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The Republic of Uganda  
In the High Court of Uganda Holden at Soroti  
Civil Suit No. 20 of 2014

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1. Elilu Paul
2. Esebu Charles
3. Ekangu Francis
4. Ogaram Stephen
5. Enguna Simon
6. Oloya Martine

..... Plaintiffs

15

Versus

1. The Registered Trustees of Catholic Diocese
2. Soroti District Land Board

..... Defendants

Before: Hon. Justice Dr Henry Peter Adonyo

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Judgement

1. Introduction:

This suit was filed by six plaintiffs against two defendants. Three of the plaintiffs, that is, Elilu Paul (P1), Esebu Charles (P2) and Oloya Martine (P6) continued with this case. Two plaintiffs, Ekangu Francis (P3) and Enguna Simon (P5) died. Their legal interests were not pursued. One plaintiff, Ogaram Stephen (P4) became mentally incapacitated. None was appointed to legally handle his interests in court.

5 Otherwise, the background of this suit is that the plaintiffs jointly sued the two defendants herein, that is, the Registered Trustees of the Catholic Diocese and the Soroti District Land Board, seeking a number of reliefs, including:

- 10 a) A declaration Plot 25-37 Serere Road and Plots 1-20 Kateta Road, in effective possession of the Plaintiffs and the defendants' representatives /agents/servants, which measures approximately 29 gardens, is land belonging to and owned by the Plaintiffs, in fact, and law;
- 15 b) A declaration that the alleged acquisition of a registered interest in the suit land by the defendant while fully aware of the interests of the Plaintiffs in the suit land and with an intention to defeat the Plaintiffs' unregistered interests in the suit land is tantamount to fraud;
- 20 c) A declaration that the instructions of the 2<sup>nd</sup> defendant of authorising the 1<sup>st</sup> defendant to survey and procure registered interests in the suit land were tantamount to fraud on her part because the 2<sup>nd</sup> defendant was aware through her representatives that the said land was private property and not public property therefore not available for allocation.
- 25 d) A declaration in the alternative to the above remedy that the Plaintiffs and their family members were, at the time of allocation and grant of lease offers to the 1<sup>st</sup> defendant, entitled to be given the first opportunity/priority to acquire leases in respect to the suit land since they were customary tenants on the suit land and that the action of granting such leases to the 1<sup>st</sup> defendant without first availing them such opportunity tantamount to fraud on both the defendants;
- 30 e) A declaration that the lease offers issued to the 1<sup>st</sup> defendant in respect to the above-described suit land are invalid for being tainted with fraud.
- f) A declaration that the defendants have trespassed on the suit land.



- 5 g) An order for the delivery up by the defendant of the lease offers in respect of the suit land to the 2nd defendant and other issuing respective bodies for cancellation;
- h) Orders directing the Secretary, Soroti District Land Board and the Commissioner of Lands Registration to cancel any lease offers or lease certificates issued to the defendant in respect to the suit land;
- 10 i) An order for transfer and registration of the suit land or creation of a new certificate of title in respect of the suit land in favour of the plaintiffs;
- j) A permanent injunction to restrain the defendants by themselves, their servants or agents or otherwise from selling, disposing of or in any way dealing with the said land without the consent of the Plaintiffs;
- 15 k) Compensation at the current market value for the land where the defendant has constructed her structures within a period of 1 year, failure of which demolition of the 1<sup>st</sup> defendant's structures on the suit land should ensue;
- 20 l) Exemplary damages to be paid due to the high-handed conduct of the defendants;
- m) An order that the Plaintiffs are entitled to interests in respect to damages and mesne profits from the time the land is decreed in favour of the Plaintiffs till payment in full at the rate of 25%;
- 25 n) A declaration that the transaction between the Defendants is null and void for fraud and illegalities and that the land was not available for lease to the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant, and the 1<sup>st</sup> Defendant's continued stay on the land is wrongful calling for an eviction order.
- o) General damages;
- 30 p) Mesne profits;
- q) Costs of the suit.

5        2. The Plaintiffs' case:

The plaintiffs is that their forefathers were customary tenants on the suit land, having occupied the same way back in the 1940s but that with the advancement of urbanisation and titling, they became *bonafide* occupants of the suit land and were entitled to priority in the grant of any legal interests thereto and/or  
10 compensation as their forefathers owned that chunk of land in Soroti City starting from the present-day Post Office to the Police Barracks, the Military Barracks up to the suit land until the government took it over part for establishing a hospital, post office, police barracks and military barracks with the plaintiffs reserving the suit land for their use.

15 The plaintiffs contend that when the 1<sup>st</sup> defendant introduced the catholic faith in Uganda, and especially in Teso sub region, their forefathers got converted into Catholicism and started attending prayers at the 1<sup>st</sup> defendant's church which was located at Madera Catholic Mission with the said plaintiffs' forefathers moving from the suit land to go and attend prayers at the Madera Catholic  
20 Mission. That similarly they would also attend school at the defendant's Holy Angels school therein.

That with time, the said forefathers grew old and could no longer move long distances to Madera Catholic Mission and so they invited the 1<sup>st</sup> defendant to occupy the suit land so as to establish the present-day St Immaculate Catholic  
25 Church in order for the plaintiffs' fathers to attend church services near their homes.

That after the establishment of the present-day St Immaculate Catholic Church, the plaintiffs' forefathers gave extra piece of land to the catholic church to establish a primary school on the condition that their children would attend the



5 school at no cost and that the school would employ them as workers therein.  
Subsequently on that basis a school was established and is the present-day Father  
Hilder's Primary School.

However, by turn of events, the plaintiffs contend that to their surprise, the 1<sup>st</sup>  
defendant later on and in connivance with the 2<sup>nd</sup> defendant and other  
10 authorities, fraudulently registered the donated suit land and even proceeded  
to acquire certificates of titles, which action defeated the plaintiffs' unregistered  
interests in the suit land, for which by this suit, the plaintiffs seek their  
cancellation and the declaration that they are the owners of the land.

3. The Defendant's case:

15 The 1<sup>st</sup> defendant denied the plaintiffs claim and stated that the suit land of plot  
25-27 Serere Road and plot 1-11 Kateta Road were legally acquired by way of a  
donation by the community of the area a long time ago and that the same was  
always in their possession with developments thereon with no adverse claim  
from anybody including the plaintiffs.

20 That its action of registering the suit land was merely to confirm and secure its  
ownership legally as the suit land was in an urban area and that its action was not  
fraudulent and illegal and that the plaintiffs have no legal interests in the suit land  
to warrant the court issuing the orders prayed for by them as the suit land  
properly and legally belongs to it and it does not have any intentions to dispose  
25 of it since the suit land is for the Church as an institution.

Accordingly, the 1<sup>st</sup> defendant prayed that this suit brought against it should be  
found to have no merit and thus should be dismissed.



5 The 2<sup>nd</sup> defendant denied any connivance with the 1<sup>st</sup> defendant to commit fraud as alleged by the plaintiffs and contended that the suit property was acquired legally by the 1<sup>st</sup> defendant from the then Soroti Municipal Council in 1991 after it had acted lawfully within its mandate to allocate and lease the suit land to the 1<sup>st</sup> defendant and that legal ownership documents were got by the 1<sup>st</sup> defendant  
10 way back in 1993 from Mbale Lands Registration Office and that it handled the extensions/renewals of already issued leases upon those facts and thus prayed that the suit be dismissed for non-disclosure of a cause of action by the plaintiffs.

4. Counterclaim:

Additionally, the 1<sup>st</sup> Defendant raised a counterclaim against the Plaintiffs in  
15 trespass and fraud in respect to plots 25 to 37 and prayed for the counterclaim to be sustained against the Plaintiffs.

The 1<sup>st</sup> defendant prayed that the plaintiffs' suit be dismissed with costs and judgment be entered upon the counterclaim in favour of the defendants for:

- 20 a) A declaration that the plaintiffs' suit is frivolous, vexatious, tainted with fraud, had no merit whatsoever and is an abuse of court process.
- b) A declaration that the suit land belongs to the 1<sup>st</sup> defendant.
- c) A permanent injunction restraining the plaintiffs, their agents, servants and workmen and any other person on their behalf from further and future interference with the suit land.
- 25 d) General damages.
- e) Special damages for the damages caused to the defendants' land including the cutting down of the fence the defendants had put all around the suit land.
- f) Costs of the counterclaim.

- 5 g) Interest on (d), (e) and (f) at court rate from the date of the judgment till payment in full.

The plaintiffs did not make a reply to the counterclaim, and neither did the 1<sup>st</sup> defendant pray for the counterclaim to proceed *ex parte*.

5. Material facts agreed upon:

- 10 The parties agreed to the location and size of the land, that the 1<sup>st</sup> defendant was in possession and was utilising the suit land, that the plaintiffs were also utilising part of the suit land and that the 1<sup>st</sup> defendant is registered as the owner of the suit land and has a certificate of title of the same.

6. Representation:

- 15 M/s Natala & Co. Advocates represented the plaintiffs while M/s Oboth-Okumu & Co. Advocates represented the 1<sup>st</sup> defendant and M/s Ewatu & Co. Advocates first represented the 2<sup>nd</sup> defendant but later, the Attorney General's Chambers, Soroti Regional Office, did so.

- 20 The plaintiff, in proof of its case, led evidence of seven witnesses and these are; Elilu Paul (PW1), Esebu Charles (PW2), Oloya Martin (PW3), Manasseh Eyenyu (PW4), Ario Martina (PW5), Apio Phoebe (PW6), and Odongo Richard (PW7).

The 1<sup>st</sup> defendant led the evidence of three witnesses, that is, Rev. Father Mubiru Anthansius (DW1), Otekat John Emily (DW2), and Ejukat Charles (DW3).

The 2<sup>nd</sup> defendant led evidence of Akello Christine (DW4).

5        7. Evidence:

A number of documents were also exhibited by the parties with the plaintiffs relying majorly on the following documents;

- a) A letter from Ewinya Gilbert and Sons (Request for surveying) dated 18<sup>th</sup> October 1999 to the District Land Board, **PEX2**.
- 10        b) A letter dated 29th November 1999 to the LC1 Chairperson Opiyai Village with instructions to survey the land issued by the then Secretary Soroti District Land Board, **PEX3**.
- c) Initial lease offer given to the 1st defendant in respect to the un-surveyed land measuring 2.5 hectares issued by Mbale Land Board, for 2 years  
15        commencing from 1/7/1991, **PEX8**.
- d) Lease offers in respect to plot 1-9 Kateta road issued in 1999.
- e) Lease offers in respect to plot 25-37 Serere road dated 30<sup>th</sup> September 2013 for 49 years commencing from 1.7.1991 **PEX7**.
- f) Application by the 1st defendant to extend the lease offer dated 9/7/1999
- 20        g) Rejection of extension and re-entering of the suit land by Soroti District Land Board dated 18th March 1999, **PEX 10**.
- h) A letter of the Soroti District Land board dated 21st April 1999 confirming refusal to extend the lease and directing the 1st defendant to remove its fence from the suit land, **PEX 11**.
- 25        i) Letter dated 08/10/2011 by Oloya Ewinya Martin to the Emorimor of the Iteso Cultural Union regarding the land of *Ipiyatok Inomu* – through the chairman of the clan of Ipiyatok Inomu, **PEX12**.
- j) Letter dated 31<sup>st</sup> January 2012 from the Iteso Cultural Union to the Rt. Reverend Emmanuel Obbo, the Bishop of Soroti Catholic Diocese with the  
30        subject: Inomu, Ipiyatok piece land in Opiyai B and Pamba, **PEX13**.



