

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL APPEAL No. 0024 OF 2016
(Arising from Paidha Grade One Magistrates Court Civil Suit No. 0001 of 2011)

OVOYA EMMANUEL **APPELLANT**

VERSUS

LILY NZIZORI **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

JUDGMENT

In the court below, the appellant sued the respondent for trespass to land, seeking an order of eviction / vacant possession in respect of land situate at Kololo Central Ward, Paidha Town Council measuring approximately 30 metres by 15 metres. The appellant's case was that the plot in dispute had initially been granted to a one Mama Lucy Akello under a temporary licence to occupy the land by Paidha Town Council. The appellant entered into a negotiation with the said Mama Lucy Akello whereupon he paid her shs. 1,200,000/= and took over possession of the land. The appellant then formally applied for a lease from Nebbi District Land Board for the disputed piece of land and the District Land Board accordingly granted him the lease under its minute number NDLB/44/8/2007. He paid all the designated fees and processed a building plan. Before he could begin construction, the respondent, without his permission, consent or other lawful authority entered onto the land and began laying a foundation for the construction of a building. Paidha Town Council advised the appellant to compensate the respondent with a sum of shs. 554,580/= which he duly offered the respondent but the respondent rejected it.

In her written statement of defence, the respondent denied the appellant's claim and instead contended that the documentation relating to the grant of a lease by Nebbi District Land Board was a forgery since that Board did not exist in 2004. She averred further that the land in dispute

belonged to her and Mama Lucy Akello under customary tenure but that the appellant had only compensated Mama Lucy Akello and not her prior to the purported application for a lease. The respondent counteracted that it was the appellant who had instead trespassed onto the land when he engaged persons to level it in preparation for construction.

In his testimony, the appellant stated that before applying for a lease, he had inspected the land and found that there were occupants on the land holding under temporary occupation permits issued to them by Paidha Town Council. He entered into negotiations with one of the occupants, Mama Lucy Akello now deceased, and paid her shs. 1,200,000/= to enable him take over possession of the land. Before Paidha Town Council had allocated the disputed land to Mama Lucy Akello, it had initially allocated it to the respondent's husband. As a result, there was also a latrine and grass thatched house on the land belonging to the respondent. Paidha Town Council advised him to compensate the respondent with a sum of shs. 554,580/= which he duly offered the respondent but the respondent rejected it. She instead began ferrying building material onto the land, hence the suit. He admitted under cross-examination that Zombo District did not exist in 2008 but its name appears on the documents relating to his acquisition of a lease over the land because it was anticipated as a new District.

P.W.2 Odar Robinson, a former land supervisor with Paidha Town Council, testified that the Department of Agriculture of Nebbi District originally operated as a demonstration farm on land now comprised in plot 16 Block A, now in dispute. When Paidha became a Town Board, it took over the land and decided to allocate it to residents on a temporary basis. In 1987, it allocated the plot to a one Wilfred Binega, husband of the respondent. The late Lucy Okello who was a neighbour to the plot too secured a temporary allocation over the plot. The latter had a grass thatched houses on the plot. During 1995 Paidha Town Council decided to survey the entire area and the occupants were given first priority to apply for leases over the plots which they occupied. Wilfred Binega applied for and was allocated plot 17 Block C designated as a commercial plot as a result of which he had to relinquish the current plot 16 Block A. Then plot 16 Block A designated as a residential plot was allocated to Lucy Okello as compensation for her original plot which had been taken up entirely by a planned road. When Wilfred Binega died, his widow, the respondent took over and began developing plot 17 Block C. These allocations were done in

June 1995 in accordance with an allocation list tendered in evidence and marked as exhibit P.E No. 7. The respondent was entitled to compensation in the sum of shs. 554,580/= under the resultant compensation scheme. In compensation for his grass thatched house on plot 16 Block A, Wilfred Binenga was allocated plot 17 Block C.

