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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(SITTING AT KASESE)  
CIVIL SUIT NO. 0014 OF 2014**

10 **WESTERN UGANDA IMPORTERS  
AND DISTRIBUTERS LTD ::: PLAINTIFF**

**VERSUS**

1. **MUHASA IVAN IMPORTERS**  
2. **KASESE DISTRICT LAND BOARD ::::::::::::::::::::: DEFENDANTS**  
15 3. **COMMISSIONER FOR LAND REGISTRATION**

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

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

WESTERN UGANDA IMPORTERS & DISTRIBUTORS LTD. (hereinafter referred to as the  
“plaintiff”) brought this suit against MUHASA IVAN MPONDI, KASESE DISTRICT  
20 LANDBOARD; and the COMMISSIONER FOR LAND REGISTRATION herein after referred to  
as the “1<sup>st</sup>”, “2<sup>nd</sup>” and “3<sup>rd</sup>” defendants respectively). The plaintiff sued the defendants jointly  
and severally seeking orders and declaration that;

- (a) *The certificate of title registered as FRV 1083 Folio 12 1<sup>st</sup> Street Kasese be cancelled.*
- (b) *A declaration that the lease registered on Plot 5, 1<sup>st</sup> Street Kasese by the plaintiff is*  
25 *still subsisting.*
- (c) *In the alternative and without prejudice to the above an order that Plot 5,1<sup>st</sup> Street*  
*belongs to the plaintiff.*
- (d) *An order for a permanent injunction against the 1<sup>st</sup> defendant or his agents, servants*  
*or anybody claiming title under him from interfering with the plaintiff’s quiet*  
30 *enjoyment of the suit property, stopping them from any transaction on this land,*  
*alienating it and/or making any claim on it whatsoever.*

*(e) An order that the 1<sup>st</sup> defendant hands over all the plaintiff's official documents, company seal, and makes accountability in his capacity as Chairman Task Force of the plaintiff company.*

35 *(f) The 1<sup>st</sup> defendant pays, general and punitive damages*

*(g) The 1<sup>st</sup> defendant pays cost of the suit.*

***Background:***

The plaintiff is a company incorporated under the Laws of Uganda. Sometime in 1982 the plaintiff purchased from one Steven Barekye an interest in land registered as Plot 5, 1<sup>st</sup> Street –  
40 Kasese, *hereinafter referred to as the “suit land”*). The said Steven Barekye had got a lease offer from the then controlling authority for the initial period of two years running from 01.07.1979 extendable to full term of 49 years on compliance with the building covenant in the lease offer. Upon purchasing the suit land, the plaintiff also applied for fresh lease of its own and was given a lease offer for the initial period of two years form 01.08.1982 extendable to a total of 49 years  
45 on completion of the building covenant. The plaintiff went ahead and constructed two warehouses for the purpose of setting up a soap factory on the suit land.

Sometime in 1998 the plaintiff company faced financial difficulties in its operations and developed the idea of selling the suit land in order to raise money to revive the operations. A resolution to that effect was made at the general meeting of the company and the 1<sup>st</sup> defendant  
50 was tasked to look for a buyer. Instead of getting a buyer as mandated, the 1<sup>st</sup> defendant transferred the suit land into his own names as owner even without paying any consideration for it. The plaintiff contends that the 1<sup>st</sup> defendant forged the minutes of the meeting and claimed that the plaintiff had surrendered the suit land to him personally as owner. Further, that the 1<sup>st</sup> defendant gorged a “surrender letter” falsely claiming that the company had surrendered the suit

55 land to him as owner and that two other members of the company signed the surrender letter  
whereas not.

