring the disputed land but by the time the title was obtained the plaintiffs were on the land.

25 That Kolir sub county acquired the suit land from the elders including Mzee Olelebwa, Eskia, Malinga, Ikwakol and Omoit Danieli Okocho and that this land is very huge and he cannot estimate how many gardens or acres it is. That there are graves of the plaintiff's relatives on the suit land but he is not aware of any grave older than the 1980s insurgency.

30 That in 1980s, the plaintiffs were not on the suit land but were neighbours. He stated that Kolir Sub county cannot have all the 151 hectares of land as indicated on the title. DW2 Isiagi Silvanus testified that in the 1960s while serving as a member of parliament he developed an idea to establish a modern cattle ranch in Kolir Sub county and he therefore approached Kolir sub county officials and political leadership for permission to apply for land of the sub county at Kolir. That Kolir Sub county officials and political leadership had no objection and so applied to the Uganda Land
35 Commission for a lease over the land and a survey of the same was done in November 1969 under I/S 8712. The survey totalled to over 131 hectares and it was virgin land without any person either living on it or cultivating it, none of the plaintiffs nor their families were on the land at that time and no body raised an objection to his surveying of the land. He, however, did not go on with the project or process a title because of
40 the overthrow of the then government by the military in 1971.

That in the 1990s Kolir Sub county council approached him to surrender the survey papers and he agreed to do so in order for them to process a land title of the same but asked them to reimburse his expenses he had incurred in doing the survey and this was Shs 615,000/= which was paid to him in 2000.

5 That in a meeting called by the sub-county officials which PW1 also attended, he agreed to handover the land in Kolir which he had surveyed in 1969 and he further informed PW1, Aisu who had trespassed on the land to organise and leave the land whereupon he agreed to do so.

10 He further stated that he knows that in the 1980s due to the insurgency and cattle rustling by the Karamojong, people in neighbouring villages like Kamuturu, Kagoloto and Komongomeri sought refuge on the suit land for security but most left after the security situation improved.

15 That Aisu David Livingstone (PW1) is personally known to him and his home and social life are based in Apasak Ongino Kumi and while he was processing for land in Kolir Aisu was aware and raised no objection.

20 During cross-examination he stated that all the papers he used in applying for the land were destroyed during the insurgency. That from 1971 he had no further interest in the land and he could not follow up the papers and so for that reason he also had no copy of the lease as he did not get it. He signed a refund document for expenses incurred in the survey which the officials took away and when shown DEX3 which shows the refund he stated that what is indicated in the particulars is different from survey expenses and Kolir sub county should have his letters in their custody. That he transferred his user rights to the sub county but unfortunately, he did not have any handover document in respect of the land as they were destroyed during the 25 insurgency. He also could not recall the year of the handover but estimated that it could be in the 1990s. He does not know the particular period the people came on the land but he added that Aisu was previously on the land in the 1960s. He later states that Aisu came to the land after the survey in 1969 but as his friend, in-law and fellow teacher Aisu knew his actions even for the survey of the land.

30 DW3 Opolot George William testified that Kolir sub county was established in 1927 by influential men and the land on which the sub county headquarters including the disputed land was donated to the government by Ikwabwai Okelebwa of Iwoo clan. That in the 1960s when Isiagi wanted to establish a cattle ranch on the suit land the plaintiffs were not on it as the land was originally a forest occupied by hyenas.

35 That the plaintiffs came on the suit land during the insurgency but they were allowed to continue staying there by the sub county council since they agreed to develop the same and they took advantage of this to claim the land as theirs.

40 That none of the plaintiffs or their relatives protested the survey by Isiagi. That Aisu came to be on the suit land when the pigs he started to rear in Kolir Primary School caused a jigger outbreak resulting into a resolution by the school management that he removes them and he then moved his pigs to the suit land after clearing part of the forest.

45 That during the insurgency Aisu utilised the opportunity to move wholly on the suit land. That even Opule Paul and his family who included Ochela Yakobo and Olaatum Peter were invited in Kolir from Bukedea, Kakere by Ibulaimu who had land

5 neighbouring the suit land and after his death the land was taken over by Opule and his children but that these children took advantage of the insurgency to encroach on the suit land.

10 That Kakwa Lawrence's father was given land neighbouring the suit land by Ekimat and he also took advantage of the insurgency to encroach on the suit land with Ekimat also inviting the sons of his sister, that is, Ogire Kupiliono and Ogire Peter from Kamatur to come and stay with him and after Ekimat's death they took advantage of being neighbours to the suit land and encroached on it. That Esikanasi owned land neighbouring the suit land and he invited Eriakimu Imodot his clan brother to stay with him and when he passed on Esikanasi was buried in Kumi in his ancestral home. 15 Eriakimu and his son took over the land later encroached on the suit land. Okobet Vigilio, Iking Katula, Opolot Peter James and Osingilio came to the suit land due to the insurgency for refuge but have refused to leave.

20 During cross-examination he stated that he was born on 28/01/1928 and was present when the land was donated in 1929, around 1930s, he was a boy of about four or five years. He was around when the survey was done together with other people who gave Isiagi authority to survey the land and it was done during the time of Obote 1.

25 That the land went up to Kachumbala and there is an 'olwa' tree, then the map continued up to the road leading to Bukedea. That Aisu, Ochola, Olaatum and others were present when the survey was done and they never complained. That it was a reverend, Ekimat, Ibrahim Lole and an Acholi lady who complained against the survey. The plaintiffs were told to leave by the sub county authorities but they refused to do so.

30 During locus it was observed that all the plaintiffs had homesteads on the suit land. The sub-county showed court that their land is from Sironko-Bulambuli road to the cactus tree in Ogire's land but no mark stones were seen on Ogire's land. The survey line as shown by the sub county passes in front of Ogire's home but through that of his brother Ocom, part of Opule's garden is affected by the survey.

7. Submissions:

35 Counsel for the plaintiffs' M/s Omongole & Co. Advocates submitted that the evidence of all the five witnesses as to the land they own and how they got it was never challenged at all during the hearing and from the visit of locus in quo to the suit land, it was very visible and clear that the plaintiffs are in possession of the suit land. Counsel submitted that the plaintiffs had led evidence to the effect that they had lived on the suit land for over 40-90 years unchallenged. That it is evident that the 40 defendants interfered with the plaintiff's possession, quiet enjoyment and ownership when they obtained a title styled as plot 231 in 2013 and cut down trees on the plaintiffs' property in 2014 which were taken to Kolir Comprehensive secondary school. This was all intended to defeat the plaintiffs' customary unregistered interest in the suit land.

5 Counsel submitted on the land tenures as provided under **Article 273 (3) of the Constitution and sections 2 and 3(1) of the Land Act** with customary ownership as the area of focus.

Counsel additionally relied on *Marko Matovu & 2 others versus Mohammed Sseviri & Another Civil Appeal No 7/1978* as cited in the case of *Betty Nalugwa Versus Soroti Municipal Council Civil Suit No. 16/2010*, where
10 the Court of Appeal held that;

15 ***“Customary tenure can be established by the cultivation of seasonal crops or grazing cattle and related construction of wells to water cattle, and submitted that the decision supported the Respondents’ claim of customary ownership.”***

20 ***“There is no definition of customary tenure because it is so well understood by the people. Where a person has a kibanja, it is generally accepted that he thereby established customary tenure on public land. But not all people live on kibanja. In many areas people grow seasonal crops on the land they occupy and in other places some use the land for grazing cattle only. Yet all these people also enjoy customary rights over land they use.”***

25 Counsel submitted that it is evident that the suit land is customary land belonging to the plaintiffs who acquired it customarily and the defendants never objected to the ownership of Land by the plaintiffs who have lived on it for over 40-90 years. During locus in quo, the plaintiffs clearly showed boundaries of their land and it was seen that the plaintiffs are neighbours and in possession of the land. The plaintiffs showed graves of their relatives and were cultivating seasonal crops on the suit land. The court also saw that the defendant was not in possession of the suit land.