P.W.3 Bidongo Okun, the Chairperson of Kololo village Central Ward testified that the land in dispute originally belonged to the Department of Agriculture under Nebbi District. Later during 1987 it was allocated to occupants on temporary basis. They were permitted to construct grass thatched but not permanent houses. In 1995, Paidha Town Council decided to plan the area for development of permanent buildings. The planning scheme covered Kawa village, Kololo village and Awinjiri village. The Town Council then invited applications for allocation of plots under the planning scheme. Wilfred Binenga applied for and was allocated plot 17 Block C where he constructed a commercial building. His wife demolished their grass thatched houses which existed on the plot they were occupying by then which became plot 16 Block A under the scheme which was then allocated to Lucy Okello because the plot she occupied was taken up by a planned access road. In 2006, a dispute broke out when the respondent claimed entitlement to plot 16 Block A and rejected compensation for her developments on the plot.

P.W.4 Mananano Zoro, the Engineer of Paidha Town Council testified that under the development Scheme of the Council, people who had grass thatched houses would be compensated. On 19th September 2006, the respondent was offered compensation of shs. 554,580/= to enable the appellant develop the land. The respondent's husband had been allocated plot 17 Block C, a commercial plot in place of plot 16 Block A, a residential plot, which he occupied at the time. The respondent had presented a building plan for plot 16 Block A but was advised it had been allocated to another person and therefore her building plan could not be approved. That was the close of the respondent's case.

In her defence, the respondent testified that the land in dispute was given to her husband during 1983 by Paidha Town Board after payment of shs. 15,000/=. They began construction of a grass thatched house thereon in 1987 and begun occupying it during 1993. On 30th June 2011, following the death of her husband, she submitted building plans for the plot to Paidha Town

Council. Sometime during the year 2010 her grass thatched house on the land was demolished in her absence since she was no longer living in it at the time. The elders met and decided in absence of the appellant that she was the rightful owner of the land. She then deposited construction material on the land and that is when the dispute with the appellant started.

D.W.2 Irma Othele a neighbour to the respondent testified that the land in dispute was initially used by the Agriculture Department but later the respondent was allocated the area in dispute on 15th January 1988 by the then engineer of Paidha Town Board. She and her husband then constructed two grass thatched houses on it. They lived on the land from 1990 until the year 2007 when the appellant engaged some prisoners in demolition of the houses intending to construct one of his own on the land hence this dispute.

D.W.3 Miriam Mungu Acel a neighbour to the respondent testified that the respondent's late husband bought the land in dispute on 15th January 1998 but did not know from whom he bought it or the price at which he bought it. The couple constructed a grass thatched house on the land which they initially occupied and subsequently let it out to tenants. Later the appellant demolished that house. Before the respondent's late husband purchased the land, it belonged to the Town Council. Lucy Akello too had a grass thatched house and kitchen on the disputed plot. A planned road was to traverse her houses.

D.W.4 Abdul Oroga Jangidu testified that the respondent inherited the land in dispute from her late husband. Her late husband had acquired the land on 15th January 1998 from the Town Board. The couple constructed a house on the land and let it out to tenants. They had lived in the house before that. The appellant later demolished the house claiming that it belonged to Lucy Akello who had two grass thatched houses on the land but which were traversed by a planned road. Lucy then occupied the land from the year 1989 – 2000. That was the close of the defence case.

The court then visited the *locus in quo* on 1st June 2016 where it received evidence from the parties and their respective witnesses, each of whom restated their respective claims to ownership of the disputed land. The court prepared a sketch map of the land as well.