Using the “surrender letter”, the 1<sup>st</sup> defendant applied to the Kasese Town Council Land Board  
(2<sup>nd</sup> defendant) to have the suit land registered in his names. The plaintiff learnt of the 1<sup>st</sup>  
defendant’s move and wrote to the 2<sup>nd</sup> defendant warning that the suit land should not be  
60 transferred into the 1<sup>st</sup> defendant’s names, because the plaintiff had never surrendered the suit  
plot to him. However, the 2<sup>nd</sup> defendant never heeded the plaintiff’s warning but went ahead to  
grant ownership of the suit land to the 1<sup>st</sup> defendant. The 3<sup>rd</sup> defendant subsequently issued a  
certificate of title to the 1<sup>st</sup> defendant. That prompted the plaintiff to institute the instant suit  
against all the defendants jointly and severally seeking the orders outlined above.

65 The 1<sup>st</sup> defendant, for his part, denied the plaintiff’s claims and the allegations of fraud against  
him. He stated that it was the company which, in its general meeting, surrendered to him the suit  
land as the owner. He further contended that although the company gave him the responsibility  
to get the buyer for the suit land, he failed to secure one. That when he approached the 2<sup>nd</sup>  
defendant’s agents, they advised him that the period of the lease offer for the plaintiff on the suit  
70 land had expired and that the land was free he could apply for it. That he applied for the suit  
land and was subsequently issued with freehold certificate of the title in his names for the suit  
land.

Premised on the above averments, the 1<sup>st</sup> defendant vehemently denied that the suit land belongs  
to the plaintiff. He maintained that when the plaintiff’s lease offer period expired, the suit land  
75 reverted back to the 2<sup>nd</sup> defendant who gave it to him. He prayed that the plaintiff’s suit be  
dismissed with costs.

At the hearing, the plaintiff was represented by their company lawyer Mr. David Bwambale of *M/S Bamusede, Bwambale & Co. Advocates*, while Mr. Rwakatooke of *M/s Nyamutale & Co. Advocates* represented the 1<sup>st</sup> defendant. Both Counsel filed written submissions which are on  
80 court record and I have taken them into account in arriving at a decision. I therefore need not to reproduce the submissions in detail in this judgment, but I will make specific references to them as and when occasion demands so.

The 2<sup>nd</sup> and 3<sup>rd</sup> defendants were duly served with summons to file their respective defences. Despite acknowledging receipt of the services, they opted not to file any defence. Court was duly  
85 satisfied that they were properly and effectively served with summons, and therefore, the case proceeded *ex parte* under **Order 9 r.10 of the Civil Procedure Rules(CPR)** as if the said defendants had filed their respective defences.

The plaintiff adduced evidence of three witnesses to wit; PW1 Masereka Simon, PW2 Hellena Biira Bwambale and PW3 Leo Bwambale. All of them are the current executive as well as the  
90 board members of the plaintiff company. On the other hand, the 1<sup>st</sup> defendant adduced evidence of two witnesses to wit, himself as DW1 and DW2, Mijumbi Wilson.

A scheduling conference was conducted pursuant to **Order 12 CPR** and the following issues were framed for determination;

- (i) Whether the 1<sup>st</sup> defendant acquired the suit plot fraudulently.**
- 95 **(ii) Whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendant participated in the fraud in respect of the suit land.**
- (iii) Remedies available to the parties.**

**Resolution of issues:**

**Issues No. 1: Whether the 1<sup>st</sup> defendant acquired the suit plot by fraud.**

100 “Fraud” was well defined in the case of *FJ K Zaabwe vs. Orient Bank & 5 O’rs SCCA No. 4 of 2006* (at page 28). In the lead judgment, Katerebe JSC (as he then was) relying on the definition of “fraud” in *Black’s Law Dictionary (6<sup>th</sup> Edition)* at page 660 held as follows;

105 *“An intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act of combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or*

110 *silence, word of mouth or look or gesture.... A generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or by suppression of truth and includes all surprise, trick cunning dissembling and any unfair way by which another is cheated. “Bad faith” and fraud are synonymous and also synonymous of dishonesty, infidelity, faithlessness, perfidy unfairness etc. As distinguished from negligence, it is*