- 5 k) Letter dated 30<sup>th</sup> May 2012 from Enguna Simon – Clan Chairperson of Ipiyatok Inomu Clan land occupied by Soroti Catholic Diocese to the Emorimor of ICU reminding him of the meeting, **PEX14**.
- l) Application for lease hold by the 1<sup>st</sup> defendant for the plot 25-39 Serere road dated 5/11/2012 **PEX5**.
- 10 m) Application for leasehold by the 1<sup>st</sup> defendant for plot 1-9 Kateta road dated 5/11/2012, **PEX4**.
- n) Leasehold title for plots 1-11 Kateta close, **PEX6**, from 20<sup>th</sup> February 1993.
- o) 25-27, 33-37 and 29-31 Serere road.
- p) Certificate of Registration of The Registered Trustees of Soroti Catholic Diocese dated 29<sup>th</sup> April 2021, **PEX 9** – validated the trustees of Soroti
- 15 Catholic Diocese.

The defendants relied on the following documents;

- a) Certificate of Title – Leasehold for plots 25-27, 33-37 and 29-31 Soroti block, Serere road in the name of the Registered Trustees of Soroti Catholic Diocese, **D4- (From 1<sup>st</sup> July 1991 for 49 years of 8.8570 hectares)**.
- 20 b) Certificate of Title – Leasehold for plots 1-11, Kateta, close in the name of the Registered Trustees of Soroti Catholic Diocese, D5 – it is from 1<sup>st</sup> July 1991. **D5- (From 20<sup>th</sup> February 1993 for 49 years of 2.6 hectares)**.
- c) Lease Offer dated 23/7/1993 issued by Department of Lands, Mbale, to M/s Soroti Catholic Diocese for approximately 2.6 ha off Serere Road Soroti
- 25 for an initial period of 5 years from 20/2/1993, **D6**.
- d) Lease Offer dated 4/2/2000 issued by Department of Lands, Mbale, to M/s Soroti Catholic Diocese for plots 33-37, Serere Road Soroti for an initial period of 5 years from 1/8/1992, **D8**.

- 5 e) Allocation of town plots to Soroti Catholic Diocese by the Soroti Municipal Council dated 1993, **D9**.
- f) Authority to survey areas Lale Road, Serere Road, **D10**.
- g) Application for extension of lease for Soroti Catholic Diocese plots in Soroti Municipality dated 29.03.1999 for plot 25-27; plot 29-31; plot 33-39, plot 10 5/5A on Ongodia road, plots 2-20 and 22-34 Ogwara road, plot off Serere road and old Mbale road (approx. 2.6 ha.), **D11**.
- h) Receipt No. 32336 dated 24-6-1993, payment for premium ground rent and survey fees in respect of plots off Serere road per allocation on 20.2.1993, **D13**.
- 15 i) Application for more land dated 7.5.1992, **D14**.
- j) Application for land allocation, for construction of staff houses, dated 9.7.1992; **D15**.
- k) Extension of land for the Youth Development Centre dated 19<sup>th</sup> July 1992, **D27**.
- 20 l) A letter, Survey of M/s Ewinya and Sons dated 19<sup>th</sup> November 1999, **D35**.
- m) A letter dated 18<sup>th</sup> March 1999 from the District Land Board -Soroti to the Town Clerk regarding a Block of land formerly for SOCCADIDO, **D36**.
- n) Letter on Diocesan land dated 21/04/1999 to Rev Fr Athanasius Mubiru, **D37**.
- 25 o) Minutes of the Meeting on SOCADIDO Land allocated to other developers at Aminit Vocation Institute held on 19<sup>th</sup> May 1999, **D3**.
- p) Letter dated 28.04.199 Land adjacent to SOCCADIDO, a request to rescind the decision regarding the land that was given to other developers.
- q) The letter dated 21 May 1999 from the Chairman LCV to the Chairman 30 District Land Board, Soroti **D1**.
- r) Application for plots 1-9 Kateta road, **D42**.



- 5 s) Application for plots 25-39, **D43**.  
t) Lease offer for approximately 2.6 hectares off Serere Road, Soroti for initial  
5 years from 20/2/1993 – issued by the department of lands, Mbale on  
23/7/1993 to M/s Soroti Catholic Diocese, **D6**.  
u) Lease off for plot 33-37 Serere Road for 5 years initially commencing from  
10 1/2/2000 issued by the department of land in Mbale on 4/2/2000, **D7**.  
v) Others mentioned in the judgement and on the record of court.
8. Issues:

Three issues were framed after distilling them from the ones proposed by parties and these are;

- 15 a) Who is the owner of the suit land?  
b) Whether the 1st defendant fraudulently obtained its registration as  
proprietor of the suit land.  
c) What are the remedies available to the parties?
9. Burden and Standard of Proof:

20 **Section 101 of the Evidence Act, Cap 6**, provides that;

- 1) **Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.**  
2) **When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.**

25

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

Also, **Section 103 of the Evidence Act** provides that the burden of proof as the  
30 burden of proof as to any particular fact lies on that person who wishes the court



5 to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

This being a civil suit, the burden of proof lies with the plaintiff (**sections 101 and 102 of the Evidence Act, Cap 6**) to prove their case on a balance of probabilities. (***See: Nsubuga vs Kawuma [1978] HCB 307***).

10 However, it should be borne in mind that where the plaintiff leaves his case in equilibrium, the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard. See: ***Erumiya Ebyetu v. Gusberito [1985] HCB 64***.

10. Submissions:

15 The plaintiffs and the defendants, through counsels, filed final written submissions which are on record. I am grateful to counsels for the effort made in compiling the same which are very informative. These submissions have been considered herein accordingly, together with the pleadings, the evidence and the law.

20 11. Testimonies:

Elilu Paul, PW1, aged 42 years old, testified that the suit land belonged to his ancestors who had settled on it. That his father, the late Ewinya Gilbert, was the first person who sought the help of the the then Soroti Land Board in 1999 to provide him with a surveyor so as to have his clan's unregistered interest on the  
25 suit land to be converted into a registered one.

PW1 testified that he was born and raised on the land which the suit land formed part of. He told court that suit land was previously used for cultivation and grazing and that he was now only cultivating a small portion of the same owing to the forceful fencing of the land in 1999 by a representative of the 1<sup>st</sup> defendant

5 known as Father Mubiru. He testified that the caretaker of the land, Mzee Mannasse Eyenyu Etyeku, their then heir of the clan land forwarded the matter to Rose Okwi, the LCIII Chairperson Western Division, who summoned the 1<sup>st</sup> defendant which did not respond.

10 PW1 testified that the plaintiffs then approached the office of Emorimor (Iteso Cultural Leadership) for peaceful dialogue, the church people responded, and a locus visit was scheduled. He relied on PEX2, PEX3, PEX11, PEX12, PEX13, PEX14 and PEX15 in support of this assertion.

15 PW1 stated that after the death of their father, Ewinya Gilbert, who was the first person to seek the help of Soroti Land Board to provide him with a surveyor and have the clan's unregistered interest on the land converted into registered interests, Mzee Mannasse Eyenyu Etyeku, PW4 continued to pursue the registration.

20 PW1 testified that during the process of opening boundaries and negotiations, the 1<sup>st</sup> defendant connived with the 2<sup>nd</sup> defendant and acquired lease offers for plots 1-9 Kateta Road and plot 25-39 Serere Road, which was granted on 4<sup>th</sup> February 2000 in order to defeat the plaintiffs' non-registered interests in the suit land but the same expired when the dispute was still subsisting.

25 PW1 testified that they were in occupation of the suit land at the time the 1<sup>st</sup> defendant was processing the lease offers and that the plaintiffs had resisted any eviction, but they were overpowered by armed men and thrown off part of the land.

PW4 testified that the late Ewinya was his paternal uncle who inherited the suit land from his parents Isaiah Ogaram who also inherited the land from his parents Arita and Isina who died and are buried on the suit land. That his grandparents



5 used the land until 1999 when the 1<sup>st</sup> defendant started interfering and claiming ownership. PW4 testified that the disputed land was handed over as a share to Ogaram Isaiah the father of Ewinya Gilbert who was the father of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> plaintiffs and grandfather to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs.

PW4, testified that during the Amin's regime, he took off to Nairobi in Kenya,  
10 however, when the regime was overthrown, he moved back to Uganda in 1980 and Ewinya Gabriel gave him part of his land to settle which is next to the suit land where his present home is.

PW4 testified that in April 1999, the Chairman Soroti District Land Board wrote a letter dated 21<sup>st</sup> April 1999 informing the 1<sup>st</sup> defendant's representative Fr.  
15 Mubiru that the board had taken a decision to allocate the land to other tenants who included his uncle and his sons.

Esebu Charles, 38, PW2, corroborated the evidence of PW1 when he reiterated PW1's testimony that when he was born, his parents were using the suit land for cultivation, and he later joined them. He stated that he learnt that some of their  
20 ancestors were buried on the same land. He testified that as they were peacefully utilising the land, one Father Mubiru, acting on behalf of the 1st defendant, stopped them from cultivating part of the land and suddenly fenced part of it. Like PW1, PW2 also told the court that some of their elders, like Manasse and Enguna, reported the matter to various authorities, including the LCIII of Western  
25 Division, the Emorimor and several meetings were held to resolve the dispute, but that the 1<sup>st</sup> defendant's representatives were determined to grab the land. He stated that when the 1<sup>st</sup> defendant fenced off the land by force, even some of their visible ancestral graves were not cemented, but there were bark trees planted around the graves, which were also fenced off by the 1<sup>st</sup> defendant.



5 Martin Oloya Ewinya, aged 68 years, PW3, testified that they were using the land for cultivation and in 1999 when they were cultivating the land, Father Mubiru and the staff of SOCCAIDO went and stopped them from using the land on allegations that the land was for the church allocated to it by the Soroti Municipal Council. PW3 further testified that together with his brother, Manasseh, they  
10 consulted the Soroti Municipal Board, and there was no information to that effect, and the same was told to them when they consulted the Soroti District Land Board that there was no lease issued to the 1<sup>st</sup> defendant.

Apio Pheobe, aged 91 years, PW5 and Ariao Martina, aged 83 years, PW6, testified that the plaintiffs inherited the suit land from their parents, like Arita  
15 and Isina, who were buried on the suit land. They testified that apart from the graves and the itumba trees, the families had planted permanent plants on the land, like mango trees and Tamarind trees, which still exist. They testified that the suit land stretches from where SOCADIDO Board office premises are located downwards to Oderai. They stated that their parents offered land to the church  
20 to construct the current St, Immaculate Catholic Church and another portion of land where father's Hilder's Primary School is, which is opposite the suit land.

On the other hand, the 1<sup>st</sup> defendant's witnesses testified that the Soroti Municipal Council allocated the suit land to the Soroti Catholic Development Organization (SOCADIDO), a development arm of the Dioceses which, as DW1  
25 stated, was informed that the land was free of any disputes. DW1 stated that SOCADIDO went ahead and fulfilled all the requirements. DW1 stated that the only two people who were on the land were Mr Eletu Joseph and Ms Margaret Ojongole, who raised a dispute over their piece of land, a meeting held at Uganda Martyrs Vocational Institute in Aminit where the dispute was amicably settled,  
30 and Soroti Municipal Council was instructed to allocate them different land. DW1

5 testified that SOCADIDA was asked to compensate them, which was implemented.

