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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT FORT-PORTAL  
HCT-CV-CS-003 OF 2003**

- 10 1. MULEWA ISEBAHASA  
2. YORUNIMU BALUKU  
3. FRANCIS MAKWANO  
4. MBUSA BETHEL  
5. TOMASI BISHOGO  
15 6. MIKAIRI MASEREKA  
7. ANDEREA BAGASAKI  
8. BONIFACE BWAMBALE  
9. BWAMBALE S/o KAMBERE HERIZONI  
10. JOHN KIBWANA  
20 11. NYINABARONGO W/o MASEREKA  
12. MASEREKA STEVEN  
13. NYANSIYO TEMBO  
14. NARSON KAMBIDI  
25 15. BITEYO S/o MAKUHA  
16. MUHINDO SIRIRYANA  
17. VANISI KABUGHO

=====

PLAINTIFFS

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**VERSUS**

- 35 1. M/s WESTERN UGANDAN IMPORTERS &  
DISTRIBUTORS LTD.  
2. M/s NYAKATONZI GROWERS  
CO-OPERATIVES UNION LTD.

=====DEFENDANTS

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

**JUDGMENT**

MULEWA ISEBAHASA AND 16 OTHERS (hereinafter referred to as the “plaintiffs”) brought this suit against M/s.WESTERN UGANDA IMPORTERS & DISTRIBUTORS LTD., and M/s. NYAKATONZI GROWERS CO - OPERATIVE SOCIETY LTD. (hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> “defendants” respectively) seeking a declaration that the plaintiffs are the owners of land situate at Kirembe, Kamaiba, in the Kasese District (hereinafter referred to as the “suit land”).

The suit land borders Kasese – Mbarara Road, Basaija Tibalemwa Ltd, and one Masereka, among others. The plaintiffs also seek a declaration that the title of the 1<sup>st</sup> defendant is invalid having been obtained through fraud and that it be cancelled, a declaration that the plaintiffs are free to obtain a certificate of title to their communal customary holding, that the 2<sup>nd</sup> defendant is not a bona fide purchaser for value and hence a trespasser on the suit land, an order of eviction against both defendants, general damages and interest thereon at a rate of 4% per annum from the date of filing the suit until payment in full, mesne profits, a permanent injunction against the defendants and those claiming under them from trespassing on the suit land, and costs of the suit.

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55 The 1<sup>st</sup> defendant filed a defence with a counterclaim seeking a declaration that it is the registered proprietor of the suit land, an order of eviction and a permanent injunction restraining the plaintiffs from any further acts of trespass on the suit land, general damages, and costs of the counterclaim. The 2<sup>nd</sup> defendant also filed a defence seeking the dismissal of the plaintiffs' suit with costs.

60 ***Background:***

Originally in January, 2003, six plaintiffs to wit; Isebahasa Mulewa, Francis Makwano, Yorunimu Baluku, Narson Muhiwa, Petero Mukirane, and Mbafu Batulumayo, filed this suit against both defendants herein. They claimed to be part of the other customary owners of the suit land which is now comprised in LRV 1227 Folio 17 known as Busongora Block 13 Plot 1 land at Kamaiba, Muhokya, registered in the name of the 1<sup>st</sup> defendant, and LRV 3049 Folio 8 known as Busongora Block 13 Plot 9 land at Kamaiba, Muhokya, registered in the name of the 2<sup>nd</sup> defendant.

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The plaintiffs contended that they own the suit land and had been in possession having acquired it since the 1940s. They alleged that the 1<sup>st</sup> defendant fraudulently acquired a leasehold title over

70 the suit land and later in 2002 also fraudulently sold part of it to the 2<sup>nd</sup> defendant. The plaintiffs thus sought the remedies stated above.

Subsequently in 2011, the six plaintiffs amended their plaint and included an additional 14 plaintiffs. However, by the time of hearing this suit, two of the plaintiffs were reportedly dead  
75 including Mbafu Batulumayo, and another Muhiwa Narson was dropped by the plaintiffs' Counsel from the case.

The remaining plaintiffs were represented by Mr. Nyamutale Peter and Mr. Mugisa Rwakatooke both of *M/s. Nyamutale & Co. Advocates*. The 1<sup>st</sup> defendant was represented by Mr. David Bwambale of *M/s. Tropical Law Advocates*, while the 2<sup>nd</sup> defendant was represented by Mr.  
80 Cosma Kateeba of *M/s. KRK Advocates*. The Counsel filed written submissions to argue the case, and I must thank them for their well researched arguments. Their submissions are on court record and I need not to reproduce them in detail. I will only make specific reference to them in course of this judgment where the occasion arises.

To prove their respective cases, the plaintiffs adduced evidence of nine witnesses, the 1<sup>st</sup>  
85 defendant four witnesses, and the 2<sup>nd</sup> defendant one witness. The respective evidence is also on court record and I will not reproduce it in detail to avoid repetition when evaluating the same.

Counsel for the parties filed a joint scheduling memorandum and agreed on the following issues for determination;

1. ***Whether the plaintiffs have any interest in the suit land.***
- 90 2. ***Whether the 1<sup>st</sup> defendant obtained the lease and certificate of title over the suit land fraudulently and/or unlawfully.***

**3. Whether the sale of part of the suit land by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant was fraudulent and/or unlawful.**

**4. What are the remedies available to the parties?**

95 I will resolve the issues in the same order they were framed and argued by Counsel for the parties.

**Issue No.1: Whether the plaintiffs have any interest in the suit land.**

Through their pleadings and respective testimonies, the plaintiffs who testified claim a customary interest as customary tenants on the suit land. They premise their claim largely on  
100 their alleged continuous occupation and use of the suit land for a very long time dating back to the 1940s. By their evidence, the plaintiffs variously stated that they have built houses, planted seasonal crops, and grown forests and buried their relatives on the suit land.

On the other hand, the 1<sup>st</sup> defendant claims a legal interest as registered proprietor of the suit land described as LRV 1227 Folio 17 Block 13 Plot1 land at Kamaiba, Muhokya. The 1<sup>st</sup> defendant  
105 contends that it was granted the lease over the whole of the suit land on 14<sup>th</sup> February, 1983, by the then controlling authority, the Uganda Land Commission. The 1<sup>st</sup> defendant thus denies having obtained registration through fraud, and maintains that it lawfully acquired the title following all the due processes of acquiring a lease on public land.

The 1<sup>st</sup> defendant further averred that it has been in occupation since 1980 when it set up a farm  
110 for livestock and used part of the suit land for cultivation mainly cotton growing. Further, that it enjoyed quiet possession until 1996 when one Zowe Muhindo, the 2<sup>nd</sup> Yorunimu Baluku, and the 3<sup>rd</sup> plaintiff Francis Makwano started claiming part of the suit land which had distinctive demarcations of “oruyenje” trees had planted by the 1<sup>st</sup> defendant’s agents. Thus in its

counterclaim the 1<sup>st</sup> defendant contends that some of the plaintiffs are trespassers, while others  
115 are simply not even in occupation of the suit land and hence do not have an interest therein.