115 *always positive intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage of another, and includes anything calculated to deceive whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo by speech, or by silence by word of*

120 *mouth of by look or gesture.”*

Similarly, in the case of *Kampala Bottlers Ltd vs. Damnico Ltd SCCA No. 22 of 1992*, Wambuzi CJ (at page 5 of his judgment quoting the trial judge on the definition of fraud, held that it is well established that fraud means actual fraud or some act of dishonesty. The trial judge  
125 in that case had relied on the case of *Waimiha Saw Milling Co. Ltd vs. Waione Timber Co. Ltd (1926) A.C 101 at page 106*, quoting Lord Buchmaster, that fraud implies some act of dishonesty.

Furthermore, in *David Sejjaaka vs. Rebecca Musoke, SCCA No. 12 of 1985*, it was held that fraud must be attributable to the transferee, either directly or by necessary implication. The  
130 transferee must be guilty of some fraudulent act or must have known of such act by somebody else and participated in it or taken advantage of it. The Supreme Court also in the case of *J.W.R Kazzora vs. M.L.S Rukuba, SCCA No. 13 of 1992*, held that fraud must be superficially pleaded and strictly proved and cannot be left to be inferred from the facts.

In the instant case, the plaintiff stated the particulars of the alleged fraud against the 1<sup>st</sup> defendant  
135 I paragraph 7 of the plaint as follows;

- *Forging minutes of a general meeting to indicate that the plot in issue is surrendered to him whereas not. See Annexure marked “D”.*
- *Forging a surrender letter and claiming that it originated from the plaintiff whereas not.*
- *Forging signatures of two members of the plaintiff alleging that they signed on the  
140 surrender letter. See Annexure “E”. A copy of surrender letter.*

In paragraph 15 of the plaint, the plaintiff further particularized facts constituting the alleged fraud by all the defendants as follows;

- *Applying for the conversion of land from customary tenure to freehold tenure well knowing that the land is not customary.*

- 145
- *Receiving and approving the above application well knowing that there can never be customary land in an urban area (Municipality).*
  - *Claiming that the land has no occupants whereas it has occupants.*
  - *Making a wrong notice. See Annexure Marked “H3”.*
  - *Making and forwarding a wrong, fraudulent inspection report. See Annexure “H4” a*
- 150 *copy of the inspection report.*

To prove that the 1<sup>st</sup> defendant forged minutes of the general meeting the plaintiff adduced in evidence *Exhibit P4*, which is a copy of minutes of the meeting held on 08.10.1998 at Verina Gardens chaired by the 1<sup>st</sup> defendant in his capacity as Chairman of the Task Force of the company. At page (E) of the minutes, it shows that the members of the company resolved to sell

155 the suit land which was owned by the plaintiff company in order to raise funds to revive the company which faced financial problems. The company mandated the 1<sup>st</sup> defendant to get “a serious buyer” and “after that resolution the company was to revive soon” and by that motion “all the members agreed”. The plaintiff contends that 1<sup>st</sup> defendant forges the minutes by adding a statement therein to state that;

160 ***“So Plot No. 5, 1<sup>st</sup> Street Industrial Area was surrendered and transferred to Ivan Mpondi Muhasa as a full owner of the plot.”***

PW2, Hellena Biira Bwambale, the current vice - chairperson and former chairperson of the plaintiff company, who also attended the said general meeting and is listed as No. 19 therein, testified that no such resolution was ever passed by the members surrendering the suit land to the

165 1<sup>st</sup> defendant. She explained that the resolution which was made only mandated the 1<sup>st</sup> defendant to get a serious buyer and report back to the company, which would assign three other members who would then help in the negotiations of the purchase price.