DW2, Capt. Otekat John Emilly, in his testimony, corroborated the dispute between SOCADIDO and Eletu Joseph and Ojangole Margaret and stated that he chaired a meeting that resolved the dispute. He stated that the Dioceses agreed  
10 to compensate the Eletu Joseph and Ojangole Margaret, and the land board was asked to reallocate them to a different land. He testified that after the compensation and re-allocation to the said persons, there were no more disputes. He testified that on 21<sup>st</sup> May, 1999, he wrote to the chairperson of Soroti District Land Board to implement the decision made in the meeting of Aminit to  
15 which he stated that **DEX38**, the minutes of the meeting dated **19th May, 1999** and **DEX 39**, the resolution of the meeting to allocate land to the 1st Defendant support his assertion.

Ejukat Charles DW3 testified that he joined Soroti Catholic Diocese in 1993 as a Site Supervisor till 2008 when he left in 2008. He stated that while they were  
20 constructing SOCADIDO offices, they used mark stones to establish the position of the building structures since the church land was surveyed. He testified that they never received any complaints from the community regarding the church land except from one lady who had begun construction on the church land but that she left when she was stopped and compensated for the materials used for  
25 her construction. He testified that they were using the gardens near Oderai housing estate to plant their crops but that the church was forced to build staff houses at the extreme end of the church land to prevent the community from encroaching on the land, and that is why they have two staff houses near former hostel in Oderai. He reiterated the fencing of the land during cross-examination



5 but stated that they fenced off three blocks, 25-27, 29 - 31 and 1-11, using chain links and hedge/live fences on plots 33 – 37.

Akello Catherine DW4 testified that the 1<sup>st</sup> Defendant is a Board of Trustees mandated to manage the property of Soroti Catholic Dioceses, which is an ecclesiastical and juridical body.

10 That the 2<sup>nd</sup> Defendant issued documents of ownership to the 1<sup>st</sup> Defendant because it had acquired the suit land from Soroti Municipal Council and that the Plaintiffs have no claim over the suit land.

DW4, Akello Catherine during cross examination clarified that when the Soroti District Land Board received applications from the Soroti Catholic Diocese, the  
15 officers of the District Land Board verified and confirmed that the application belonged to the Roman Catholic Church, upon which the Diocese was leased suit land comprised in plots 25-39 Serere Road and plots 1-11 Kateta close (road) in 1991 and 1993 respectively.

#### 12. Court's Analysis and decision:

20 I will deal first with the 1<sup>st</sup> defendant preliminary objection raised in its written submissions that the plaintiffs' submissions were not valid in law and should be struck out on the basis that while the said submissions bore the signature of its author, it did not have the printed name of the author. That this renders the same invalid for in the case of **Col. (Rtd) Dr. Kiiza Besigye vs Yoweri Kaguta Museveni**  
25 **and Anor Presidential Election Petition No. 1 of 2001** the Supreme Court while considering a similar situation held that an affidavit which was filed on record which bore the signature of a Commissioner for Oaths but not his names was null and void with the Supreme Court proceeding to strike the same on the basis that the names of the Commissioner of Oaths had been omitted.



5 It was thus contended herein that since the plaintiffs' submissions only bore the signature of its author and not his/her names then it ought to be struck off following the above cited Supreme Court precedent.

In response, counsel for the plaintiffs' counsel while relying on Article 126(2)(e) of the Constitution of the Republic of Uganda, submitted quite correctly that the  
10 omission of not including the defendant's name was a technicality which did not go to the root of the matter before this Honourable Court and as such it should be ignored since the said submissions was filed by M/s Natala and Company Advocates which was the legal representatives of the plaintiffs with even the submissions itself incorporating their address.

15 I have had the occasion to peruse the submissions filed on behalf of the plaintiffs and I note that indeed it is true that its author is not disclosed. However, from my perusal of the submissions, I find that it incorporates the address of M/s Natala and Company Advocates which according to pleadings are the undisputed legal representatives of the plaintiffs.

20 From that clear finding, it is my conclusion that the alleged omission to include the author of the submissions is a mere technicality in line with Article 126(2)(e) of the Constitution which enjoins me to administer justice without undue regard to technicalities as M/s Natala and Company Advocates are the undisputed legal representatives of the plaintiffs.

25 Secondly, the issue of a submissions not having its author named is also distinguishable from that of the cited case cited by the defendant which clearly relates to an affidavit and when the two are considered side by side, I would find that each has a different implication for in my considered view, a mere omission in a submission would bear significantly no grave legal consequences while an

5 omission in an affidavit would render such an affidavit which embodies vital evidence, inadmissible. Accordingly, the preliminary objection of the 1<sup>st</sup> defendant is overruled.

The 2<sup>nd</sup> defendant also raised two preliminary objections which were framed into issues. These are whether the plaintiffs' claim and consequently this suit itself is  
10 time-barred and whether the plaintiffs claim disclose any cause of action and locus standi by the plaintiffs to bring the instant suit. The plaintiffs' counsel replied to these above preliminary objections.

a) Whether the plaintiffs' claim and consequently their suit is time-barred:

In this respect, counsel for the 2<sup>nd</sup> defendant submitted that PW2 and PW3's  
15 evidence brought to light that the plaintiffs' claim and suit was time barred because the plaintiff filed this suit in 2014 which was fifteen years after the cause of action arose in 1999. Counsel referred this court to the case of **Kiwanuka Frederick Kakutumutwe vs Kibirige Edward Civil Appeal No. 272 of 2017**, where it was held that;

20 *"... after the defendant had continuously occupied the suit land for a period of 12 years unchallenged, whether the original entry into possession of the suit land had been lawful or unlawful became irrelevant, Section 16 of the Limitation Act automatically came to the defendant's aid to extinguish the title of the plaintiff (if any)."*

25 Counsel for the 2<sup>nd</sup> defendant contended that Section 5 of the Limitation Act and the case of **Kiwanuka vs Kibirige** (supra) automatically invalidates all suits filed in courts of law for the recovery of land such as the instant one which was brought to court after the expiration of twelve years from the date the right of action accrued.



5 In support of this contention, Counsel for the 2<sup>nd</sup> defendant contended that the time for the plaintiffs to file the instant suit, thus right of action, started running from 1999 when allegedly they were dispossessed by Fr Mubiru, the agent of the 1<sup>st</sup> defendant, of their land with even PW2 testifying that indeed Father Mubiru, stopped the plaintiffs from cultivating the suit land which included the graves of  
10 their ancestors in that year by even fencing it off but requesting that the said fence be removed so that the plaintiffs get access to their land.

In this respect, counsel to the 2<sup>nd</sup> defendant submitted that this acceptance PW2 confirmed that from 1999 the 1<sup>st</sup> defendant was in possession of the suit land.

Additionally, Counsel for the 2<sup>nd</sup> defendant contended that PW1 did not claim  
15 ownership of the suit land but stated that Ewinya Paul gave him his land where he is in 1980 and he settled next to the suit land at his parents' home and that in 1999 when Ewinya and sons attempted activities in the suit land, they were stopped by Father Mubiru.

Counsel for the 2<sup>nd</sup> defendant further went on to contend that if this was the case  
20 then by 2008 time had equally run out for the plaintiffs who did not even in the instant suit plead any disability. In support of this assertion counsel for the 2<sup>nd</sup> defendant cited the holding in ***Perry vs Clissod [1907] AC 73 at 79*** where it was held that the uninterrupted and uncontested possession of land for a specified period, hostile to the rights and interests of the true owner, is considered to be  
25 one of the legally recognized modes of acquisition of ownership of land with counsel pointing out that the said holding clarified the concept of "***extinctive prescription***" as reflected in Sections 5 and 16 of the Limitation Act which both provides that where a claim of adverse possession succeeds, then it has the effect of terminating the title of the original owner of the land and in unregistered land,

5 the adverse possessor of land acquires ownership when the right of action to terminate the adverse possession expires.

Counsel for the 2<sup>nd</sup> defendant thus concluded that from the plaintiffs' testimonies where they all agree that they were stopped from utilising the suit land in 1999 when it was fenced off by the 1<sup>st</sup> defendant and with the plaintiffs not suing the  
10 1<sup>st</sup> defendant for a period of over 15 years since 1999, then it would mean that they sat on their right to make any claim for the suit land thus making this suit time barred by virtue of the 12 years limitation.

In response, counsel for the plaintiffs' submitted that whereas it was true that adverse possession is one mode of acquisition of land in Uganda, this case is  
15 distinguishable since the 1<sup>st</sup> defendant's defence was not hinged on adverse possession as evidence on record by the plaintiffs prove that the 1<sup>st</sup> defendant's stay on the suit land was undisturbed as witnesses such as PW4 told court that they reported the case of forcible eviction and the fencing of the plaintiffs' land to various authorities including the LC 3 Soroti Western Division and even to the  
20 office of the Emorimor upon which several meetings were held with the intention of resolving the dispute between the parties amicably but in vain. To reinforce this submission, counsel cites the **PEX 10, PEX 11, PEX 12, PEX 13 and PEX 14** which letters and correspondences dating from 18<sup>th</sup> March, 1999 till 30<sup>th</sup> May, 2012 as demonstrating the fact that indeed there was a dispute over the suit land  
25 since the plaintiffs were claiming an interest on the same with the 1<sup>st</sup> defendant being at all times, aware of their claim, with counsel citing **PEX 13** which is a letter written by Iteso Cultural Union to the then Bishop, Rt. Rev. Emmanuel Obbo as thereafter leading to a meeting on 24<sup>th</sup> February 2012 between the Emorimor, the clan of the plaintiffs and the diocesan representatives wherein the diocesan



5 representatives in that meeting requested assured the meeting that he will take the outcome of the meeting to the board of the diocese.

Counsel additionally submitted that the initial intention of both parties was to have the dispute over the suit land resolved amicably is further evidenced by the fact that when the initial lease **PEX 1** expired, the 1<sup>st</sup> Defendant did not renew  
10 the same but that the plaintiffs were shocked in 2013 learn that the 1<sup>st</sup> defendant had received a lease offer from the 2<sup>nd</sup> defendant with a certificate of title following in 2014 (see **PEX 7**, which actions made the plaintiffs to realized that whereas they were open to a negotiated solution, the 1<sup>st</sup> Defendant had other ulterior motives which then led the plaintiffs to bring this matter before this  
15 Court.

Accordingly, counsel concluded that from the series of events after 1999, it should be found by this Honourable Court that the plaintiffs were not barred by limitation as claimed by the 2<sup>nd</sup> Defendant as the provisions of the Limitation Act Cap 80 were not applicable to them.

20 In resolving this preliminary point of law, I take note of the provisions of Section 5 of the Limitation Act, Cap 80 provides for limitation of actions for the recovery land. It states thus;

**No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued  
25 to him or her or, if it first accrued to some person through whom he or she claims, to that person.**

In the case of cases of **Miza S/o Beki (Miza Bhaki) Vs Bruna Ososi HCCA No.26 of 2016** and **Rwajuma Vs Jingo Mukasa, HCCS No. 508 of 2012**, the above position of the law above was re-emphasised that as a rule limitation not only

5 cuts off the owner's right to bring an action for the recovery of the suit land that has been in adverse possession for over twelve years but also the adverse possessor is vested with title thereto.

