THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

CIVIL SUIT NO. 1417 OF 1999

1. **PETERO BALABA**
2. **JAMES RWAMUNYANKORE::::::::::::::::::::::::::::::::PLAINTIFFS**
3. **CANON SAM RUBUNDA**

VERSUS

1. **KAGABA MOSES**
2. **MATIYA SAKKYE::DEFENDANTS**
3. **YOSAMU MULEMESA**

(Administrators of the estate of Yozefu Sehene, Serikanuye, Nkurunziza and Kanyemera the original defendants).

BEFORE: HON. MR . JUSTICE BASHAIJA K. ANDREW

JUDGEMENT:

Introduction:

PETER BALABA, JAMES RWAMUNYANKORE, and CANON SAM RUBUNDA (hereinafter referred to as the 1st, 2nd , and 3rd "plaintiffs" respectively) brought this suit against *KAGABA MOSES, MATIYA SAKKYE, and YOSAMU MULEMESA (hereinafter referred to as the 1st, 2nd , and 3rd "defendants" respectively)* jointly and severally. The defendants are the Administrators of the estate of the late Yozefu Sehene, Serikanuye, Nkurunziza and Kanyemera respectively, who were the original defendants. The plaintiffs seek orders that the defendants' certificate of title for land comprised in *Plot 4 Bulemezi Block 919 (hereinafter referred to as the "suit land")* be cancelled, the plaintiffs be declared the rightful owners of the suit land, general damages, and

costs of the suit. The plaintiffs claim that the suit land belongs to them, but that the defendants fraudulently obtained a certificate of title and claim ownership of the same land.

The defendants refuted the plaintiffs' claim and filed a counterclaim. They too claim ownership of the suit land alleging that the plaintiffs fraudulently acquired a certificate of title and trespassed on the suit land. The defendants seek that judgment be entered in their favor, an order doth issue evicting the plaintiffs from the suit land, the plaintiffs' title be cancelled and they pay *mesne* profits, general damages, interest, and costs of the suit. The plaintiffs denied the allegations and claim in the counterclaim and prayed that the same be dismissed with costs.

Background:

The 1st plaintiff together with one Kebikomi Jenet and Kagoro *(hereinafter referred to as "Kebikomi group" for convenience)* for sometime settled and lived on land at Kisendwe, Ngoma Sub County in Bulemezi in the Luwero District. On 13.11.1973 they applied to the Commissioner of Lands & Surveys, Buganda Region, to register in their names the land they occupied. The land was duly inspected by the Land Committee and an Inspection Report was submitted. The application was subsequently approved by Uganda Land Commission (ULC) on 14.01.1974 under *Minute No.4/74(a) (439) Jan14, (Exhibit P5)*. The plaintiffs were granted a lease offer on 14.06.1974 *(Exhibit P9)* for 1554 hectares for five years, and they paid the required fees.

Later in1974, however, the land was taken over by the Uganda Army for training purposes. Government through the office of the Commissioner of Lands & Surveys *(Exhibit P7 and P20)* gave the plaintiffs alternative land in Buwana parish also located in Ngoma sub county. The new location was at the time unoccupied. After it was inspected by the District Land Committee *(Exhibit P10)* Kebikomi group was allowed to bring their cattle and they settled on the land. The

land at the new location covered several hills of Kyanamuwanga, Kibajja, Kyakujjaba, Kagonge, Kyankonge and Migambwa.

On 27.11.1974 Kebikomi group formally applied for the land at the new location *(Exhibit P6).* In July, 1976, the application was duly approved under *Minute 17/ 76(a)(568)July 1976, (Exhibit P8).* The lease offer *(Exhibit P9)* previously for land at Kisendwe was transferred to the land at the new location *(Exhibit P22 and P20)* and they commenced the exercise of surveying the land.

Before completion of the survey, Kebikomi's surveyors encountered other surveyors of one Sehene and others *(hereinafter referred to as "Sehene group" for convenience)* also doing a survey on part of the suit land. The survey line of Sehene group came from Kiswaga village in Kalagala parish in the neighbouring Wakyato sub county and crossed into Kyakujjaba village in Buwana parish in Ngoma Sub County into part of the land that had been allocated to Kebikomi group.

The matter was reported to Buwana parish chief, one Muhammad Sebbowa Sebisubi Mpanga, who visited the area and confirmed that surveyors of Sehene group from neighbouring Wakyato Sub County had crossed into land allocated to Kebikomi group. He halted the exercise and referred them to the Wakyato sub county chief who also referred the matter to the District Commissioner (DC).

After investigations, the DC resolved the dispute in favour of Kebikomi group. Sehene group was ordered to leave the suit land, and they left in December, 1977 *(Exhibits P11- P19).* The DC informed the Commissioner of Lands & Surveys of the outcome of the dispute *(Exhibit P21).* He also advised that further instructions be issued to complete the survey of Kebikomi group, and that the previous lease offer made in the names of Kebikomi group for land at Kisendwe be transferred to the new location at Kyanamuwanga,*(Exhibit P22).* The Commissioner of Lands &

Survey in May, 1978, obliged and granted the authority to survey the land for Kebikomi group in the new location which they already occupied *(Exhibit P23).* The survey was subsequently completed, and on 01.06.1978, Kebikomi group was granted a five -year lease for the suit land, despite delays in submitting their survey documents *(Exhibit P25).*

Meanwhile, at some unknown date in June, 1978, Sehene group also applied for the same land they were previously made to vacate in 1977 upon resolution of the dispute by the DC. On 14.06.1978, their application was approved *(Exhibit D1 and P29).* An Inspection Report was made in respect their application on some unclear date *(Exhibit D2).* On 28.06.1978 they were given a lease offer and on the same day *(Exhibit P32)* sought for instruction to survey (*IS)* and on the following day paid all the fees *(Exhibit P28 and P33)*. In letter dated 18.08.1980 *(Exhibit D3)* it is stated that the survey was done and completed for land at Kyanamuwanga under *I/S X0166 - LB/ 3485* for *Plot 4 Bulemezi Block 919 for 1280 hectares*.

The initial lease of Kebikomi group was slated to expire on 31.12.1983. Nevertheless, they could not extend it due to the war that was raging on at the time in the Luwero Triangle where the suit land was located. The plaintiffs fled the area and returned in 1986 after the war and re-occupied the land. They renewed their application and in July, 1987, and were granted another five years. On 02.07.1998, they were granted a full term lease of 44 years effective from 01 .12.1999 by the ULC. Kebikoni Jenet and Kagoro's family sold part of their interest in the suit land to the 2nd and 3rd plaintiffs *(Exhibit D12)* who also took possession and occupied their respective portions on the suit land.

