

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**  
**CIVIL SUIT NO. 239 OF 2009 CONSOLIDATED WITH**  
**CIVIL SUIT NO. 298 OF 2010**

1. **AMRATLAL PURSHOTTAM BHIMJI**
2. **NARMADABEN PURSHOTTAM ::::::::::::::::::::::::::::::: PLAINTIFFS**

**VERSUS**

1. **GIAN SINGH BHAMBRA**
2. **NIZARALI HAMIRANI**
3. **CRAIG IAN MIRANUS**
4. **REGISTRAR OF TITLES ::::::::::::::::::::::::::::::: DEFENDANTS**

**BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**J U D G M E N T.**

*Amratlal Purshottam Bhimji* and *Narmadaben Purshottam* who are husband and wife respectively (hereinafter referred to as the “1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs”) filed this suit against the four Defendants for the recovery of properties comprised in **LRV 2803 Folio 3 Plot 3 Clement Hill Road, Kampala** (hereinafter referred to as “**Plot 3**”) and **LRV 198 Folio 4 Plot 5 Clement Hill Road, Kampala** (hereinafter referred to as “**Plot 5**”). The Plaintiffs seek the following orders:-

- a) ***A declaration that the 1<sup>st</sup> Defendant is not entitled to transfer, or in any way deal with Plots 3 and 5, Clement Hill Road, Kampala.***
- b) ***A declaration that the transfer of Plots 5 and 3 Clement Hill Road, Kampala, by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively, was illegal and void ab initio.***
- c) ***A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have no legal claim or right in respect of Plots 5 and 3 Clement Hill Road, Kampala, and are not entitled to possession of the same.***

- d) *A declaration that the 4<sup>th</sup> Defendant has no authority to cancel the title to Plots 3 Clement Hill Road, Kampala or issue title for the same to the 1<sup>st</sup> or 3<sup>rd</sup> Defendant.*
- e) *A permanent injunction restraining the 4<sup>th</sup> Defendant from cancelling the certificate of title to Plot 3 Clement Hill Road, Kampala.*
- f) *A declaration that the 4<sup>th</sup> Defendant wrongly and illegally cancelled the 1<sup>st</sup> Plaintiff's name as registered proprietor of Plot 3 Clement Hill Road, Kampala, entered the 1<sup>st</sup> Defendant's name, and later entered the 3<sup>rd</sup> Defendant's name as registered proprietor thereof improperly and illegally.*
- g) *An order directing the 4<sup>th</sup> Defendant to cancel all subsequent instruments of transfer in respect of Plots 3 and 5 Clement Hill Road, Kampala, and reinstate the 1<sup>st</sup> Plaintiff as registered proprietor thereof.*
- h) *A permanent injunction restraining the 3<sup>rd</sup> Defendant or his agents from evicting the Plaintiffs and the rest of their family from the suit property, transferring or in any other way dealing with Plots 3 Clement Hill Road, Kampala.*
- i) *Mesne Profits against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in respect of Plot 5 Clement Hill Road, Kampala, from September 2008.*
- j) *General and punitive damages*
- k) *Costs of the suit.*

***Summary of facts.***

Gian Singh Bhabra (*hereinafter referred to as the "1<sup>st</sup> Defendant"*) advanced a sum of US \$530,000 to one Sameer Bhimji. A Memorandum of Understanding (MoU) to that effect was executed on 10/04/2007. The said Sameer Bhimji is a grandson of the 1<sup>st</sup> Plaintiff and acted in the interest of the Plaintiffs. The loan was

to be paid back within a period of six months from the date of the signing of the MoU together with interest of 12% all amounting to US\$609,500.

Sameer Bhimji offered two properties comprised in **Plot 5** and **Plot 3 Clement Hill Road, Kampala** as security for the loan. The 1<sup>st</sup> Defendant duly lodged caveats on both titles to secure his interest therein. One of the terms under the MoU was that the transaction was not a sale and that the 1<sup>st</sup> Defendant would not at any time take possession of the properties but would allow the Plaintiffs' family to remain in occupation until the loan was fully paid.

The six months' period lapsed and the 1<sup>st</sup> Plaintiff defaulted on the payment of the amount due. The parties immediately thereafter, through their respective lawyers, commenced negotiations on how the loan should be paid. Through a series of negotiations the parties eventually agreed that Plot 5 be sold to M/s. Sharp Electronic Technologies Ltd; a buyer identified by the Plaintiffs at a price of US \$510,000, and the balance of US \$170,000 was to be secured by the 1<sup>st</sup> Plaintiff handing over the title for Plot 3 to the 1<sup>st</sup> Defendant to register a legal mortgage on it. The balance was to be paid within eight months from the date of registration of the legal mortgage and in default to attract 12% interest per annum.

As the negotiations were on going, it was discovered that the 1<sup>st</sup> Defendant had already transferred Plot 5 to himself without the knowledge of the Plaintiffs. He subsequently sold the same to Nizarali Hamirani (*hereinafter referred to as the "2<sup>nd</sup> Defendant"*). It was also discovered that when the certificate of title for Plot 3 was surrendered to the 1<sup>st</sup> Defendant to register a legal mortgage pursuant to the terms of the negotiations, he instead lodged it for transfer also to himself. The 1<sup>st</sup> Plaintiff's lawyer Mr. Muwanga Sebina Hussein, however, managed to withdraw it from the Department of Land Registration, and the 1<sup>st</sup> Plaintiff lodged a caveat thereon.

The Commissioner for Land Registration (*hereinafter referred to as the “4<sup>th</sup> Defendant”*) later demanded that Mr. Muwanga Sebina Hussein returns the title. The said lawyer instead told the 4<sup>th</sup> Defendant to directly contact the 1<sup>st</sup> Plaintiff who now had the title in the UK. The 4<sup>th</sup> Defendant then dismissed the 1<sup>st</sup> Plaintiff’s caveat and refused to register the 2<sup>nd</sup> Plaintiff’s caveat to protect her interest in the matrimonial property, and cancelled the title to Plot 3 and issued a special certificate of title and registered the 1<sup>st</sup> Defendant as the proprietor. The 1<sup>st</sup> Defendant then sold Plot 3 to Craig Ian Miranus (*hereinafter referred to as the 3<sup>rd</sup> Defendant”*). All this time the 1<sup>st</sup> Plaintiff’s family was in occupation of Plot 3 where they still reside up to now, and they filed this suit.