30 Counsel further submitted that is evident that the plaintiffs are *bonafide* occupants and adverse possessors owning land customarily which the defendant intended to defeat their interest. Counsel relied on Section 29 (2) (a) of the Land Act.

35 Counsel then prayed that in the premises this Honourable Court declares the plaintiffs the rightful owners of the suit land having lived on it for over 40-90 years, cultivating on it, established burial grounds and livelihoods unchallenged and as customary owners.

40 Counsel submitted that the plaintiff has adduced overwhelming unchallenged evidence to prove that the fraud that was committed in the registration of the suit property into the defendant’s names is attributable to the defendants both directly and by necessary implication. Counsel relied on the evidence of PW1 and PW4 especially how they discovered the existence of the title.

Counsel listed the following points to consider in finding the defendants fraudulent;

- 5
- During cross examination of DW1 Okello Okwii John Justine when asked to confirm that the certificate of title styled as Block (Road) 5, plot 231 and 232 at Kolir was obtained when the plaintiffs were in occupation of the suit land, he confirmed by saying yes.
 - Furthermore, that during cross examination, DW2 Isiagi confirmed that he saw Aisu David Livingstone on the suit land in 1960s. When asked if he had any public notices of the survey, he said he did not have them.
 - DW2 also presented Exh.DE1 which was an instruction to survey stating that please demarcate and survey above land at Kolir for Hon. Isiagi M.P subject to land being free from tenants. The said document is dated 4th November 1969. In the 1960s all land was public land and all persons intending to own land applied for leases by virtue of the 1969 Public Lands Act, 1969. DW2 being a Member of Parliament ought to have known that he could not own land at the time and or transfer any interest.
 - The defendants also produced EXH DE3 as a payment document as proof of refund of survey fees by DW2 Isiagi of the suit land. Interestingly the description of the said document read that
- 10
- 15
- 20

25

“being payment of the last instalment on the expenses incurred by the above named person upon the land he is leasing to Kolir Council...” That it should be noted that the said document read last instalment and yet the defendants failed to adduce any proof of the first instalment and yet DW2 insisted that he was only paid 615,000/= as refund for surveying.

- Furthermore, the said document EXH DE3 read

30

“...expenses incurred by the above named person upon the land he is leasing to Kolir Council...”

and not surveying as DW2 portrayed it to be.

35

That there was no way DW2 could lease land to Kolir Council without a lease agreement and be that as it may, in the 1960s, all land was public and DW2 could not own land individually without a lease from government and had no authority or locus to lease it unless the same was done fraudulently. DW2 in fact during cross examination admitted that he did not lease land to Kolir sub county.

- The title marked Exh.DE4 presented by the defendants as evidence of ownership was issued on 5th August 2013 and yet the defendants' case is that the suit land was already surveyed in 1969 by Isiagi DW2. The question then arises why a title was only obtained in 2013 and yet land was surveyed in 1969 and the immediate pointers only lead to fraud.
 - While the defendants insisted that the land was surveyed in 1960s, they did not provide any survey documents, public notices of survey, attendance lists of the
- 40

5 survey and any minutes of the survey meeting. All these show that the defendants intended to conceal evidence that could show the process of acquiring the certificate of title and the court should impute fraud.

- 10 • DW3 Opolot George William who appeared to insist that he was present during the survey around 1929 completely contradicted DW2'S evidence who led evidence that the suit land was surveyed in 1969 by him. Be that as it may DW3 according to his evidence on cross examination was born in 1928 and could not have witnessed the survey in 1929 when he was only one-year-old except if it he was told. DW3 in his statement under paragraph 2 says Kolir sub county was established in 1927 and yet he was born in 1928 since he was 93 years old as at 15 2021 when he made his witness statement. This was laughable and only intended to mislead court and the court should impute fraud on the defendants.
- 20 • The defendants' case was weakened, challenged and the fraud was exposed by the defendants' witnesses who admitted that the plaintiffs had graves on the suit land and by the time the defendants got registered on the suit land, the plaintiffs were in actual possession and are still in possession of the suit land clearly acknowledging notice of the plaintiffs' interest but going ahead clandestinely to procure registration to defeat the unregistered interests of the plaintiffs.
- 25 • All the defendants' witnesses admitted that the plaintiffs have been on the suit land for over 40 years. DW1, said the 1st plaintiff came on the suit land in 1960s while the DW2 admitted that the plaintiffs came on the suit land in the 1980s. All in all, it was fraudulent to acquire title of the plaintiffs' land without notice to them and with notice of their interest when they are in occupation of the same.

30 Counsel relied on ***Fredrick Zaabwe Vs Orient Bank Limited & Others Civil Appeal No. 04/2006, Kampala Bottlers Ltd vs Damanico (U) Ltd [1994 – 95] HCB 49, Volo Michael versus Drate Francis Kenyi Civil Appeal No. 18/2017 and Regulation 26 (1) of The Land Regulations 2004*** to support their submissions.

35 Counsel then prayed that court finds that the defendants never followed proper processes as required by law and cancels the defendants' title.

Counsel additionally submitted relying on ***Kampala District Land Board & Chemical Distributors Vs National Housing and Construction Corporation SCCA No. 2 of 2004***, where the Supreme Court held that;

40 ***“The indefeasibility of title on ground of fraud has been considered in a number of decisions in our Courts. In Kampala Bottles Ltd vs Damanico (U) Ltd Civil Appeal No. 22 of 1992, this Court approved the definition of fraud by the trial judge as follows:***

5

"It is well established that fraud means actual fraud or some act of dishonesty. In Waimiha Saw Milling Co. Ltd vs Laine Timber Co. Ltd (1926) AC 101 at p.106, Lord Buchmaster said, Now fraud implies some act of dishonesty.' Lord Lindley in Assets Co. vs Mere Roihi (1950) AC 176 states, Fraud in these actions (i.e. actions seeking to effect (sic) a registered titles) means actual fraud, dishonesty of some sort or what is called constructive fraud an unfortunate expression and one very apt to mislead, but often used for want of a better term, to denote transactions in equity similar to those which flow from fraud."

10

15

It is now well settled that to procure registration of title in order to defeat an unregistered interest amounts to fraud. In Marko Matovu & Others vs Mohammed Sseviri and Another. Civil Appeal No. 7 of 1978 (CA), Sijaaka Nalima vs Rebecca Musoke. Civil Appeal No. 12 of 1985 (SC) and Uganda Posts and Telecommunications vs Lutaaya Civil Appeal No.36 of 1995 (SC) this Court approved the holding of the High Court in Katarikawe vs Katwiremu (Supra) where it was stated:

20

It is the plaintiffs' submission that the defendants forcefully entered the plaintiffs' land, cut down their trees and illegally acquired a title to the land where the plaintiffs live and derive their source of livelihood without compensating them thereby completely depriving the plaintiffs of their land as they are unable to enjoy quiet possession of their land since there are mark-stones passing through their land. That the 1st and 2nd defendants connived to compulsorily acquire the plaintiffs' land where they established a school, being the 2nd defendant. It is the plaintiffs' submission that the said evidence was not challenged and further that the acts of the defendants in forcefully entering the applicants' land amounted to compulsory acquisition without any compensation and was not backed by any law and justification whatsoever.

25

30

Counsel prayed that this Honourable court finds that the actions of the defendants' amount to compulsory acquisition for which they should be held liable.

35

Counsel submitted that the acts of the defendants resulted into the violation of the plaintiffs' right to property enshrined under Article 26 of the Constitution, right to fair hearing and violation of the right to life and livelihood enshrined under Article 22 of the Constitution.

40

It is the plaintiff's submission that court finds the plaintiff's rights were violated in the purported acquisition by the defendants.