In his judgment, the learned trial magistrate found that the respondent was in possession of the land as far back as during the 1980s. The respondent and her late husband had lived on the land and had structures on it, for which the appellant acknowledged that he sought to compensate the respondent. The documents relating to a lease offer relied on by the appellant did not indicate the plot number. Zombo did not exist as a District by 7th January 2008 when the purported lease offer was issued. The appellant claimed to have been granted a lease offer yet the documents he presented relate to an offer for freehold land alongside another set relating to a leasehold. Both are signed on the same date but by two different individuals. The land belonging to Lucy Akello, for which the appellant paid compensation in the sum of shs. 1,200,000/=, was different from the land in dispute since evidence revealed it was the one traversed by the planned road. The evidence relied upon by the appellant was unsatisfactory and mainly based on forged documents. On the other hand, the respondent had lived on the disputed land for 28 uninterrupted years and therefore acquired bonafide interests in the land. Her respondent's actions on the land were consistent with her interest and therefore she is not a trespasser. The court decline to grant the reliefs sought by the appellant and instead dismissed the suit with costs to the respondent. The respondent was also awarded shs. 2,000,000/= as general damages for "her inconvenience and disturbances by the plaintiff."

Being dissatisfied with the decision the appellants appeal on the following grounds, namely;

1. The learned trial magistrate erred both in law and fact when he held that the respondent acquired legitimate protectable interests in the suit land.
2. The learned trial magistrate erred both in law and fact when he declined to declare the appellant as the owner of the suit land and held without evidence that P.E.1 and P.E.2 were forged whereas they are not.

Submitting in support of the appeal, counsel for the appellant Mr. Manzi Paul argued that the evidence before the trial court showed that the land in dispute was under the mandate of Nebbi District Land Board. In 1995, Paidha Town Council surveyed the land and scribed plot numbers. The appellant was granted an offer of freehold land of one of the plots by Nebbi District Land Board. Being land in an urban area, the respondent could not have acquired a customary interest in the land. The documents relied on by the appellant were not challenged as forgeries during the trial and the court was wrong to find so in absence of evidence to that effect. Forgery, being akin

to fraud must not only be pleaded but it must also be proved to a high standard and must be attributed to the transferee. He relied on the decision in *Kampala Bottlers Limited v. Damanico (U) Limited*, S. C. Civil appeal No. 22 of 1992. At the time the documents were issued, the survey had not been done yet and therefore they could not have indicated a plot number. The land was described by location and size. The appellant paid all dues after the allocation and the decision of the court below should therefore be set aside and substituted with one declaring the appellant the rightful owner of the land.

In response, counsel for the respondent Mr. Henry Odama argued that the findings of the trial court are supported by the evidence adduced before that court and should therefore be upheld. There were several anomalies in the documents presented by the appellant including; Zombo District was created in 2009 and became operational only in 2010, the exhibited documents had no plot number indicated on them, the appellant applied for a lease but was granted an offer for a leasehold, he presented two offers issued on the same day but which were signed by two different officers. The visit to the locus established that the land of Lucy Akello was different from the one now in dispute. Being an occupant, the respondent was entitled to compensation for her developments on the land. Being a sitting tenant, she was entitled to first priority in the offer for a lease. The appeal should therefore be dismissed with costs.

The duty of a first appellate court was appropriately stated in *Selle v Associated Motor Boat Co. [1968] EA 123*, thus:

An appeal is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (*Abdul Hameed Saif vs. Ali Mohamed Sholan (1955), 22 E. A. C. A. 270*).

This court therefore is enjoined to weigh the conflicting evidence and draw its own inferences and conclusions in order to come to its own decision on issues of fact as well as of law and

remembering to make due allowance for the fact that it has neither seen nor heard the witnesses. The appellate Court is confined to the evidence on record. Accordingly the view of the trial court as to where credibility lies is entitled to great weight. However, the appellate court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court.

It is common ground that the land in dispute was originally managed by the Department of Agriculture of Nebbi District as a demonstration farm until sometime in the mid 1980s when Paidha Town Council granted temporary occupation rights to various people, including the respondent and her late husband to occupy and construct temporary shelters on the land. Under section 1 of *The Land Reform Decree of 1975*, the law in force then, all land in Uganda had been declared public land to be administered by the Uganda Land Commission in accordance with *The Public Lands Act* of 1969, subject to such modification as were necessary to bring the Act into conformity with the Decree. Section 23 (2) of *The Public Lands Act, 1969* provided that the Uganda Land Commission would grant to the Urban Authorities of designated areas, such lease and on such terms and conditions as the Minister would direct and any lease so granted would be deemed to be a statutory lease. A controlling authority then had the capacity to lease out the land entrusted to it under the statutory lease, to individuals.