The following issues were agreed and framed for determination;

- (1) Whether the 1<sup>st</sup> Defendant’s action of transferring the suit properties into his name, and subsequent transfer to the 2<sup>nd</sup> Defendant (Plot 5) and 3<sup>rd</sup> Defendant (Plot 3) was fraudulent, and/or illegal.***
- (2) Whether the 4<sup>th</sup> Defendant actions of transferring the properties in the Defendants’ names was lawful.***
- (3) If the answer to the 1<sup>st</sup> and 2<sup>nd</sup> issue is in the affirmative, whether the Defendants are entitled to any refund of the money from the Plaintiffs and if so how much?***
- (4) If the issues in (1) and (2) above are answered in the affirmative whether the 1<sup>st</sup> Plaintiff is entitled to mesne profits in respect of Plot 5 from September 2008 to date.***
- (5) Remedies available to the parties.***

Mr. Andrew Kibaya represented the Plaintiffs and Mr. Luswata the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The 4<sup>th</sup> Defendant never filed a defence and court proceeded under ***Order 9 r.10 Civil Procedure Rules (CPR)*** as if the defence had been filed.

Counsel for the parties made extensive oral submissions which are on court record. I will not reproduce them, but will make occasional reference to them.

**Resolution.**

***Issue No.1: Whether the 1<sup>st</sup> Defendant's action of transferring the suit properties into his name, and subsequent transfer to the 2<sup>nd</sup> Defendant (Plot 5) and 3<sup>rd</sup> Defendant (Plot 3) was fraudulent, and/or illegal.***

The Plaintiffs' main contention is that the acts of the 1<sup>st</sup> Defendant of transferring Plot 5 into his name and subsequently to the 2<sup>nd</sup> Defendant, and Plot 3 into his name and subsequently into the 3<sup>rd</sup> Defendant's name was done in bad faith, illegally and/or fraudulently. The particulars of fraud and bad faith set out in paragraph 8 of the plaint are as follows;

***“PARTICULARS OF BAD FAITH, FRAUD AND ILLEGALITY***

- i) The 1<sup>st</sup> Defendant transferring Plot 5 Clement Hill Road to the 2<sup>nd</sup> Defendant without consent of the 1<sup>st</sup> Plaintiff, and in breach of the spirit of negotiation and settlement.***
- ii) The 1<sup>st</sup> Defendant procuring a transfer forms from the 1<sup>st</sup> Plaintiff by use of lies and deceit.***
- iii) The 1<sup>st</sup> Defendants lodging the title to Plot 3 Clement Hill Road with the 4<sup>th</sup> Defendant for transfer against the agreed position that only a legal mortgage would be registered.***
- iv) The 1<sup>st</sup> Defendant providing wrong information to the 1<sup>st</sup> Plaintiff that he had not transferred Plot 5 to the 2<sup>nd</sup> Defendant, whereas not.***
- v) The 1<sup>st</sup> Defendant selling and transferring Plot 3 Clement Hill Road to the 3<sup>rd</sup> Defendant yet he was a mortgagee and had agreed with the 1<sup>st</sup> Plaintiff on how money due to him was to be paid back.***
- vi) The 1<sup>st</sup> Defendant taking legal fees from the 1<sup>st</sup> Plaintiff and reneging on all other agreed matters.***

- vii) *The 1<sup>st</sup> Defendant transferring both Plots 3 and 5 Clement Hill Road to 3<sup>rd</sup> parties without advertising and having valuations carried out yet the 1<sup>st</sup> Defendant was merely a mortgagee not an owner in his own right.*
- viii) *The 4<sup>th</sup> Defendant refusing to lodge the 2<sup>nd</sup> Plaintiff's caveat to protect her interest in the matrimonial property.*
- ix) *The 4<sup>th</sup> Defendant "dismissing" the 1<sup>st</sup> Plaintiff's caveat.*
- x) *The 4<sup>th</sup> Defendant transferring Plot 3 Clement Hill Road to the 1<sup>st</sup> Defendant yet there was no sale agreement but only a mortgage arrangement which the 4<sup>th</sup> Defendant was aware of.*
- xi) *The 3<sup>rd</sup> Defendant "purchasing" Plot 3 Clement Hill Road without inspecting the property to ascertain whether it was occupied, and the rights of the current occupants".*

The 1<sup>st</sup> Defendant denied the allegations of bad faith or committing any illegality and fraud. He averred that the acts sought to be blocked already happened and the property was transferred to third parties, and hence the suit has been overtaken by events. The 2<sup>nd</sup> Defendant also denied taking part in the alleged fraud stating that he is a *bona fide* purchaser for value of the suit property without notice of any fraud. Similarly, the 3<sup>rd</sup> Defendant denied any knowledge of the alleged fraud and that he is a *bona fide* purchaser for value without notice of the fraud.

From the facts it is clear that an equitable mortgage was created under the MoU (*Exhibit P1*) when the 1<sup>st</sup> Defendant advanced a sum of money to the 1<sup>st</sup> Plaintiff against the security of the suit properties. This falls within the ambit of **Section 129** of the **Registration of Titles Act (Cap 230)** to the effect that;

***"(1) Notwithstanding anything in this Act, an equitable mortgage of land may be made by deposit by the registered proprietor of his or her certificate of title with intent to create a security thereon whether***

*accompanied or not by a note or memorandum of deposit subject to the provisions hereinafter contained.*

*(2) Every equitable mortgage as aforesaid shall be deemed to create an interest in land.*

*(3) Every equitable mortgagee shall cause a caveat to be entered as provided for by section 139.”[Underlining is for emphasis].*

It is the established law that an equitable mortgage is duly created when a transaction has the intent but not the form of a mortgage, and which a court of equity will treat as a mortgage. The threshold issue in an action seeking imposition of an equitable mortgage is whether the plaintiff has an equitable remedy at law. See: *Black’s Law Dictionary (8<sup>th</sup> Edition) page 1032*. Similar position was taken in *DFCU Bank (U) Ltd. v. Dotway Marketing Bureau Ltd & Georgina Najjemba, Originating Summons No.06 of 2012, per Obura J*; to the effect that once land is given to secure a loan and a caveat lodged on the property an equitable mortgage is duly created even if it is not formally expressed that it is a mortgage.