45

Counsel prayed that fraudulently acquired Certificate of Title be cancelled since its existence on the white page is an illegality which this Honourable Court cannot sanction. Counsel relied on **Makula International Vs His Eminence cardinal Nsubuga & Anor (1982) HCB 11**, Section 77 of the Registration of Title Act and Section 177 of the Registration of Titles Act.

5 Counsel for the defendants Attorney General's Chambers in reply submitted that during cross examination, the 1st plaintiff testified that he came to Kolir in 1970's as a teacher. That his original home is in Kumi in a place called Ongino. That he further stated during cross examination that when he came to the suit land in 1970's, the suit land was a bush and there were no people on the suit land.

10 That the evidence on record especially PW1 clearly shows that the plaintiffs' claims that they were on the suit land before 1970's was false. The suit land was vacant before the 1st Plaintiff occupied for purposes or rearing his pigs.

15 That most of the plaintiffs alleged during cross examination that their relatives gave them land on the suit land. That it is important to note that all the plaintiffs are not of the same clan. That some of the plaintiffs clearly stated during cross examination that they do not have clan mates neighboring the suit land which is strange.

20 Counsel additionally submitted that the plaintiffs claim that the suit land is clan land yet none of them tendered in exhibit any letter from their clan giving them authority to sue on behalf of the clan for recovery of the clan land. That the claim by the plaintiffs that the suit land is clan land is fabricated as no clan leader came to court to testify that the suit land was for a particular clan.

25 That in his defence DW3 testified that the land in dispute belongs to the 1st defendant having got the same from Ikabwai Olelebwa and that people took refuge on the land in dispute during insurgency. Dw3 in cross examination he testified that the land being claimed by the plaintiff was a forest with hyenas and was government land.

30 Counsel submitted that DW2 demonstrated to this Court that he was given the land in dispute in 1960 and went ahead and surveyed it as evidenced by **DEX1** and **DEX 2(B)**. Defence further exhibited **DEX3**, which is a payment for the expenses incurred in the survey. These documents were not disputed or disproved by the plaintiff and it is cogent evidence that proves that the 1st defendant is the rightful owner of the land in dispute. Further, DW3 stated from paragraph 11 to 21 how the plaintiff came to the Kolir Sub County and how they got into the suit land it was never challenged by the plaintiffs during cross-examination and the same should be admitted as true.

35 Counsel additionally submitted that the plaintiffs testified that they have ancestors buried on the land in dispute and yet during the locus visit, none of the plaintiffs showed court the graves of their relatives; the only graves on the land were of recently buried children of some of the Plaintiffs and this makes it more probable than not that the evidence of the defendants is true.

40 Counsel submitted that the plaintiffs' allegation that they are bonafide occupants is not true as this only applies to registered land and this suit land was registered in 2013, though, the process of bringing it under the operation of RTA began in 1969.

Counsel agreed with authorities cited by the plaintiffs but did not agree that there was any fraud involved in the obtaining of the Certificates of Title to the disputed land. That DW2 testified that he surveyed the land in dispute in 1969 and he exhibited DEX2

5 as of 2015 when this suit was being brought to this Honourable Court, the land was
already surveyed and the 1st defendant had a certificate of title in respect to the suit
land. Counsel submitted that the other issues of ignoring the plaintiff's customary
ownership does not amount to fraud but simply an issue of trespass and they prayed
10 that this Honourable Court disregards the same as it will be dealt with in the 1st and
3rd Issues.

Counsel further submitted that for fraud to defeat a title, the same has to be
attributable to the transferee, as was held by the Supreme Court in the case of
15 ***Kampala Bottlers Limited Vs Damanico (U) Limited [1994-95] HCB 49*** but
there is no fraud attributable to the 1st defendant in the instant case as the obtaining
of the Certificates of Title started way before the plaintiff started claiming ownership
of the suit land and by the time he started claiming for the same, the process was in
the final stages and he did not serve the Registrar of Titles with the interim injunction.
Thus 1st defendant cannot be held liable for actions of another office.

20 With regard to the allegation of compulsory acquisition counsel submitted that the 1st
defendant pleaded that the land in dispute was a donation from different persons.

Furthermore, the titling of the suit land started in 1969 and therefore the laws
indicated by the plaintiffs in the submissions are not applicable to the suit land. That
the 1st defendant being the owner of the disputed land cannot be held to have
compulsorily acquired the suit land without compensation since the suit land was for
25 the 1st defendant.

Counsel finally prayed that this court finds in favor of the 1st Defendant and dismisses
this suit with costs to the Defendants and the plaintiffs cannot claim for damages and
compensation when they are on the suit land.

In rejoinder, counsel for the plaintiffs reiterated their earlier submissions.

30 8. Resolution:

a. Issue 1:

Who is the rightfully owner of the suit land?

There are two conflicting land rights in this suit. These are customary land tenure
rights and registered land tenure rights.

35 The dispute herein is between a claim anchored on customary ownership by the
plaintiffs' *vis a vis* a claim of being a legally registered owner of the suit land by the 1st
defendant.

For starters, it should be noted that land as one of the factors of production is vital for
the survival of human beings. We live on it, live from it and maybe even live for it.

40 This fact of life explains the confusion that many have over the meaning of land, what
it means to own the land, the laws governing the use of land and how to resolve the
disputes arising out of the land.

5 Like any other country on the globe, land is a vital resource in Uganda and there are so many laws and mechanisms put in place to protect land and people's land rights.

However even with the many laws and mechanisms in place, many people still find it hard to enforce their land rights. In the endless land disputes which sometimes result in mass displacements of people, mostly of the poor by the rich.

10 Disputes often arise over who owns land in a formal legal sense. Many conflicts over land ownership usually arise in a family context, where inheritance rights may be disputed. But another which is a particularly common problem which has grown multifold over the years is the so called "**land grab**", typically where those who have owned or lived on the land are dispossessed without their free, prior and informed consent and in violation of basic human rights. Such land grabs may be perpetrated by
15 someone from outside the area who claims to have bought the land or to have been granted a concession to use it.

This problem has been exacerbated by the scarcity of land globally and the potential financial rewards for those able to exploit land for industrial scale agriculture or
20 extractive industries rather than for traditional subsistence farming or pasture. This trend is well summarized in the 2011 Tirana Declaration.

In Uganda there are different types of land rights, and various ways in which land rights can be acquired or extinguished. The starting point are the four systems provided for by the Constitution of Uganda and the laws made under it like the 1998
25 Land Act.

Under the Ugandan law the following tenure (holding) of land are recognised:

- Customary tenure, according to the traditions of a particular community
- Leasehold tenure, comprising a time-limited right to use land owned by another
- Freehold tenure, conferring absolute ownership rights on the title-holder
- 30 - Mailo tenure, a right to use and build on another's land in perpetuity

These land tenures can overlap. In other words, any given piece of land may be subject to rights deriving from more than one of the above tenure systems.

It is also worth bearing in mind that while Ugandan land law is the main source of rights over land, in some circumstances one may find that inheritance laws, as well as
35 the human or constitutional rights of citizens or groups, could also be relevant. The rights to land are generally acquired through;

- Purchase.
- inheritance, gift, or marriage.
- occupation or usage over a period.
- 40 - grant from the government.

If you have rights under one of the four forms of Ugandan land tenure, then you may be entitled to make use of your land in a number of different ways like living on the land, farming and growing food on the land, grazing and having pasture on the land,

5 growing wood or fuel crops on the land, providing water and fishing. Land use
concerns not only what you do on the surface of land, but may also include what is
under the ground (minerals, oil, etc.) and to the air space above. The rights of land use
may also include rights over water on the land (such as a river that through it). The
rights to collect water are often vital for communities, yet, their right to water may be
10 affected by preventing or limiting their access to the land or by land use which pollutes
the water source.

Some land is not formally "used" for anything but either remains in its natural state or
is specifically designated as a park, reserve, forest, or other protected area. This may
look like "**empty**" or "**unoccupied**" land, but using it might become a source of
15 confusion and dispute.