For its part the 2<sup>nd</sup> defendant denied the plaintiffs' allegations and averred that it is a bona fide  
purchaser for value without notice of the plaintiffs' interest, if any. That from around 1996 they  
hired part of suit land from the 1<sup>st</sup> defendant which was by then already the registered proprietor  
thereof. That the 2<sup>nd</sup> defendant used the part of the land for cotton growing and never  
120 encountered any complaint from any of the plaintiffs or other person.

The 2<sup>nd</sup> defendant further averred that in 2002, at the invitation of the 1<sup>st</sup> defendant, it purchased  
the particular part of the suit land which it had all along hired. The 2<sup>nd</sup> defendant duly obtained  
title in its name for 214 acres now comprised in LRV 3049 Folio 8 Busongora Block 13 Plot 9  
land at Kimaiba, Muhokya. Further, that at the time of the purchase, the 2<sup>nd</sup> defendant was  
125 already in physical possession, occupation, and use of that part of the suit land as hirer thereof  
from the 1<sup>st</sup> defendant, and that the particular portion was not occupied or being used by any of  
the plaintiffs or other persons.

The 2<sup>nd</sup> defendant also averred that the part of the suit land at the time of hiring was bushy and  
not occupied by any person including the plaintiffs, and denied the having fraudulently acquired  
130 the suit land and contended that it acquired a good indefeasible title.

From the outset, it is important to note that some of the plaintiffs never testified to prove their  
claim of interest in the suit land. These are the 4<sup>th</sup> plaintiff Mbusa Bethel, the 5<sup>th</sup> plaintiff Tomasi  
Bishogo, the 6<sup>th</sup> plaintiff Mikairi Masereka, the 8<sup>th</sup> plaintiff Biniface Bwambale, the 9<sup>th</sup> plaintiff  
Bwambale S/o Kambere Herizoni, the 10<sup>th</sup> plaintiff John Kibwana, the 12<sup>h</sup> plaintiff Masereka  
135 Stephen, the 14<sup>th</sup> plaintiff Narson Kambidi, the 15<sup>th</sup> plaintiff Biteyo S/o Makuha, and the 16<sup>th</sup>  
plaintiff Muhindo Siriryana.

It is a requirement under *Section 101 (1) of the Evidence Act (Cap. 6)* 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.***

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***(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.”***

The necessary implication of the principles in the cited provisions of the law above to that the particular plaintiffs who did not testify is that they failed to prove their alleged claim of being  
145 customary tenants on the suit land. It also implies that the plaintiffs who testified did not do so for or on behalf of those who failed to adduce evidence. As rightly submitted by Mr. David Bwambale, Counsel for the 1<sup>st</sup> defendant, this suit is not a representative suit where the plaintiffs who testified could have testified for, or on behalf of the others who did not.

In representative suits, *Order 1 r 8 of the Civil Procedure Rules*, specifically provides that a  
150 person suing for or defending on behalf of or for the benefit of the others with the same interest in the subject matter of the suit must do so with the authority of court, and notice of the institution of the suit must be given to all such other persons interested in the case as set out in the rule. There was no compliance with these provisions by the plaintiffs; perhaps rightly so because the action does not fall in the category of representative suits.

155 For the plaintiffs who testified, the burden of proof lay upon them to prove on balance of probabilities that they hold customary interest as customary tenants on the suit land. “Customary tenure” is defined under *Section 1(l) of the Land Act (Cap. 227)* as;

160 “...a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons the incidents of which are described in section 3.”

**Section 3(supra)** provides for incidents of customary tenures as follows;

- (1) Customary tenure is a form of tenure—
- (a) applicable to a specific area of land and a specific description or class of persons;
  - (b) subject to section 27, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;
  - (c) applicable to any persons acquiring land in that area in accordance with those rules;
  - (d) subject to section 27, characterised by local customary regulation;
  - 170 (e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;
  - (f) providing for communal ownership and use of land;
  - (g) in which parcels of land may be recognised as subdivisions belonging to a person, a family or a traditional institution; and
  - 175 (h) which is owned in perpetuity.”

In the case of *Tifu Lukwago vs. Samwiri Mudde Kizza and Justine Nabitaka, Civil Appeal No. 13 of 1996*, which cited the decision in *Paul Kisekka Ssaku vs. Seventh Day Adventist Church, Civil Appeal No. 8 of 1993* (unreported) it was held that that whoever relies on a custom must prove it. A similar stance was adopted in the case of *R. vs. Ndembera S/o Mwandawale (1947)*<sup>14</sup>

180 *EACA 85*, that a native custom must be proved in evidence and cannot be obtained from the assessors or supplied from the knowledge and experience of the trial judge.

*Section 46 of the Evidence Act (supra)* also provides as follows;

185 ***“When the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of that custom or right, of persons who would be likely to know of its existence if it existed, are relevant.”***

With these legal principles in mind, I proceed to examine the nature of the customary tenure and incidents thereto applicable to the Kasese region and in particular, to the area of the suit land

The cross – cutting factor that appeared consistently in the evidence adduced on both sides is that for one to qualify as customary tenant, he or she must have been given a Kibanja by the Ridge Leader; known as “*Omukulhu Wabulambo*” in the local dialect of the area, which literary means “the owner of the land”. This is a special social position – the equivalent of a traditional chief – which is generally respected in the Bakonzho community in the Kasese region, which is traced along particular familial lineage. The land in the area, if it is customary land, belongs to, and is controlled by the Ridge Leader, and it used under his authority by the different people to whom  
195 he apportions it.

Again evidence adduced on both sides suggests that there are largely two distinctive categories of customary tenants in the area. The first one is the Kibanja holders who acquire interest in customary land from the Ridge Leader. In this case one must have given a hoe, a goat, a basket of cassava flour, beer, and a token called “engemu” to the Ridge Leader. The token is given out  
200 once and the person acquiring the Kibanja interest enjoys a certain level of security of tenure of occupancy. He or she is at liberty to use it in any way he or she likes, including selling or having it surveyed and creating registered legal interest thereon.



The other category is constituted of tenants at will, locally known as “Bakunjii”. These enjoy no security of tenure, and the Ridge leader may allocate land to them as and when it is available.

205 They are only allowed to cultivate seasonal crops like cotton, beans, and maize, and this happens every season. They are not allowed to construct permanent houses or grow permanent crops, and cannot transfer their interest to other persons. The land can be re - allocated to other persons by the Ridge Leader without consulting the Mukunjii. They are also not allowed to bury their deceased relatives on the land without the permission of either the Ridge Leader or of the

210 Kibanja holder.

Furthermore, the Ridge Leader has a free hand to transfer a Mukunjii from one location to another at will, and the holder is obligated to keep paying the “engemu” to the Ridge Leader at every harvest. At the lapse of the season, the Mukunjii has to relocate to the traditional home in the mountains locally called “Bukonzho”.

215 It is thus sufficiently evident that the Mukunjii’s interest in the land is usufruct in nature only lasting for a season for a particular limited use, which is specifically cultivation.