In 1999 when the 1st plaintiff sought to have the suit land sub – divided into the respective shares of the 2nd and 3rd plaintiffs, he was notified by the Commissioner for Land Registration in a letter dated 22.09.1999 *(see attachment to Exhibit P29)* that there existed another title over the suit land in the names of Sehene group. The plaintiffs then instituted this suit against the defendants.

As earlier stated, the defendants refuted the plaintiffs' claims and filed a counterclaim. They contend that the plaintiffs only applied for and were granted a lease offer for land situate at Kisendwe, and not Kyanamuwanga. The defendants further contend that they applied for and were granted a lease offer and issued with a certificate of title for the suit land on 23.04.1987 under *Instrument No.236360* for land comprised in *LRV 1564 Folio 14* and known as *Plot 4 Bulemezi Block 919* for 44 years effective from 01.09.1985.

The defendants further aver that the suit land was empty when they applied for it, and that it was not being occupied by the plaintiffs as the latter allege. That sometime in 1980s during the Luwero Triangle war the defendants were forced to leave the suit land but pursued the lease which they got in 1987. That when they returned after the war they found that the plaintiffs had trespassed on the suit land and were occupying it. The defendants further contend that the lease granted to the plaintiffs on 18.07.1987 was fraudulently obtained because there was already another lease running in favor of the defendants for 44 years. The defendants hence sought by way of counterclaim the reliefs already outlined above.

In the joint scheduling memorandum the parties agreed on one fact, i.e. that the land in dispute is located at Kyanamuwanga, Ngoma in the Luwero District. Initially there were four defendants in this suit, i.e. Yozefu Sehene, Serikanuye, Nkurunziza, and Kanyemera. Two entered a consent judgment with the plaintiffs on 24.01.2011. Court also visited *locus in quo* on 27.10. 2003 and

established that the suit land is one and the same despite being described differently by the parties. This formed the basis of the only agreed fact stated above.

The plaintiffs adduced evidence of five witnesses to wit; PW1 Rev. Canon Sam Rubunda who is also the 3rd plaintiff; PW2 Peter Balaba who is also the 1st plaintiff, PW3 Mohammed Sebbowa Sebisubi Mpanga a former parish chief of Buwana parish in Ngoma sub county; and PW4 Ivan Serwambala a Senior Staff Surveyor for Luwero District at Bukalasa Land Office. PW5 Naomi Kabanda the Assistant Commissioner for Land Administration in the Ministry of Lands, Housing & Urban Development was summoned by court essentially to tender in documents on *File No. LB/880* which contained most of the documentary exhibits relied on by the parties. The defendants for their part adduced evidence of two witnesses to wit; DW1 Yosamu Mulemesa who is also the 3rd defendant; and DW2 Yusuf Kakerewe, the Registrar of Titles in the Ministry of Lands, Housing & Urban Development.

The plaintiffs were represented by Mr. Kandebe Ntambirweki of *M/s.Ntambirweki Kandebe & Co Advocates,* while Mr. Brian Othieno of *M/s. Alliance Advocates,* and Mr. Segona Medard of *M/s Lukwago & Co Advocates* jointly represented the defendants. All the Counsel filed written submissions which I have taken into consideration in arriving at the decision in this judgment. They also supplied copies of authorities on which they relied and I am thankful to them for that.

The following are the agreed issues for determination;

1. ***Which of the two titles held by the parties is valid?***
2. ***Whether any of the parties committed fraud.***
3. ***What are the remedies available to the parties?***

Counsel for the plaintiffs in their submissions raised another issue to wit;

4. ***Whether the counterclaim is time barred.***

Court noted that Counsel for the defendants faulted the manner in which Counsel for the plaintiffs presented some aspects of the facts in the submissions. Counsel for the defendant argued that the facts were clearly altered and Counsel for the plaintiffs brought in his own evidence from the bar. I have had occasion to read and appreciate the particular facts pointed out. I have found that indeed some of the facts could have been overstated by Counsel for the plaintiffs. That notwithstanding, however, they substantially reflect facts from which reasonable inferences can be made particularly in the documentary evidence on the court record. Court cannot be misled by the plaintiffs' Counsel's submissions as to what the true and accurate state of facts is in this case.

It is necessary to consider first the preliminary issue; *whether the counterclaim is time barred.* Counsel for the plaintiffs premised their arguments on this issue on provisions of ***Section 5 of the Limitation Act (Cap. 80)*** which are to the effect that 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 to him or her.

Counsel argued that even assuming that the defendants occupied and left the suit land on 31.12.1986 to go and look for cows as claimed by DW1, and came back in 1999, twelve years within which to file the suit lapsed on 31.12.1998. Further, that even assuming that the defendants were on the land on 23.04.1987 when they got their lease of 44 years (which is not denied) twelve years would expire at most on 23.04.1999. Furthermore, that even if the computation started from July, 1987, when the plaintiffs obtained their certificate of title, twelve years would lapse latest on 31.07.1999, and that this would render the counterclaim time barred by statute.

Counsel for the defendants / counterclaimants never responded to this particular issue. They cannot be faulted owing to the fact that the issue was raised outside those agreed upon in the joint scheduling memorandum. It arose out of the evidence adduced after the agreed issues had been framed. It is primarily more of an issue of law than mixed law and fact, and as such it could be raised at any stage of the case.

In paragraph 18, the counterclaim the defendants/ counterclaimants aver that during their absence from the suit land after the Luwero Triangle war, the plaintiffs' predecessors in title trespassed on the suit land and occupied it, and continue to occupy it, and that the acts of the plaintiffs are wrongful and amount to trespass and conversion of the land to their own use. These particular pleadings show that the cause of action is founded on the tort of trespass in addition to fraud whose particulars were also pleaded. It is trite law that trespass is a continuing tort, which in this case would imply that the alleged trespass by the plaintiffs on the suit land has been continuous for the time they have been in possession and occupation of the same. In the case of ***Justine E.M.N Lutaya vs. Sterling Civil Engineering Company Ltd. SCCA 11 of 2002;*** it was held, *inter alia*, that;

> ***"…where trespass is continuous, the person with the right to sue may, subject to the law on limitation of actions, exercise the right immediately after the trespass commences, or any time during its continuance or after it has ended…in a suit for tort, the date when the cause of action arose is particularly material in determining if the suit was instituted in time. The commencement date is also material…in other continuing torts that date is of little significance…trespass to land is a continuing tort…"***

Based on the stated position of the law on trespass as it relates to the pleaded facts in the counterclaim, the preliminary objection raised by Counsel for the plaintiffs lacks merit and it is dismissed.

Resolution of the issues:

Issue No. 1: Which of the two titles held by the parties is valid?