The rights of traditional communities in respect of such land are often very important.
For example, the land may be regarded as "**belonging**" to a community under
customary or international law but as available for granting concessions to other
parties under national law.

20 Common causes of disputes over land include activities such as:

- Deforestation and logging.
- Ranching.
- Mining and other extractive industries.
- Dam construction.
- 25 - Growing fuel crops, palm oil, soya, or other crops on an industrial scale.
- Building settlements for others or constructing roads to facilitate any of the
above activities.
- Transformation of mixed local land use system to monoculture

See: https://uganda.action4justice.org/legal_areas/land-rights-introduction/

30 In the instant case, the plaintiffs' claim over the suit land is that based on customary
land ownership. According to Wikipedia Online Dictionary land which is customarily
owned is one owned by indigenous communities and is administered in accordance
with their customs, as opposed to statutory tenure usually introduced during the
colonial periods. Common ownership is one form of customary land ownership. Since
35 the late 20th century, statutory recognition and protection of indigenous and
community land rights continues to be a major challenge. It should be noted that the
gap between formally recognized and customarily held and managed land is a
significant source of underdevelopment, conflict, and environmental degradation. In
a property owning democracy customary landowners have unchallenged rights to
40 ownership of their land and its development. However, the pursuit of national
economic growth can only be achieved with a pluralistic approach that contains a
mixture of private and common property rights. Customary land tenure systems in
themselves have connotations of individual, communal and public or common
property rights. Any form of development should be for the benefit of people as a
45 whole. Instances where many are disadvantaged from development must be avoided.

5 Customary land ownership principles do not necessarily conflict with state ownership
of land. Only when a genuine and developmental state owns land will there be a
facilitation of societal development. This is not the case in in this instant case and this
is the fundamental but unresolved issue that is largely to be blamed for the dispute
10 herein. Customary land tenure is the prevalent means of land ownership in Uganda,
where land is typically held by families and communities rather than by individuals.

Customary land ownership simply means that someone (or a group of people) owns or
has rights to land because their community accepts that they own or have rights to it.

15 Most of the customary land in Uganda is privately owned either by individuals,
families or by clans and is usually utilized for farming, grazing or hunting. People on
customary land do not usually have or own land titles. Although it is usually
characterized by non-registration of interests, lack of registration does not invalidate
a customary tenure. However, a Certificate of Customary Ownership (CCO) can be
issued and a freehold title obtained if the land is converted to freehold tenure.

20 The rights to control, use and ownership of customary land are derived from being a
member of a clan, family, tribe or a given community. Membership is retained by
fulfilling certain obligations in accordance to the clan, family tribe or community one
is affiliated to.

In Uganda today, two general customary systems can be distinguished: -

- 25 - The communal land system where land is owned by the community where user
rights are guaranteed for farming and seasonal grazing, access to water,
pasture, burial grounds, firewood gathering, and other community activities.
No specific ownership rights of control are conferred on users. Control and
ownership are through the family, clan, or community. The system is
predominant in Northern Uganda.
- 30 - Under individual/family or clan customary tenure where the family and clan
rather than the whole community has control over land. In this system, land is
normally allocated to the male children apart from a few cases where the girls/
women also benefit.

The features of customary tenure system include:

- 35 • Land is owned and disposed of in accordance with customs, norms and
practices of a specific community.
- It is applicable to a specific area of land and a specific class of people.
- 40 • It is governed by rules and practices generally accepted as binding and
authoritative by the class/group of people to which it applies BUT such rules
and practices must not be discriminatory against women, children and persons
with disability.
- It provides for communal ownership and use of land.

- 5
- Parcels of land may be recognized as subdivisions - sub divisions belonging to a person, family or traditional institution.
 - Land is owned in perpetuity.
 - Customary land may be converted to Freehold Tenure by registration.
 - Community leaders regulate internal management & transfers of land
 - 10 • Restrictions on dealing with outsiders
 - Common property resources (forests, pastures, etc.)

See: <https://justicecentres.go.ug/glossary/customary-land-tenure/>

15 The defendants herein claim ownership of the suit land through registered land rights. The land which is registered is one where there is an official record called a certificate of title. The register is proof of the seller's title and records a description of the property, the nature of the estate held by the seller and many third parties' rights over the land. Land registration provides a country-backed guarantee securing the title to the property. This means that should you be deprived of the title to your property owing to an error or omission in the register, or because the register needs to be

20 corrected, you will normally be compensated. Land registration helps protect land from fraudsters and prevents third party applications for adverse possession ("squatter's rights") over one's land and property. It also safeguards against the title deeds being lost, damaged or destroyed. Registration makes it easier to buy and sell a property as all the property title information necessary for conveyancing will be held

25 centrally by the Land Registry. This means it is easier to check who owns property and what benefits and burdens are attached to the land. If the land isn't registered, the conveyancer has to obtain the deeds from the client or mortgage lender and examine them, all of which costs time and money.

30 In this instant case, from the evidence adduced, all the plaintiffs' claim the suit land on the basis of customary land ownership. They state that the suit land belongs to their various clans. Their witnesses too, testify to this fact and advance the line that the suit land was occupied and surrounded by different clans.

35 This is seen from the testimony of PW1, PW4 and PW3 state that part of the suit land belongs to the Ikatekok clan. PW2 and Olaatum Peter (The 3rd plaintiff) state that part of the suit land belongs to the Ikomoro clan. PW5 and 11th plaintiff state that part of the suit land belongs to the Ikareboit clan.

40 Inheritance and the period spent on land in law is usually taken as proof enough of a customary claim. The plaintiffs state that they had inherited the suit land from their relatives and ancestors and that they had been on the suit land uninterrupted for between 40 to 90 years hence they rightly own the suit land. These facts are not satisfactorily proved in my view for there is no concrete evidence to this effect as to either stay or clan endorsement.

45 On the other hand, the defendants state that the plaintiffs came to the suit land during the insurgency in the 1980s' and 1990's and were temporarily accommodated on the suit land which belong to Kolir sub county (1st defendant) which had been donated the

5 same way back by various donors in the early 20th century but refused to leave when the insurgencies ceased.

Silvanus Isiagi (DW2), however, told court that Aisu David Livingstone (plaintiff 1) came to the land in the 1960s. Opolot George William (DW3) told court that some plaintiffs came to the suit land during insurgencies but did not give the years when they did so.

10 DW2 and DW3 thus contradicted each other on when the plaintiffs entered the suit land. This is more so in relation to the alleged time of the survey. While DW3 told court that the plaintiffs entered the suit land during the times of insurgency and that during the survey none of the plaintiffs raised any objections yet DW2 confirmed that Aisu David Livingstone entered the suit land in the 1960s.

DW1 told court during cross-examination that some of the plaintiffs entered the suit land in the 1980s before the insurgency.

These statements by the defendants' testimony solidify the claim by the plaintiffs that they have been on the land for many a year.

20 The defendants themselves do not dispute the plaintiffs' presence on the suit land for very long periods of time which fact further proves that the plaintiffs indeed have a customary claim to the suit land.

The basis of the defendants' claims to the suit land is the certificate of title to the suit land in their names which they believe overrides the plaintiffs' ownership and possession. The titling of the land is an issue whose process both seems to have no proper agreement on.

25 The genesis of Kolir sub county (the first defendant) coming onto the suit land as testified by Opolot George William (DW3), is that the land which it has its headquarters situated. This is land was clearly donated to it in the 1920's and 1930s. It belongs to Kolir sub county.

30 However, in late 1960's Isiagi Silvanus (DW2) who was then the area member of parliament is stated to have approached Kolir sub county leadership seeking permission establish a cattle ranch project on land which allegedly belonged to Kolir sub county which evidence show actually as being adjacent to Kolir sub county headquarters. That land was bush land and not part of the land forming the area where Kolir sub county headquarters was located as per evidence received in court and at locus.

35 When Isiagi Silvanus sought to establish a cattle ranch on the bush land, he was allegedly granted permission to do so leading him to apply for a lease over the suit land to the Uganda Land Commission.