Furthermore, under the persuasive English law, from which the Ugandan land law has its origin, the expiry of a limitation period provides a defendant with a  
10 complete defence to an action as was held in the case of ***Donovon Vs Gwentoy's Ltd [1990] 1 WLR 472*** as Lord Griffiths pointed out that;

***"The primary purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim, that is; a claim with which he never expected to have to deal with".***

15 It is thus a given legal position that once limitation period has caught up with a litigant, he or she can only be saved by the exceptions to limitation if they are available and applicable to such a litigant's particular situation.

The facts of this suit as garnered from the testimonies of the plaintiffs' witnesses, especially PW2 and PW3, show that despite the plaintiffs cultivating and grazing  
20 on the suit land, a one Fr. Athanasius Mubiru, on behalf of the 1<sup>st</sup> defendant, fenced off the suit land in 1999 on the basis that it belonged to the 1<sup>st</sup> defendant.

This testimony is corroborated by even PW4 who confirmed that indeed the fact of the 1<sup>st</sup> defendant's commencement of interfering in the plaintiffs' possession of the suit land started in 1999.

25 Furthermore, PW3 similarly testified that in 1999 while he and the other plaintiffs were cultivating the suit land, Fr. Mubiru and the staff of SOCADIDO stopped them from using the land on basis that the suit land belonged to the 1<sup>st</sup> defendant after it had been allocated to it by the then Soroti Municipal Council.



5 Given the above factual testimonies of the plaintiffs, it is evident that in 1999 the 1<sup>st</sup> defendant inhibited the plaintiffs' possession of the suit land by stopping them from cultivating it and it even fenced off the same.

Additionally, it is also factually evident that this instant suit was filed in the year 2014, which was fifteen (15) years from 1999 when the 1<sup>st</sup> defendant through its  
10 agents stopped the plaintiffs from physical possession of the suit land.

Given the fact that the law relating to claims of land restricts such claims to twelve (12) years, then it means that the suit which was filed in 2014 exceeded the limitation period by Three (3) years.

The plaintiffs, however, state that the said limitation period did not start to run  
15 as against them as they ensured that 1<sup>st</sup> defendant did not enjoy quiet possession of the suit land undisturbed. According to PW1, PW4, who was the caretaker of the land, raised the issue of the 1<sup>st</sup> defendant fencing of the suit land with one Rose Okwi, the LCIII Chairperson of Soroti Western Division, summoned the 1<sup>st</sup> defendant to appear before her in response to the plaintiffs' complaint in regards  
20 to the suit land but was ignored by the 1<sup>st</sup> defendant.

PW1 further testified that the plaintiffs were not done yet even if the 1<sup>st</sup> defendant had ignored summons from Rose Okwi for still through PW3, they wrote to the office of the Emorimor (The Iteso Cultural Union Leader) for peaceful resolution of the land dispute to which the 1<sup>st</sup> defendant respondent, and a locus  
25 visit was scheduled and carried out but no solution resulted.

• **Section 6 of the Limitation Act** provides that the right of action is deemed to have accrued on the date of the dispossession.

5 Whereas PW4 testified that their apparent dispute with the 1<sup>st</sup> defendant was forwarded the LCIII chairperson of Western Division, Rose Okwi, no cogent evidence, whether documentary or otherwise was adduced to prove this oral averment by PW4.

10 Furthermore, whereas it is true that PW4 wrote the letter PEX12 to the Emorimor on 08/10/2011, it was 12 years from 1999 late and it was not a filing of a suit. That letter was basically a complaint against the 1<sup>st</sup> defendant and thus fails the legal test of "**an action**" as envisaged by the Limitation Act as counsel for would want this Honourable Court to believe.

15 This is because in the case of ***F.X. Miramago v. Attorney General [1979] HCB 24***, which I find educative and thus associate myself with, the period of limitation begins to run as against a plaintiff from the time the cause of action has accrued until a suit is actually filed.

20 The holding in ***F.X. Miramago*** (above) restates the position of the law in relations to limitation as it is that the action envisaged by the law is when an actual filing of a suit in a court of law is made, not complaints or correspondences to different personalities and or authorities.

That being the case, it can safely be concluded that for a cause of action in land to be sustained then a suit must be instituted in a court of law.

25 In the instant matter, no evidence was adduced that prior to 2014, a civil suit was instituted in a court of law in satisfaction of the test laid down in ***F.X. Miramago's case*** (cited above). What I see is a series of letters, correspondences and complaints to various authorities such as the LC111 chairperson of Soroti Western Division and to the Emorimor in 2011 on alleged conversion by the 1<sup>st</sup> defendant of the plaintiffs' land ( ***Ipiyatok Inomu clan's land***) but not a legal



5 action in any court of law with any such lack of doing so rendering the various  
*which is the filing of a civil suit in a court of law such as the High Court or*  
*Magistrates Court*” as was held in *A.G Vs Nakibuule Gladys Kisekka*  
*Constitutional Appeal No.2 of 2016.*

The legal implication of the above is that once a party fails to file a civil suit in a  
10 court of law as required then such a party is easily being caught up by the law of  
limitation unless saved by a claim of disability as any failure to do so renders a  
party’s suit time-barred and a court of law cannot grant any remedy or relief  
sought by such a litigant and must reject any such claim. See: *Iga and 200 Others*  
*VS. Makerere University [1972] EA 65;* unless such a party pleads disability as  
15 required by **Order 18 rule 13 of The Civil Procedure Rules.**

In the instant suit, however, the plaintiffs’ suit is clearly time barred as it was filed  
in 2014 which was fifteen (15) years from 1999 when their cause of action arose  
and thus was Three (3) years late beyond the twelve years’ (12) limitation yet the  
perusal of the pleadings show that no disability is pleaded.

20 This late filing of the civil suit in a court of law renders their cause of action clearly  
barred by limitation, is bad in law and is also barred by law. This preliminary  
objection succeeds.

b. Whether the plaintiffs disclose any cause of action and locus standi to bring  
the suit?

25 In support of the 2<sup>nd</sup> defendant’s contention that the plaintiffs disclose no cause  
of action and locus standi to bring the instant suit, counsel submitted that none  
of the plaintiffs’ witnesses testified that plaintiffs nor their ancestors had applied  
for a lease on the suit land. Counsel cites the testimony of PW1 who testified that

5 the suit land belonged to Ewinya Gilbert, claiming that it is ancestral land though he does not indicate how he got the suit land.

Counsel submitted that none of the plaintiffs indicated the mode in which they purportedly owned the suit land because they possess no letters of administration nor do they indicate the portions claimed by each.

10 Counsel also submitted that PW1 himself did not claim ownership of the suit land but instead told court of how the late Ewinya Paul gave him part of his (Ewinya's) land in 1980 and how he PW1 settled next to the suit land at his parent's home and that in 1999 when Ewinya and his sons attempted to carry out activities on the suit land they were stopped by Father Mubiru. That in addition, PW1 testified  
15 to the fact of his having been entrusted by Ewinya's family to bring this suit because he was a counsellor at municipality level which proves that the 1<sup>st</sup> plaintiff did not have a right in the suit land as they claim.

Counsel further submitted that the plaintiffs testified that they were suing on behalf of the family of the late Ewinya and that of the clan but they do not have  
20 authority allowing them to sue on their behalf.

In conclusion, counsel submitted that the plaintiffs had not proved that they had a right which was violated by the defendants for which they would seek court redress and that since no such right accrued to the plaintiffs, then they had no cause of action in this claim and as such this suit should be dismissed accordingly.  
25 Counsel for the plaintiffs submitted that PW1 testified that the land belonged to his parent, Ewinya Gilbert.

In determining this preliminary point of law, I am inclined to refer to the celebrated case of *Auto Garage vs Motokov [1971] EA 514* where three essential requirements pointed out as required in support of a party's cause of



5 action and these are that a party enjoyed a right, that right was violated, and the defendant was liable.

In respect of determining whether the plaint discloses a cause of action, it is now the established legal position that court must look only at the plaint and its annexures, if any, and nowhere else. See: **Kapeeka Coffee Works Ltd –Vs- NPART**  
10 **Court of Appeal Civil Appeal No. 3 of 2000.**

In respect of the instant suit, a carefully analysis of the plaint together with its annexures show that the pplaintiffs' plea is anchored on an allegation that they were dispossessed of the suit land by the 1<sup>st</sup> defendant in 1999 despite their cultivating and grazing on it by the 1<sup>st</sup> defendant, which through its agents  
15 forcefully chased them away from the suit land and even fenced it off in the same year of 1999.

The further facts pleaded in the plaint are that the 2<sup>nd</sup> defendant fraudulently allocated the plaintiffs' land to the 1<sup>st</sup> defendant well knowing of the plaintiffs' had prior existing unregistered interest on the suit land derived from the  
20 plaintiffs' forefathers with their late Father/ grandparent, Ewinya Gilbert at one time writing to the then District Land Board of Soroti in the names of Ewinya and Sons seeking for the survey of the suit land and one Mzee Manasseh Eyenyu continuing to follow up the registration process only to afterwards discover that the 1<sup>st</sup> defendant had already been granted a new lease onto the suit land after  
25 1<sup>st</sup> one had expired.

The summary of all the above facts point to a cause of action which fits with the requirement in the authority of **Auto Garage vs Motokov (supra)** and thus is resolvable dispute by this court as the plaint and its annexures answer to the fact of the plaintiffs alleging their enjoyment of a right which the 1<sup>st</sup> defendant

5 interfered with in 1999 and subsequently dispossessed them of that right in  
connivance with the 2<sup>nd</sup> defendant. This shows the existence of a cause of action  
and so the preliminary objection in this respect is overruled.

The above conclusion being so that there is a cause of action, I will now proceed  
to analyse the related issues presently.

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

Counsel for the plaintiffs submitted that the plaintiffs' forefathers are the owners  
of the suit land for they remained in occupation, possession of the same by  
cultivating it and building on it undisturbed despite the several changes in the law  
meaning that the plaintiffs' unregistered interests remained intact until 1991 and  
15 2000 when the 1<sup>st</sup> defendant attempted to and acquired a lease on the land in  
respect to land off Serere road from Soroti Municipal Council and Kateta close  
from Soroti District land Board, respectively.

Counsel asserted that at the purported acquisition of the 1991 lease offer by the  
1<sup>st</sup> defendant from the 2<sup>nd</sup> defendant was illegal as by that time it was the sole  
20 mandate of the Uganda Land Commission (ULC) to lease out the suit land and not  
the Soroti Municipal Council which had no statutory lease or a private lease over  
the same.

Counsel further submitted that there was even evidence to the effect that in the  
year 2000 when the 2<sup>nd</sup> defendant purported to issue a lease offer to the 1<sup>st</sup>  
25 defendant in respect to plots 1-9 Kateta Close, both defendants were fully aware  
of the nature of the plaintiffs' interests in the same for even an official of the 2<sup>nd</sup>  
defendant had issued instructions for the survey the suit land on behalf of the  
Plaintiffs in 1999 as evidenced by PEX 3 though the 1<sup>st</sup> defendant resisted the  
same by forcibly evicting the plaintiffs and fenced of the land.



5 Counsel further submitted that the plaintiffs held the suit land customarily with proof of their customary tenure being a practice which had attained such notoriety that this Honourable Court would be justified in taking judicial notice thereof as was provided for under **section 56 (3) of The Evidence Act** and upheld in ***Geoffrey Mugambi and Two Others v. David K. Mugambi and Three***  
10 ***Others, C.A. No. 153 of 1989 (K) (unreported)*** since the evidence of the plaintiff witnesses, especially those of PW5 and PW6 who were 90 and 83 years old proved evidence of inheritance of the suit land from the forefathers of the plaintiffs some of whom were buried on the suit land. Counsel submitted that based on the ages of these witnesses, they qualify to be persons with knowledge  
15 of how the suit land was inherited from the forefathers of the plaintiffs.