This issue is inherently two pronged. Firstly, by "validity" of the title it is sought to determine which of the two titles was issued earlier in time. This would in turn settle the issue of which title is paramount and takes priority over the other in terms of ***Section 64 RTA (Cap. 230)***. Secondly, by of the "validity" of title the parties seek to prove their respective allegations of fraud as set out in their respective pleadings. This inevitably calls for investigation into how each of the parties obtained registration and title to the suit land in their names. *Issue No.2* will therefore be resolved first because it intrinsically embeds within it *Issue No.1*. In addition, both issues relate to ***Section 64(Supra)*** which not only provides for priority of titles that exist over same piece of land, but also provides for fraud as one of the exceptions to the general rule that holding of a title to land is paramount. For ease of referrence I quote ***Section64 (supra)*** fully below;

> ***"(1) Notwithstanding the existence in any other person of any estate or interest, whether derived by grant or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, <u>except in the case of fraud,</u> hold the land or estate or interest in land subject to such encumbrances as are notified on the folium of the Register Book constituted by the certificate of title, but absolutely free from all other encumbrances, <u>except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title</u>, and except as regards any portion of land***

that by wrong description of parcels or boundaries is included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser.

(2) Notwithstanding subsection (1), the land which is included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, covenants, conditions and powers, if any, contained in the grant of that land, and to any rights subsisting under any adverse possession of the land, and to any public rights of way and to any easements acquired by enjoyment or use or subsisting over or upon or affecting the land, and to any unpaid rates and other monies which without reference to registration under this Act are by or under the provisions of any written law declared to be a charge upon land in favour of any Government department or officer or any public authority, and to any leases, licenses or other authorities granted by the Governor or any Government department or officer or any public authority, and in respect of which no provision for registration is made and also, where the possession is not adverse, to the interest of any tenant of the land, notwithstanding the same respectively are not specially notified as encumbrances on the certificate or instrument." *[Underlining supplied].*

Issue No. 2: Whether any of the parties committed fraud.

In paragraph (6) of the plaint, the plaintiffs give the particulars of fraud against the defendants as follows;

(a) Applying for registration of land that was occupied by the plaintiffs.

(b) Purporting to be citizens of Uganda whereas not.

(c) Obtaining a lease offer to land that did not belong to them after having been directed by the District Commissioner not to do so.

(d) Obtaining a lease by providing fake information to the Uganda Land Commission and Department of Lands and Surveys.

(e) Obtaining a lease offer to land which to their knowledge had been offered to the plaintiffs.

(f) Together with other persons processing a title for land that already had a title.

(g) Falsifying records at the Land Registry.

(h) Presenting false information and documentation to the Uganda Land Commission and Land Registry.

The defendants in paragraph (20) of the counterclaim also allege fraud against the plaintiffs, and give the particulars as follows;

(a) The plaintiffs caused to be put on their land title PLOT NO.4 BULEMEZI BLOCK 919 when they knew that part of that Block was already leased to the defendants at KISENDWE.

(b) The plaintiffs caused to be included in their land all the land which was already leased to the defendants.

(c) The plaintiffs fraudulently stated that the land leased to them measured 1280 hs (sic).

(d) The plaintiffs ignored the clear evidence of the defendants' presence and interest on the land.

PW2 Peter Balaba, 82 years old and the 1st plaintiff, testified that together with Kebikomi group they have occupied the suit land since 1974 at Kyanamuwanga; and not at Kisendwe. That Government allocated them the suit land as an alternative after the one they were occupying at

Kisendwe was taken over by the Army. That at the time they entered the suit land it was unoccupied and just full of wild bushes. That the DC gave them a letter to the sub county chief one Samsoni who also forwarded them to parish chief of Buwana, one Muhammad Sebbowa Sebisubi Mpanga, and the village chief one Peter Kakyasoro to get them the alternative land in the area; which was done.

Further, that they got the allocation and offer of the suit land from Land Office at Bukalasa and engaged a surveyor, one Luganda who began to survey the land for them. That before the survey could be completed the plaintiffs' surveyors encountered other surveyors of Sehene group who started doing a survey on part of the land allocated to Kebikomi. That the dispute was reported to the DC who asked the parties to provide their documents, and that it was found that Sehene's documents related to land in Wakyato Sub County while those of Kebikomi related to the suit land in Ngoma sub county. That Sehene group was ordered to leave the suit land; which they did, and Kebikomi continued the survey and completed it in 1977 and later got a title.

PW2 insisted that by the time Sehene group entered in 1975, Kebikomi group was already settled on the suit land since in 1974 and had commenced their survey. Further, that later during the Luwero Triangle war in 1980s, Kebikomi group left the suit land and returned in 1986 and found Sehene on the land. That a Mutongole (village) chief of the area chased away Sehene, who again left the suit land.

The evidence of PW2 was corroborated by PW3 Muhammad Sebisubi Sebbowa Mpanga, 72 years old and formerly the parish chief of Buwana parish in Ngoma Sub County. He stated that he knew Kebikomi very well who came to him in 1974 with a letter from the DC requiring PW3 to get her land measuring 6 sq. miles. That the 6sq. miles were not available in his parish because all land was already surveyed, but that he was able to get only 5 sq miles for Kebikomi group.

That the land covered four hills of Kibajja, Buwunga, Kagonge, Kyakujjaba, Kyankonge and Migambwa. That the Area and District Land Committees visited the suit land and confirmed Kebikomi's allocation, and she was then allowed to bring their cattle and settled on the suit land in one of the valleys called Bbabwe.

PW3 further stated that later in 1975, a dispute developed over the suit land between Kebikomi and Sehene groups. That earlier after Kebikomi had settled on the suit land she was given surveyors who commenced surveying of the land, and that as they got towards the boundary of Kyakujjaba village with Wakyato Sub County, the surveyors of Sehene group from Wakyato sub county started surveying on the land that had been allocated to Kebikomi in part of Ngoma Sub County. That the matter was reported to him, and PW3 visited the place the following day and found the surveyors of Sehene group and stopped them.

That after sometime Yozefu Sehene with Nkurunziza came to him claiming that they had applied for the suit land and wanted him to sign their documents. That PW3 refused and asked them why they never came to him first as area chief before applying, and that they claimed that they had applied to one Kesi Sebbowa the parish chief of their area in Kalagala in Wakyato Sub County. PW3 referred them to one Mulindwa the Ngoma Sub County chief who in turn referred them to the DC of Luwero.