40 In proof of this purpose exhibit D. Ex1 which is an instruction for survey dated 4th November 1969 was tendered in court.

5 The said exhibit D. Ex1 indicates that land situated at Kolir comprised of the 160 hectares was to be surveyed for Isiagi Silvanus was subject to and being free of tenants and was undisputed. A cadastral map of the suit land marked D. Exh2 was also tendered in exhibit.

10 These two documents are the only documentations in as far as the survey of the suit land is concerned. Isiagi never got a lease over the suit land and neither a land title or any other further documents was issued to him. He also failed to tender any other further document claiming that all his other documents relating to his application for the land and its survey were destroyed during the insurgencies which swept the area in the 1980s and 1990s.

15 Okello Okwii John Justine (DW1), an official of Kolir sub county told court that stated as the LCIII chairperson Kolir sub county he only learnt of the suit land belonging to Kolir sub county from the records he found in his office such as the survey report. He, however, miserably failed to exhibit any such document in court.

20 Opolot George William (DW3), who also testified of having been an official of the said sub county claimed that the plaintiffs did not contest the survey of the suit land in 1960s yet he went ahead to name the neighbours who did actually contested the same.

25 From the unclear and unproven testimonies of the defence witnesses, I am of the firm belief that while it could be true that some process of survey of the suit land was initiated so as to turn the bush land into a cattle ranch , the fact of the ownership of the suit land is not established from this survey since it is not clear whether the said land was unoccupied or not and if the latter was true did the person who wanted to have the land follow the correct procedure as provided for in the law as was at that time including consulting neighbours, users of the land etc.?

30 As things stands such information is very scanty and even there is no evidence of any public notice to the community and neighbours of the suit land about the survey as was required by the Public Lands Act of 1969. That a legally conducted survey was carried out, in my view, remains unconvincing.

35 The next hole in this carefully woven story is again the testimony of Isiagi Silvanus (DW2), who after telling court that he did in fact execute the survey of the suit land in 1969, goes on to claim that in the 1970s he lost interest in further pursuing the issue of the land due to the military takeover of government in 1971 as he had to go into hiding and so completely abandoned his pet project. He did not even proceed to process the lease over the suit land.

40 Therefore, form the evidence, it is not clearly possible to state with certainty that by the 1970s there was a lease over the suit land, purportedly as a public land nor was the ownership that of the land by the sub county.

Even if this was indeed public land, the next move by Isiagi Silvanus (DW2) which is seen from his claim) in 2000 in which he wanted a refund of Shs 615,000/= allegedly

5 incurred as expenses in 1969 for the survey of the suit land defeats the claim by the sub county that the suit land was its.

This is because that document exhibited as DEX3 as proof of refund of payment for survey to Silvanus Isiagi dated 14.11.2000 tells us another story altogether. In its description of payment, it states as follows;

10 ***“Being payment of the last instalment on the expenses incurred by the above named person (Mzee Isiagi) upon the land he is leasing to Kolir Council for development purposes as per attached.”***
(Emphasis added)

15 The reading of this document shows two things. One is that this was a last instalment payment. Two, that Isiagi was **LEASING** his land to Kolir sub county.

The question that then comes into mind is if Isiagi was leasing the land to Kolir sub county, whose land was it? Isiagi's or that of the sub county?

20 The answer to that question is as good as mine. However, What I note is that apparently from after that payment to Isiagi, Kolir sub county then proceeded to process a land title in its names in 2013 which it claims was the only opportunity it had in doing so for earlier there was no clear planning for the area and since Kolir sub county was still under Kumi District but that when it became part of Bukedea district then they decided to get land titles.

25 DEX3, proves one thing in my view. That before 1969, apparently the suit land was a community land with no apparent owner. Isiagi Silvanus goes on to try claim its ownership with Kolir sub county recognising this fact through its own document and so proceeded to lease the same from him.

30 These sequence of action clearly contradicts what Counsel for the defendants submitted in court that the process of obtaining the title issued to Kolir sub county started in 1969 with the laws submitted on by the counsel for the plaintiffs then not applicable to the land as in 1969 when Isiagi surveyed the suit land, the law governing land was the **Public Lands Act 1969** which vested all public land in Uganda in the Uganda Land Commission.

35 Unfortunately, this law does not help the defendant's case either for under **Section 24 (1) of that Act**, it is provided that it was lawful for persons holding by customary tenure to occupy land without grant, lease or licence from the controlling authority any unalienated public land vested in the commission if the land is not in an urban area and no tenancy or other right of occupancy has been created in respect of it.

40 From the reading of section 24 as stated above, if indeed the suit land was public land in a rural area, even if Isiagi Silvanus wanted to have a lease over it, the law then required that he would have to apply for the same to the Uganda Land Commission and if he a lease was to be given to him, he still had the duty to seek first tenants or the community and neighbours of the land and those on the land including people like Aisu David Livingstone who is admitted by some of the defendants' witnesses as

5 having been on the suit land prior to that survey. However, no evidence was adduced that his consent or the consent of any other persons, the community or neighbours was sought and received for the survey to take place.

Isiagi Silvanus himself testified in court to this fact and even goes on to state that after the 1971 military coup he lost interest in the land and that the process did not follow the required legal process.

Given the fact that Isiagi Silvanus did not acquire a lease over the suit land, then the conclusion is that he did not acquire any interest in the land under the 1969 Public Lands Act or even under the Land Reform Decree of 1975.

Accordingly, I would find that DW2 did not acquire any interest in the suit land he no title to it and could not pass on any interest to Kolir sub county.

Kolir sub county allegedly '**reclaimed**' its land from Isiagi Silvanus in 2000. However, by that time the 1995 Constitution and Land Act of 1998 were already in force and had established clear four land tenure regimes and it vested all land acquired by the government in accordance with the Constitution then vested in the Uganda Land Commission.

The said constitution further established District Land Boards whose primary role is to hold and allocate land in the districts which is not owned by any person or authority but through an established process including notice to those who are on such land, and after providing prompt and adequate prior compensation to such persons among other requirements.

In my view by 1969 when Isiagi Silvanus attempted to acquire the land with his losing interests in it by 1971 he lost interest, the land no ownership prior to the survey by the sub county was established as the alleged donation to the Kolir sub county by one Okelebwa of Oloo clan was contested by the plaintiffs.

This fact, while partly corroborated by PW3's who told court that his father donated land where Kolir Sub county (1st defendant's) headquarters is, told court that is not part of the suit land. This is fact which is not disputed by the defendants.

I will now turn to consider the various situation of each of the plaintiff who are said to be bonafide occupants. Under the law a *bonafide occupant* means a person who before the coming into force of the 1995 Constitution had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or had been settled on the particular land by the Government or an agent of the Government, which may include a local authority.

A bonafide occupant does not have a title to land that he/she is occupying and no one has challenged his occupation. S/he must have occupied and utilized the land for twelve years or more before the coming into force of the 1995 Constitution. The registered owner of the land or his/her agent did not challenge or ask the landholder to leave the land during this period.

5 A bonafide occupant;

- Enjoys security of occupancy;
- Has priority to buy the land if the registered owner wants to sell the land;
- May acquire a certificate of occupancy by applying to the registered owner;
- May assign, pledge and creates 3rd party rights in the land with the consent of the registered owner; and
- May change occupancy into freehold, mailo, lease or sublease upon purchase.

10
15 The law only protects lawful and bonafide occupants on registered land. A squatter is not protected by the law. However, a squatter may have exclusive ownership of the land he or she has settled on if the person remains on that land and exclusively uses it without any interruption from the owner of the land for a period of 12 years and more.

To qualify to be a bona fide occupant, one must have settled and utilized the land unchallenged by the registered owner for twelve years or more before the coming into force of the 1995 Constitution. Thus, he/she must have settled and used the land before 8th October 1983.