Under that legal regime, for an Urban Authority to be constituted into a controlling authority, and hence acquire capacity to lease land or confer similar interests in land, there had to be proof of prior grant of a statutory lease by the Uganda Land Commission. For example in *Nyumba ya Chuma Ltd v. Uganda Land Commission and another, Const. Petition No. 13 of 2010*, where the Constitutional Court found no evidence whatsoever to show that the then Kampala City Council, now Kampala Capital City Authority, had ever had a statutory lease over the suit property from which it could have legally granted a lease to the petitioner or its alleged predecessor in title, it decided that Kampala Capital City Authority did not have any authority to grant a lease over the land. In the instant case, it was not proved that Paidha Town Board, and later Town Council, was at any time before the purported grant of a lease to the respondent granted a statutory lease by the Uganda Land Commission.

In absence of evidence to the effect that Paidha Town Board, an otherwise planning and regulatory authority, was ever constituted into a controlling authority over public land nor granted a statutory lease by the Uganda Land Commission, it therefore had no powers to create interests in land under its political / administrative jurisdiction, of any nature. Even assuming that Paidha Town Board was a controlling authority, under both *The Public Lands Act* and *The Land Reform decree, 1975*, occupants, including customary tenants on public land, were only tenants at sufferance and controlling authorities had power to lease such land to any person. The respondent did not acquire any interest in the land as a result of any permission granted to her and her late husband by Paidha Town Board to occupy what was for all intents and purposes, public land vested in the Uganda Land Commission.

Regulation 1 *The Land Reform Regulations 1976* (S.I 26 of 1976) in force at the time provided that any person wishing to obtain permission to occupy public land by customary tenure had to apply to the sub county chief in charge of the area where the land is situated. The applicant then had to be registered as a customary occupant of land by the sub-county Land Committee according to Regulation 3. Since there was no evidence that the respondent undertook any of this, the respondent was barred from acquiring interest in the land of a customary nature by section 5 (1) of *The Land Reform Decree* which prohibited the occupation of unoccupied public land by customary tenure without permission of the prescribed authority, and Section 6 which made it an offence for one to do so (see *Paul Kisekka Saku v. Seventh Day Adventist Church Association of Uganda, S. C. Civil Appeal No. 8 of 1993*).

On the other hand, both D.W.2 and D.W.3 testified that the respondent's late husband acquired the land on 15th January 1998 while she on her part claimed it was during 1983. This contradiction was never explained nor resolved. Nevertheless, it is trite law that proof of mere occupancy and user of unregistered land, however long that occupancy and user may be, without more, is not proof of customary tenure. That occupancy should be proved to have been in accordance with a customary rules accepted as binding and authoritative in respect of that land, in such circumstances. In *Bwetegeine Kiiza and Another v Kadooba Kiiza C.A. Civil Appeal No. 59 of 2009*; where the respondent claimed ownership of the land in dispute on the basis that it had been given to him as a gift by the Bataka (local elders) of the area and also due to the fact

that since he had from then onwards occupied and used it for a long time, on that basis he had acquired a customary interest in the land. The court decided;

We have carefully perused the record, and it is our finding that there was no evidence led or adduced to prove the custom that LCs and the Bataka (local elders) can allocate land in the form of a gift from which arises a customary interest in Bunyoro.....We also disagree with the finding that as a general rule when one occupies or develops land then *ipso facto*, a customary interest is created. The effect of that holding is that no matter how one comes to the land, as long as one develops it, a customary interest is acquired. Even trespassers would then acquire interest on property which they otherwise shouldn't. In any event this was not proven in evidence and, as a general proposition of customary law, would be unacceptable. It is clear from the authorities above that customary law must be accurately and definitely established and sweeping generalities will not do under this test.