The MoU in the instant case expressly provides *inter alia* that it does not constitute a sale and specifically prohibits the 1<sup>st</sup> Defendant at anytime taking possession of the properties, but to let the 1<sup>st</sup> Plaintiff’s family remain in occupation until full payment of the loan. Even if the MoU did not specifically state so, the law would naturally presume the terms to exist inherently in the nature of any equitable mortgage, and the essence is to preserve the mortgagor’s inviolable right of equity of redemption. See: *Commercial Microfinance Ltd v. Davis Edger Kayondo, HTC-00-CC-0012-2006* per Kiryabwire J. (as he then was); *General Parts (U) Ltd. & Another v.N.P.A.R.T., S.C.C.A. No.09 of 2005*.

It is an agreed fact that the 1<sup>st</sup> Plaintiff defaulted on the terms of payment under the MoU. It is also a fact that the parties through their respective lawyers commenced negotiations on how to pay back the loan. Through a series of correspondences the

parties finally reached mutually agreeable terms of payment. Under the terms the 1<sup>st</sup> Defendant agreed to sell Plot 5 to M/s. Sharp Electronic Technologies Ltd; a buyer identified by the 1<sup>st</sup> Plaintiff at a price of US \$510,000. As a condition *sine qua non* to the sale of Plot 5, the 1<sup>st</sup> Plaintiff was required to hand over the certificate of title for Plot 3 to the 1<sup>st</sup> Defendant for the purpose of registering a legal mortgage on it to secure the agreed balance of US \$170,000. The balance would be paid in a period of eight months from the date of registering the legal mortgage and in default would attract an interest rate of 12% per annum.

The terms negotiated were duly accepted by parties as per *Exhibit P24*; a letter from the 1<sup>st</sup> Plaintiff's lawyers *M/s Mwandha, Wabwire & Muwanga Advocates & Solicitors* to *M/s Kibojana, Kakuba & Co. Advocates* for the 1<sup>st</sup> Defendant, which was to the effect that the 1<sup>st</sup> Defendant makes a written undertaking to sell Plot 5 to a buyer identified the 1<sup>st</sup> Plaintiff at a price of US \$510,000. The 1<sup>st</sup> Defendant made the undertaking in letter *Exhibit P27* to the effect that the sale of Plot 5 at a price of US\$510,000 was not disputed. Also, letter *Exhibit P36* is proof that selling Plot 5 was conditional on the certificate of title for Plot 3 being surrendered to the 1<sup>st</sup> Defendant to secure the balance of US\$170,000 by registering a legal mortgage on the title.

The spirit of the negotiations is quite apparent from the several correspondences exhibited on court record. As part of the settlement the 1<sup>st</sup> Defendant's lawyers in letter *Exhibit P35* asked for and were paid legal fees as confirmed in letters *Exhibit P51 and 57*. The 1<sup>st</sup> Plaintiff in addition suggested, in letter *Exhibit P38*, that the repayment period under the legal mortgage for the balance amount be 12 months without interest. The 1<sup>st</sup> Defendant in letter *Exhibit P39* however agreed to 8 months and added that in event of default, 12% interest per annum be applied. The parties ultimately settled for the latter position, and the 1<sup>st</sup> Plaintiff in letter *Exhibit*



P40 handed over the certificate of title for Plot 3, which the 1<sup>st</sup> Defendant acknowledged receipt in letter *Exhibit P41*.

For the sale of Plot 5 to materialize the 1<sup>st</sup> Defendant was required to hand over the title to M/s. Sharp Electronic Technologies Ltd the buyer identified by the 1<sup>st</sup> Plaintiff. The buyer would first pay 30% of US\$ 510,000 on to the account of the 1<sup>st</sup> Defendant and the balance later by obtaining a bank facility using the same title as security. This would settle US \$ 510,000 as regards Plot 5.

It is important to observe that the negotiations invariably gave rise to a whole new set of terms which superseded the MoU, but the essence of entire arrangement remained essentially an equitable mortgage. The parties' mutually negotiated and accepted terms, however, never came to fruition. The 1<sup>st</sup> Defendant did not hand over the title for Plot 5 to the buyer identified by the Plaintiffs after he had received the certificate of title to Plot 3. As a matter of fact when the 1<sup>st</sup> Plaintiff, in letter *Exhibit P38*, asked the 1<sup>st</sup> Defendant to nominate the bank account for the buyer to deposit the 30% of the US \$510,000, the 1<sup>st</sup> Defendant's reply in letter *Exhibit P39* was that Plot 5 was not in issue.

Given the entire repayment arrangement, the 1<sup>st</sup> Defendant's response, in my view, was totally strange and quite at variance with the earlier position in letter *Exhibit P37* in which he expressly gave all indications that the sale of Plot 5 on the agreed terms was acceptable. It is evidently clear that the shifting of position by the 1<sup>st</sup> Defendant was not a sudden event but part of his protracted machinations to take over the properties. This is demonstrated by the fact that as at the time the parties appeared to be negotiating a settlement, the 1<sup>st</sup> Defendant had in fact already got himself registered on the title to Plot 5. Indeed the parties found it fit to frame this fact as an agreed fact in item No.6 of joint Scheduling Memorandum.

It is also obvious that by subjecting the sale of Plot 5 to the 1<sup>st</sup> Plaintiff's surrender of the title for Plot 3, the 1<sup>st</sup> Defendant simply wanted to have the title to Plot 3 in

his possession as well because he knew for a fact that the transfer of Plot 5 had already been done and the purported a “*sine qua non*” was just a hoax.

I cannot find a clear case of trickery and sharp practices than this. It is evidently clear that all along the 1<sup>st</sup> Defendant harbored ill intentions of taking over the properties and was never genuinely interested in the recovery of his debt. This could not be any clearer than in the transfer of Plot 5 to himself and then selling it at US \$350,000 - a price of his own choice - to the 2<sup>nd</sup> Defendant; which was by far less than the price offered by the buyer identified by the 1<sup>st</sup> Plaintiff. There is no doubt that 1<sup>st</sup> Defendant employed manipulation, trickery, and dishonest means to defraud the 1<sup>st</sup> Plaintiff of the property.