Court had the occasion of hearing testimonies of John Lwingiryande DW1, and Narson Muhiwa DW2, both the immediate former and the current Ridge Leader respectively. They stated that the office of the Ridge Leader keeps a record of all the tenants to whom they allocate the land. The

220 Ridge Leader also settles land disputed between the tenants and helps in determining and identifying boundaries of every tenant’s holding on the land. The unfailing requirement in the position of the Ridge Leader is that he must necessarily be a resident of the place where the land is situate.

DW1 and DW2 gave a chronology of Ridge Leaders since the 1940s. These were Muhiwa who  
225 was succeeded by Kambere Kastubire, who was succeeded by Lwingiryande, who was also  
succeeded by his brother Nerson Muhiwa currently holding the position.

Having examined in detail the customary tenure and the incidents thereto pertaining to the  
community in the area of the land in issue, it is necessary to determine the category in which the  
plaintiffs fall, and whether their evidence proves to the required standard their claim as  
230 customary tenants on the suit land. I will evaluate the evidence of plaintiffs who testified as it  
relates to the particular individual claim of the plaintiff who adduced it as against that of the  
respective defendants. For ease of following, I will adopt the order in which the plaintiffs  
testified and juxtapose their evidence against that of the defendants and make inferences and  
draw conclusions from it as a whole.

235 PW1 Yorunimu Baluku, the 2<sup>nd</sup> plaintiff, testified that he was born on the suit land and that he  
got it from the Kingdom of Toro which owned the land but that they never gave him any  
document as proof of his ownership, and that he has never paid any Busulu to the said Kingdom.  
He further stated that all the plaintiffs got this land in 1940s. PW1 also stated that he knows  
DW1 John Lwingiryande and DW2 Nerson Muhiwa as Ridge Leaders of the suit land, and that  
240 in 1940s the Ridge Leader of the land was Muhiwa the grandfather of DW1 Lwingiryande.

PW1 further testified that the 1<sup>st</sup> defendant bought land from only four people, of whom he was  
not among. He concluded his testimony stating that; “*the way we see our land is outside the titled  
land*”– referring to the titled land of the 1<sup>st</sup> defendant which is the suit land in this case.

DW1 John Lwingiryande testified that he was the Ridge Leader of the area where the suit land is  
245 situate, and that he is the one who gave the land to the 1<sup>st</sup> defendant in 1980. He named one  
Nyabayanda, Katwanga, Manuel Kasande, Syasuwusa and Mulefu as the only people who were

in occupation of the suit land at the time, and that they were compensated and left. He further stated that the 2<sup>nd</sup> plaintiff is not a resident of that area but resides in Bukonzho. That he only cultivates on the unregistered land which is outside the suit land, the so – called extension land  
250 also belonging to the 1<sup>st</sup> defendant. This evidence was corroborated by the 2<sup>nd</sup> plaintiff himself during the locus in quo visit, who also admitted that he has never buried any of his relatives on the suit land, and that his home is in the mountains.

The current Ridge Leader, DW2 Narson Muhiwa, also testified that he knows all the people who were on the suit land by the time the 1<sup>st</sup> defendant got it and that they were compensated and left.  
255 He corroborated the evidence of DW1 that the 2<sup>nd</sup> plaintiff was not on the suit land by the time it was given to the 1<sup>st</sup> defendant in 1980. DW2 pointed out that the 2<sup>nd</sup> plaintiff started cultivating on the suit land in 2003, but that as the RidgeLeader he has never given him any land.

DW2 also refuted the 2<sup>nd</sup> plaintiff's claim that the Kingdom of Toro has any land in the area. He stated that leadership of Ridge Leaders on matters of land has nothing to do with the Kingdom of  
260 Toro. In particular, DW2 pointed out that the 2<sup>nd</sup> plaintiff he has his Kibanja at a place called Kabiri where ordinarily resides, and that he has no house or trees on the suit land. DW2 also refuted the 2<sup>nd</sup> plaintiff's claim of having planted trees on the suit land and stated that the few that were there grew by themselves.

Indeed, during the locus in quo visit, court saw no any house or forest belonging to the 2<sup>nd</sup>  
265 plaintiff on the suit land as he had earlier testified in court. The 2<sup>nd</sup> plaintiff was to be a particularly very untrustworthy witness who even attempted to change his testimony at the locus in quo. He earlier testified in court that his land borders that of Ivan Muhasa Mpondi on the suit land, but during the locus visit court found that actually Ivan Muhasa Mpondi has no land there at all. Court also found a new permanent house that was still under construction but the 2<sup>nd</sup>

270 plaintiff did not even know the person who was building on the very part of the suit land that he claimed to be his Kibanja since 1940s.

The logical conclusion from the evidence as a whole as regards the 2<sup>nd</sup> plaintiff's claim is that he was not on the suit land by the time it was given to the 1<sup>st</sup> defendant by the Ridge Leader. Also the 2<sup>nd</sup> plaintiff's claim of having got the land from the Kingdom of Toro, which does not own  
275 land anywhere in the area, is unsustainable. As testified by DW4 Hellena Biira Bwambale, and the others on the issue, the 2<sup>nd</sup> plaintiff is clearly one of the persons who have continuously disturbed the 1<sup>st</sup> defendant's quiet enjoyment of the suit land. The findings at the locus in quo visit left no doubt that the 2<sup>nd</sup> plaintiff; Baluku Yorunimu, has no interest which he claims, but is just a trespasser on the suit land.

280 PW2 the 3<sup>rd</sup> plaintiff, Francis Makwano testified that he got the land in 1940s. In the same breath he changed stance and stated that he got the land in 1959, and that Muhiwa was the owner of the land. PW3 correctly restated the customary tenure of land ownership in the area as it has already been stated above. He further stated that he owns a banana plantation and forest of "misizi" trees on his customary holding on the suit land.

285 When court visited the locus in quo, however, it found that the 3<sup>rd</sup> plaintiff's Kibanja is located quite far from the suit land in another piece of land in extension land, which also belongs to the 1<sup>st</sup> defendant, but not the suit land. Having been caught in his lie, the 3<sup>rd</sup> plaintiff conceded that his Kibanja is on the extension land from which he has never been chased from by the 1<sup>st</sup> defendant. It was thus clear enough that the 3<sup>rd</sup> plaintiff owned absolutely nothing on the suit  
290 land, and has no claim of customary interest on the suit land.

PW3 the 1<sup>st</sup> plaintiff Mulewa Isebahasa testified that he first came on the suit land in 1959. That he was staying with one Zowe Muhindo who later on gave him her whole land in 1992 before

she died in 2001. In an apparent contradiction PW3 then stated that by the time Zowe died the land still belonged to her. PW3 stated that he did not know how late Zowe got the land.

295 The 1<sup>st</sup> defendant, for its part, adduced evidence of DW1, John Lwingiryande who stated that he was the Ridge Leader from 1978 to 2001 when he ceded the position his younger brother Narson Muhiwa, DW2. He denied the 1<sup>st</sup> plaintiff having ever been a resident on the suit land, adding that he only first saw him on Zowe's death. DW1 stated that he very well knew late Zowe Muhindo whose land the 1<sup>st</sup> plaintiff now claims to have taken over. DW1 confirmed that it was  
300 his father the Ridge Leader then who gave the land to the late Zowe, but that even then, it was not located on the suit land but in the extension land.