The learned trial magistrate therefore erred when he found that the respondent had proved ownership of an interest in the land in dispute, an interest he never classified, based only on evidence of a long period of occupation and user without proof that such occupancy and user was in accordance with known customary rules accepted as binding and authoritative in respect of that land, proved by the evidence adduced before him to that effect. An interest in land must be one capable of surviving the parties and must be recognisable to the whole world (See *National Provincial Bank v. Anisworth [1965] A.C.1175*). The trial magistrate ought to have expressly categorised the nature of interest acquired by the respondent, which he never did. I am unable to find one myself. In any event, section 24 of *The Public Land Act* and Section 5(1) of *The Land Reform Decree* prohibited customary tenure in urban areas. Any customary occupation without consent of the prescribed authority was declared unlawful (see also *Tifu Lukwago v. Samwiri Mudde Kizza and Nabitaka S. C. Civil Appeal No. 13 of 1996* and *Paul Kiseka Ssaku v. Seventh Day Adventist Church S. C. Civil Appeal No. 8 of 1993*). Clearly therefore, the respondent could not have acquired any customary proprietary interest in the land.

Not being a Controlling Authority at the time, Paidha Town Board could not even grant a licence or temporary occupancy over land not vested in it. On the other hand, assuming that Paidha Town Board was an authorised Controlling Authority capable of creating interests in the then Public Land in 1983 when the respondent claims her husband was authorised to occupy the land,

the learned trial Magistrate then erred in not taking into account the provisions of Rule 10 of *The Public Lands Rules S.I 201-1* then in force at the time of the transaction which stated:

Any occupation or use by a grantee or lessee of land which the controlling authority has agreed to alienate shall until registration of the grant or lease be on sufferance only and at the sole risk of such grantee or lessee.

That notwithstanding, since there is no evidence that Paidha Town Board had the legal capacity to create interests in the land and the respondent's long user was of itself incapable of creating one, the respondent was at best a tenant at sufferance on what was otherwise public land and the trial magistrate came to a wrong conclusion when he decided that she acquired rights in the land. Ground one of the appeal therefore succeeds.

The second ground of appeal assails the trial court's evaluation of the evidence. Since there is no standard method of evaluation of evidence, an appellate court will interfere with the findings made and conclusions arrived at by the trial court only if it forms the opinion that in the process of coming to those conclusions the trial court did not back them with acceptable reasoning based on a proper evaluation of evidence, which evidence as a result was not considered in its proper perspective. This being the first appellate court, findings of fact which were based on no evidence, or on a misapprehension of the evidence, or in respect of which the trial court demonstrably acted on the wrong principles in reaching those findings may be reversed (See *Peters v Sunday Post Ltd [1958] E.A. 429*).

At the trial, the burden of proof lay with the respondent. To decide in favour of the respondent, the court had to be satisfied that the respondent had furnished evidence whose level of probity was not just of equal degree of probability with that adduced by the appellants such that the choice between his version and that of the appellants would be a matter of mere conjecture, but rather of a quality which a reasonable man, after comparing it with that adduced by the appellants, might hold that the more probable conclusion was that for which the respondent contended. That in essence is the balance of probability / preponderance of evidence standard applied in civil trials.

The appellant's claim was hinged on having been offered a lease / freehold over the land in dispute by Nebbi District Land Board, whose validity the respondent refutes. Upon the promulgation of *The Constitution of the Republic of Uganda, 1995*, according to article 241 (1) (a) thereof and section 59 (1) of *The Land Act*, the power to hold and allocate land in the district "which is not owned by any person or authority," was vested in the District Land Boards, in this case, Nebbi District Land Board. The District Land Boards by operation of law as well became successors in title to controlling authorities or urban authorities in respect of public land which had not been granted or alienated to any person or authority.