PW4 Ivan Serwambala a Senior Staff Surveyor for Luwero District at Bukalasa Land Office testified that he came across a document in form of *Instruction to Survey M597 (IS)* dated 05.11.1974, on which an allocation *File No LB 1880* was in favor of "Mrs. Kebikomi" which was for the survey of an area measuring 1554.0 hectares under *Sheet No. 60/1 (Exhibit P36).* That the land was public land with an area of 1280 hectares. Further, that in the column of the remarks for the registered proprietors it indicated that initially there was an entry of "Kebikomi

Jenet" which shows a crossing on that name and above it there appears inscriptions of another name of "Sehene and others". PW4 clarified that the "*IS"* number is particular as to the person, area and location. Further, that in his records he did not find another additional instruction on *IS M597*.

PW4 also stated that the implication of a crossing in a Survey Book (Kalamazoo) implies that the same piece of land has been subjected to another survey in favor of the last name not crossed. However, that in this case he could not tell whether the crossing was a mistake or genuine. In his letter, *Exhibit P36,* PW4 explained that despite the crossing of "Mrs. Kebikomi's" names, he could not locate any other *IS* affecting the same land and as such was not in position to establish under what circumstances the names of "Sehene and others" got in the Kalamazoo.

For their part, the defendants adduced evidence of DW1 Mulemesa Yosamu, 72 years old S/o late Nkurunziza and the 3rd defendant. He testified that his late father and others of Sehene group applied for the land in 1977 and obtained title in 1980. That they occupied the suit land in 1974 and left it in 1980 during the Luwero Triangle war and came back in 1986 after the war and started cultivating the land as they had no cows. That it was after the war when they applied for extension of their lease to 44 years after the initial five years had expired.

DW1 further stated that in 1986 they left the suit land to look for money elsewhere to buy cows. That when they got the cows they returned to the suit land in 1999, but found the 2nd and 3rd plaintiffs on the land who chased them away. DW1 maintained that Sehene group was in occupation of the suit land from 1974 to 1980 when they ran away due to the war, and that there has never been any dispute at all between the Sehene group and Kebikomi group over the suit land at any time. DW1 also insisted that Sehene group has never been summoned by the DC

regarding any dispute over the suit land. He also denied having ever seen or known Kebikomi Jenet or the 1st plaintiff at all.

DW1 further denied ever signing *Exhibit D1* (an application for rural land by Sehene group) which shows that it was approved by Land Office on 14.06.1978 for land at Kyanamuwanga. DW1 also stated that he does not know how to read or write, and denied that the name "Ruremesa Rawurensio" on the said form is not his, but acknowledged that he was called "Rawurensio" before he converted to his current religion.

DW1 stated that he did not know anything of how his father acquired the suit land, or that the land he was claiming to be his father's land already belonged to other people. Even when *Exhibit D1* (the application for rural land form) was read to him clearly showing that the land which his late father and Sehene group applied for was at Kyanamuwanga, DW1 insisted that the suit land which he is now claiming is located at Kisendwe and not at Kyanamuwanga. Also when shown *Exhibit P28,* (a lease offer form issued to Sehene and others on 28.06.1978, for Plot 4 Bulemezi Block 919) DW1 insisted that it was not the plot of land that Sehene and others applied for. He vehemently maintained that his father had never had any dispute over the suit land with Kebikomi or P.Balala. Also, that he does not know who helped his father acquire the suit land, but that he saw the land title of Sehene for the suit land and believes that it was not forged.

DW2 Yusuf Kakerewe the Registrar of Titles, stated that there are two leasehold titles the first one having been registered on 23.04.1987 in the names of Sehene, Serukanuye, Nkurunziza and Kanyemera vide *LRV 1546 Folio 14*, (*Exhibit D14),* for 44 years from 01.09.1985. That the second title is comprised in *LRV 2640 Folio 17 (Exhibit D13)* for a period of 44 years from 01.12.1999 in the names of Kebikomi Jenet, P. Balaba and Kagoro, was issued on 02.07.1998. DW2 noted that the lease offer for the second title is dated 08.06.1998, and has a minute quoted

as *20/96 (a)(26)* of 30.10.1996, while the lease offer for the first title is dated 05.01.1987 under minute *8/86(a)(15)* of 20.11.1986. He also stated that both titles refer to the same piece of land.

DW2 further testified that *Exhibit D13* the title in the names of Kebikomi group is under *File No.LB/1880*, while *Exhibit D14* the title in the names of Sehene and others is under *File No.LB/3485;* and that *LB/1880* in respect of the plaintiffs' title applied for the land first while the lease offer of the defendants was issued on 28.06.1978 vide *Exhibit P1 & 28.* DW2 explained that when there are disputes on a piece of land that has been allocated, the offer made to another party is no longer effective.

DW2 further stated that *LRV1546 Folio 14,* (*Exhibit D14),* in the names of Sehene and others got an *Instrument No. 230360* earlier than *LRV 2640 Folio 17 (Exhibit D13)* in the names of Kebikomi's group which got *Instrument No. 295028* later. DW2 further noted that *Exhibit D13* was issued on 21.07.1987, for a lease of 5 years from 01.12.1986, under *Minute No. 17/76 (a) (568) July 1976,* and that the lease offer in respect of Sehene's title was made on 05.01.1987, while the initial term of 5 years was still running from 01.12.1986, and the plaintiffs were in occupation of the land.

DW2 also stated that the initial term of the plaintiffs' lease was 5 years under *Minute No. 17/76 (a) (568)* which meant that it would expire in 1981, but that when you look at *LRV 1586 Folio 17 (Exhibit D13)* in the names of Kebikomi's group the commencement period 01.01.1978, was tampered with since it was crossed and substituted for 01.12.1986. According to DW2, this was irregular because it meant there was an extension of a lease after the initial term of 5 years under *Exhibit P37*. DW2 also noted that the first minute is *ULC Minute No. 17/76 (a) (568)* and the second minute is *ULC Minute No. 8/87(a) (81) of 29th June 1987.*

DW2 further testified that the defendants' title under the initial term under *Minute No. 2/78(a) (24) of June 1978* was registered on 15.09.1980 under *LB/3485 LRV 1095 Folio 14 (Exhibit D15).* He also noted that under *Exhibit P37* the first minute number is usually for surveying and the second minute number is for the term of the lease.

After carefully evaluating all the evidence on the issue, the inescapable deduction is that the Kebikomi group was in occupation of the suit land prior to Sehene group. It is also evidently clear that Sehene group applied for the suit land in 1978 and obtained registration well aware that Kebikomi group was already in occupation and possession of the same These conclusions and inferences are premised on credible oral evidence adduced by PW2, PW3, and DW2, and from the various cited documents relevant to the issue.