The evidence of DW1 was corroborated in that material particular by DW2 Narson Muhiwa the current Ridge Leader who stated that the 1<sup>st</sup> plaintiff first appeared on Zowe's death in 2001. DW2 denied the claim by the 1<sup>st</sup> plaintiff that the late Zowe took 1<sup>st</sup> plaintiff's to DW2 as the  
305 Ridge Leader and that she handed over her land to him in his presence. DW2 insisted that he only knew one Kaija Businge as the person who was shown to him as late Zowe's heir.

Kaija Businge testified, as DW3, that he is a nephew to late Zowe and the administrator of her estate. He supported this claim with "*Exhibit D11*"; a copy of the letters of administration. He further stated that the 1<sup>st</sup> plaintiff was a stranger and that late Zowe never gave him any part of  
310 her land. Further, that what used to be late Zowe's land was not located on the suit land, but outside in the extension land of the 1<sup>st</sup> defendant which is not the suit land. That even the whole of the late Zowe's land located in the extension was bought by the 1<sup>st</sup> defendant, and that he does not know where the 1<sup>st</sup> plaintiff currently stays.

DW3 further testified that he took the 1<sup>st</sup> plaintiff to court in the Chief Magistrate's Court at  
315 Kasese over late Zowe's land for criminal trespass, and that the 1<sup>st</sup> plaintiff was convicted and

sentenced. A copy of the judgment in *Criminal Case No. KAS – 00 – CR – 03/2003 Uganda vs. Mulewa Isebahasa*, dated 02/05/2003 is on court record. Suffice it to note that it is still binding as there is no evidence indicating that the 1<sup>st</sup> plaintiff has ever successfully appealed against it.

After carefully evaluating the evidence as whole as regards the claim of the 1<sup>st</sup> plaintiff, it emerged clearly that he was very untruthful all through his evidence. He falsely claimed that he was given land by late Zowe and that he has been staying on this land since 1950, whereas not. It was further observed at the locus in quo that what used to be late Zowe's land lay outside the suit land. Furthermore, the 1<sup>st</sup> plaintiff was duly convicted by court for criminal trespass on Zowe's land. It follows that he would be a trespasser on to the suit land by claiming to own late Zowe's land there.

It is necessary at this point to weigh the evidence adduced by PW1, Yoronimu Baluku, as against that of the defendants regarding the 4<sup>th</sup> plaintiff, Mbusa Bethel. This is so because the 4<sup>th</sup> plaintiff never testified to prove his claim on the suit land, even though he was at all times in attendance in court and at the locus in quo. It was instead PW1 Yoronimu Baluku who stated that the 4<sup>th</sup> plaintiff was son of late Zabuloni Bitaba who had a Kibanja on the suit land in the portion now belonging to the 2<sup>nd</sup> defendant.

The defendants for their part led evidence of DW4 Hellena Biira Bwambale who stated that the late Zabuloni Bitaba was in fact her brother - in- law, and that he never owned any land on the suit land. That the late Zabuloni Bitaba only had a Kibanja at a place called Nyamiragara in the vicinity of Kasese town, and that he died in 2008, but that he had never claimed any interest in the suit land. This evidence was echoed by the two Ridge Leaders.

After evaluating the evidence as a whole on the particular issue as regards the 4<sup>th</sup> plaintiff's claim, it is evident that PW1 Yoronimu Baluku once again spewed a pack of lies in court under oath.

Contrary well corroborated evidence of the defence demonstrated that late Bitaba died in 2008  
340 without ever claiming interest in any part of the suit land. Logically, the 4<sup>th</sup> plaintiff could not  
have an interest in 2011 under the name of his late father who claimed no interest in the suit land  
at the time he died in 2008.

The above findings are fortified by the respective testimonies of the Ridge Leaders who also  
stated that the late Zabuloni Bitaba was staying at Nyamiragara Lime Works, and had no Kibanja  
345 on the suit land. The conclusion is that the 4<sup>th</sup> plaintiff has no interest whatsoever in the suit land.

PW4 Nyinabarongo wife of Masereka, the 11<sup>th</sup> plaintiff, testified that she got the Kibanja on the  
suit land from the Ridge Leader, and that the 1<sup>st</sup> defendant trespassed on it and that she sued in  
court in 1993. PW4 further stated that she was born on that land. However, in her earlier  
affidavit, “*Exhibit D1*”, which she had sworn in an application arising from this suit, she stated  
350 that she got the land from the Kingdom of Toro in 1940s. When this apparent contradiction was  
put to her, she admitted that her current version of evidence in court was not true, but again  
claimed that she got the land from her father in the 1940s, and not from the Kingdom of Toro;  
which was also not true.

PW4 further stated that she has a banana and coffee plantation on the suit land which she planted  
355 shortly after she was joined to this suit in 2011. She also stated that she was among the new  
entrants on the suit land whom the 1<sup>st</sup> defendant’s agents have continuously chased away from  
the suit land but they come back.

The 1<sup>st</sup> defendant on the other hand adduced evidence of the Ridge Leaders who confirmed  
knowing the 11<sup>th</sup> plaintiff and her late husband Masereka as people who used to work on the 1<sup>st</sup>  
360 defendant’s farm with one Kagote. DW4, Hellena Biira Bwambale, one of the earlier members  
of the 1<sup>st</sup> defendant company, also confirmed that the 11<sup>th</sup> plaintiff and her late husband

Masereka were farm hands, and that when Masereka died he was buried on the suit land under protest by the 1<sup>st</sup> defendant because by the time the Police came to the scene, they found he had already been buried and they could not exhume the dead body.

365 At the locus in quo, the 11<sup>th</sup> plaintiff was tasked by defence Counsel to explain her claim on the suit land. She admitted being on the 1<sup>st</sup> defendant's land, and also that the Ridge Leaders, who were also in attendance, have never given her that land. Her claim that her mother was buried on suit land was also refuted by DW2 who stated that as the Ridge Leader, he is actually the one who buried the 11<sup>th</sup> plaintiff's mother at his home in the mountains far away from the suit land  
370 and conducted all the necessary burial rituals. Indeed no grave was seen on the suit land, and having failed to account for her false claims, the 11<sup>th</sup> plaintiff simply kept silent. The inference from the totality of evidence is that the 11<sup>th</sup> plaintiff has no interest whatsoever in the suit land, but is merely a trespasser thereon.

PW5 Anderea Bagasaki, the 7<sup>th</sup> plaintiff, testified that his land was leased and that he got it from  
375 one Yowana Kapara his late father, who also got it in the 1940s from the then Ridge Leader. He further stated that they were born nine children on the suit land and shared the portion on the suit land. That his immediate neighbors are Francis Makwano, Sidifayo, Mikairi, and one Herizoni.