It is the established law that fraud means actual fraud or some act of dishonesty. In ***Waimiha Saw Milling Co. Ltd.v. Waione Timber Co. Ltd.(1926) A.C 101 at p. 106***, it was held that fraud implies some act of dishonesty. In ***Assets Co. v. Mere Roihi (1905) A.C 176***, it was also held that fraud in actions seeking to affect a registered title means actual fraud, dishonesty of some sort not what is called constructive fraud; an unfortunate expression and one may opt to mislead, but often used for want of a better term to denote transactions having consequences in equity similar to those which flow from fraud. The same definition was applied by the Supreme Court and the Court of Appeal of Uganda in the case of ***Kampala Bottlers Ltd. v. Damanico(U) Ltd., Civil Appeal No. 22 of 1999***; and ***David Sejjaaka v. Rebecca Musoke, Civil Appeal No. 12 of 1985*** respectively. Applying the same principles to the facts of the instant case, I find that actual fraud had been proved by the Plaintiffs as against the 1<sup>st</sup> Defendant beyond balance of probabilities.

Apart from the proven fraud, evidence shows that the 1<sup>st</sup> Defendant also committed illegal acts. This can be seen in the transfer to himself of the property which he well knew was the subject of an equitable mortgage. The established principles of

a mortgage are that “once a mortgage always a mortgage” and a mortgagee cannot impose any “clog or fetter on equity of redemption”. See: ***Browne v. Ryan***[1901] 2 1R 655; ***Sammuel v Jarrah Timber and Wood Paving Corp. Ltd*** [1904] AC 323. In the latter case the court also held that where the option changed the nature of the transaction from a mortgage to a sale it was void, and that equity is jealous of persons taking securities for a loan and converting such securities into purchases. Similar position was taken in ***Commercial Microfinance Ltd v. Davis Edger Kayondo***,(supra) quoting the case of ***Erieza Wamala v. Musa Musoke***, [1920 -29] ***111ULR 120*** at page 120- 121 where it was held that;

***“It is an old established rule that if money is lent on the security of land, the lender will get security and nothing more...Therefore if the borrower wishes to redeem the land within a reasonable time he will always be allowed to do so, even though the due date is past. This rule is so strict that not even an express agreement will be allowed to exclude the borrower’s right to redeem.”***

In light of this settled position of the law, I find Mr. Luswata’s argument unsustainable that the 1<sup>st</sup> Defendant obtained signed transfer forms from the 1<sup>st</sup> Plaintiff in the UK and transferred the property when there was default in payment in accordance with the terms of the MoU. It is trite law that the terms of an agreement could not act as a fetter or clog on the borrower’s right of equity of redemption.

If the 1<sup>st</sup> Defendant wished to sell security, his remedy was in applying to court for an order to foreclose the 1<sup>st</sup> Plaintiff’s right of redemption anytime after the breach of the covenant to pay. This is a requirement under **Section 8. (1)** of the old ***Mortgage Act (Cap229)*** under whose legal regime the MoU was crafted. Upon the application the court would determine the amount due and fix a date not exceeding

six months from the date of the failure to pay within which the 1<sup>st</sup> Plaintiff would pay the amount due and if he failed to redeem the security would be sold.

**Section 9 (supra)** set out an elaborate procedure that had to be complied with in a sale by foreclosure. It was by public auction on terms approved by the court, and the sale would not take place until the expiration of thirty days from the date of the order of foreclosure. Prior to the sale the mortgagee would give to the mortgagor reasonable notice, being not less than thirty days, of the date and the place of sale. Failure to give notice, though not affecting the validity of the sale, would render the mortgagee personally liable for any loss caused thereby. Most importantly, the mortgagee was specifically precluded from purchasing the mortgaged property at the sale unless the purchase by the mortgagee or his or her nominee was approved by the court.

There is no evidence to suggest the 1<sup>st</sup> Defendant complied with the above stated legal procedure prior to transferring to himself the property and then selling it to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. I agree with Mr. Andrew Kibaya's submissions that the 1<sup>st</sup> Defendant opted for the "self – help" method, and the law regards the transfer of the property by such means as ineffective because it is illegal. Needless to emphasize that the transfer was also void because it was used as a clog on the mortgagor's right of equity of redemption.

I hasten to add that the terms of the MoU were effectively superseded by the subsequent negotiations; which fundamentally modified the terms as to payment. By going for negotiations than to enforce the terms of the MoU, it meant that the 1<sup>st</sup> Defendant opted out of his right to insist on strict compliance with terms of MoU. His conduct therefore amounted to a waiver and would thus act as estoppel. He could not later be seen to renege on the negotiated terms to enforce payment in strict compliance with the terms of the MoU. My finding in this regard is fortified by the case of *National Insurance Corporation v Spam International* [1997 –

*2000] UCLR 100*, citing the decision of the House of Lords in *Kammans Co. Ltd. v. Zenith Investments (Torqway) Ltd. [1970] ALL E.R 871 at 894*, where it was held that if one party by his conduct leads another to believe that the strict rights under a contract will not be insisted on, intending that the other should act on that belief, and he does act on it, the first party will not afterwards be allowed to insist on the strict legal rights.

The second part of issue No.1 is whether the subsequent transfer to the 2<sup>nd</sup> Defendant (Plot 5) and 3<sup>rd</sup> Defendant (Plot 3) was fraudulent and /or illegal. Mr. Luswata submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant are *bona fide* purchasers for value without notice of any fraud. Mr. Andrew Kibaya submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had prior knowledge of the material facts surrounding the property, and of the fraud. Mr. Kibaya asserted that 2<sup>nd</sup> Defendant is most likely the brain behind the fraud because he simply refrained from talking to the 1<sup>st</sup> Plaintiff's family members whom he knew were staying on Plot 3 next to Plot 5, but went ahead to buy it.