It is quite apparent that except on the two occasions when Sehene group attempted to enter the land and was chased away, they have never been in occupation of the suit land at Kyanamuwanga. They were stopped from surveying the land in 1975 and ordered out by the DC and they left in 1977. Later in 1986 after the Luwero Triangle war when the plaintiffs' group retuned and found Sehene had re-entered the land, he was again chased away by the Mutongole chief of the area. *Exhibits P6, P7 and P10* prove Kebikomi group to have occupied the suit land in 1974 and applied to have it surveyed. They had been resettled on the suit land by Government with their cattle as far back as 1974. Also the combined *Exhibits 10 to P21* confirm that there developed a dispute between the two groups over the suit land, and that even as at that time Kebikomi group was already in occupation of the suit land. PW3 Muhammad Sebbowa Sebisubi Mpanga, who was at the time the parish chief of the area where the suit land is located clearly testified to have participated in resettling Kebikomi group on the suit land in 1974. PW3 categorically discounted Sehene group having ever stayed on the suit land, or coming back to

survey the land after they was ordered to leave. PW3 clarified that even as the time he left the area as parish chief in 1979, no other survey had been done by Sehene group on the suit land.

The defendants, on the other hand could not furnish any proof to support their claim that Sehene group has ever occupied the land. The assertions by DW1 to that effect remained completely unsupported. DW1 essentially admitted to not knowing how his late father and Sehene acquired the suit land or that the land he was claiming to be his father's was already in occupation of other people. DW1 generally exhibited total ignorance of the material facts pertaining to the suit land, which is evidently the reason that he denied the existence of a dispute ever over the suit land between his father's and Kebikomi group. Evidence on this point was so overwhelming that no person conversant with facts concerning the suit land would fail to be aware of. Even by their own *Exhibits D8, D9 and D10* the defence shows the dispute existed between the two groups. It was rather odd that DW1 attempted deny a fact that was obviously proved to the contrary by his own documentary evidence.

DW1 also purported not to know or having ever seen the 1st plaintiff P. Balaba, or Kebikomi Jenet at all; the very same people who have been in occupation of the suit land, and from whom he and seeks to recover the suit land. DW1 appeared not to know exactly what he wanted from court when he insisted that he does not claim the suit land, which is known to be located at Kyanamuwanga, but some other land located at Kisendwe which is not in dispute at all. The particular issue of the suit land being located at Kyanamuwanga was resolved earlier when court visited the *locus in quo*. I find the assertions and denials of DW1's very material contradictions in his evidence and the defendants' case because they point to deliberate untruthfulness. In the case of ***Alfred Tajar vs. Uganda [1969] EACA Cr. Appeal No. 167 1969*** it was held that;

> ***"The principle that a witness or witnesses whose evidence by itself or with others are grossly tainted with grave contradictions or inconsistencies unless satisfactorily explained their evidence may be rejected. That being the case even evidence tainted with minor contradictions or inconsistencies which point to deliberate falsehood may also be rejected.***"

Applying the principle to the instant case, the evidence of DW1 is rejected for the same reasons.

I also find as misleading contents of *Exhibit D10;* a letter dated 15.08.1980 by the Commissioner of Lands &Surveys which appears to suggest that land surveyed for the Kebikomi group was different from what they were allocated by the ULC. The land at Kisendwe which the letter referred to is what was taken over by the Army for which an alternative land at Kyanamuwanga was allocated and offered to Kebikomi group. In fact, it was the same office of the Commissioner of Lands & Surveys that actually endorsed the allocation and offer of the alternative land and authorised its survey as it is evident from contents of letter *Exhibit P20 and P23* dated 22.02.1978 and 02.05.1978 respectively, signed by the Commissioner of Lands &Surveys then one Z.K. Kabagambe. The resultant survey was on *Map Sheet 50/3 (Exhibit P24)*. Therefore, the same office could not turn around later in 1980 and purport that the plaintiffs had surveyed different land.

It is quite evident that the subsequent processes undertaken, if at all, on the suit land as indicated in *Exhibit D1, D2, D3, D4, 5D, D6, D7, D8, D9, and D10,* were wholly precipitated by Sehene group who, after being ordered to leave the suit land in 1977, and they left, nevertheless went ahead to mislead the Land Officials that the land was available for leasing. This was a deliberate misrepresentation of facts by Sehene group which was dishonestly made and amounted to fraud in law.

Decided cases have defined fraud to include such dishonest dealings in land or sharp practice intended to deprive a person of an interest in land, including unregistered interest. See: ***Kampala Bottlers Ltd. vs. Damanico Ltd. SCCA NO. 22 of 1992; Sejjaka Nalima vs. Rebecca Musoke, SCCA No. 2 of 1985; UP&TC vs. Lutaaya SCCA No 36 of 1995.*** It has also been held that a person who obtains title over land he or she knows to be in occupation of another commits fraud and cannot seek to evict the occupant. See: ***UP&TC vs. Abraham Kitumba Peter Mulangira Lutaaya SCCA No. 36 of 1995.***

Applying the principles to facts of the instant case, it is in no doubt that the defendants committed fraud. They attempted to survey the land which they knew very well was already in occupation by the plaintiffs. They were stopped because, among other things, they had no allocation to that land, and had not consulted the local authorities of the area on the availability of the land before applying and starting to survey the same. They were ordered to vacate the land; which they did in 1977, but nonetheless applied for the same land and procured registration in their names in 1985. This was dishonest conduct that clearly manifested the intention to deprive the plaintiffs of their interest in the suit land; and it amounts to nothing short of fraud.

The findings above are further fortified by the case of ***Kampala District Land Board & An' or vs. Venansio Babweyaka & 3 Or's, SCCA No.02 of 2007.*** The Supreme Court upheld the decision of the Court of Appeal that the appellant was deliberately dishonest when he proceeded to obtain a title without consulting with the occupants and authorities of the area, and that it amounted to fraud.

The testimony of DW2, Yusufu Kakerewe the Registrar of Titles also manifests the fraud of the defednats. DW2 explained that when there is a land dispute, that piece of land cannot be acquired by another person. Similarly, in this case, there was a dispute over the suit land and that was

resolved by the DC in favour of the plaintiffs in 1977. It was thus contrary to the established norms that different persons, the defendants, applied for the same land and obtained a lease offer and purported to have the land surveyed in their names. It implies that as at the time the defendants applied for and were given the offer, they not only knew that that land was in occupation of the plaintiff but also that it was not available for leasing.

DW2 further stated that Sehene's title was extended on 05.01.1987 while the initial term of five year term was still running from 01.12.1986, and the plaintiffs were in occupation of the land. To my mind this evidence reinforces the fact that the defendants obtained title over land they knew to be in occupation by the plaintiffs. In ***Kampala District Land Board & A' nor vs. National Housing & Construction Co.Ltd, SCCA No.02 of 2004,*** the suit land had been occupied by the respondent and the 1st appellant granted a lease over the suit land to the 2nd appellant. The Supreme Court held, inter alia, that the grant of the lease to the 2nd appellant was unlawful and fraudulent because, among other things, the land was not available for leasing.