PW5, however, stated that he did not know the 1<sup>st</sup> defendant's land, but described it as being two miles from his own land. He also stated that his land does not share boundaries with any of his  
380 brothers' with whom he shared the same land of their late father. He could not explain, and it remained quite puzzling, as to how he could share the same piece of his late father's land with his brothers and yet none of them shares boundaries with him.

When PW5 was shown "Exhibit D2", his affidavit dated 12<sup>th</sup> December, 2011, in *Misc. Application No.189 of 2011(Arising from the instant suit)* where he stated that he got the land



385 from the Kingdom of Toro, he attempted to change his current version of evidence and stated that he never got the land from the Ridge Leader, but from the Kingdom of Toro. However, PW5 could not produce any document of ownership or Busulu receipts from the Kingdom of Toro. At the risk of repetition, the Kingdom of Toro has never had any land at all in the area.

The 1<sup>st</sup> defendant, on the other hand, relied on the testimony of DW1 John Lwingiryande the  
390 former Ridge Leader. He testified that the 7<sup>th</sup> plaintiff is a resident of Mahago, and that he does not have anything on the suit land. This evidence was corroborated by DW2 the current Ridge Leader who stated that he knows PW5 as merely a trespasser on the 1<sup>st</sup> defendant's other piece of land under the extension, which is different from the suit land, and that he came there in 2001.

The above evidence taken as a whole in respect to the claim of 7<sup>th</sup> plaintiff reveals that he too was  
395 a very untruthful witness. He falsely claimed to have houses on the suit land, but none was seen during the locus in quo visit. He also could not point to any garden of his on the suit land. It became apparent that he simply joined the suit either ignorantly or merely as a busy body but without any interest of any kind whatsoever in the suit land.

PW6, the 13<sup>th</sup> plaintiff, Nyansio Tembo, testified that he got the land in 1940s which he inherited  
400 it from his father who got it from the then Ridge Leader. Further, that he had houses and has been cultivating seasonal crops such as cotton, maize, and cassava on the suit land forming part of the 2<sup>nd</sup> defendant's titled land. Furthermore, that he was born on the suit land with two other siblings, but that they all died leaving no children.

PW6 further stated that he got Kibanja in 1985, but that he did not know that the suit land had a  
405 title by that time. He stated that his houses were demolished by the 2<sup>nd</sup> defendant's agents, and that he reported the matter to his lawyer in Fort-Portal. He stated that he did not report to Police or the LCs of the area, because they would not listen to him, and as such he filed his suit in 2000.

This latter claim was found to be particularly untrue because the 7<sup>th</sup> plaintiff was joined to the suit only in 2011.

410 The 2<sup>nd</sup> defendant led evidence of DW1 the former Ridge Leader who stated that he knows PW6, who is his maternal uncle, and that he has nothing on the suit land. DW1 further stated that his father gave land to Muwumba Ndoke, the 13<sup>th</sup> plaintiff's father, which is located at the Ridge Leader's home in Bukonzho. That the said father had long stopped cultivating on the suit land, and that he was not buried on the suit land but on the land the Ridge Leader gave him. DW1 was  
415 categorical that PW6 started cultivating on the suit land only in 2013.

DW2 the current Ridge Leader corroborated the fact that PW6 has no land on the 2<sup>nd</sup> defendant's part of the land, and that his land is at a place called Nyakasonjo. Indeed court found this evidence to be true at the locus in quo visit. PW6 became deliberately evasive in when questions were put to him by Counsel for 1<sup>st</sup> and 2<sup>nd</sup> defendants and the court. For instance he flatly denied  
420 being a maternal uncle to DW1 the Ridge Leader, yet the mother to DW1 is his biological sister, whom he claimed was dead and never left any children. In fact said sister was still alive and well and had not died when she was still young as claimed by PW6. There was no spot on the suit land the 13<sup>th</sup> plaintiff could point at where his houses were before they were allegedly demolished by the 2<sup>nd</sup> defendant's agents. There were no trees at all contrary to what he had  
425 testified in court. PW6 conjured up pure lies for his evidence which were too transparent to be a whitewash. Such pack of lies could not by any stretch of imagination meet the standard of proof required in civil cases, let alone prove his claim. PW6 is just a trespasser laying a false claim of interest in the 2<sup>nd</sup> defendant's land.

The 17<sup>th</sup> plaintiff, Vanisi Kabugho, is in the category of the plaintiffs who never testified to prove  
430 their case. The only evidence mentioning her was by DW2 the current Ridge Leader. He stated

that he knows her and that she came to the suit land in 2000 and started cultivating on it. At the locus in quo visit, court found her house located on part of the suit land of the 1<sup>st</sup> defendant.

PW7 Muhasa Ivan Mpondi, a key witness of the plaintiffs, told court that the 17<sup>th</sup> plaintiff was among the people who were compensated for their crops and told to leave the suit land.

435 Apparently she did not. The 17<sup>th</sup> plaintiff was never given land by the Ridge Leader, and she is not known to the registered proprietor, which means she is merely trespasser on the suit land.

Court was also able to get some bits of evidence adduced by other witnesses barely touching on plaintiffs who did not testify from DW1 and DW2, the Ridge Leaders. In particular DW2 stated that he knows the 5<sup>th</sup> plaintiff Tomasi Bishogo, and that his land is at Nyamiragara Trading  
440 Center which is in the neighborhood, but not on the suit land.

DW2 further stated the 6<sup>th</sup> plaintiff, Mikairi Masereka, is a cultivator on the 1<sup>st</sup> defendant's other land in the extension, which is different from the suit land. Regarding the 8<sup>th</sup> plaintiff, Boniface Bwambale, DW2 identified him as a resident of Muhokya who has never been on the suit land.

DW2 also identified the 9<sup>th</sup> plaintiff, Bwambale son of Kambere Herizoni, as a resident in  
445 Mahango and not a cultivator the suit land.

DW2 denied knowing or having ever seen the 10<sup>th</sup> plaintiff, John Kibwana at. For the 12<sup>th</sup> plaintiff, Masereka Stephen, DW2 stated that he first saw him in 2013 among the people who came to the suit land with the 6<sup>th</sup> plaintiff, Mbusa Bethel, with the intention of grabbing it. DW2 also identified the 15<sup>th</sup> plaintiff, Biteyo son of Makuha, as previously a cultivator on the 1<sup>st</sup>  
450 defendant's land, but whose crops were compensated and he left the suit land. The compensation agreement was tendered in court in evidence as "*Exhibit D10*".

DW1 Lwingiryande the immediate former Ridge Leader corroborated the fact that the 15<sup>th</sup> plaintiff, Biteyo, was one of the workers at the 1<sup>st</sup> defendant's farm, but that his home is at

Mahango, and that he left the suit land. Both Ridge Leaders also identified the 16<sup>th</sup> plaintiff,  
455 Muhindo Siriryana, as a person who started cultivating on the suit land in 2013, but that his  
home is at a place called Kakone in Mahango where he resides.