The evidence of PW2 was corroborated in that material particular by PW3 Leo Bwambale who was the member of the plaintiff company at the time the meeting was held and minutes made, and is the current Chairman. Further corroborating the evidence of PW2 was PW1 Masereka Simon who is a founder member of the plaintiff company who also attended the said meeting and is the current treasurer. All these witnesses denied the plaintiff ever surrendering the suit land to the 1<sup>st</sup> defendant to take for his own use, and they insisted that the resolution regarding the surrender and the surrender letter were mere forgeries made by or at the instigation of the 1<sup>st</sup> defendant to benefit himself.

The 1<sup>st</sup> defendant (DW1) for his part insisted that the company surrendered the suit land to him to own personally. He acknowledged that even though the company members in the said meeting tasked him to get a serious buyer, he failed to get one. That upon failing to get the buyer, the company members decided to surrender the suit land to him as owner.

After carefully evaluating all the evidence together on this issue, I find that the 1<sup>st</sup> defendant's testimony is riddled all through with glaringly major inconsistency and contradictions which could not be satisfactorily explained. They could only point at either attempt calculated to mislead or to tell to court outright deliberate falsehoods.

For instance, the 1<sup>st</sup> defendant stated that in the meeting of 08.10.1998 the company members asked him to go and look for a serious buyer for the suit land. In the same breath the 1<sup>st</sup> defendant claims that the company members in the same meeting resolved and surrendered the suit land to him as his personal property after he failed to get the buyer. This is grossly inconsistent as it makes no sense at all. Members could not resolve that the 1<sup>st</sup> defendant looks for a buyer and at the same time resolve to surrender to him the suit land to own as his personal property. It is also a major contradiction for the 1<sup>st</sup> defendant to claim that he failed to get a



buyer before looking for one in the same meeting held on the same date and venue, and the members surrender the suit land to his as his personal property.

DW2 Wilson Mijumbi who was the treasurer of the plaintiff company at the time the meeting was held, who also attended the said meeting as No.5 on the list of attendees, also denied any  
195 knowledge of such a resolution to surrender the suit land to the 1<sup>st</sup> defendant. He testified that he was only aware that the general meeting tasked the 1<sup>st</sup> defendant to find a buyer but not the surrendering of the suit land to him.

It is, therefore, clear on the evidence of the plaintiff and defence witness that the plaintiff never surrendered the suit land to the 1<sup>st</sup> defendant for him to own as his personal property. The  
200 intention of the company asking the 1<sup>st</sup> defendant as its Task Force Chairman was to find “a serious buyer” to raise money to help to revamp the company’s dire financial situation. The so - called resolution to surrender the suit land to the 1<sup>st</sup> defendant absolutely contradicts that intention, and the claim by the 1<sup>st</sup> defendant that the suit land was surrendered to him to own as personal property was unknown to any member of the company including his own witness DW2  
205 Mijumbi Wilson.

The logical inference drawn from the facts in evidence above is that the forgery was perpetrated by the 1<sup>st</sup> defendant who knowingly stood to benefit from it. The forgery was not an isolated incident but just one of the steps in a plan orchestrated by the 1<sup>st</sup> defendant to completely deprive the plaintiff of its property. Even the so -called “surrender letter”, *Exhibit P6* dated 19.11.1998,  
210 which was authored, *inter alia*, by the 1<sup>st</sup> defendant as Chairman (of the Board/Company) is an obvious fraud and forgery. It was authored with the sole purpose of buttress the forgery of the resolution in the minutes of the general meeting, *Exhibit P4*, earlier mentioned of the plaintiff company.

The other side – issue to consider is that whereas the 1<sup>st</sup> defendant was appointed “Task Force  
215 Chairman” to oversee the company affairs during its hard times mentioned earlier, he purported  
to sign *Exhibit P6* as “Chairman” of the company/board. This was a deliberate misrepresentation  
of facts and state of affairs to the addressee of the letter - the controlling authority, from whom  
the 1<sup>st</sup> defendant fraudulently sought to obtain allocation of the suit land. According to the  
unchallenged evidence of the plaintiff, which was also corroborated in that respect by that of the  
220 1<sup>st</sup> defendant, the chairman of the board/company, was at the time Mr. Bruno Bwambale. The  
said Bruno Bwambale never signed Exhibit P6. It also so happens that other than the signature of  
the 1<sup>st</sup> defendant, the other signatures appearing on the so – called “surrender letter” were denied  
by the other company officials such as PW1 and PW2 who were more conversant with the  
signatures of the alleged signatories.