Regarding the basis of registration process itself, fraud of the defendants is more poignant in the crossings on the names "Mrs. Kebikomi Janet" in the Kalamazoo *(Exhibit P36)* and replacing them with "Sehene and others". PW4 Ivan Serwambala a Senior Staff Surveyor for Luwero District at Bukalasa Land Office testified that someone crossed the names of "Mrs Kebikomi Jenet" and inserted "Sehene and others". He clarified that the implication of a crossing in the survey book shows that the same piece of land has been subjected to another survey in favor of the last name not crossed. It is, nevertheless, known from *Exhibit P11* dated 01.03.1977, that Kebikomi had raised the issue with the Ministry of Lands & Water Resources of another survey being done by Sehene group on part of the land that had been allocated to her in Kyakujjaba village near the border with Wakyato Sub County. It is also known from the evidence of PW2

Muhammad Sebbowa Sebisubi Mpanga the former parish chief of the area, that "Sehene and others" had no allocation or offer of land in Buwana Parish. This evidence is further corroborated by contents of letter *Exhibit P19* authored by the DC that Sehene and group only wanted to extend their land holding to 8 sq. miles from the 3 sq. miles they had been allocated at Kiswaga in Wakyato Sub County, and hence applied for the land which was already occupied and was being surveyed for Kebikomi group in Kyanamuwanga in Ngoma Sub County.

Contents of *Exhibit P20,* dated 22.02.1978 further show that the Commissioner of Land & Surveys expressly authorised that suit land to be surveyed for Kebikomi group by the Provincial Commissioner of Lands & Surveys after it became clear that the dispute over the suit land had been resolved and Sehene group had no claim over the land. The logical inference would be that fraud was committed by crossing out the names "Mrs. Kebikomi Jenet" and inserting "Sehene and others" in the Kalamazoo. Most importantly, it implies that the survey of land initially made for Kebikomi Janet is what was subsequently "adopted" as the basis on which "Sehene and others" obtained their lease title for Plot 4 Bulemezi Block 919. PW4 Ivan Serwambala stated that much when he testified that the column of the remarks for the registered proprietors in the Kalamazoo initially indicated an entry of "Kebikomi Jenet", which was then crossed and inscriptions of another name "Sehene and others" inserted above it. PW4 clarified that the "*IS"* number is particular as to the person, area and location, and that the Land Office records show no other additional instruction on *IS M597*. PW4 stated that he could not confirm whether the crossing was genuine as he could not locate any other *IS* affecting the same land showing under what circumstances the names of "Sehene and others" could have got in the Kalamazoo.

It is quite telling that the crossing was not just an innocent mistake. It was rather intended for the sole purpose of using the survey done for Mrs. Kebikomi to obtain title of the same land in

names of “Sehene and others”. I have not found any other credible evidence showing that any other survey was done for “Sehene and others” for the suit land. *Exhibit D3* (a letter of the Senior Staff Surveyor Lands & Surveys, Wobulenzi) dated 18.08.1980 is premised on fraud in so far as it purports to inform the Commissioner of Lands & Surveys that that a survey under *IS X 0166* for Plot 4 Bulemezi Block 919 had been completed. There is no proof that such survey was actually done as the only known survey ever to be done on suit land was one initially done for Mrs. Kebikomi and her names were by fraudulent design simply crossed out in the Kalamazoo.

If indeed any other survey had been done, the specific *IS* under which the survey in the names “Mrs. Kebikomi” appeared out of which Plot 4 Bulemezi Block 919 was made, would have also been cancelled to read “Sehene and others”. It was not. Whoever made the crossing in the Kalamazoo committed blatant forgery but forgot to tie up the “loose end” which is too transparent to be a whitewash. It is too obvious to be missed by any person who appreciates the process of registration of land in Uganda.

From the documentary evidence, it is quite apparent that the fraud was mediated through; inter alia, manipulation of documents in the Land Office as already shown above. It is inferred from contents of letter *Exhibit P25* dated 09.11.1978 by the DC addressed to the Commissioner Lands & Survey, “for the attention of Z.K. Kabagambe”. It is called for to paraphrase the contents because it fundamentally traces the genesis of the instant case and how the fraud unfolded.

The DC made reference to earlier correspondences on the subject of the land dispute between Sehene and Kebikomi groups. He noted that a retired Provincial Commissioner of Lands & Surveys one Kirunda was responsible for the “confusion” after Sehene group had been repatriated back to their original leased land at Kiswaga after the resolution of the land dispute.

The letter further traces how Kebikomi group came to acquire the suit land at Kyanamuwanga as an alternative to one they had previously occupied at Kisendwe which was over by the Army. The DC noted that land at the new location was obtained and occupied by Kebikomi group with their 1020 heads of cattle with the permission of Land Office and the local authorities since 1974, and they started paying taxes. That after staying there for six months a surveyor called Luganda was sent by Land Office to survey the land, but before completion of the exercise having reached Kyakujjaba village, some private surveyors started surveying across that land. That he entertained the dispute which took him almost six months to know the people who were entering into the land because Sehene on several occasions on the advice of Kirunda stubbornly refused to go to the DC's office until he was compelled by the chief. That Sehene presented evidence of the offer for only 3 sq. miles at Kiswaga village in Kalagala parish in Wakyato Sub County, which the DC found was different from the one they had attempted to survey.

The DC then observed that Sehene group left their leased land at Kalagala and surveyed land at Kyanamuwanga which had been allocated to Kebikomi group. The DC further noted that another surveyor called Luboyera then completed the survey for Kebikomi group in four days because part of the land had been surveyed, and survey documents were forwarded to the Commissioner of Lands & Survey. The DC then wondered as to why it could take a long period of over three months from the completion of the survey and submissions of the survey documents to the Commissioner's office to process Kebikomi's lease since the latter had requested for an urgent survey. The DC concluded that the delay was intended to give time to Sehene group to acquire a lease offer.

This court could not agree more with the contents of *Exhibit P25* and the DC's conclusions. It only remains to determine actually committed the fraud. In the case of ***Kampala Bottlers Ltd. vs.***

Damanico (U) Ltd, SCCA No. 22of 1992 Wambuzi CJ held, inter alia, that fraud must be attributable either directly or by necessary implication, that is the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

Even though it is not known in the instant case exactly who effected the crossing of Mrs. Kebikomi's names, since it was in any case never countersigned, it is in no doubt that "Sehene and others" knowingly took advantage and benefitted from the fraud to obtain registration of suit land in their names, based on a survey whose particulars in the initial stages was for a different person. In ***Fr. Narsensio Begumisa & Or's vs. Eric Tibebaga, SCCA No.17 of 2002,*** it was held, inter alia, that the survey is the basis of a title, and that the inviolability of a certificate of title under the RTA is hinged on a survey that determines and delimits the land to which the certificate of title relates. Similarly, in the instant case, the survey upon which Sehene's title hinged was done for a different person for the same land; and since there in no nexus, and I have not found one, that a survey of the suit land was ever done for or by Sehene and others, it renders their title invalid.