After carefully evaluating the evidence as a whole on the *Issue No.1*, it is inevitable to conclude  
that the plaintiffs totally failed to prove their claim of interest whatsoever in the suit land. They  
failed to show how they acquired any interest in the suit land. They also failed to account for  
460 their occupation on the suit land either through the Ridge Leaders who traditionally own the  
land, or the registered proprietors of the suit land. Therefore, the plaintiffs on the suit land or  
those claiming any interest therein whatsoever are trespassers. *Issue No. 1* is answered in the  
negative.

***Issue No.2: Whether the 1<sup>st</sup> defendant obtained the lease and certificate of title over the***  
465 ***property fraudulently and/or unlawfully.***

It is the established law that fraud means actual fraud or some act of dishonesty. In ***Waimiha  
Saw Milling Co. Ltd.vs. Waione Timber Co. Ltd.(1926) A.C 101*** at page 106, it was held that  
fraud implies some act of dishonesty. In ***Assets Co. vs. 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  
470 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 in the Supreme  
Court and the Court of Appeal decisions in ***Kampala Bottlers Ltd. vs. Damanico(U) Ltd., Civil  
Appeal No. 22 of 1999***; and ***David Sejjaaka vs. Rebecca Musoke, Civil Appeal No. 12 of 1985***  
475 respectively. In ***Kampala Bottlers vs. Damanico (supra)*** it was further held that fraud must be

pleaded and strictly proved, the standard of proof being higher than that required in ordinary civil cases but not beyond reasonable doubts as required in criminal cases.

Since the plaintiffs herein allege fraud against the defendants, which is a very serious allegation, the burden is upon the plaintiffs to prove it to the required standard. It is thus called for to  
480 examine the process of how the 1<sup>st</sup> defendant obtained title to the suit land to determine *Issue No.2*. The 2<sup>nd</sup> defendant will be considered later under *Issue No.3*.

DW1 John Lwigiryande testified that he was the one, as a Ridge Leader at the time, who gave the suit land to 1<sup>st</sup> defendant in 1980. He had just taken over the position in 1978 from his father Kambere Kastumbire. He further stated that he gave the land to the 1<sup>st</sup> defendant through its  
485 Managing Director then, one Bruno Bwambale, who undertook to compensate the people with Bibanjja and gardens on the land. DW1 named the people as Nyabayanda, Katwanga, Manuel Kasande, Syasuwusa and Mulefu. He further stated that as Ridge Leader, those people were known to him and that they left after being compensated, and the 1<sup>st</sup> defendant took possession and set up livestock farm and started growing cotton on the suit land.

490 DW1 also stated that the 1<sup>st</sup> defendant demarcated its land by planting “oruyenje” trees around it. Indeed court saw the same, and was further shown permanent houses belonging to the 1<sup>st</sup> defendant during the locus in quo visit. DW1 firmly stated that by the time the 1<sup>st</sup> defendant took over the suit land, there were no claimants or occupants, and that none of the plaintiffs was on the land. DW1 clarified that the 1<sup>st</sup> defendant was initially given a Kibanja and held it under a  
495 customary tenure and shortly after converted it into a legal registered interest.

It needs to be emphasised that at the time the 1<sup>st</sup> defendant acquired the Kibanja, the law in force was the repealed ***Land Reform Decree, 1975***. Under ***Section 1*** thereof all the land in Uganda was declared public land. Under ***Section 3 (2) (supra)*** it was provided that a customary

occupation of public land shall, notwithstanding, anything contained in any other written law, be  
500 only at sufferance and a lease of any such land may be granted by the commission to any person  
including the holder of the tenure in accordance with this decree. The inherent legal implication  
in these provisions was that a lease could be granted on public land to a holder of customary  
tenure on that land or anybody else.

In the instant case, DW4, Hellena Biira Bwambale, and PW7, Ivan Muhasa Mpondi, gave  
505 evidence that the 1<sup>st</sup> defendant which already held customary tenure on public land applied for a  
lease on the land. The application form, “*Exhibit P9*”, further shows that the 1<sup>st</sup> defendant applied  
for 2 Sq. Km of land on the 9<sup>th</sup> July, 1982, two years after acquiring a Kibanja interest in the suit  
land and setting up a farm thereon.

Evidence further shows that the land was inspected by the District Land Committee in the  
510 presence of the then sub county chief, one Asuman Bwambale, the then parish chief, one Erinesti  
Kigoma, the then chairman of The Abalisa Kweterana, one Muguta C. Monday, and the then 1<sup>st</sup>  
defendant’s Managing Director, Bruno Bwambale. The Land Committee’s findings are  
instructive that the land did not have customary tenants or disputes on it.

On this issue, not one of the plaintiffs adduced any evidence proving the alleged particulars of  
515 fraud against the 1<sup>st</sup> defendant in the acquisition of the title. Only Counsel for the plaintiffs, in  
their submissions, attempted to explain that the instruction to survey (IS) the suit was dated 20<sup>th</sup>  
December, 1982, but that by 14<sup>th</sup> July, 1985, the process of survey and mapping was not  
completed according to the comments on Land Form 13A, and yet the certificate of title was  
issued to the 1<sup>st</sup> defendant in 1983. According to Counsel for the plaintiffs, this amounted to fraud  
520 because the 1<sup>st</sup> defendant disregarded the necessary procedures and steps of acquiring the lease.

With due respect, I find that the submissions of Counsel for the plaintiffs on that point was an attempt to adduce evidence from the Bar; which is untenable. Apart from that, the submissions appear to have been premised on misapprehension of facts. The 1<sup>st</sup> defendant applied for 2 Sq. km of land and the survey was not conducted all at ago but in phases. The IS for the first phase  
525 was issued on the 6<sup>th</sup> January, 1983, for 200hectares whose title was issued on the 10<sup>th</sup> March, 1983. There was, however, still an ongoing process for the title for land now under the extension, which was actually surveyed but whose title was never issued primarily due to the claimants still on it. This is, however, not the land under in dispute. With these clear facts, it would be erroneous to assert the 1<sup>st</sup> defendant side – stepped the procedure in getting a lease. On the  
530 contrary, the 1<sup>st</sup> defendant properly followed the due process in obtaining registration and is accorded protection under **Section 64 and 176** of the **Registration of Titles Act (Cap 230)**. I find that the plaintiffs failed to prove fraud against the 1<sup>st</sup>defendant to the required standard.

In the same vein, I find that the 1<sup>st</sup> defendant has through the evidence of DW1, DW2, DW4, PW7, and others, in addition to the documentary evidence, ably discharged its burden under the  
535 counterclaim; which must succeed.

***Issue No. 3: Whether the sale of part of the suit property by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant was fraudulent and/or unlawful.***

In their pleadings, the plaintiffs particularised fraud against the 2<sup>nd</sup> defendant as the purchasing of part of the plaintiff's land with full knowledge that it was the property of the plaintiffs; colluding  
540 with the 1<sup>st</sup>defendant with intent to defeat the plaintiffs' claim on the suit land; and purchasing land in the occupation and utilisation of the plaintiffs.

The 2<sup>nd</sup> defendant, on the other hand, raised the defence of bona fide purchaser for value without notice of the plaintiffs' alleged interests in the suit land measuring 214 acres comprised LRV 4130 Folio 5 Busongora Block 13 Plot 9 in its name.