In making this assertions counsel referred to the case of ***Wokorach & Ors v Dr Okech & 3 Ors HCCS No. 59 of 2011*** where it was held that the evidence of user of unregistered land may in some circumstances be sufficient to establish customary ownership of such land and possession can sometimes be used as an  
20 indicator of ownership or even to create ownership.

According to counsel, the plaintiffss had proved that they were and are jointly/communally using the suit land for farming as a clan/family and were still in possession of part of the suit land.

Counsel further submitted that the plaintiffs had further proved that they were  
25 forcefully ejected from part of the suit land by the 1<sup>st</sup> defendant's agents, who claimed to have acquired leases over the suit land through the 2<sup>nd</sup> defendant, yet possession binds the whole world save for the person with good title.

Counsel thus concluded that from the genuine evidence of the plaintiffs, this court must find that plaintiffs had proved unchallenged that they were in

5 possession of the suit land since even their witnesses had confirmed their existence on the suit land even during locus visit when they showed to court their former homesteads, the mango trees (*dodo*) planted by their parents, the Bark Cloth trees (*ituba*) planted at the graves of their relatives, etc.

Counsel contended that though these trees were seen by the court at locus as  
10 appearing wild, the plaintiffs' forefathers and the plaintiffs had had exclusive possession and usage of the suit land for cultivating seasonal crops for a long time without interruption or challenge and this was proof of their customary ownership with even the 1995 Constitution of the Republic of Uganda also protecting their rights as occupants of registered land like the lawful and bonafide  
15 occupants.

To support of the contention, counsel cited the case of ***Kampala District Land Board and other vs National Housing and Construction Corporation, Civil Appeal No. 2 of 2004*** where the Supreme Court held that a respondent who had been in possession of the suit land for a long time and utilized it was entitled to  
20 have its interest recognized and protected by the first appellant.

Counsel contended that the actions of the defendants were intended to defeat the plaintiffs' possession and their unregistered interest and that this Honourable court should declares that the suit land is property of the plaintiffs for their having enjoyed uninterrupted use of the land for over 50 years as their families had had  
25 exclusive possession and ownership of the same since 1940's as customary owners who had utilised he as their place of residence, their farms and their burial until 2012 when the 1<sup>st</sup> Defendant interfered with their interests and registered their land into its names.



5 In the alternative, counsel submitted that in the event that the Court finds that the plaintiffs were not customary tenants on the suit land that the court should declare that the Plaintiffs as holding interest in the suit land either as lawful or bonafide occupants in light of Section 29 of the Land Act of 1998.

10 In response, counsel for the 1<sup>st</sup> defendant contended that whereas the plaintiffs aver in their amended plaint that their late father Ewinya Gilbert was the customary owner of the then surveyed suit land now described as plots 25-37 Serere Road and plots 1-20 Kateta road, in now Soroti Municipality which is said to be in possession of the plaintiffs and the defendants, Oloya Martin, plaintiff No. 6 during cross examination told court that he was the father of PW1, the 1<sup>st</sup> 15 plaintiff and not Ewinya Gilbert with even PW1 also, during cross-examination, pointed out that Oloya Martin was his father and not the late Ewinya Gilbert, showing clearly that the plaintiffs evidence were contradictory and prone to the giving of false information and thus should be found unreliable.

On the issue of possession, counsel for the 1<sup>st</sup> defendant's counsel submitted that 20 the 1<sup>st</sup> defendant has been in possession and use of the suit land and even had land titles issued to it by the appropriate authorities and so under Section 59 of the Registration of Titles Act, Cap 230 its having the said title should be found as conclusive evidence of title making the 1<sup>st</sup> defendant the rightful owner of the suit land.

25 Counsel for the 1<sup>st</sup> defendant further contended that Mzee Manasse Eyenyu Elyeku did not express any objection to the contents of the minutes of the meeting of 19<sup>th</sup> May 1999 held at Aminit Hall but only mentioned that the Chairman's signature was not there which to counsel was due to the minutes not having a provision for the name and signature of the Chairman but only of the 30 minute's secretary's on the documents but later thumb printed it. Counsel avers

5 that the contents of the meeting recorded by Edigu John correctly reflected the proceedings at the meeting including the resolutions made that the chairman, Capt. Otekat John Emily referred to in his letter of 21<sup>st</sup> May 1999.

According to counsel for the 1<sup>st</sup> defendant, Arumet Gabriel gave evidence during the locus visit that between 1981 and 1987 he was a staff member and later was  
10 promoted to position of Headmaster of Fr Hilder's Primary School and it is him and other staff members who were cultivating the suit land with the plaintiffs being nowhere near the suit land and that as of 19<sup>th</sup> May 1999, only Margaret Ojangole and Andrew Eletu were on the suit land and their issue was resolved by the 19<sup>th</sup> May 1999 meeting as per the Chairman's letter of 21<sup>st</sup> May 1999.

15 Counsel submitted further that also DW3 testified that during the period of 1993-2008 when he was working for SOCADIDO (Soroti Catholic Diocese Integrated Development Organisation), he placed mark stones on the suit land as the land had been surveyed with none of the plaintiffs being on the suit land.

That even exhibits D1, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D15,  
20 D16, D16(a), D16(b), D16(c), D17 and exhibits D33-D44 (2<sup>nd</sup> defendant) contained information that the plaintiffs were not on the suit land yet these exhibits submitted by the defendant and not objected to by the plaintiffs and were now part of the court record without any objections on their admissibility.

On the issue of fraud, counsel submitted that there was no fraud committed by  
25 the defendants as they did, how they did and the results they got in respect of the suit land were legally valid since the plaintiffs had never occupied and or utilised the suit land at all and that from 1991/1993, the land was in the hands of the 1<sup>st</sup> defendant to date with the 1<sup>st</sup> defendant having visible developments on



5 thereon with the leases thereto renewed when they expired and extended for 49 years and the 1<sup>st</sup> defendant received certificates of title after 1999.

Thus counsel submitted that by 2014 when the plaintiffs filed the instant suit, the 1<sup>st</sup> defendant had utilised and occupied the land for more than 12 years, developed it up to today.

10 Counsel additionally submitted that the plaintiffs were not bonafide occupants of the suit land as they have never been on the land within the law with the plaintiffs themselves and their principal witness, PW4, confirming on oath during cross examination that they had never applied to any authorities to be given the suit land making the issue of being given the first opportunity to apply for the suit  
15 land not arising as was held in the case of ***Bogere Mitala vs Kampala District Land Board SCCA No. 2 of 2007.***

Counsel for the 2<sup>nd</sup> defendant also submitted that there was no evidence that the plaintiffs' witnesses took the matter of the dispute to the LCIII chairperson and that the plaintiffs' negotiated with the 1<sup>st</sup> defendant as not being true because  
20 the plaintiff did not produce any evidence of the same happening and that even if that was true, the undertaking of mediation could not give a cause of action to a time barred case like the instant one.

Counsel for the 2<sup>nd</sup> defendant further submitted that exhibits PEX 2, PEX 3 and PEX 11 to PEX 15 had nothing to indicate that mediation took place between the  
25 plaintiffs and defendants because they prove no agreement reached between plaintiffs and any of the defendants that would aid the plaintiffs' case.

Counsel for the 2<sup>nd</sup> defendant further contended that PW2's description of the land was not for the suit land because her claim was that the suit land had graves on it as per paragraph 11 of her evidence in chief yet the locus visit proved no

- 5 visible grave on the suit land in addition to none of the plaintiffs giving an account of the numerous buildings on the suit land built by the 1<sup>st</sup> defendant.

On the allegation that the 1<sup>st</sup> defendant used a wrong Area Land Committee in securing the decision for securing the land title for the suit land, counsel for the 2<sup>nd</sup> defendant pointed out that argument was remote and not based on any law  
10 for there was no law which would stop the particular Area Land Committee from undertaking the activities as it did and that even if that was true that the 1<sup>st</sup> defendant used a wrong area land committee, that would not render null the power to allocate and extend a lease as such powers were vested in the 2<sup>nd</sup> defendant not an area land committee.

- 15 On the issue of whether the plaintiffs had proved that they or that their fore fathers used the suit land from long ago, counsel for the 2<sup>nd</sup> defendant submitted that the plaintiffs evidence in this respect was largely contradictory the plaintiffs' with the plaintiffs not demonstrating any clan ownership of the suit land because they claimed individual interests, among others.

- 20 Counsel for the 2<sup>nd</sup> defendant further contended that counsel for the plaintiffs stated that DW4 testified that the suit land was held by the 1<sup>st</sup> defendant as an extension of a lease because, to Counsel for the plaintiffs, there is evidence suggesting otherwise.

According to counsel for the 2<sup>nd</sup> plaintiff this argument was not based his on the  
25 law that would make the lease extension illegal and that DW4 testified clearly on the documents the 2<sup>nd</sup> defendant relied on to extend the lease.

Counsel for the 2<sup>nd</sup> defendant distinguished the case of *Wokorach & Ors vs Dr. Okech & 3 Ors, HCCS NO. 59 of 2011* which counsel for the plaintiffs relied on stating that in the *Wokorach's case* concerned plaintiffs occupying the suit land



- 5 unlike the instant case where none of the plaintiffs occupies the suit land yet in the instant case, the plaintiffs were claiming ownership of the suit based land on the allegation that the lessee fraudulently acquired the suit land.

Further, that in **Wokorach** case(supra) the plaintiffs sued as adverse possessors whereas in the instant case, it is the 1<sup>st</sup> defendant in possession since 1993.

- 10 On the submission by counsel for the plaintiffs that being of an old age alone made one an expert in customary law, counsel for the 2<sup>nd</sup> defendant submitted that despite the fact that the two (2) aged witnesses who testified in court were not cross-examined, that alone did not prove their testimony as true for as was considered in the case of **Wokorach & Ors vs Dr. Okech & 3 Ors, HCCS No. 59 of**
- 15 **2011**, where the tenant holds over after the expiration of the initial term and continues to pay the original rental, which is accepted by the lessor, under such circumstances, the lessee holds over and will occupy the status of a tenant at will. In a proper case, an option to extend at the expiration of the original lease may be effectively exercised by the lessee's holding over, without express notification
- 20 by way of an application for extension. In such a situation the lessor could elect to treat the lessee as a trespasser or to waive the notice requirement and treat the lease as having been extended.

- That this was the specific position of the law which takes precedence of the general position of law submitted on by counsel for the plaintiffs. Counsel for the
- 25 2<sup>nd</sup> defendant contends that the 2<sup>nd</sup> defendant portrayed several undertakings that treated the lease as extended, some of them being participating in resolving the issues on the land by intruders and writing letters and also DW 2 testified that the meeting of 1999 overtook the context of the letter of 21<sup>st</sup> Feb 1999.

5 On ownership of the suit land, counsel for the 2<sup>nd</sup> defendant contended that it is by law that the 2<sup>nd</sup> defendant has control over the suit land pursuant to section 59 of the Land Act and article 241 (1)(b) of the Constitution of the Republic of Uganda, 1995.