Mr. Kibaya further argued that the 2<sup>nd</sup> Defendant helped to frustrate the negotiations in order to dishonestly benefit from purchase of the property. That this is evident from his pleadings and evidence that if he is refunded the sum of US \$680,000 he will relinquish the property, yet he paid only US \$350,000 for Plot 5 while the sum he claims relates to two properties including Plot 3.

Counsel insisted that the 2<sup>nd</sup> Defendant was aware of the fraud because he employed the services of the same lawyers as the 1<sup>st</sup> Defendant who were involved in exchanging correspondences with those of the 1<sup>st</sup> Plaintiff, and that the knowledge and authority of the lawyers is actually knowledge that can be imputed on their client. Further, that the 2<sup>nd</sup> Defendant knew of the security arrangements on the properties, and that it was the reason he could not draw a distinction between his own evidence, the evidence of the 1<sup>st</sup> Defendant, of the 3<sup>rd</sup> Defendant.

Furthermore, that it is the reason why he stated that if he is refunded his money, which according to paragraph 11 of his defence he states is US \$680,000 he would release the properties, because he considers himself to be the lender, yet he had bought only Plot 5 at US \$350,000.

Mr. Luswata in reply strongly argued that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are *bona fide* purchasers for value, and that the fact that no evidence of payment has been given cannot be sustained because the 1<sup>st</sup> Defendant who is the recipient of the value does not dispute that he was paid the amount of money. Further, that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants conducted the necessary due diligence and found out from the titles and from the 1<sup>st</sup> Defendant the vendor that there was no claim from the Bhimji family and proceeded to buy the same.

Mr. Luswata further submitted that although the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant knew about Bhimji's claim and interest in the properties, the titles were free of the Plaintiffs' claims and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants proceeded to buy and paid value, which is supported by evidence.

After evaluation, I find evidence of DW1 Hamirani Nizarali (the 2<sup>nd</sup> Defendant) quite helpful on this issue. He was categorical that he was aware of the existence the MoU, and particularly that Plot 5 had been given by Bhimji's family to 1<sup>st</sup> Defendant as security for a loan. He also revealed that he purchased Plot 5 from the 1<sup>st</sup> Defendant at a price of US \$350,000, and that he was aware that the property had problems at the time he made the purchase, and that as a business man he was concerned. DW1 further stated that he looked at all the documents before he bought, and was conversant with all material facts bearing on the property. He also stated that he knew the Bhimji family and that some of the family members were staying in Plot 3 just next to Plot 5, but that he never talked to them about Plot 5. With this wealth of knowledge on the property the 2<sup>nd</sup> Defendant could not be a *bona fide* purchaser for value without notice.

Regarding 3<sup>rd</sup> Defendant, he too appears from the evidence to have had actual and imputed knowledge of the material facts pertaining to Plot 3 prior to purchasing of the same. For instance, by his own admission the 2<sup>nd</sup> Defendant who testified on behalf of 3<sup>rd</sup> Defendant stated that he knew of the mortgage arrangement that existed between the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Plaintiff. Being legally well advised, the 3<sup>rd</sup> Defendant cannot plead ignorance of the law. Proper inquiry would inevitably inform him that this was an equitable mortgage and that the 1<sup>st</sup> Defendant precluded from transferring the property to himself without a court order of foreclosure. The 3<sup>rd</sup> defendant was aware of all material facts surrounding the property, but nonetheless went ahead to purchase the same. There could be no *bona fides* on his part too.

It is also quite curious that 3<sup>rd</sup> Defendant did not consider it necessary to inquire from the Bhimji family members who occupied Plot 3 of any interest they had in property he was about to purchase. If he did any due diligence at all the MoU would have revealed to him that the Bhimji family would continue occupying the properties until the loan was fully paid - which he knew had not been paid. He would also know that that the 1<sup>st</sup> Defendant held title to the property subject to equities of the 1<sup>st</sup> Plaintiff. By not carrying out due diligence or ignoring information from the due diligence, the 3<sup>rd</sup> Defendant fails the test of *bona fide* purchasers without notice.

A *bona fide* purchaser is one who buys property for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. A *bona fide* purchaser does all that is reasonably possible and necessary in his or her power to find out about all material facts pertaining to property before he or she could commit him or herself to purchase the same. To be a *bona fide*

purchaser one must have done due diligence and exercised caution before entering into a transaction of the nature that would ultimately be binding upon him or her.

In the case of *Hajji Nasser Katende v. Vithalidas Halidas & Co. Ltd., C.A.C.A. No.84 of 2003* citing the case of *Sir John Bageire v. Ausi Matovu, C.A.C.A. No.07 of 1996, at page 26*, Kikonyogo, DCJ, quoted Okello J.A. (as he then was) and emphasized the value of land and the need for thorough investigations before purchase, and held *inter alia* that;

***“Lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations not only of the land but of the sellers before purchase.”***

I am acutely alive to the position that a *bona fide* purchaser can obtain a good title from a proprietor who previously got registered through fraud and illegality arising out of the fraud. The illegality in this sense is not of a statutory nature but flows from common law principles upon the fraud. However, as was held in *David Sajaaka Nalima v Rebecca Musoke (supra)* before a purchaser can claim protection as a *bona fide* purchaser without notice of the fraud under **Section 181** of the **Registration of Titles Act (supra)** he or she must act in good faith. If he or she is guilty of fraud or sharp practice, that person ceases to be innocent and therefore loses the protection.

On that note I quite agree with Mr. Andrew Kibaya that knowledge could be imputed on the 2<sup>nd</sup> Defendant through his lawyers who acted for the 1<sup>st</sup> Defendant to transfer the property into his name. The same lawyers wrote several correspondences with the Plaintiffs’ lawyers and were aware of all material the facts. With this imputed prior knowledge the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants cannot claim to be *bona fide* purchasers without notice of the fraud.