545 It should be noted that only three of plaintiffs claimed an interest in the land under the 2<sup>nd</sup> defendant's title. These are 4<sup>th</sup> plaintiff Mbusa Bethel, the 11<sup>th</sup> plaintiff Nyinabarongo w/o Masereka, and the 13<sup>th</sup> plaintiff Nyansio Tembo.

The evidence available from both sides is that 2<sup>nd</sup> defendant purchased land that was already registered in the name of the 1<sup>st</sup> defendant. As already found above, the 1<sup>st</sup> defendant lawfully got  
550 registered in 1983. It is a logical conclusion that the 2<sup>nd</sup> defendant was never involved in the process of registration of the 1<sup>st</sup> defendant at that point. This automatically renders the alleged particulars of fraud as regards "collusion" between the defendants untenable.

Under the law, the 2<sup>nd</sup> defendant, like any other potential purchaser of land, was required to search the Register of Titles for any encumbrances on the 1<sup>st</sup> defendant's title. Evidence shows  
555 that there was none by the time the 2<sup>nd</sup> defendant purchased its portion of the suit land. In the absence of any physical occupation or use by the plaintiffs or any other encumbrance notified on 1<sup>st</sup> defendant's certificate of title, it could not be said to have had actual or constructive notice or otherwise, of the plaintiffs' interest, if any, in the suit land when it purchased part of it in 2002.

Apart from the above, even the plaintiffs who testified precisely stated that the pieces of land  
560 they claimed were located not within the part now owned by the 2<sup>nd</sup> defendant. In particular, PW1, Yorunimu Baluku, was categorical that the land they claimed was outside the titled land of the 2<sup>nd</sup> defendant, and that the 2<sup>nd</sup> defendant has never destroyed their crops. He unequivocally stated that he has no claim against the 2<sup>nd</sup> defendant.



Similarly, PW2, Francis Makwano stated that his claim is not on the land owned by the 2<sup>nd</sup>  
565 defendant, and that the 2<sup>nd</sup> defendant has never entered his portion of land. He further stated that  
the land claimed by the 1<sup>st</sup> plaintiff, Isebahasa Mulewa, is also not on the 2<sup>nd</sup> defendant's titled  
land. PW3 Isebahasa Mulewa indeed confirmed that the 2<sup>nd</sup> defendant is not on his land, but that  
all the plaintiffs decided simply to sue the 2<sup>nd</sup> defendant as a group. PW3 confirmed that he has  
never occupied the land of the 2<sup>nd</sup> defendant, except that at one time his family found land that  
570 had been ploughed by the 2<sup>nd</sup> defendant and just planted crops thereon.

PW 4 Nyinabarongo w/o Masereka testified that she has never used the land now owned by the  
2<sup>nd</sup> defendant. Indeed at the locus in quo visit, it was clearly observed that the land she claimed  
was very far from the land owned by the 2<sup>nd</sup> defendant. PW5, Anderea Bagasaki, also conceded  
that his land was not within the land under the 2<sup>nd</sup> defendant's title. PW6 Nyansio Tembo, claim  
575 of interest the titled land of the 2<sup>nd</sup> defendant has already been dismissed under *Issue No.1*, and I  
need not to repeat here.

PW7, Ivan Muhasa Mpondi, who testified on the plaintiffs' side clearly stated that there were no  
gardens or squatters or occupants on the land now owned by the 2<sup>nd</sup> defendant, either at the time  
the 2<sup>nd</sup> defendant started renting part of it in 1998, or when they purchased it from the 1<sup>st</sup>  
580 defendant in 2002. This fact is corroborated by "*Exhibit D5*", the sale agreement between the  
defendants, of which PW7 was one of signatories. It clearly guaranteed that there were no  
encumbrances or squatters /occupants on the suit land sold to the 2<sup>nd</sup> defendant.

The evidence of PW7 was further corroborated by PW 8, Mijumbi Wilson, a former official of  
the 1<sup>st</sup> defendant, that the 2<sup>nd</sup> defendant used all the land they bought which was part of what they  
585 were hiring from the 1<sup>st</sup> defendant. PW8 further stated that the plaintiffs were among the many

people who came later on to the 2<sup>nd</sup> defendant's land after a Grade 11 Magistrate had misled them by misinterpreting an interim order issued in 2000.

The other evidence on this issue regarding the 2<sup>nd</sup> defendant's title was adduced by PW9, Robert Mugabe, the investigator; of which I need not to say much. Apart from conceding that he was not a qualified fraud investigator, he admitted that he premised his investigations on the assumption that the plaintiffs were customary owners and on that basis set out to look for fraud against the defendants. He conceded that he made his report without even talking to or inquiring from the defendants' officers as to how they got the land. The report PW9 invariably based on questionable data, flawed assumptions, and inappropriate analyses resulting in biased inadequate interpretations. It was generally short on credible substance and was grossly discredited and hence of no evidential value at all.

DW3, Kaija Businge Njima also adduced evidence that the 2<sup>nd</sup> defendant purchased the land they were renting from 1<sup>st</sup> defendant around 1997. This corroborates the testimony of DW5, Adam Bwambale the General Manager of the 2<sup>nd</sup> defendant, that it purchased and registered in its name part of the land they initially rented from 1<sup>st</sup> defendant. This was further corroborated DW4 Hellena Biira Bwamable that the land 2<sup>nd</sup> defendant bought is the land it was initially hiring from 1<sup>st</sup> defendant. The logical inference from all the evidence on this issue is that none of the plaintiffs was in occupation, possession and /or utilisation of the suit land by the time the 2<sup>nd</sup> defendant purchased the same. As a result, the 2<sup>nd</sup> defendant could not reasonably be expected to have known of the plaintiffs' interest in the suit land, which never existed there in the first place. Similarly, there is no evidence to indicate that the 2<sup>nd</sup> defendant was involved in any dishonest dealings in land or sharp practice intended to deprive the plaintiffs of an interest in the suit land. The 2<sup>nd</sup> defendant obtained registration and title over suit land lawfully and without any fraud.

The plaintiffs totally failed prove fraud against the 2<sup>nd</sup> defendant, and the plaintiffs' suit is  
610 dismissed with costs as against the 2<sup>nd</sup> defendant.

***Issue No.4: What are the remedies available to the parties?***

Having found that the plaintiffs failed to prove their case to the required standard, their suit is  
dismissed with coststo each of the defendants.

The 1<sup>st</sup> defendant's counterclaim is allowed with costs; and all the plaintiffs on the suit land are  
615 declared trespassers thereon. An eviction order doth issue against those plaintiffs on the suit land  
to give vacant possession to the 1<sup>st</sup> defendant. A permanent injunction doth issue against all the  
plaintiffs, their agents, servants or anybody claiming title under them restraining them from any  
further acts of trespass, alienating, using or claiming any interest in the suit land.