20 In the instant case the plaintiffs are not registered proprietors of the land in question; rather, each have sought to establish a superior interest in the disputed land as having inherited the said land as customary heir of relatives while the defendants claim to be the registered proprietors of the suit land.

The uncontroverted evidence on record clearly depicts these varying positons.

25 In this respect, if this court is to believe the testimony of various defence witnesses that the plaintiffs were settled on the suit land during insurgency, then this would mean that it was the local authority of Kolir that did so making me to conclude that in view of the later ambit of the law, they become legally *bona fide* occupants.

30 On the other hand, the defendants could turn around to state that they were reclaiming the land from Isiagi Silvanus who lost and even never got any interests in it in the first place as he stopped sort of doing that by 1971.

35 Given the fact that **Section 29 (2) of the Land Act** defines a bonafide occupant of land to include a person who, before the coming into force of the Constitution, had occupied and utilised or developed any land unchallenged by the registered owner or agent thereof for a period of twelve years or more, from the evidence on record, undoubtedly the plaintiffs have occupied, developed and utilised their pieces of the suit land continuously and unchallenged variously since the 1960's and 1970's.

40 The only challenge to their occupation thereof came from the defendants well after 1995 when the Constitution came into force when in 2013 the defendants purportedly acquired a title onto the suit land.

As bonafide occupants the plaintiffs cannot be considered a trespasser on own land as was alleged by the defendants. Nonetheless, the plaintiffs' alleged trespass onto the defendants' land can only be established as a question of fact that must also be

5 satisfactorily established for the law on trespass to land was aptly stated in the case of *Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company Civil Appeal No. 11 of 2002 (SC)* as follows:

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

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

20 I have thus failed to find any evidence of trespass in the instant case as it is clear to me that the plaintiffs, ***(if the statement of the defendants are to be believed that they were merely settled on the suit land temporarily during insurgency,)*** became bonafide occupants on the suit land and thus are in lawful possession of each one's piece of land with the defendants not anymore being in a position to claim that they are trespassers as they never got onto the suit land
25 unlawfully.

And because they did lawfully enter the suit land, they have built, tilled and planted crops thereon uneased before the defendants got title to the suit land. This fact is well established by the locus in quo visit by court which found that each of the parties herein had established places where each was well established. They thus came into
30 possession of their individual pieces of the suit land by virtue of adverse possession.

The term "**adverse possession**" refers to a legal principle that grants title to someone who resides on or is in possession of another person's land. The property's title is granted to the possessor as long as certain conditions are met including whether they infringe on the rights of the actual owner and whether they are in continuous
35 possession of the property. Adverse possession which is sometimes called squatter's rights, although squatter's rights also known as homesteading, in law may also be applied to other properties such as intellectual or digital/virtual property.

The key takeaways in relations to adverse possession is that this is the legal process whereby a non-owner occupant of a piece of land gains title and ownership of that land
40 after a certain period of time. The claimant, or disseisor, must demonstrate that several criteria have been met before the court will allow their claim. The requirements may include continuous use, a takeover of the land, and exclusive use.

As mentioned above, adverse possession is a legal situation that occurs when one party is granted title to another person's property by taking possession of it. This can happen
45 intentionally or unintentionally with or without the property owner's knowledge.

5 In cases of intentional adverse possession, a trespasser or squatter—someone who occupies another person's land illegally—knowingly comes on to another person's land to live on it and/or take it over. In other cases, adverse possession may be unintentional. For example, a homeowner may build a fence separating their yard without realizing they have crossed over and encroached on their neighbour's property
10 line.

In either case, the adverse possessor—also referred to as the disseisor—can lay claim to that property. And if the claimant is successful in proving adverse possession, they are not required to pay the owner for the land.

15 To successfully claim land under adverse possession, the claimant must demonstrate that his or her occupation of the land meets the following requirements:

- Continuous use: Under this condition, the adverse possessor must show they've been in continuous and uninterrupted possession of the property in question.
- Hostile and adverse occupation of the property: Although this doesn't mean that the disseisor uses force to take the land, they must show there is no existing agreement or license from the landowner such as a written easement, lease, or
20 rent agreement.
- Open and notorious possession: The person seeking adverse possession must occupy a property in a manner that is open, notorious, and obvious. The true owner is not required, however, to be aware of the occupation.
- Actual possession: The possessor must actively possess the property for the
25 state's predetermined statutory period, which may vary from three to 30 years. Possession may involve maintaining the land and—depending on state law—paying taxes.
- Exclusive use: The property is used solely by the disseisor, excluding any others
30 from using it as well.

Using the above legal undertone, I would conclude that in the instant case while evidence of inheritance and customary right to the suit land is scanty, it is evident that by the time the sub county acquired the land title, various persons including the plaintiffs were already settled on the pieces of the land they currently occupy.

35 I am satisfied, therefore, that the plaintiffs have adverse possession of the pieces of the land they occupy and qualifies as bonafide occupants of the pieces of land as per the provision of the Uganda Constitution as Amended and the Land Act of 1988. I so hold.

b. Issue 2:

40 *Whether the defendant fraudulently acquired title to the said land and if so, whether the same should be cancelled or impeached.*

Counsel listed the following points to consider in finding the defendants fraudulent;

During cross examination of DW1 Okello Okwii John Justine when asked to confirm that the certificate of title styled as Block (Road) 5, plot 231 and 232 at Kolir was

5 obtained when the plaintiffs were in occupation of the suit land, he confirmed by saying yes.

Furthermore, that during cross examination, DW2 Isiagi confirmed that he saw Aisu David Livingstone on the suit land in 1960s. When asked if he had any public notices of the survey, he said he did not have them.

10 DW2 also presented Exh.DE1 which was an instruction to survey stating that please demarcate and survey above land at Kolir for Hon. Isiagi M.P subject to land being free from tenants. The said document is dated 4th November 1969. In the 1960s all land was public land and all persons intending to own land applied for leases by virtue of the 1969 Public Lands Act, 1969. DW2 being a Member of Parliament ought to have
15 known that he could not own land at the time and or transfer any interest.

The defendants also produced EXH DE3 as a payment document as proof of refund of survey fees by DW2 Isiagi of the suit land. Interestingly the description of the said document read that

20 ***“being payment of the last instalment on the expenses incurred by the above named person upon the land he is leasing to Kolir Council...”***

That it should be noted that the said document read last instalment and yet the defendants failed to adduce any proof of the first instalment and yet DW2 insisted that he was only paid 615,000/= as refund for surveying.

25 Furthermore, the said document DEx.3 read

“...expenses incurred by the above named person upon the land he is leasing to Kolir Council...”

30 and not surveying as DW2 portrayed it to be. That there was no way DW2 could lease land to Kolir Council without a lease agreement and be that as it may, in the 1960s, all land was public and DW2 could not own land individually without a lease from government and had no authority or locus to lease it unless the same was done fraudulently. DW2 in fact during cross examination admitted that he did not lease land to Kolir sub county.

35 The title marked Exh.DE4 presented by the defendants as evidence of ownership was issued on 5th August 2013 and yet the defendants' case is that the suit land was already surveyed in 1969 by Isiagi DW2. The question then arises why a title was only obtained in 2013 and yet land was surveyed in 1969 and the immediate pointers only lead to fraud.

40 While the defendants insisted that the land was surveyed in 1960s, they did not provide any survey documents, public notices of survey, attendance lists of the survey and any minutes of the survey meeting. All these show that the defendants intended to conceal evidence that could show the process of acquiring the certificate of title and the court should impute fraud.

5 DW3 Opolot George William who appeared to insist that he was present during the
survey around 1929 completely contradicted DW2'S evidence who led evidence that
the suit land was surveyed in 1969 by him. Be that as it may DW3 according to his
evidence on cross examination was born in 1928 and could not have witnessed the
10 survey in 1929 when he was only one-year-old except if it he was told. DW3 in his
statement under paragraph 2 says Kolir sub county was established in 1927 and yet he
was born in 1928 since he was 93 years old as at 2021 when he made his witness
statement. This was laughable and only intended to mislead court and the court should
impute fraud on the defendants.