In the instant case, the land in dispute formed part of land formerly managed by the Department of Agriculture of Nebbi District as a demonstration farm until sometime in the mid 1980s. Being land in the district "which is not owned by any person or authority," it was by operation of law land vested in Nebbi District Land Board (see *Kampala District Land Board and another v. National Housing and Construction Corporation S. C. Civil Appeal No.2 of 2004*). Nebbi District Land Board therefore had the capacity to lease it out to qualifying applicants in accordance with *The Land Regulations* and the principle that a sitting tenant ought to be given the first option to lease and failing which, the offer would be made to another interested party.

Under section 5 (2) of the law then in force, *The Town and Country Planning Act*, (repealed by *The Physical Planning Act 2010*), the Minister could by statutory order declare an area to be a planning area. In the court below, there was no evidence adduced to the effect that Paidha was ever declared a planning area. It however is apparent that Paidha Town Council during or around 1995 embarked on a development scheme of sorts for the town. They came up with a planning scheme (exhibit P.E. 3) by which land within the town was sub-divided into plots, creating access roads in between them. Most of the plots within the locality of the area in dispute were, according to P.W.2 reserved for residential purposes, while three of them were reserved for commercial purposes. It so happened that the area now in dispute was ascribed plot No. 16 Block A, a residential plot, in place of which the respondent was given a commercial plot No. 17 Block C and the former given to Lucy Akello in compensation for what she lost to land reserved for a planned road.

Whereas under section 16 (1) (a) of *The Town and Country Planning Act*, provided that when a detailed or planning scheme has been brought into effect, the authority empowered in that behalf under the provisions of any enactment relating to the compulsory acquisition of land may, on the advice of the board and in accordance with that enactment, acquire; any land in the planning area required for roads, open spaces, etc. or any land within the planning area which has not been developed in accordance with the outline scheme or a detailed scheme, the evidence before the trial court did not canvass the circumstances in which Paidha Town Council came up with a system of allowing each occupant one plot upon application. Whether or not it considered this legal requirement, I have not found that system to have been unfair at all considering that the respondent had no proprietary interest in the land that was the subject of the scheme. There was no evidence that the respondent suffered any loss in the market value neither of her developments on the land nor of any damages attributable to disturbance. She did not adduce evidence of any damages for injurious affection or any special difficulties in relocation.

Under the law, a tenant at sufferance is not covered by articles 26 and 237 (2) of the Constitution and is therefore not entitled to compensation in the event of compulsory acquisition of land, considering that at common law a tenancy at sufferance may be terminated at any time and recovery of possession effected. According to the Court of Appeal in its decision of, *Hajati Mulagusi v Pade C.A Civil Appeal No. 28 of 2010*, a trespasser or a tenant at sufferance is not entitled to compensation. In *Joseph Ihugo Mwaura and others v. The Attorney General and others, Petition No. 498 of 2009 (Unreported)*, the High Court of Kenya decided that the Constitution contemplates that the person whose property is the subject of compulsory acquisition has a proprietary interest as defined by law. For that reason, the fact that the respondent, a tenant at sufferance on the land in dispute, was compensated by way of plot No. 17 Block C not only satisfied the requirements of compensation under section 17 of *The Town and Country Planning Act*, which guaranteed compensation from the board in the amount by which her property was decreased in value, or expenditure incurred in respect of plot No. 16 Block A, so far as it was reasonably incurred, but also in as far as the requirement for being given first priority before grant of a lease to any other person in respect thereof, was concerned, if at all she qualified for such compensation, a fact she did not prove in the first place.

By virtue of that gratuitous compensation, effected way of swapping plots, the land was now available for leasing to any other person, all that was required of the appellant was to comply with the procedures of acquisition of leases on former public land. The procedures were by then outlined in *The Land Regulations, S.I. No.100 of 2004*. He was by Regulation 16 of those regulations required to submit a formal application by filling in the prescribed form (Form 8 in the First Schedule thereto) and paying the prescribed fees.