225 The 1<sup>st</sup> defendant evidently contrived a scheme to deprive the company of its land through  
misrepresentation and manipulation of the company resolution in the minutes of the said  
meeting. He forged, or had forged, the minutes and the “surrender letter” and misrepresented  
himself as chairman of the board/company. It is plainly clear that the 1<sup>st</sup> defendant acted  
dishonestly and fraudulently, and he knowingly intended to benefit from the forgery. This  
230 amounts to nothing short of actual fraud. Having found as such, that effectively disposes of the  
resolution of this issue on the other particulars of the fraud pleaded under paragraph 7 of the  
plaint by the plaintiff.

***Issue No. 2: Whether the 2<sup>nd</sup> and 3<sup>rd</sup> defendants participated in the fraud in respect of the suit  
land.***

235 Under paragraph 15 of the plaint, (in the first bullet) the plaintiff also alleged fraud against the 1<sup>st</sup>  
defendant for having applied for the conversion of suit land from customary tenure to freehold

tenure well knowing that the land was not customary land. The defendant on his part testified that to his mind, he knew that the suit land was held under customary tenure.

“Customary” tenure is defined under **Section 3(1) of the Land Act (Cap.227)** and the relevant  
240 portion states as follows;

**“(1) Customary tenure is a form of tenure -**

**(a) applicable to a specific area of land and specific description or class of persons;**

**(b) subject to Section 27, governed by rules generally accepted as binding and  
authorities by the class of persons to which it applies;**

245 **(c) applicable to any persons acquiring land in that area in accordance with those  
rules;**

**(d) subject to Section 27 characterized by local customary regulation;**

**(e) applying local customary regulations and management to individual and household  
ownership the use and occupation of, and transaction in, land;**

250 **(f) providing for communal ownership and use of land;**

**(g) in which parcels of land may be recognised as subdivision belonging to a person, a  
family or a tradition institution; and**

**(h) which is owned in perpetuity.”**

None of the description above fits the definition of the suit land in issue as customary land. At  
255 the time the 1<sup>st</sup> defendant applied for it, the suit land was already plotted and surveyed and had a  
plot number as “Plot 5, 1<sup>st</sup> Street – Kasese Industrial Area”.

In addition, the suit land could not be customary land as it was in an urban area. At the time of  
said meeting on 08.10.1998, the **Land Act (Cap 277)** had just come into force on 02.07.1998. It  
means that the suit land was hitherto held subject to the **Public Land Act, 1969**, and the **Land**

260 **Reform Decree 1975** as the law in force at the time. **Section 24 of the Public Land Act (supra)**  
and **Section 5(1) of the Land Reform Decree (supra)** prohibited customary tenure in urban  
areas. Further in the case of **Tifu Lukwago vs. Samwiri Mudde Kizza and Nabitaka SCCA No.**  
**13 of 1996** which relied on the decision in **Paul Kiseka Ssaku vs. Seventh Day Adventist**  
**Church SCCA No. 8 of 1993**, it was held that customary occupation without consent of the  
265 prescribed authority was unlawful.

Since the 1<sup>st</sup> defendant purported to acquire customary interest in 1998 in the suit land which had  
been held by the plaintiff and its processor in title since 1979, it would be illegal for the 1<sup>st</sup>  
defendant to hold a customary tenure in the urban area since he could not acquire the interest  
which did not exist in the first place. For emphasis, it is noted that even though the **Land Act**  
270 **(supra)** does not expressly prohibit customary tenure in urban areas, the Act has no retrospective  
effect and cannot apply to pre-1998 customary occupation.