15 The defendants' case was weakened, challenged and the fraud was exposed by the
defendants' witnesses who admitted that the plaintiffs had graves on the suit land and
by the time the defendants got registered on the suit land, the plaintiffs were in actual
possession and are still in possession of the suit land clearly acknowledging notice of
the plaintiffs' interest but going ahead clandestinely to procure registration to defeat
the unregistered interests of the plaintiffs.

20 All the defendants' witnesses admitted that the plaintiffs have been on the suit land
for over 40 years. DW1, said the 1st plaintiff came on the suit land in 1960s while the
DW2 admitted that the plaintiffs came on the suit land in the 1980s. All in all, it was
fraudulent to acquire title of the plaintiffs' land without notice to them and with notice
of their interest when they are in occupation of the same.

25 Counsel relied on ***Fredrick Zaabwe Vs Orient Bank Limited & Others Civil
Appeal No. 04/2006, Kampala Bottlers Ltd vs Damanico (U) Ltd [1994 –
95] HCB 49, Volo Michael versus Drate Francis Kenyi Civil Appeal No.
18/2017*** and **Regulation 26 (1) of The Land Regulations 2004** to support their
submissions.

30 Counsel then prayed that court finds that the defendants never followed proper
processes as required by law and cancels the defendants' title.

Counsel additionally submitted relying on ***Kampala District Land Board &
Chemical Distributors Vs National Housing and Construction
Corporation SCCA No. 2 of 2004***, where the Supreme Court held that;

35 ***"The indefeasibility of title on ground of fraud has been considered
in a number of decisions in our Courts. In Kampala Bottles Ltd vs
Damanico (U) Ltd Civil Appeal No. 22 of 1992, this Court approved
the definition of fraud by the trial judge as follows:***

40 ***"It is well established that fraud means actual fraud or some act of
dishonesty. In Waimiha Saw Milling Co. Ltd vs Laine Timber Co.
Ltd (1926) AC 101 at p.106, Lord Buchmaster said, now fraud
implies some act of dishonesty.' Lord Lindley in Assets Co. Vs Mere
Roihi (1950) AC 176 states, Fraud in these actions (i.e. actions
seeking to effect (sic) a registered titles) means actual fraud,
45 dishonesty of some sort or what is called constructive fraud an***

5 ***unfortunate expression and one very apt to mislead, but often used for want of a better term, to denote transactions in equity similar to those which flow from fraud."***

It is now well settled that to procure registration of title in order to defeat an unregistered interest amounts to fraud. In ***Marko Matovu & Others vs Mohammed Sseviru and Another. Civil Appeal No. 7 of 1978 (CA)***, ***Sijaaka Nalima vs Rebecca Musoke Civil Appeal No. 12 of 1985 (SC)*** and ***Uganda Posts and Telecommunications vs Lutaaya Civil Appeal No.36 of 1995 (SC)*** this Court approved the holding of the High Court in ***Katarikawe vs Katwiremu (Supra)*** where it was stated:

15 Particulars of fraud as pleaded by the plaintiffs are;

- a) Unlawfully acquiring a Certificate of Title with knowledge of the plaintiffs' interest.
- b) Secretly surveying and registering on the plaintiffs' land
- c) Ignoring the plaintiffs' rights and interests with notice of the same
- 20 d) Unlawfully demarcating and developing the land
- e) Unlawfully registering the defendants on the certificate of title

All the plaintiffs;' witnesses denied knowledge of a survey in 1969, even though DW3 claimed that Aisu David was present and did not complain, this testimony cannot be trusted as it is contrary to his previous statements that Aisu came to the land during the insurgency. This testimony is also contrary to DW2, Isiagi who carried out the survey as he stated that no one was on the land at the time of the survey and Aisu came to the land after the land was surveyed and Aisu himself testified that he came to the land in 1977 which was way after the survey was done.

Later in his testimony DW2 again stated that Aisu came to the land in the 1960s before the survey. The plaintiffs believe the land was surveyed in 2013 the same year when the title was got by the sub county, which title they discovered in 2014 when trees were cut around Aisu's home.

The testimony of DW1 was that he came to learn about the land from the records at his office and these records indicate that the land was surveyed by Silvanus Isiagi in 1969 and that Kolir Sub-county reclaimed the same in 2000 but processed and secured the impugned title in 2013 because there was no clear planning for the suit land since Kolir sub county was still under Kumi District but by the time the title was got the plaintiffs were on the suit land.

It should be noted that the 1st and 2nd defendants failed to adduce evidence that the people of Kolir who were on the suit land were informed of the survey prior, no documentation on the meetings held by the sub-county where also tendered when it was resolved that Kolir sub county reclaims the suit land.

5 The only person who was knowledgeable about any documentation prior to the titling of the suit land was Stanislaus Isiagi (DW2) who, unfortunately was not helpful in this respect as he told court that all the relevant documents which were used for the survey of the suit land including a survey report were lost the insurgency which ravaged the area.

10 Kolir sub-county was equally not helpful in that respect as it produced two only two documents which are the certificate of title and the payment allegedly of the survey fees to Stanislaus Isiagi (DW2), the whose details of which was at variance with the title since it was stating the Kolir sub county was leasing the suit land from Isiagi and not refunding his survey costs.

15 **Part 2 of the Land Act of 1998** provides that subject to **Article 237 of the Constitution**, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems—

- (a) customary;
- (b) freehold;
- 20 (c) mailo; and
- (d) leasehold

Under section 3 of the said Act incidences of incidences of forms of tenure are garnered from the following;

(1) Customary tenure is a form of tenure—

- 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 accordance with those rules;
- (d) subject to section 27, characterised by local customary regulation;
- 30 (e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;
- (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
- 35 (h) which is owned in perpetuity.

(5) Leasehold tenure is a form of tenure—

- (a) created either by contract or by operation of law;

5 (b) the terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between the parties;

(c) under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee,

10 exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending;

(d) usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for goods or services or both or may be free of any required return;

15 (e) under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of a freehold owner as are appropriate and possible given the specific nature of a leasehold tenure.

20 **Section 42 of the Land Act** provides for acquisition of land by the Government with government including a local government only in accordance with **Articles 26 and 237(2) of the Constitution**.

25 **Articles 26 and 237(2) of the Constitution** provides that every person has a right to own property either individually or in association with others. Further that no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied—the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and the compulsory taking of possession or acquisition of property is made under a law which makes provision for—

- 30 (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
(ii) (ii) a right of access to a court of law by any person who has an interest or right over the property.

Articles 237(2):

35 **(2) Notwithstanding clause (1) of this article—The Government or a local government may, subject to article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament;**

40 **Land Acquisition Act Chapter 226** provides for how government may acquire land. Where the government is interested in any such land, an elaborate process follows as provided for in sections 4, 5 and 6 of the Act suffice to state that a person authorized by the Minister ascertains if the land is suitable for a public purpose and if it is found to be suitable, then the Minister may by statutory instrument make a declaration to that effect that the land is required by the government for public

5 purpose and thereafter serves a copy of the declaration to the owner or the individual. This declaration serves as a communication to the owner that the government intends to compulsorily acquire his land.

10 In this case, there seems to have not been any such process followed for according to the plaintiffs Kolir sub-county had the suit land titled without their knowledge even though they were evidently residing on the suit land at the time it was got and had interests in it.

15 The condescending statement by the defendants that because a survey had done in 1969 and as such that was sufficient even when it was brought in evidence that even those who were present at that time had opposed it cannot be used as against the plaintiffs because all the witnesses denied knowledge of this and the defendants failed to prove otherwise.

That act of processing a title while the plaintiffs were on the suit without informing them or with their consent was argued by counsel for the plaintiffs as amounting to fraud.