The standard of proof in fraud cases was stated in the case of ***Kampala Bottlers Ltd. vs. Damanico (U) Ltd,(supra)*** and ***J.W.R. Kazzora vs. M.L.S. Rukuba, SCCA No.13 of 1992,*** that fraud must be proved strictly, the burden being heavier than that on the balance of probabilities in other ordinary civil cases, but not so heavy to require proof beyond reasonable doubt.

This court is satisfied that the plaintiffs have proved the allegations set out in the particulars of fraud against the defendants to the required standard. The defendants, on the other hand, have failed to prove any of the allegations set out in particulars of fraud against the plaintiffs in the counterclaim. The counterclaim thus fails and it is wholly dismissed with costs.

However, court finds that the allegations that the defendants are not citizens of Uganda were not proved. No evidence was led by the plaintiffs to support the same. Counsel for the plaintiffs strenuously argued that since the allegations had been made against the defendants in the negative, it was up to the defendants to adduce evidence showing that they are Ugandan citizens. I respectfully disagree. The position of the law regarding the burden of proof and on whom it lies states the contrary under the ***Evidence Act (Cap.06)***. Section ***101 (supra)*** 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."***

Section 102 (supra) further provides 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."***

Section 103 (supra) provides that;

> ***"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person****." [Underlined for emphasis].*

In the case of ***Dr.Vincent Karuhanga t/a friends Polyclinic vs. National Insurance Corporation & Uganda Revenue Authority, HCCS No.617 0f 2002 (2008)ULR 660 at 665,*** cited with approval by the Court of Appeal in ***Takiya Kaswahili & A' nor vs. Kajungu Denis, CACA No.85 of 2011,*** it was held, inter alia, that;

> ***"…The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof that is, his allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption."***

In the instant case, no evidence was adduced by the plaintiffs to support their allegation of the citizenship of the defendants which would have shifted the burden to the defendants. Equally, the defendants gave no evidence to the contrary. Therefore, in context of ***Section 102 (supra)*** the burden of proof did not shift, but it remained on plaintiffs to sustain their allegation; which they failed to discharge since no evidence was given on either side regarding the allegation.

Similarly, under ***Section103 (supra)*** the burden of proof as to the particular facts of the citizenship of the defendants was on the plaintiffs who wished court to believe in its existence. Since there is no law that specifically shifts the burden of proof on the defendants to prove that they are citizens of Uganda, and the plaintiffs adduced no evidence of the existence of the fact they allege, they would fail in their bid to prove this particular allegation.

Issue No.1: Which of the two titles held by the parties is valid?

It is trite law that fraud invalidates a title. See: ***Kampala District Land Board & A' nor vs. Venansio Babweyaka & 3 Or's, SCCA No.02 of 2007***. Having found that the title of the defendants was obtained through fraud, it is rendered invalid by reason of the fraud notwithstanding that it could have been obtained earlier in time than that of the plaintiffs. This is the import of the exception under ***Section 64(supra)*** that the estate of a registered proprietor is paramount except in case of fraud. I must emphasize that fraud is a serious matter that goes to the root of the title. Similarly, under ***Section 176 RTA,*** a registered proprietor is protected

against ejectment except in certain cases including where a person has been deprived of any land by fraud by the registered proprietor.

At this point it is called for to address the point advanced by Counsel for the defendants that the ***Public Lands Act, 1969,*** and the ***Land Reform Decree, 1975,*** which were the law in force at the time did not grant powers to a DC to allocate land or to transfer a lease offer of one piece of land to another. Indeed this is the correct position and this court is acutely alive to it. The reading of the various correspondences by the DC, however, do not show that they written in the context suggested by Counsel's for the defendants in their argument. The correspondences were essentially administrative in the context in which the DC brought home to the relevant Land Officers the facts pertaining to the suit land. None of the correspondences authored by the DC purports to allocate or transfer the lease offer from one piece of land to another. *Exhibit P22* which alludes to the transfer of a lease offer of Mrs. Kebikomi from Kisendwe to Kyanamuwanga was simply introducing Mrs. Kebikomi as the person to whom the Commissioner of Lands & Surveys "*had agreed to allocate land at the new site"* and "*to request you to transfer her lease offer"*. This by no means suggests that the DC allocated and or transferred a lease offer from one land to another.

Overall, it was well within the DC's administrative domain to have investigated and administratively resolved the land dispute between the parties. It was also within the same mandate for the DC to make reports and recommendations to the officers in the Ministry of Lands who reserved the right to act or not to act on them. The DC's actions were not in the least contrary to the law or *ultra vires* his mandate as submitted by Counsel for the defendants. To that end, ***Makula International vs. His Eminence Cardinal Nsubuga CACA No. 4 of 1981*** cited about illegalities is not relevant to facts of this particular case.

Counsel for the defendants also advanced the argument that plaintiffs' lease to the suit land was extended under *Minute No. 20/96(a) (26) of 30/10/1996* to a full term by the ULC which had no authority to do so. Counsel submitted that ***Article 238*** of the ***Constitution, 1995,*** created a new ULC to hold and manage any land in Uganda vested in or acquired by the Government of Uganda, but that the suit land was not at the time vested in or acquired by the Government of Uganda to clothe the ULC with those powers to extend the lease of the plaintiffs to a full term. Counsel submitted that those powers from the promulgation of the ***Constitution*** vested in the District Land Boards (DLB) created under ***Article 240 and 241*** thereof**,** with functions to hold and allocate land located in the districts, which is not owned by any person or authority, among other functions.

Counsel further cited ***Article 280 (supra)*** to the effect that where there was a matter or anything commenced before the coming into force of the ***Constitution*** by an Authority that had power to do so, that matter may be completed by the person or Authority having the power to do so after the coming into force of the ***Constitution.*** Counsel opined that the plaintiffs' lease to the suit land was therefore illegally extended to a full term by ULC which no longer had the Constitutional mandate to do so at the time.

In reply, Counsel for the plaintiffs submitted the submissions by Counsel for the defendants lack basis as the defence did not lead any evidence to show that the suit land vested in the DLB. That it is judicially noticed that there is land vested in the ULC and also in the DLB, and that the defendants never led a scintilla of evidence to show that the suit land vested in the DLB and not the ULC. That ULC owns land in Uganda and extended the lease in issue, and that the suit land vests in ULC unless the contrary is proved; which the defendants failed to do.