10 Counsel for the 2<sup>nd</sup> defendant submitted that DW4 Miss Akello Catherine testified that the land is owned by the 1<sup>st</sup> defendant because the 1<sup>st</sup> defendant acquired the disputed plots from Soroti Municipal Council and that, first the Department of Lands in Mbale issued a lease offer and then the 2<sup>nd</sup> defendant issued documents of ownership to the 1<sup>st</sup> defendant.

15 That DW4 testified that the plaintiffs had no claim of right whatsoever over the suit property as DW4 Miss Akello Catherine even in cross examination insisted that the suit land did not have customary owners with Soroti District Land Board under section 59 (c) of the land act taking over from the then controlling authority that had a statutory lease over the suit land which fell within the boundary of that statutory lease and was not a no man's land.

20 That DW2 testified that he knew that the disputed land where SOCADIDO belonged to the Catholic Church and in cross examination testified to the fact that of the number of plots which SOCADIDO had as being 4 plots in number comprised of plot 25-27, plot 29-31 and plot 33-37 along Serere road and plot 1-11 along Kateta road.

25 That given all these facts this Honourable Court should find that the suit land belonged to the 1<sup>st</sup> defendant and dismiss this suit accordingly.



5 d. Court's analysis:

The gist of the plaintiffs' claim is that the suit land was for their father the late Ewinya Gilbert and as such they were customary owners by inheritance. That the late Ewinya first applied to the 2<sup>nd</sup> defendant in 1999 to have the suit land surveyed. That Mzee Manasse Eyenye Etyeku, PW4 followed up the registration  
10 process after the death of Ewinya Gilbert. However, the plaintiffs claim that the 1<sup>st</sup> defendant started claiming for the land in 1999.

The plaintiffs assert that it should have been them who would have been given a chance to get a lease over the suit land and not the 1<sup>st</sup> defendant and that the act of the 2<sup>nd</sup> defendant in issuing a lease to the 1<sup>st</sup> defendant while it was aware  
15 of their claim was fraudulent.

On the other hand, the defendants deny that the plaintiffs were the owners of the suit land either through customary inheritance or by virtue of any other legal holding.

That plot 25-27 Serere Road, plot 1-11 Kateta Road (suit land) which is in their  
20 possession having put developments thereon, was legally acquired from the 2<sup>nd</sup> defendant without any connivance or fraud.

In resolving this dispute, it is imperative that to establish the root of the ownership of the suit land. The plaintiffs plead that the land belongs to their clan of ***Ipiyatok Inomu*** to which their forefathers belonged with PW4 testifying that  
25 the late Ewinya was his paternal uncle who inherited the suit land from his parent Isaiah Ogaram, who also inherited the land from his parents Arita and Isina who died and were buried on the suit land.

- 5 That his grandparents used the land until 1999 when the 1<sup>st</sup> defendant started interfering and claiming ownership of the same.

PW4 further testified that the disputed land was handed over as a share to Ogaram Isaiah, the father of Ewinya Gilbert, who was the father of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> plaintiffs and grandfather to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs.

- 10 PW5 and PW6 corroborates the PW4 testimony in regard the history of the land, but both did not mention when and how the late Arita and Isina got the land, nor the kind of portions that the different plaintiffs got. The claimed caretaker PW4 also did not mention whether he inherited the land and what instrument he and the other plaintiffs had in proof of the alleged inheritance.

- 15 Neither did any of the plaintiffs present any letters of administration to evidence the inheritance or sharing of the estate of the late Ewinya or authority to deal in estate property.

The court was left to speculate as to how Arita and Isina derived their claimed ownership of the land and under which notorious custom, practice or usage.

- 20 PEX12 is a letter dated 08/10/2011 written by Oloya Ewinya Martin (PW3) to the Emorimor of the Iteso Cultural Union regarding the land of *Ipiyatok Inomu* clan. It is through the chairman of the chairman of the *Ipiyatok Inomu*, clan, imputing a semblance of customary ownership.

- 25 However, the contents of PEX12 show that it is more of a complaint by PW3 as he raises a concern that most of their land had been taken either by force or taken without the consent of the land and was occupied by the Soroti Catholic Diocese, Ministry of Works, Soroti District Local Government and as such he was requesting the Emorimor to be given the opportunity to access the suit land so as access to open their boundaries.



5 Whereas this letter through his chairman of the clan, the said chairman did not allude to any notorious custom or practice as regard to the suit land. Also, it merely narrated what was contained in PEX2 and PEX3 as all done in 1999 by themselves when they applied to have surveyed the suit land that they had applied for survey of the land. The letter to the Iteso Cultural Union was written  
10 in 2011. No mention as to why they abandoned their cause or letter of their father, Ewinya Gabriel had written in November 1999 addressed as Ewinya and Sons written to the land board to the Chairperson seeking for the survey of the suit land. Also no mention of the reply from the Land Board to Ewinya and sons.

On the other hand, the plaintiffs plead the incidents of customary ownership of  
15 the suit land, arguing that the suit land was for their forefathers who occupied it from the 1940s.

The plaintiffs further claim having inherited the suit land from the late Gabriel Ewinya and also that the graves of their forefathers were thereon the suit land as testified to by PW5 and PW6.

20 As far as this argument is concerned, it is trite that customary holding of land be regulated by customs, traditions, usage and practices, as well as local rules or regulations that are generally accepted as applicable and binding to the specific area of situation of the suit land and which are notorious.

The plaintiffs, however, did not prove the custom or practice in regard to the suit  
25 land during the hearing of this suit as was the requirement laid out in the case of ***Wokorach & Ors vs Dr. Okech & 3 Ors, HCCS NO. 59 of 2011*** cited by the plaintiffs' counsel.

In that case the plaintiffs therein were held to have no right in the suit land where they did not prove customs upon which they based their claim as the proving

5 customary ownership began with the establishing the nature and scope of the applicable customary rules and their binding and authoritative character, and thereafter evidence of acquisition in accordance with those rules, of a part of that specific land to which such rules apply.

10 That proof of customary tenure at the least requires evidence of a practice that has attained such notoriety that court would be justified in taking judicial notice of it under section 56 (3) of The Evidence Act with proof of mere occupancy and use of unregistered land, however long that occupancy and use may be, without more, is not proof of customary tenure as ***"possession is good against all the world except the person who can show a good title."***

15 More importantly, it is true that with the coming up of the Public Lands Act 1969 and the Land Reform Decree of 1975, no urban could be held under customary tenure. Indeed, Section 24 of The Public Land Act and Section 5(1) of The Land Reform Decree prohibited customary tenure in urban areas with any customary occupation of land in an urban setting without consent of the prescribed  
20 authority declared unlawful. (see: also ***Tifu Lukwago v. Samwiri Mudde Kizza and Nabitaka S. C. Civil Appeal No. 13 of 1996*** and ***Paul Kisekka Ssaku v. Seventh Day Adventist Church S. C. Civil Appeal No. 8 of 1993.***

From the onset of the Public Lands Act 1969 and the Land Reform Decree of 1975 came with attendant actions which required customary owners of land in urban  
25 settings to do and the documents/consent which they needed to obtain which have not been shown or brought to this court by the plaintiffs which conflicts and contradicts their claim that their forefathers owned the land since 1940s. The plaintiffs ought to have presented those documents to this court to prove their customary ownership during the period when the above laws were good laws as  
30 it is evident that the suit land was in urban area and therefore there could not



5 have been any incidence of customary tenure on the suit land after the onset of  
the Public Lands Act 1969 and the Land Reform Decree of 1975 as Section 1 of  
The Land Reform Decree of 1975 had even declared all land in Uganda to be  
public land under the Administration of the Uganda Land Commission in  
accordance with The Public Lands Act of 1969, subject to such modification as  
10 were necessary to bring the Act into conformity with the Decree.

Section 23 (2) of The Public Lands Act, 1969 provided that the Uganda Land  
Commission would grant to the Urban Authorities of designated areas, such lease  
and on such terms and conditions as the Minister would direct and any lease so  
granted would be deemed to be a statutory lease. A controlling authority then  
15 had the capacity to lease out the land entrusted to it under the statutory lease,  
to individuals.

Under both The Public Lands Act and The Land Reform Decree, 1975, occupants,  
including customary tenants on public land, were only tenants at sufferance and  
controlling authorities had power to lease such land to any person. (see: **Ovoya**  
20 **Emmanuel vs Lily Nzizori HCCA No. 24 of 2016.**

It is also trite that proof of mere occupancy and user of unregistered land,  
however long that occupancy and user may be, without more, is not proof of  
customary tenure. That occupancy should be proved to have been in accordance  
with a customary rules accepted as binding and authoritative in respect of that  
25 land, in such circumstances. (See again: **Ovoya Emmanuel vs Lily Nzizori (supra).**

The plaintiffs gave contradictory testimony because in one instance they claim to  
be customary owners of the suit land, in another they refer to a letter written by  
the late Ewinya Gilbert to the Soroti District Land Board for survey of the suit land.  
Whereas, I find the reply to the letter in which a surveyor was sent being

5 addressed to Ewinya Gilbert and Sons which does not explain as to whether, Ewinya Gilbert is the one and the same with Ewinya and Sons, I find that for Ewinya and Sons to seek the allocation of the suit land as being contradictory of their alleged customary ownership.

While Oloya Martin (PW3) testified that the suit land belonged to his grandfather Arita and his late wife Isina but while claiming customary holding, he did not tell the court the successors of the suit land that apparently belonged to his grandfather Arita. He actually contradicts himself that he even consulted the Soroti Municipal about a lease which had been issued to the first defendant but he was told that non had been issued.

15 Be that as it may, I find that the even at the time when Ewinya Gilbert in the letter titled Ewinya Gilbert and Sons (**Request for surveying**) dated 18<sup>th</sup> October 1999 to the District Land Board (PEX2) which was responded to in a letter dated 29<sup>th</sup> November 1999 to the LC1 Chairperson Opiyai Village, instructions to survey the suit land was issued by the then Secretary Soroti District Land Board (PEX3). While the Ewinya Gilbert and Sons was not explained and even the alleged land to be surveyed was not clearly mentioned. These two letters were written in 1999 but at the same time there was already an existing initial lease offer for 2 years commencing from 1/7/1991 given to the 1<sup>st</sup> defendant in respect to an un-surveyed land measuring 2.5 hectares in Soroti Municipal Council issued by Mbale Land office.

On top of that there was an also application by the 1<sup>st</sup> defendant for the extension of the 1991 lease offer and was dated 9/7/1999 and this was several months before Ewinya and Sons' applied to have surveyed the unspecified land. From all these going ons, it would mean that the 1<sup>st</sup> defendant was already on the suit land by 1991/1993, even if one is to believe that the letter by Ewinya and Sons to the controlling authority referred to the same suit land and thus in any case was



5 some years after the 1<sup>st</sup> defendant was already in possession of a lease offer to the same and had even applied for its extension before Ewinya and Sons thought of seeking any survey of the suit land.

Moreover, even if one were to assume that the original lease offer to the 1<sup>st</sup> defendant had expired by 1999 when the late Ewinya made an application for  
10 survey of the suit land, the specific letter written by the controlling authority to Ewinya did not specify the land to be surveyed for Ewinya and Sons and also there was no proved evidence of his occupation or possession of the suit land at that time.

From the above sequenced of events, it can be safely concluded that the suit land  
15 was in 1999 under the control of the Uganda Land Commission or the controlling authority which had the powers to allocate it and not the plaintiffs holding it under customary tenure or at best if they were possessing it, they were occupants at sufferance which they also were not.