20 Fraud to denote actual fraud or some act of dishonesty as was pointed out in *Kampala Bottlers Ltd versus Domanico (U) Ltd SCCA No.22 of 1992, Waimiha Saw Milling Co. Ltd versus Waione Timber Co. Ltd (1926) AC 101, Assets Co. versus Mere Roihi (1905) AC 176 and David Sejjaka versus Rebecca Musoke CA No. 12 of 1985.*

25 I agree with Counsel for the Plaintiff that fraud denotes any act of dishonesty. This definition has also been noted in the case of *Zaabwe Fredrick versus Orient Bank & Others SCCA No. 4 of 2006.*

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

35 In order to succeed on an action based on fraud, a plaintiff must attribute the fraud to the transferee that is by showing that the defendant is guilty of some dishonest act or must have known of such act by somebody else and taken advantage of such act.

See: Supreme Court decision of *Kampala Bottlers Ltd vs Domanico (U) Ltd SCCA No.22 of 1992*

40 The Plaintiffs herein have shown they were on the suit land before the tile was issued to the 1st defendant. That fact is not controverted. It has also demonstrated that the 1st Defendant became registered on the same land without the knowledge of the plaintiffs. This fact is corroborated by the locus visit by this court where a number of households, graves and so on were seen by court as being well established on the suit land for many years.

5 Furthermore, there no evidence was adduced to show that the plaintiffs were made aware of the survey and all the remaining processes which led to the tilting of the suit land with this fact indeed proved by the plaintiffs discovering that actually a title existed over the land they were in 2014 long after it had been issued.

10 According to Section 77 of the Registration of Titles Act Cap 230, title acquired through fraud is *void ab initio* as against all parties privy to the fraud.

See also: ***David Sejjaka Nalima versus Rebecca Musoke SCCA 12/85 reported in [1992] V KALR 132***

15 Considering all the evidence, I am convinced that the Defendants fraudulently acquired the title in the suit land. Fraud was thus shown through this action of the defendants. I have already found that the Defendant's registration was done fraudulently.

Section 64(1) Registration of Titles Act (RTA) provides that a registered proprietor can only hold such land subject to such incumbrances as are notified on the folium of the Register Book constituted by the certificate of title.

20 Further **Section 64 (2) RTA** provides that land which is included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, covenants, conditions and powers, if any, contained in the grant of that land, and to any rights subsisting under any adverse possession of the land, etc.

25 On the other hand, **Section 77 RTA** provides that a certificate of title is void for fraud for under the Torrens System of land registration, the security of title is based on the four principles of; (i) indefeasibility (cannot be impeached),

(ii) registration (title is by registration),

(iii) the curtain principle (abolition of notice or exhaustive inquiry), and;

(iv) assurance (compensation upon detrimental reliance).

30 **See: *Adrabo v Madira (Civil Suit 24 of 2013) [2017] UGHCLD 102***

35 Accordingly following the finding of this court that the process through which the title to the suit land was acquired, I would conclude and find that the defendants failed to prove that the process of acquiring the title into the suit land began before the plaintiffs came to the land and so the subsequent acquisition of the title during the existence of the plaintiffs on the suit land without their notice would amount to fraud. I so find.

c. Issue 3:

Whether the defendant compulsorily acquired the land without compensating the plaintiffs.

40 Compulsory acquisition of land as submitted by counsel for the plaintiffs is provided for under **Article 26(2) of the Constitution** and the **Land Acquisition Act**. These laws provide for compulsory acquisition and compensation by the government,

5 the process as provided by the law starts from consultation and determination of
whether land is suitable for public purpose, the acquisition of land must be for public
purpose, the minister must issue a statutory instrument declaring that land is needed
for public purpose, a scheme for compensation and resettlement(resettlement action
10 plan) is drawn and notice to persons having an interest issued, assessment of
compensation or resettlement package if any is done which is followed by the right of
an aggrieved person to petition court for redress and finally government to take
possession of land after full compensation or resettlement.

15 In the instant case the plaintiffs are on the suit land and have not been evicted except
for PW5 who claims 20 of their gardens were taken by the secondary school. Given
that none of the processes that amount to compulsory acquisition were done by the
government and the plaintiffs are in occupation and possession of the suit land, I find
that there was no compulsory acquisition by defendants. Accordingly, what the
defendants did is found not amount to compulsory land acquisition but rather one
which was grounded on fraudulent titling of the suit land.

20 d. Issue 4:

Whether the plaintiffs' rights were violated in purported acquisition.

Having answered issue 3 in the negative, it follows that no rights were violated as there
was no compulsory acquisition of the suit as the defendants' actions did not amount
to that.

25 e. Issue 5:

What remedies are available?

30 **Section 77 RTA** provides that a certificate of title is void for fraud. This Honourable
Court has found that the certificate of title win possession of the 1st defendant was
issued as a result of fraud and since the individual plaintiffs are on their parts of land
which is included in the said certificate of title, accordingly such a certificate would be
ordered cancelled with all the persons as found by this court in occupation of the suit
land ordered to remain in possession of whatever part and parcel they are in
occupation.

35 In regard to exemplary damages, Counsel for the Plaintiff submitted that the Plaintiff
is entitled to these owing to the unconstitutional and arbitrary conduct of the officers
of the Defendant. The cases of ***Esso Standard (U) Ltd versus Semu Amanu
Opio SCCA No.3 of 1993 and Onegi Obel & Anor versus The Attorney
General & Anor HCCS 006 of 2002*** which are to the effect that an award for
40 exemplary damages can be made where the acts complained of, among others; were
unconstitutionally and arbitrarily done by officers of government.

I do agree with these authorities cited. However, I find that though the acts of the
agents of the government agency does not warrant an award of exemplary damages as
it is clear to this Honourable Court that apparently the confusion as regard to the
ownership of the suit land by who from when arose out of a false process which began

5 in 1969 which DW2 undertook which created a false situation that the suit land belonged to the sub county whereas not given the fact that the sub county already had its own demarcated land found at its headquarters which sub county later on willingly allowed the plaintiffs to settle in unconditionally and only woke up to later try to illegally evict the plaintiffs without following the due process of the law. Accordingly, 10 I decline to award any exemplary damages as no ill intention has been imputed on the defendants. It was merely incompetency.

Turning now on the prayer of general damages, these are usually awarded at the discretion of court and are intended to place the injured party in the same position he or she would have been had the breach not occurred.

15 The case of *Phillips versus Ward [1956] 1 ALL ER 874* show that the plaintiffs herein would be entitled to general damages on ground of deprivation of the suit land. However, from the evidence received by this court and from locus visit, I note that the plaintiffs have never been evicted from those pieces of land wherein they are found and they have been using those parts of the suit land profitably with no very great 20 inconvenience which would in demand for compensation. I would thus consider that an award of general damages is not called for as I am not convinced that the plaintiff suffered any deprivations in the using of the suit land.

As for costs, I would find that the plaintiffs by virtue of section 27 of the Civil Procedure Act deserves the award of costs of this suit given the fact that they are the successful 25 parties.

9. Conclusion and Orders:

In conclusion, judgment is partly entered for the Plaintiff with orders that;

- 30 a) The plaintiffs are individually lawful owners of such pieces of land as are indicated in the sketch map drawn by this court which were fraudulently included in the land title Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares in the names of the 1st defendant.
- 35 b) The Land Title Vol. HQ T8, Folio 1, Plot 231 and 232, Block 5, Kolir Bukedea in Bukedea district measuring approximately 21.421 hectares be and is hereby ordered cancelled.
- c) No case has been found as against the 2nd defendant and as such any land in its occupation remain for it.
- 40 d) No case has been found as against the 3rd defendant as its role in this unfortunate story was merely that of an institution which issued to the 1st defendant, a title which was secured by the 1st defendant fraudulently without due process.
- e) No award any exemplary or general damages to the plaintiffs is made as none was proved or found relevant.

5

- f) The plaintiffs are awarded costs of this suit as against the 1st defendant only.
- g) I so order.



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

Judge

10

1st November 2022