The 1<sup>st</sup> defendant also prayed for the award of general damages for the trespass. In the case of  
620 ***Placid Weli vs. Hippo Tours & 2 Or's HCCS No. 939 of 1996***, which relied on ***Halbury's Laws  
of England, 3<sup>rd</sup> Edition, Vol.38, para 1222***, it was held that trespass is actionable parse even if  
no damage was done to land. Further, that a plaintiff is entitled to recover damages even though  
he has suffered no actual loss, but that where trespass has caused the plaintiff loss, the plaintiff is  
entitled to receive such an amount as will compensate him or her for the loss.

625 DW4 Ms. Hellena Biira Bwambale, the current chairperson of the 1<sup>st</sup> defendant, testified that they  
have been greatly inconvenienced for a very long time as a company by the plaintiffs who keep  
on grabbing and cultivating their land forcefully, and that it has also caused the company great  
financial loss as they could not put their land to proper economic use.

The position of the law is that the award of general damages is in the discretion of court and is  
630 always as the law will presume to be the natural and probable consequence of the defendant's act  
or omission. See: ***James Fredrick Nsubuga vs. Attorney General HCCS No. 13 of 1993***. It was

also held in **Robert Cuossens vs. Attorney General SCCA No. 08 of 1999** that the object of the award of damages is to give the plaintiff compensation for the damage, loss or injury suffered. Having found evidence showing that the 1<sup>st</sup> defendant suffered financial loss due to the plaintiffs' acts of trespass, the 1<sup>st</sup> defendant is awarded general damages.

In the assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the inconveniences that the party seeking damages has been put through at the instance of the offending party, and the nature and extent of the injury or loss. See: **Uganda Commercial Bank vs. Kigozi [2002] 1 EA. 305.**

Taking all circumstances of this case into account, Shs. 50 Million would be fair and adequate recompense, and I award the same as general damages to the 1<sup>st</sup> defendant. It shall attract interest at a rate of 8% per annum from the date of this judgment until payment in full.

The 1<sup>st</sup> defendant also prayed for mesne profits. **Section 2 (m) of the Civil Procedure Act (Cap 71)** defines “mesne profits” as;

**“Those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession.”**

The above provisions of the law were applied in the case of **The Kamuswaga of Kooki vs. Attorney General, HCCS No. 608 of 2014**, where court also relied on several other decided cases, and held that;

**“It is settled that wrongful possession of the defendant is the very essence of a claim for mesne profits until possession is delivered up, the court having the power to assess them down to the date when possession is actually given.”**

655 A similar stance was adopted in *Raminicklal Ranchoddas Popat vs. Attorney General HCCS No. 701 of 1996* per Kwesiga J., whereit was held that;

**“.....the test of mesne profit is that profit that the trespasser might have received by not paying rent for the period of trespass.”**

The 1<sup>st</sup> defendant/counterclaimant did not lead evidence of the profits that the plaintiffs as  
660 trespasser might have received by not paying rent for the period of trespass. Without such evidence to support its decision, this court would be reluctant to award mesne profits in this case.

The 1<sup>st</sup> defendant prayed for costs of the counterclaim. It is the established law, under **Section 27(2) Civil Procedure Act (supra)** that costs are awarded in the discretion of the court and shall follow the event unless for good reasons the court directs otherwise. See: *Jennifer Rwanyindo Aurelia & A’ nor vs. School Outfitters (U) Ltd., CACA No.53 of 1999; National Pharmacy Ltd. vs.Kampala City Council [1979] HCB 25*. The 1<sup>st</sup> defendant has succeeded in its  
665 counterclaim, and there I find no compelling and justifiable reason to deny it costs of the counterclaim, which I accordingly award to the 1<sup>st</sup> defendant/ counterclaimant.

Before taking leave of this case, I wish to note that multiple suits were filed, particularly  
670 applications, either arising from or touching on the same subject matter of the main suit. Having resolved the ownership issue regarding the suit land which was the main issue in those other suits, all such other applications and suits (arising from of this suit) that were pending the disposal of the main suit will abide the outcome of this suit, and are accordingly disposed of in that manner.

675 It is also noted that several company causes were file, particularly concerning the management of the 1<sup>st</sup> defendant company especially as regards the distribution of the suit land among its members. These management issues were resolved by the 1<sup>st</sup> defendant’s members’ consent

through mediation conducted by the Hon. The Principle Judge. New office bearers were elected in accordance with the terms of reference of the mediation settlement on court record. Therefore, 680 the outgoing management officials, headed by Muhasa Ivan Mpondi, shall forthwith render a full and accurate account and effect a smooth hand over of all the company property/assets and /or liabilities and businesses to the new office bearers to avoid any further unnecessary litigation over the same issues. This disposes of all the company causes and applications arising there from.

685 The final point concerns *HCCS No.001 of 2015 Francis Mwebesa vs. Western Uganda Importers & Distributors Ltd.* The plaintiff therein sued the 1<sup>st</sup>defendant because some of the officials of the outgoing management had sold to him 22 acres out of the suit land, which had already been distributed to members of the company as part of their individual shares' equivalent. To avoid multiplicity of litigation, the new management headed by Ms. Hellena Biira Bwamabale, is 690 required to give to the plaintiff therein the equivalent of 22 acres which he had purchased on the suit land one way or the other. This disposes of the said suit.

Finally, it is directed that the certificate of title for the suit land comprised in LRV 1227 Folio 17 Block 13 Plot 1 land at Kamaiba, Muhokya registered in the name of the 1<sup>st</sup> defendant be handed over to officials of the 1<sup>st</sup> defendant. In summary it is declared and ordered as follows;

- 695
- 1. The plaintiffs' suit is dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively.**
  - 2. 1<sup>st</sup> defendant's counterclaim is allowed with costs.**
  - 3. The plaintiffs on the suit land are trespassers thereon.**
  - 4. An eviction order is issued against the plaintiffs on the suit land to give vacant possession to the 1<sup>st</sup> defendant.**

- 700        5. *A permanent injunction is issued against the plaintiffs, their agents, servants or anybody claiming interest under them restraining them from further acts of trespass, alienating, using or claiming any interest in the suit land.*
6. *The 1<sup>st</sup> defendant is awarded Shs. 50 million general damages, attracting interest at a rate of 8% per annum from the date of this judgment until payment in full.*
- 705        7. *The certificate of title for the suit land comprised in LRV 1227 Folio 17 Block 13 Plot 1 land at, Kamaiba, Muhokya, be handed over to the 1<sup>st</sup> defendant.*

**BASHAIJA K. ANDREW**  
**JUDGE**  
**09/02/2016**

- 710        Mr. Mugisa Rwakatooke Counsel for plaintiffs present in court.
- Mr. David Bwambale Counsel for the 1<sup>st</sup> defendant present in court.
- Mr. Cosma Kateeba Counsel for the 2<sup>nd</sup> defendant present in court.
- Plaintiffs present in court.
- 715        Representatives of the 1<sup>st</sup> defendant present in court.
- Representatives of the 2<sup>nd</sup> defendant present in court.
- Ms. Kabugho Phebis, Court clerk, present in court.
- Court: Judgment read in open court.

720        **BASHAIJA K. ANDREW**  
**JUDGE**  
**09/02/2016**