In the case of *David Sajjaaka Nalima v Rebecca Musoke case (supra)* it was also held that where a purchaser employs an agent such as Advocate to act on his or her behalf the notice the Advocate receives, actual or constructive, is imputed on the purchaser. Similarly where the Advocate acts for both parties any notice he or she acquires is ordinarily imputed on both parties. The exception to the principle is where the agent deliberately defrauds the purchaser. Quoting ***“The Law of Real Property 3<sup>rd</sup> Ed. at p.129, Megarry and Wade”*** the court went on to hold that;

***“If a purchaser employs an agent such as a solicitor any actual or constructive notice which the agent receives is imputed to the purchaser. The basis of this doctrine is that a man who empowers an agent to act for him is not allowed to plead ignorance of his agent’s dealing. Thus where a solicitor discovered an equitable mortgage on the title was deceived by a forged receipt into believing that the mortgage had been discharged, the purchaser had imputed notice of mortgage and was bound by it. Jared v. Clements (1903) 1 Ch. 428.”***

The 2<sup>nd</sup> Defendant cannot escape imputed knowledge of the fraud and illegal acts committed by the 1<sup>st</sup> Defendant through his lawyers. This is of course in addition to the actual knowledge he admitted to having of the 1<sup>st</sup> Defendant’s actions which amounted to actual fraud.

It has also been found that the 3<sup>rd</sup> Defendant had prior knowledge of all material facts surrounding Plot 3 before he purchased it, but either deliberately avoided or conveniently overlooked them. For instance, he avoided consulting the occupants of Plot 3 as to what their interest was in the property. I am acutely alive to the fact that the mere fact that he might have found out about the fraud had he been more vigilant and made further inquiries which he omitted to make does not par se prove fraud on his part. But if it be shown that his suspicions were aroused and that he

abstained from making inquiries for fear of learning the truth, the case is very different and fraud maybe properly ascribed to him. See: ***Kampala Bottlers Ltd. v Damanico (U) Ltd.(supra)***.

Also in the case of ***Nabanoba Desiranta & Another v. Kayiwa Joseph & Another, H.C.C.S. No. 496 of 2005*** per Aweri Opio J (as he then was) quoting the case of ***UP&TC v. Abraham Katumba [1997]IV KALR 103***, held that as the law stands a person who purchases an estate which he knows to be in occupation of another person other than the vendor is not a *bona fide* purchaser without notice. Further relying on the case of ***Taylor v. Stibbert [1803 – 13] ALL ER 432***, the Learned Judge held that the defendant failed to make reasonable inquiries of the persons in possession and as such his ignorance or negligence formed particulars of fraud.

I only need to add for emphasis that fraud must attributable to the transferee either directly or by necessary implication. It means that the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act. Further, the fraud which must be proved in order to invalidate the title of a registered proprietor for value if he buys from a person who obtained title through fraud must be brought home to the person whose registered title is impeached or to his agents. A fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents.

In this case I cannot but find that there is ample evidence proving that knowledge of the fraud was brought home to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. They were well advised that the property was a subject of an equitable mortgage not constituting a sale or transfer to the 1<sup>st</sup> Defendant from whom they derived title. Plot 3 was occupied by the Plaintiffs' family which should have reasonably aroused suspicions, but the Defendants refrained from making inquiries for fear of learning

the truth. Therefore, fraud maybe properly ascribed them and they cannot not be protected under **Section 181** of the **Registration of Titles Act (supra)**.

It is called for to briefly comment on the evidence which the 2<sup>nd</sup> Defendant (as DW1) purported to give on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. DW1 did not state in what capacity he was giving evidence on behalf of the other two Defendants. He testified that he was told by 3<sup>rd</sup> Defendant that the 3<sup>rd</sup> Defendant knew the 1<sup>st</sup> Defendant, and that prior to purchasing Plot 3 the 3<sup>rd</sup> Defendant told DW1 that he asked the 1<sup>st</sup> Defendant about the occupants in Plot 3, and that the 1<sup>st</sup> Defendant explained to the 3<sup>rd</sup> Defendant that the family of the former owner occupied the property but that the actual owner was living in London.

When asked by Mr Andrew Kibaya how he came to get the information, DW1 answered that he was told by the 3<sup>rd</sup> Defendant that he been told by the 1<sup>st</sup> Defendant. Mr Andrew Kibaya then submitted, and rightly so in my view, that the evidence in the witness statements of 1<sup>st</sup> and 3<sup>rd</sup> Defendant as given by the 2<sup>nd</sup> Defendant was hearsay and inadmissible. Mr. Luswata responded that it was too late to object to the evidence because the witness had already testified and been cross -examined. Further that if the evidence is rejected as hearsay, so would cross-examination based on it.

For a court to determine whether evidence is hearsay or not the evidence must first be adduced, and if it offends the rules against hearsay, it is rejected. Evidence cannot be rejected before it is heard. In this case the witness proceeded by way of witness statements which were put to him before it could be determined whether they were hearsay or not. Therefore, it was not too late to raise the issue of hearsay evidence after cross-examining the witness.

On the substance of the evidence itself, it is quite obvious that what DW1 presented on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants was purely hearsay of the worst

kind. The witnesses confirmed so when he stated that he was told by the 3<sup>rd</sup> Defendant that the 1<sup>st</sup> Defendant had told the 3<sup>rd</sup> Defendant the information in the statements. The same goes for the witness statement of the 1<sup>st</sup> Defendant. It is the established law that such evidence is inadmissible to prove a fact in issue. See: ***Nsubuga Jonah v. The Electoral Commission & Another, HCT -00-CV- EP – 0003 of 2011.***

Where a fact in issue needs to be proved the general rule is that the evidence of the witness who is alleged to have witnessed the fact must be adduced by the very witness. When a statement is made to a witness by a person, who is himself is not called as a witness; such evidence is inadmissible particularly where the object of the evidence is to establish the truth of what is contained in the statement. The rule against hearsay, in the strict sense, is that a witness who proves the out-of-court statement has no personal knowledge of the facts stated therein and a party against whom the statement is tendered has no opportunity of cross-examining its maker. See: ***Cross On Evidence (1979) 5<sup>th</sup> Ed. page 7-8.***

In the instant case the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' witness statements would not be admissible as long as it was clear that they would not be available to support the statements attributed to them by the 2<sup>nd</sup> Defendant, upon which they would have been cross-examined by the opposite party.

It is worth emphasizing that where hearsay evidence is admitted, the admissibility is a matter of substantive law, and in considering whether to admit the hearsay evidence or not, courts are guided by the "threshold reliability test". This requires that the circumstantial indicators or guarantees of reliability be present to completely avoid instances such as where the statement is likely to be fabricated or inaccurate as opposed to true or accurate.