From the evidence adduced in court the only two former occupants on the suit  
20 land who were called developers of the suit land according to the compelling evidence of the 2<sup>nd</sup> defendant; were Eletu and Ojangole Margaret. These two developers were mentioned in the meeting of developers on SOCADIDO land held at Aminit Vocation of 19<sup>th</sup> May 1999. Its relevant content reads and I quote;

25 *"After that the chairman told the gathering that the purpose of the meeting is solving the issue of SOCADIDO Land which was allocated to other developers. He said that he called this meeting because of the numerous letters from SOCADIDO complaining of their land having been allocated to other people. Mr. Omuron, a member of the Land Board also said that the Land Board only allocates land which is vacant or falls*  
30 *vacant due to the expiry of leases. This is because if the lease expires, land reverts to the controlling authority.*

5

*Resolutions; (1) the diocese has agreed to compensate the two developers, the Land Board and Soroti Municipal Council sees and identifies plots for the two people as alternatives. SOCADIDO can now start developing, otherwise and leave the two people until they are properly compensated. The two developers should from now give in their costs to Director -SOCADIDO. A team of Overseers was appointed, composed of the LCV Chairman, Mayor, Soroti Municipal Council, Chairperson Western, Secretary, Land Board as Secretary and the Chairman Land Board. They are to see to it that the problem of assessment is done favourably in consultation with SOCADIDO, Miss Ojangole and Mr. Eletu Joseph."*

It should be recalled that DW2 testified that the disputed land has always been in possession of the 1<sup>st</sup> defendant and that the only two people with claims on the SOCADIDO land were Miss Ojangole and Mr. Eletu Joseph. These two were compensated SOCADIDO land and left. They were the only people had been issued the suit land the Land Board and who attempted even to interrupt the 1<sup>st</sup> defendant's possession during the period its lease had expired. These two developers were not in any way the plaintiffs yet surprisingly, Mzee Manasse Enyenyu Etyeku (PW4) appears on the list of people who attended the said meeting whose minutes are **D3**, but in it there is not indicated that he raised any issue as to his or his ancestors also being part of the land which was being discussed which is the land in dispute.

Even in court here he only raised the issue to do with which chairman signed the minutes but the minutes itself has a thumb print of the chairman of the meeting who was DW2 Capt. Otekat John Emilly who corroborated that only persons who had claims on the SOCADIDO land developers were compensated and that he





5 even wrote a letter dated 21<sup>st</sup> May 1999 addressed to the Chairman District Land Board, Soroti, exhibit D1 in which he reiterated the resolution of the meeting at Aminit that;

10 *"It was decided that the land that had been allocated to other developers be returned to SOCADIDO for development activities. In the same vein, it was decided that, SOCADIDO takes up the responsibility of compensating the two developers (Margaret and Andrew) who had already started work in their sites."*

Therefore, the meeting held on 19<sup>th</sup> May 1999 in the period between the expiry of the lease offer of the 1<sup>st</sup> defendant and the subsequent extension by the 2<sup>nd</sup> defendant, impliedly reversed the letter dated 18<sup>th</sup> March 1999, PEX10 titled  
15 *"Rejection of extension and re-entering of the suit land by Soroti District Land Board"* in which the board reiterated that: *"The Registered Trustees of Soroti Catholic Diocese was allocated 2.5hs block around Pamba in 1991 Under Min of WP&DC 55/90 of July 1990. A lease offer to that effect was prepared in*  
20 *Mbale on 6<sup>th</sup> June 1991 for an initial period of 2years with effect from 1.7.91. The lease expired on 30.6.93. The Soroti District and Board found it fit to re-enter that Block and plan a number of plots to meet this demand, considering the expiry of the lease to SOCCADIDO."*

The developers identified in the meeting at Aminit were compensated with PW1  
25 testified during cross examination that he was not even aware that the suit land had been allocated to the 1<sup>st</sup> defendant in 1991 but only insisted that the 1<sup>st</sup> defendant connived without any further evidence.

In my assessment of all the goings on, I note that the only involvement of the plaintiffs in a dispute meeting with the 1<sup>st</sup> defendant was after their letter to the  
30 Emorimor of 08/10/2011 (PEX12) was written and replied to as per PEX13 which was from the Emorimor titled **Inomu, Ipiyatok piece land in Opiyai B and Pamba**

5 to addressed to the Rt Reverend Emmanuel Obbo, the Bishop of Soroti Catholic Diocese, which made reference to a meeting at Aminit in which PW3 who was the author asserted that a member of the clan (not named) but an area councilor of Pamba had raised a complaint which was un answered.

However, according to the minutes of the meeting at Aminit **(D3)**, the  
10 issue/complaint of the plaintiffs was conspicuously absent yet according to the letter dated 30<sup>th</sup> May 2012 **(PEX14)** from Enguna Simon- The Clan Chairperson of Ipiyatok Inomu Clan, on the land occupied by Soroti Catholic Diocese to the Emorimor of ICU, reminding him of the Aminit meeting of 14 February 2012 at Aminit, the issue of the plaintiffs claim on the land held by the 1<sup>st</sup> defendant of  
15 was not in the minutes thereof with even the 1<sup>st</sup> defendant not acknowledging any dispute with the plaintiffs but only promising to revert in due course as to the next action.

From the above, it is absolutely clear to me that the plaintiffs failed to prove that they were on the suit land or were in possession of the suit as they alleged and  
20 also they fail to prove that the 1<sup>st</sup> defendant dispossessed them.

It is true the plaintiffs wrote a letter of complaint to the cultural union head instead of complaining to the 2<sup>nd</sup> defendant whom they claim their father had earlier written to who would have responded accordingly. Though PW1 attempts to explain in cross examination that they involved the 2<sup>nd</sup> defendant whom he  
25 opines did not acknowledge receipt of their letter he does not explain how the 2<sup>nd</sup> defendant acknowledge their subsequent documents by stamping them if indeed his assertion that the 2<sup>nd</sup> defendant refused to handle their issues.

Also with the coming into force of the Constitution of the Republic of Uganda, 1995, Article 241 (1) (a) thereof and section 59 (1) of The Land Act, granted the  
30 power to hold and allocate land in the district *"which is not owned by any person or authority,"* in the District Land Boards.



5 The District Land Boards by operation of law as well became successors in title to controlling authorities or urban authorities in respect of public land which had not been granted or alienated to any person or authority.

I thus agree with the submission of the 2<sup>nd</sup> defendant that the land in dispute was vested in the 2<sup>nd</sup> defendant Soroti District Land Board, which by operation of law  
10 became a successor in title to the Uganda Land Commission in respect of former public land and land which was not owned by any person or authority or which had not been granted or alienated to any person or authority.

It is therefore by law that the 2<sup>nd</sup> defendant had control over the suit land as supported by section 59 of the Land Act and article 241 (1)(b) of the Constitution  
15 of the Republic of Uganda, 1995.

Section 59 (1) of the Land Act provides for the functions of the board to include;

(a) hold and allocate land in the district which is not owned by any person or authority;

(b) facilitate the registration and transfer of interests in land;

20 (c) take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority;

(d) cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents;

(g) deal with any matter which is incidental or connected to the other functions  
25 referred to in this subsection.

The 2<sup>nd</sup> defendant thus had the power to facilitate the registration and transfer of interests in land and take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority.

By the Land Department in Mbale giving a lease offer to the 1<sup>st</sup> defendant and  
30 the subsequent dealings of it by the 2<sup>nd</sup> defendant in respect of the suit land, I find that their action with the 1<sup>st</sup> defendant were legal since there was no

5 evidence to show that the land in question belonged to the plaintiffs or any other person, whether by customary tenure or otherwise

I am convinced that the 1<sup>st</sup> defendant has demonstrated it legally owns the suit land and it obtained proper registration at all times.

Furthermore, at locus, this court also found that Arumet Gabriel and some  
10 teachers used to cultivate on the suit land where SOCADIDO is located between 1981-1987 with the permission of school management committee.

Also Ejukat Charles (DW3) testified of his having joined the Catholic Diocese from 1993 as a Site Supervisor until 2008 and told court that while they were constructing SOCADIDO offices, they used mark stones to establish the position  
15 of the building structures since the church land had been surveyed.

This witness testified that during their erection of the buildings and the fences on the suit land, they never received any complaints from any member of the community regarding the church land except from one lady who had begun construction on the church land but that that lady left when she was stopped and  
20 was compensated for the materials which she had used for her construction. His testimony was not contradicted and was very elaborate and consistent.

This witness also testified that they were using the gardens near Oderai Housing Estate to plant their crops but that the church was forced to build staff houses at the extreme end of the church land to prevent the community from encroaching  
25 on the land, and that is why they have two staff houses near former hostel in Oderai. He reiterated that the fencing of the land during cross-examination and stated that they fenced off three blocks, 25-27, 29 - 31 and 1-11, using chain links and then hedge/live fences for plots 33 - 37.

DW3 in cross examination testified that SOCADIDO has 4 plots of the suit land  
30 that is plot 25-27, plot 29-31, and plot 33-37 along Serere road and plot 1-11 along Kateta road.



5 DW3 further testified that at fencing the disputed land the neighbors were present with some of them teachers. DW2 also testified that there were neighbors to the suit land but that the plaintiffs were not neighbors to it.

A Locus visit was conducted on 17<sup>th</sup> June 2022 in the presence of counsels and the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and nine representatives of the defendants.

10 The plaintiffs claimed on the land were graves belonging to their grandparents but these were graded over by the 1<sup>st</sup> defendant. The court did not see any graves on the suit land.

Furthermore, according to the locus report regarding the features on the land it was found out that on the portion of the suit land between Arita Road and Pamba  
15 road, the 1<sup>st</sup> defendant had the following developments thereon; education department with two radio stations (KARITAS and Delta FM), SOCADIDO offices and the Teso Organic Honey Ltd facility. These facilities were housed in about eight structures on the land. Behind the structures was land used for cultivation by the staff of the 1<sup>st</sup> defendant. All these were fenced off with chain link and iron  
20 and concrete angle bar fencing.

On the portion of the suit land between Pamba Road and Ngora Road there were a residential house belonging to the 1<sup>st</sup> defendant and a foundation belonging to the 1<sup>st</sup> plaintiff. The rest of the land was used for cultivation.

It was a finding and observation of court during locus that the suit land was  
25 fenced in 1999 but part of fence was forcefully removed by the plaintiffs with the 1<sup>st</sup> plaintiff forcefully erecting a building foundation thereon. However, the portions of the fence which had been forcefully removed by the plaintiffs were later replaced and reinforced with concrete angle bars and chain links and no signs of the plaintiff's parents' graves were visible.

5 The plaintiffs failed to prove their possession of the suit land with cogent evidence unlike the defendant witness who were coherent regarding actual possession that is through the erecting a fence, an act that was agreed to by the plaintiffs' witnesses, its cultivation of the suit land and its erecting developments thereon as confirmed by the various correspondences and also confirmed during  
10 the locus visit.

DW3 testified that SOCADIDO has four plots which are plot 25-27 plot 29-31 and plot 33-37 along Serere road and plot 1-11 along Kateta road. DW 3 also testified that the 1<sup>st</sup> defendant fenced three plots, that is, block 25-27, plots 29-31 Serere road with chain links.