In my view, the reply offered by Counsel for the plaintiffs is only part of the answer to a bigger issue raised by Counsel for the defendants. Certainly no evidence could be lead by the defence on a point that was not raised as an issue for trial in the first place. It is, however, a valid point of law, and even though it was raised at submission stage, it is quite relevant to the facts in issue and it ought to be addressed.

Article 240 (supra) which created the DLBs and provided for their functions did not off hand abolish the ULC or its functions regarding land in the districts. The Article only delineated functions to be performed by each institution under their respective specific mandates. It should also be noted that ***Article 274 (1)*** the ***Constitution*** saved the "existing law" which was defined under ***clause (2)*** thereof to mean;

> ***"… the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date."***

The ***Land Act, 1969*** and the ***Land Reform Decree, 1975,*** were hence part of the "existing law" saved under ***Article 274(1) (supra).*** It follows that even thought the ***Constitution*** established DLBs and provided for their functions in respect to land in districts, the ULC established under the "existing law" continued in force until Parliament, under ***Article 240(2)*** enacted the law "*prescribing the membership, procedure, and terms of service*" of the DLBs; which was not until 02.07.1998 when the ***Land Act (cap.227)*** came into force with provisions under ***Section 56, 57, 58, 59, and 60*** thereof stipulating the DLBs' composition, procedure, and terms of service among others.

Prior to the ***Land Act (supra)*** Parliament enacted ***The Constitution (Consequential Provisions) Statute, No 12 of 1996,*** which under ***Section 7*** thereof, provided for the establishment of Interim District Land Boards. Whereas the Statute was assented to on 14.05.1996, ***Section 2*** thereof provided that only provisions of ***Section 1,3,5,6,8,9,10 and 11*** would be deemed to have come into force at the same time as the ***Constitution, 1995.*** Furthermore, ***subsection (2)*** of ***Section 2(supra)*** provided that all provisions of the statute other than those specified in ***subsection(1)*** thereof shall come into force on the date of the publication of the Statute in the Gazette. The provisions not specified included those of ***Section 7*** under which the Interim DLBs were established, which came into force on 17.05.1996 on the date of publication.

The Statute under ***Section 8*** thereof went on to provide that;

> "***Subject to the provisions of this Statute, where the Constitution provides for the establishment of any institution or body to perform any functions under the Constitution, then until the appointment and assumption of office of the governing body of that institution or body, the corresponding institution or body <u>in existence immediately before the coming into force of that institution or body shall continue in existence and shall perform the functions of the first – mentioned institution or body.</u>" [underlined for emphasis].***

The above being the position of the law, it is clear enough that the ULC as established under the existing law continued in to be in existence and to perform the functions it had previously performed immediately after the coming into force of ***Constitution*** which under ***Article 240(supra***) established DLBs to perform the functions in regard to land in districts which were performed by the ULC immediately before the coming into force of the DLBs.

In the instant case, the lease of the plaintiffs was extended to a full term of 44 years by the ULC under *Min. No. 20/96/(a)(26) of 30/10/1996.* It would follow that even assuming that the suit land was proved to be land under the DLB; which was not, the ULC was still clothed with the constitutional and legal mandate to deal with it at the time it extended the lease of the plaintiffs to a full term. This continued to be the position even with the coming into force of the ***Land Act (Cap 227)*** on 02.07.1998. Under ***Section 95 (1)*** thereof, the interim DLBs established under ***Section 7 of the Constitution (Consequential Provisions) Statute*** continued in existence until the boards established by the ***Constitution*** and referred to in the Act were appointed. Thus the arguments of Counsel for the defendants on that point lack any legal basis.

Issue No. 3: What remedies are available to the parties?

The plaintiffs prayed that the defendants' certificate of title for the suit land be cancelled and that the plaintiffs be declared rightful owners of land comprised in *Bulemezi Block 4 Plot 919.* It is trite law that fraud invalidates a title. The defendants title to the suit land is hereby cancelled, and the plaintiffs are declared the rightful owners of land comprised in *Bulemezi Block 4 Plot 919.*

The plaintiffs prayed for general damages. The position of the law is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. See: ***Annet Zimbiha vs. Attorney General (MBR) HCCS No.109 of 2011; James Fredrick Nsubuga vs. Attorney General, HCCS No. 13 of 1993.***

In ***Takiya Kashwahiri & A' nor vs. Kajungu Denis,(supra)*** it was held that general damages should be compensatory in nature in that they should restore some satisfaction, as far as money can do it, to the injured plaintiff. The Court of Appeal went on to hold that where no evidence

has been furnished to justify the damage or injury a party has suffered, there would be no basis for awarding the same.

Applying the principles to this case, no evidence was furnished by the plaintiffs of the injury they suffered as a result of the defendants' fraud. In any case, the plaintiffs have been in occupation of the suit land and utilising the same. PW1 Can. Sam Rubunda in his evidence stated that the plaintiffs want the court to order for compensation of what they have spent on the case. This implies the costs incurred in pursuing the case, which is different from damages. In absence of evidence of the damage the plaintiffs could have suffered, this court would be reluctant to award the same.

The plaintiffs prayed for costs of the suit. The position of the law, under ***Section 27(2) of the Civil Procedure Act (Cap.71)*** is that costs are awarded at the discretion of court, and follow the event unless for some good reasons the court directs otherwise. See: ***Jennifer Rwanyindo Aurelia & A' nor vs. School Outfitters (U) Ltd., C.A.CA No.53 of 1999; National Pharmacy Ltd. vs. Kampala City Council [1979] HCB 25.*** In the instant case, the plaintiffs have succeeded in their claim, and I find no find any compelling and or justifiable reason to deny them costs of the suit. The plaintiffs are therefore awarded costs of this suit. Accordingly, it hereby ordered as follows;

1. ***The plaintiffs are declared the lawful owners of land comprised in Plot 4 Bulemezi Block 919 land at Kyanamuwanga, Bulemezi.***

2. ***The defendants' certificate of title for land comprised in Plot 4 Bulemezi part of Block 919 is hereby cancelled.***

3. The defendants counterclaim is dismissed with costs.

4. The plaintiffs are awarded costs of the suit.

BASHAIJA K. ANDREW

JUDGE

20/08/2015

Mr. Brian Othieno and Mr. Medard Segona joint Counsel for the defendants – present.

Mr. Kandebe Ntambirweki Counsel for the Plaintiffs – absent.

3rd Plaintiff – present.

2nd defendant – present.

Mr. G. Tumwikirize, Court Clerk. – present.

Ms. Hasipher Nansera Trancriber - present.

Court: Judgment read in open Court.

BASHAIJA K. ANDREW

JUDGE

20/08/2015