The exclusion of hearsay evidence on the other hand is premised on the fact that it is evidence of previous representation made by a person and cannot prove the

existence of a fact in issue that the subsequent person intended to assert by that representation. In the instant case, therefore, evidence of DW1 in respect of the statements attributed to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants would fail the threshold reliability test. The net effect would be that the evidence of the Plaintiffs as regards fraud and illegalities remains unchallenged. It is trite law that where the evidence is adduced by one party and it is not challenged by the opposite party, the presumption is that the evidence is true.

***Issue No 2: Whether the 4<sup>th</sup> Defendant actions of transferring the properties in the Defendants' names was lawful.***

It can be properly inferred from the evidence that the 4<sup>th</sup> Defendant, the Commissioner for Land Registration, was privy to and perpetuated the illegalities and the fraud committed by the Defendants. When Mr. Muwanga Sebina Hussein (PW1) a lawyer for the 1<sup>st</sup> Plaintiff withdrew the certificate of title for Plot 3 from the Department of Land Registration where the 1<sup>st</sup> Defendant had lodged it for transfer, the 1<sup>st</sup> Plaintiff lodged a caveat to protect his interest in the property. The 4<sup>th</sup> Defendant in *Exhibit P52* later demanded the return of the title, and also gave notice in *Exhibit P55* that the title would be cancelled if it was not returned.

The 1<sup>st</sup> Plaintiff's lawyers in letter *Exhibit P56* replied that the title was already in the possession of the registered proprietor, and that the 4<sup>th</sup> Defendant should contact the 1<sup>st</sup> Plaintiff directly in the UK over the title. The 4<sup>th</sup> Defendant instead dismissed the 1<sup>st</sup> Plaintiff's caveat, refused to lodge the 2<sup>nd</sup> Plaintiff's caveat to protect her interest in the matrimonial property, and proceeded to cancel the title and issued a special certificate of title and transferred the property to the 1<sup>st</sup> Defendant.

I find that in as much as the taking of the title from the Lands Office by PW1 could have been irregular, the 4<sup>th</sup> Defendant was clothed with no power to dismiss the caveat duly lodged by a registered proprietor on a title claiming interest therein

without following the due process. Basically, the circumstances for cancellation of the certificate of title under **Section 91** of the **Land Act (Cap 227)** did not exist in this case. Cancellation would arise if the title was illegally or wrongfully obtained; or illegally or wrongfully retained by a person other than the lawful registered owner. In this case the 1<sup>st</sup> Plaintiff - the registered proprietor – did not illegally or wrongfully obtain the title nor was he illegally or wrongfully retaining the title. As a matter of fact, as the lawful registered proprietor the 1<sup>st</sup> Plaintiff was entitled to retain the title.

**Section 91 (8) (supra)** also requires that in the exercise of any powers under the provision, the registrar gives not less than twenty-one days' notice in the prescribed form to any party likely to be affected by any decision and provide an opportunity to be heard to any such party to whom a notice has been given; and to conduct any such hearing in accordance with the rules of natural justice and give reasons for any decision that he or she may make.

In this case the 4<sup>th</sup> Defendant in *Exhibit P55* gave notice to PW1 the lawyer to return the certificate of title which he took after signing for it. The 4<sup>th</sup> Defendant in the notice stated that the lawyer had illegally taken away the title and illegally continued to retain it. The 4<sup>th</sup> Defendant then proceeded to cite his powers under **Section 91(supra)** that he would cancel the title if it was not received within 21 days from the date of receipt of the notice. He subsequently cancelled the tile as stated earlier.

I find the 4<sup>th</sup> Defendant's acts of the dismissing the 1<sup>st</sup> Plaintiff's caveat on Plot 3, and refusing to lodge the 2<sup>nd</sup> Plaintiff's caveat, and cancelling the 1<sup>st</sup> Plaintiff's title, and issuing a special certificate of title and transferring the property into the 1<sup>st</sup> Defendant's name, to have been *ultra vires* the power a Registrar could exercise under the law in the circumstances.

Firstly, the person to whom the notice was directed was not the “party likely to be affected by any decision” as envisaged by the relevant provision of the law. The party so affected would be the registered proprietor and not the lawyer. In letter *Exhibit P56* the 4<sup>th</sup> Defendant was advised on the proper party to direct the notice to, but there is no evidence to show that the 4<sup>th</sup> Defendant ever followed up on that course of action prior to cancelling the title.

Secondly, the duplicate certificate of title envisaged under **Section 91 (2)(e) and (f) (*supra*)** as illegally or wrongfully obtained or illegally or wrongfully retained is in reference to a title so obtained or retained by a person on or after registration other than the lawful registered proprietor. It is quite obvious and logical that a lawful registered proprietor cannot at the same time be taken to hold or retain title illegally or wrongfully; except in cases of fraud, which was not the matter before the 4<sup>th</sup> Defendant. Even if it was, which it was not, since fraud goes to the root of the title it would require evidence to be canvassed before courts of law and not before the Registrar of Titles.

The third and most important reason is that the party affected by the decision of the 4<sup>th</sup> Defendant was not accorded opportunity which flouted the rules of natural justice, and no relevant reasons were assigned for the decision to cancel the title as required by the provision of the law under which the 4<sup>th</sup> Defendant purported act. The reason in the endorsement on the special certificate of title (*Exhibit P62*) was that the title originally issued was unlawfully retained, but as already stated a lawful registered proprietor cannot unlawfully retain his title. The expression “unlawfully retained” could not have been in reference to the lawyer who took the title, for then he would be the wrong party to condemn since he was not the “party likely to be affected by any decision” taken by the 4<sup>th</sup> Defendant as envisaged under the provision.