It was, therefore, fraudulent of the 1<sup>st</sup> defendant to have applied for the land as customary land  
well knowing it was not. This knowledge is invariably imputed to him from the fact that he was  
Task Force Chairman of the plaintiff company and was at all material times aware, or should  
275 have reasonably been aware, that the suit land was titled land.

I also find fraud on part of the 2<sup>nd</sup> defendant to have received and approved the 1<sup>st</sup> defendant's  
application for land described as customary land well knowing that no such tenure existed in an  
urban area, particularly in a municipality such as Kasese.

In bullet (3) of paragraph 15, of the plaint, the plaintiff further alleges fraud against the 1<sup>st</sup>  
280 defendant in that he falsely claimed in his application to the 2<sup>nd</sup> defendant that the suit land had  
no occupants. Indeed all the witnesses of the plaintiff and the defendant agree that the suit land  
had warehouses built on it by the plaintiff company earlier in time, which were intended for a

soap factory that never materialised because of the hard financial times the company experienced. *Exhibit P3*, which are the pictures of the said buildings, were adduced in evidence.

285 All witnesses stated that the buildings' roof was blown off by strong winds. Even the 1<sup>st</sup> defendant acknowledged that the buildings have existed on the suit land and belonged to the plaintiff company, but strangely, he insisted that the suit land was unoccupied and that it was his merely because he has the title.

I find that the 1<sup>st</sup> defendant acted fraudulently to have claimed in his application (*Exhibit P8*) and  
290 in Inspection Report (*Exhibit P10*) that the suit land was not occupied. The same would be found in respect of the allegations of fraud against the 1<sup>st</sup> defendant, in bullet (5), that he made the application as the owner of the land whereas not. There is ample and well corroborated evidence, as already reviewed above, proving that at the time of applying for the suit land, the 1<sup>st</sup> defendant was not the owner. The suit land was not by any colour of right under his ownership  
295 at all.

I have already found that 1<sup>st</sup> defendant committed fraud to have claimed that he suit land was customary land whereas. It was thus fraud on his part to have filled forms for demarcation of the suit land which was already demarcated and plotted. Needless to emphasise, that the Inspection Report (*Exhibit P6*) which was filled in by officers of the 2<sup>nd</sup> defendant was full of falsehoods  
300 and total lies knowingly made by the 1<sup>st</sup> defendant. Therefore, for the 2<sup>nd</sup> defendant to have proceeded to give the suit land to the 1<sup>st</sup> defendant against that background imputes fraud on part of the 2<sup>nd</sup> defendant. The 3<sup>rd</sup> defendant is liable in fraud only to the extent that it acted on basis of the fraud committed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

In the cases of *Kampala Bottlers Ltd vs. Damanico (U) Ltd, SCCA No. 22 of 1992* and *J.W.R*  
305 *Kazzora vs. M.L.S Rukuba, SCCA No. 13 of 1992*, it was held 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. In the instant case, I find that the plaintiff has proved the elements of fraud alleged in the particulars of fraud against the defendants to the required standard.

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

The plaintiff seeks for the cancellation of the certificate of the title registered as FRV 1083 Folio 12, 1<sup>st</sup> Street – Kasese.

**Section 64 RTA** is to the effect that a title of registered owner is paramount except for fraud.

315 **Section 176 (c)(supra)** is to the effect that a registered owner is protected against ejectment except on grounds of fraud. The effect of fraud is that a title of a registered owner is impeachable only on ground of fraud. In this case, there is ample evidence proving that the 1<sup>st</sup> defendant obtained registration through fraud. His title cannot stand.

**Section 177 RTA** is also to the effect that the High Court shall direct the Registrar of Title to cancel any certificate of title (upon discovery that the same was obtained fraudulently) and to  
320 substitute such certificate of title or entry as the circumstances of the case required.