Before the trial court, in his testimony at page 13 of the record of appeal, the appellant testified that he applied for a lease over the disputed land on 29th June 2007 and he presented a copy of the application he submitted to the District Land Board, which was received and marked by Court as exhibit P.E. 3. However, at page 76 of the record, the document marked as such is not an application for a lease but rather a cartographic drawing. It is the same document referred to in the judgment at page 54 of the record of appeal. In effect the appellant never presented to court a copy of the application which he submitted to the District Land Board, if any. This is despite the fact that Regulation 16 of the then *Land Regulations, S.I. No.100 of 2004* was couched in mandatory terms; “An application for a leasehold in case of land held by a board shall be in Form 8 in the First Schedule to these Regulations.” (emphasis added). It was incumbent upon the appellant to prove to the trial court that he had complied with this requirement. Compliance with the prescribed form is important considering the content of the form which requires, among other things; a description of the location of the land, disclosure of its approximate area, the current user of the land and the names of owners of adjacent land. The land should therefore be described with sufficient particularity to avoid scenarios such as the one which unfolded subsequently in the instant case.

In his testimony, the appellant at page 12 of the record of appeal revealed that he received a lease offer dated 7th January 2008 made pursuant to Board Minute NDLB/44/8/2007 of 20th December 2007, a copy of which he presented to court and was marked as exhibit P.E. 2. However, the offer appearing at page 74 of the record of appeal, although referencing the appellant’s application dated 29th June 2007 (which according to the appellant was for a lease) is an offer for freehold and yet (exhibit P.E.4) has a receipt dated 01.02.2010 as payment for freehold land application form (three years after the offer). Regulation 23 (5) (c) of *The Land Regulations, S.I.*

No.100 of 2004 then in force required that such an offer should be “conditional upon acceptance of the offer within a specified period.” (emphasis added). This particular offer did not specify a validity period. Regulation 23 (7) of *The Land Regulations, S.I. No.100 of 2004* then in force required that an offer for freehold of land held by boards, was to be in accordance with Form 19 specified in the First Schedule to the Regulations. Item 4 of the form provides that; “The offer is conditional on the terms and conditions of the grant of freehold being accepted within forty five days of the date of this offer,” (emphasis added). The receipts of payment presented by the appellant (exhibit P.E.4) are dated; - 27.10.2006 as payment for the plot allocation, lodgement and survey fees; 01.02.2010 as payment for freehold land application form. The offer having been made on 7th January 2008, it lapsed on 21st February 2008, forty five days later. The appellant did not produce evidence of acceptance in writing of the offer and payment of the prescribed fees within the specified time yet he presented a letter dated 7th January 2008 (exhibit P.E.1) addressed to him notifying him of the offer, signed by a person whose identity is undisclosed, on behalf of the Acting Secretary, Nebbi District Land Board. In the light of all the above anomalies, the appellant cannot claim to have secured a valid lease offer in respect of the land in dispute. That the trial magistrate in light of the anomalies formed the opinion that this was evidence of a forgery may have been too strong an expression but the evidence before court left a lot to be desired. Consequently, neither the appellant nor the respondent acquired any valid interest in the disputed land which for all intents and purposes, according to article 241 (1) (a) of *The Constitution of the Republic of Uganda, 1995* and section 59 (1) of *The Land Act*, remains land in Paidha District “which is not owned by any person or authority,” and by law is vested in either Zombo or Nebbi District Land Board, depending on whether the former is now fully constituted, for allocation as it may deem fit.

In the final result, the appeal is allowed. The judgment and orders of the court below are set aside. Since the appeal succeeds only on one ground and it has been determined that none of the parties before court has a lawful claim to the land in dispute, each party is to bear its costs of the appeal and of the trial.

Dated at Arua this 2nd day of March 2017.

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Stephen Mubiru
Judge