It is the established law that a decision which affects a party taken without according the party opportunity to be heard in his or her own defence cannot stand as the decision would be contrary to the principles of natural justice. See: ***Sharp v. Welefield (1981) A.C 173*** cited in ***Re: Interdiction of Bukeni Fred Misc. Application No. 139 of 1991, per Musoke – Kibuuka J; Education v. Rice, (1911) AC 179 page 182; Musinguzi Asaph v. Kiruhura District Local Administration. HCT – 15 – CV – MA – 193 – 2011.***

The fourth reason is that the 4<sup>th</sup> Defendant was reasonably put on notice that there could be no genuine transfer to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Plaintiff who allegedly signed transfers to the 1<sup>st</sup> Defendant lodged a caveat on the same title to protect his interest in the property. The 2<sup>nd</sup> Plaintiff, the wife also tried to lodge a caveat to protect her interest in the matrimonial property, which the 4<sup>th</sup> Defendant intentionally frustrated. This means that the Plaintiffs had given the necessary notice that they had subsisting interest in the property and that it should not be transferred.

The final and most compelling reason is that the 4<sup>th</sup> Defendant transferred property to the 1<sup>st</sup> Defendant when there was actually no sale agreement but only mortgage arrangement. This could only mean that the 4<sup>th</sup> Defendant knowingly and intentionally and illegally used his powers to perpetuate illegalities and fraud of the 1<sup>st</sup> Defendant. I say “knowingly and intentionally” because I cannot think of any other explanation why a basic matter like a caveat lodged on the property could not put the 4<sup>th</sup> Defendant on notice of the Plaintiffs’ equitable interest in the property.

I also fail to understand why the 4<sup>th</sup> Defendant proceeded to cancel the title and issued a special certificate of title and transferred to the 1<sup>st</sup> Defendant property which was clearly the subject of an equitable mortgage without requiring the 1<sup>st</sup> Defendant to furnish a court order of foreclosure. In my considered view, this was



the basic prerequisite. The 4<sup>th</sup> Defendant refrained from doing so and the result was fraud. I therefore find that the 4<sup>th</sup> Defendant was privy to the fraud.

***Issue No. 3: If the answer to the 1<sup>st</sup> and 2<sup>nd</sup> issue is in the affirmative, whether the Defendants are entitled to any refund of the money from the Plaintiffs and if so how much?***

It is an agreed fact that the negotiations on how to repay the loan were conducted, and the agreed price for Plot 5 was US \$510,000. The agreed balance of US \$170,000 was to be secured by registering a legal mortgage on Plot 3. Simple computation gives a total sum of US \$ 680,000 as the debt due and owing as at 28/09/2009. As already found the payment arrangements fell through largely as a result of the 1<sup>st</sup> Defendant “going against” the spirit of the negotiations. The 1<sup>st</sup> Plaintiff however still acknowledged his indebtedness, and as such the debt must be paid.

Therefore, the 1<sup>st</sup> Defendant is entitled to a refund of a total sum of US \$ 680,000, which is widely backed by several documents, and it would not be possible for any party to attempt to run away from that figure. The date of 28/09/2009 is arrived at by taking as the starting point the 28/01/2009 when the 1<sup>st</sup> Defendant acknowledged receipt of the title for Plot 3 to register a legal mortgage on it, plus eight months for repayment after which interest of 12% per annum would apply. The US \$ 680,000, however, will not attract any interest because US \$510,000 had no interest applicable on it. Interest was only to accrue on the balance of US \$170,000 if after eight months the Plaintiffs defaulted on repayment. This was never to be hence no interest will be chargeable.

It is also clear from the facts that whereas the 1<sup>st</sup> Plaintiff defaulted on repayment under the MoU, he did not fail to pay pursuant to the subsequent negotiations. The repayment arrangements were largely frustrated by the 1<sup>st</sup> Defendant’s illegal and fraudulent actions. Therefore, both parties have their share of the blame for the

failed transaction; the 1<sup>st</sup> Plaintiff defaulting on payment under the MoU and the 1<sup>st</sup> Defendant taking unfair advantage to commit illegalities and the fraud. This is the main reason this court is reluctant grant the prayers as regards the general and aggravated damages, and *mesne* profits which both Counsel strenuously argued about. I would however direct that the legal fees which were paid to the 1<sup>st</sup> Defendant's lawyers by the 1<sup>st</sup> Plaintiff be set off as against the amount to be refunded to the 1<sup>st</sup> Defendant. The resolution of this issue disposes of issue No.4 as well.

***Issue No.5: Remedies available to the parties.***

- a) ***It is declared that the 1<sup>st</sup> Defendant was not entitled to transfer, or in any way deal with Plots 3 and 5, Clement Hill Road, Kampala.***
- b) ***It is declared that the transfer of Plot 5 and 3 Clement Hill Road, Kampala by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively is illegal and void ab initio.***
- c) ***It is declared that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have no legal claim or right in respect of Plots 5 and 3 Clement Hill Road, Kampala, and are not entitled to possession of the same.***
- d) ***It is declared that the 4<sup>th</sup> Defendant had no authority to cancel the title to Plots 3 Clement Hill Road, Kampala or issue a special certificate of title for the same to the 1<sup>st</sup> Defendant.***
- e) ***It is declared that the 4<sup>th</sup> Defendant wrongly and illegally cancelled the 1<sup>st</sup> Plaintiff's name as registered proprietor of Plot 3 Clement Hill Road, Kampala, and entered the 1<sup>st</sup> Defendant's name, and later the 3<sup>rd</sup> Defendant's name as registered proprietor thereof improperly and illegally.***
- f) ***The 4<sup>th</sup> Defendant is directed to cancel all instruments of transfer in respect of Plot 3 Clement Hill Road, Kampala, and Plot 5 Clement Hill***

*Road, Kampala and reinstate the 1<sup>st</sup> Plaintiff as registered proprietor thereof.*

- g) The 3<sup>rd</sup> Defendant and/or his agents are restrained from evicting the 1<sup>st</sup> Plaintiff and the rest of their family from the suit property, transferring or in any other way dealing with Plots 3 Clement Hill Road, Kampala.*
- h) The 1<sup>st</sup> Plaintiff is directed within a period of three months from the date of this judgment to refund the sum of US \$680,000 to the 1<sup>st</sup> Defendant against whom the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants would be entitled to recover their respective refunds from.*
- i) In event of default by the 1<sup>st</sup> Plaintiff on (h) above, the 1<sup>st</sup> Defendant will be at liberty to apply to court for an order of foreclosure.*
- j) The Plaintiffs are awarded costs of the suit.*

**BASHAIJA K. ANDREW**  
**JUDGE**  
**01/04/2014**