The plaintiff also prayed for a declaration that the lease registered by the plaintiff on Plot 5, 1<sup>st</sup> Street Kasese is still subsisting. Court however, cannot make such a declaration because it was never proved by the plaintiff that their lease is still subsisting. No evidence of the certificate of title showing the lease was adduced in evidence. Only a lease offer was produced and it does not  
325 serve the same purpose as a lease. It is not known whether the plaintiff was ever granted a lease after the initial 2 years in the lease offer expired. This however does not diminish the plaintiff's interest in the suit land, and the 2<sup>nd</sup> defendant was not entitled to issue a lease to another person without first according priority to the plaintiff which was a tenant occupying the suit land and

which had buildings thereon. This disposes of prayer No.(c) for a declaration that the suit land  
330 belongs to the plaintiff.

The plaintiff seeks an order that the 1<sup>st</sup> defendant hands over all the plaintiff's official documents, company seal and makes accountability of all funds that were received in his capacity as Chairman of the Task Force of the plaintiff company. I find this prayer to be redundant as it is not directly related to the facts in issue.

335 The plaintiff prayed for the award of general damages. The settled 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: **James Fredrick Nsubuga vs. Attorney General, HCCS No. 13 of 1993; Erukan Kuwe vs. Isaac Patrick Matovu & A'nor HCCS No. 177 of 2003**, per Tuhaise J. The purpose of damages is to  
340 put the plaintiff in as good a position as he or she would have been if the damage had not occurred.

PW2 testified that the 1<sup>st</sup> defendant has put the company to hardships and betrayed their trust by failing to sell the suit land to get the money to revive the company. She further testified that as a result of the 1<sup>st</sup> defendant's action of converting the suit land as his own, the intended money  
345 could not be raised and the activities of the company have come to a standstill. That this has caused loss of billions of shillings to the company. PW2 however proposed damages worth Shs.50 million considering that the 1<sup>st</sup> defendant is a parent and member of the company.

Considering the evidence on the issue, I am satisfied that the plaintiff duly demonstrated that it suffered damages at the instance on the 1<sup>st</sup> defendant. Accordingly, I award Shs.50 million as  
350 fair and adequate general damages payable by the 1<sup>st</sup> defendant. It shall attract interest at court rate from the date of judgment until payment in full.

Regarding the issue of costs, it is the established law, under **Section 27(2) of the Civil Procedure Act (Cap 71)** that costs are awarded at the discretion of court, and shall follow the event unless for good reasons the court directs otherwise. See: **Jennifer Rwanyindo Aurelia & A' nor vs. School Outfits (U) Ltd, CACA No. 53 of 1999; National Pharmacy Ltd vs. Kampala City Council [1979] HCB 25.** In the instant case, there is no compelling and justifiable reason to deny the successful plaintiff costs of the suit, and I award the plaintiff costs of the suit. Accordingly, it is hereby ordered as follows;

- (i) **The certificate of title registered in the names of the 1<sup>st</sup> defendant as FRV 1083 Folio 12, 1<sup>st</sup> Street-Kasese is hereby cancelled.**
- (ii) **The plaintiff is a lawful occupant of the suit land.**
- (iii) **The plaintiff is awarded general damages of Shs.50 Million payable by the 1<sup>st</sup> defendant.**
- (iv) **The amount in (iii) above shall attract interest at a rate of 8% per annum from the date of this judgment until payment in full.**
- (v) **The plaintiff is awarded costs of the suit.**

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

Mr. David Bwambale for the plaintiffs in court  
Mr. Mugisha Rwakatooke for 1<sup>st</sup> defendant in court  
The Representatives of the plaintiff company in court.  
Ms. Kabugho Phebis Court Clerk in court  
Court: Judgment read in open court



A handwritten signature in blue ink, appearing to read 'Bashaija K. Andrew', with a small cross-like mark at the end of the signature.

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

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