15 DW3 added that they put a fence on plot 33-37 but approximately 7/8 of it was cut down by time of locus visit. DW 3 testified that he lived on the suit land as a worker of the SOCADIDO, an NGO of Soroti Catholic Church until 2008. He also said that there were crops on the suit land. DW3 testified that in 1993 some lady came and tried to construct in the land occupied by SOCADIDO but her dispute  
20 was resolved and that he had never seen any of the plaintiffs on the suit land. DW3 who was the construction supervisor under SOCADIDO an NGO of the Catholic Church, testified that they did not receive any resistance from the community while fencing the disputed land and that they did not deploy any army. That at fencing the disputed land the neighbours were present some of  
25 them teachers. DW2 also testified that there were neighbours to the suit land but that the plaintiffs were not neighbours to it.

This evidence not only rebuts any iota of e possession of the suit land by the plaintiffs but concretise the actual possession of the suit land by the 1<sup>st</sup> defendant which is corroborated by the 2<sup>nd</sup> defendant which is the controlling authority.



5 It is my considered view that in light of the evidence above the 1<sup>st</sup> defendant's ownership of the suit land is supported by its witnesses, the documents and the locus visit report which all prove concretely that the 1<sup>st</sup> defendant occupied and continue to occupy the suit land effectively and un interrupted since it was given the relevant legal documents to do so by the then controlling authority when no  
10 one had any claim to the suit land.

The 1<sup>st</sup> defendant thus is found to have acquired the suit property from the then Soroti Municipal Council in 1992 and obtained documents of ownership by 1993 from the 2<sup>nd</sup> defendant's office in Mbale. The 2<sup>nd</sup> defendant handled extensions/renewal of the said leases.

15 Because I have earlier found that the plaintiffs' and their forefathers, if at all were on the land at any one point, they were on it as customary tenants at sufferance, these cannot be lawful and bonafide occupants like counsel for the plaintiffs contends.

Section 29(c) of the Land Act, 1998 defines a lawful occupant to mean a person  
20 who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title. It is my considered view that the plaintiffs never occupied the land as they have not proved it on a balance of probabilities.

The plaintiffs counsel contended that there were annexures of the defendant  
25 which were brought to court during trial but not attached to the Written Statement of Dependence.

DW4 testified that the documents of DEX 45 to 52 were on the file and that the lawyer of the defendants took the file and chose the documents that they wanted for use in court. She also testified that she participated in giving information, but

5 she did not file the defence. It is trite that once an exhibit is admitted on the record and no objection was raised on it by the plaintiffs' counsel when admitting it, counsel cannot renege in submissions for judgment by objecting to the documents that were admitted on the court's record. The objection now is merely a submission of the plaintiffs' counsel from the bar which is frowned upon  
10 strongly.

The plaintiffs raised the concern of extending an expired lease. DW4 Miss Akello Catherine testified in her evidence in chief and cross-examination that whatever the 2<sup>nd</sup> defendant did was within her mandate.

In cross-examination, she testified that the disputed transaction in the suit land  
15 called for an extension of a lease. According to the annexures presented, the 1<sup>st</sup> defendant already had a lease granted to it by the Mbale Lands department, but also, despite the rejection and re-entry documents, there was a meeting at Aminit which intervened and resolutions made in which the two developers on the suit land not the plaintiffs were said to have been compensated, and there is  
20 no other contrary evidence to that effect.

The plaintiffs' counsel raised the issue of Soroti Diocese not being non-existent. The Certificate of Registration of The Registered Trustees of Soroti Catholic Diocese dated 29<sup>th</sup> April 2021, **PEX 9, validated the trustees of Soroti Catholic Diocese, to me settles the issue raised by the plaintiffs' counsel.**

25 The plaintiffs' counsel contends that the 2<sup>nd</sup> defendant ignored priority to a sitting tenant being the plaintiffs and their forefathers. It has been observed above in this judgement that there is no evidence that the plaintiffs were in actual occupation of the suit land, but even if they were, they were customary tenants



5 at sufferance with full knowledge of the legal ownership of the land by the 1<sup>st</sup> defendant at the least constructively.

But also evidence was led by the plaintiffs that even when they had the survey letter allowing them to survey the land, they did not go ahead with the survey, nor did they make any payments to the same.

10 It is my finding that there was no evidence alluding to the fact that plaintiffs were tenants on the suit land.

On the contrary, the defendants whose evidence is more compellingly believable led to evidence of the continuous and uninterrupted possession and leasehold occupancy of the 1<sup>st</sup> defendant in the suit land since 1991/1993 to the day of  
15 locus as per the following exhibits;

- Initial lease offer given to the 1st defendant in respect to the un-surveyed land measuring 2.5 hectares issued by Mbale Land Board, for 2 years commencing from 1/7/1991, PEX8,
- Lease offers in respect to plot 1-9 Kateta road issued in 1999, Lease offers  
20 in respect to plot 25-37 Serere road dated 30<sup>th</sup> September 2013 for 49 years commencing from 1.7.1991 PEX7,
- Application by the 1<sup>st</sup> defendant to extend the lease offer dated 9/7/1999, Rejection of extension and re-entering of the suit land by Soroti District Land Board dated 18<sup>th</sup> March 1999, PEX 10, the contents which are that,

25 ***"The Registered Trustees of Soroti Catholic Diocese was allocated 2.5ha block around Pamba in 1991 Under Min of WP&DC 55/90 of July 1990. A lease offer to that effect was prepared in Mbale on 6<sup>th</sup> June 1991 for an initial period of 2years with effect from 1.7.91. The lease expired on 30.6.93. The Soroti District and Board***

5                    *found it fit to re-enter that Block and plan a number of plots to  
meet this demand, considering the expiry of the lease to  
SOCCADIDO."*

- A letter of the Soroti District Land board dated 21st April 1999 confirming refusal to extend the lease and directing the 1st defendant to remove its  
10                    fence from the suit land, **PEX 11**, This letter made reference to the application for extension of land leases offered to SOCCADIDO REF: NO. SOC/LAND/99 dated 29<sup>th</sup> March 1999 and a letter of 31<sup>st</sup> March 1999.
- Application for lease hold by the 1st defendant for the plot 25-39 Serere road dated 5/11/2012 **PEX5**.
- 15                    - Application for leasehold by the 1<sup>st</sup> defendant for plot 1-9 Kateta road dated 5/11/2012, **PEX4**.
- Leasehold title for plots 1-11 Kateta close, **PEX6**, from 20<sup>th</sup> February 1993. Certificate of Registration of The Registered Trustees of Soroti Catholic Diocese dated 29<sup>th</sup> April 2021, **PEX 9** – validated the trustees of Soroti  
20                    Catholic Diocese. The defendants also presented various receipts of payments of ground rent and surveyor fees, all of which were never disputed.
- Certificate of Title – Leasehold for plots 25-27, 33-37 and 29-31 Soroti block, Serere road in the name of the Registered Trustees of Soroti Catholic  
25                    Diocese, D4 – it is from 1<sup>st</sup> July 1991 for 49 years of 8.8570 hectares;
- Certificate of Title – Leasehold for plots 1-11, Kateta, close in the name of the Registered Trustees of Soroti Catholic Diocese, D5 – it is from 1<sup>st</sup> July 1991 for 49 years, D5 -- 20<sup>th</sup> February 1993 for 49 years of 2.6 hectares;
- Lease Offer dated 23/7/1993 issued by Department of Lands, Mbale, to  
30                    M/s Soroti Catholic Diocese for approximately 2.6 ha off Serere Road Soroti for an initial period of 5 years from 20/2/1993, **D6**;



- 5        - Lease Offer dated 4/2/2000 issued by Department of Lands, Mbale, to M/s Soroti Catholic Diocese for plots 33-37, Serere Road Soroti for an initial period of 5 years from 1/8/1992, **D8**;
- Allocation of town plots to Soroti Catholic Diocese by the Soroti Municipal Council dated 1993, **D9**;
- 10       - Authority to survey areas Lale Road, Serere Road, **D10**.
- Application for extension of lease for Soroti Catholic Diocese plots in Soroti Municipality dated 29.03.1999 for plot 25-27; plot 29-31; plot 33-39, plot 5/5A on Ongodia road, plots 2-20 and 22-34 Ogwara road, plot off Serere road and old Mbale road (approx. 2.6 ha), **D11**.
- 15       - Minutes of the Meeting on SOCADIDO Land allocated to other developers at Aminit Vocation Institute held on 19<sup>th</sup> May 1999, **D3**.
- The letter dated 21<sup>st</sup> May 1999 from the Chairman LCV to the Chairman District Land Board, Soroti, in which it was decided that the land that had been allocated to other developers be returned to SOCADIDO for development activities. In the same vein, it was decided that, SOCADIDO takes up the responsibility of compensating the two developers (Margaret and Andrew) who had already started work in their sites.
- 20

In sum total, it is my considered finding that the 1<sup>st</sup> defendant's has proved its possession and use of the suit land as opposed to the plaintiffs. On top of that it has the titles to the suit land issued by the appropriate authorities with no proof that they were fraudulently obtained and so as per Section 59 of the Registration of Titles Act, Cap 230, the 1<sup>st</sup> defendant thus has conclusive ownership of the suit as the person or entity with a certificate of title.

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5 The plaintiffs failed to prove their ownership of the suit land on a balance of probabilities as the 1<sup>st</sup> defendant's account is more believable and leaves no iota of doubt making it the lawful and rightful owner of the suit land.

d) Whether the 1<sup>st</sup> defendant fraudulently obtained its registration as proprietor of the suit land.

10 Counsel for the 2<sup>nd</sup> defendant contends that the plaintiffs were fraudulent, misconceived and misleading in bringing this suit claiming ownership as owners yet they had it in mind that the 1st defendant has a leasehold title. The plaintiff disputes the allocation of the said leasehold but then claim for ownership of the same.

15 The plaintiffs, according to Paragraph 11 of the Amended Plaint, averred that *the* defendant, acting through its servants/agents, fraudulently acquired a lease offer and/or certificate in respect to the suit land.

The plaintiffs stated regarding the fraud are; procuring the acquisition of a lease offer and/or certificates in respect to the suit land in order to defeat the plaintiffs' 20 unregistered interests in the suit land, tricking the plaintiffs into a sham negotiation over the disputed property in order to buy time to fraudulently procure the acquisition of the registered interests in the suit land, forcefully fencing off the suit land without seeking consent of the plaintiffs and their late parents who were in effective possession of the suit land and had been consistent 25 in repelling the fencing off of the suit land by the 1<sup>st</sup> defendant's agents/servants, making several attempts to procure certificates of title in respect to the suit land amidst protests by the plaintiffs.

Having found issues 1 and 2 that the suit land belongs to the 1<sup>st</sup> defendant which legally acquired the suit land with no fraud involved, I do not find it necessary to



5 furthermore to delve into this issue which is resolved by the two issues above.  
resolve this issue.

e) What are the remedies available to the parties?

Since I have found that the plaintiffs are not the owners of the suit land and that  
the 1<sup>st</sup> defendant is the rightful owner of the suit land, the plaintiffs have no  
10 remedy.

Whereas the 1<sup>st</sup> defendant introduced a counterclaim, it was never followed it up  
by praying to court for an *ex parte* resolution after the plaintiffs' failed to make  
reply thereto and consequently setting it down for formal proof. In that regard,  
the counterclaim is not proved and it is dismissed.

15 13. Conclusion:

This suit is found to lack merits and is dismissed with costs to the defendants to  
be paid by the plaintiffs.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

30<sup>th</sup> November 2023

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