

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL SUIT No. 0007 OF 2011**

ALEX AGANDRU PLAINTIFF

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VERSUS

ETOMA FRANCIS DEFENDANT

AND

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|----|------------------------------------|---|-----------------------------------|
| 10 | 1. ALEX AGANDRU | } | |
| | 2. BAKOLE JOSEPH ODROA | } | DEFENDANTS TO COUNTERCLAIM |
| | 3. ARUA DISTRICT LAND BOARD | } | |
| | 4. ARUA MUNICIPAL COUNCIL | } | |

15 **Before: Hon Justice Stephen Mubiru.**

JUDGMENT

The plaintiff sued the defendant for trespass to land, seeking a declaration that the defendant is a trespasser on the plaintiff's land, an order of vacant possession, a permanent injunction against further acts of trespass, general damages for trespass, interest and costs. His claim is that he is the registered proprietor of land comprised in LR NPL/3214 Volume 4194 Folio 10 Gulam Close measuring approximately 0.047 Hectares which he purchased from a one Bakole Joseph Odroa on 12th April, 2011. Following the purchase, he began mobilizing construction material and depositing it on the plot but to his surprise, on 27th September, 2011 the defendant unlawfully took possession of the land and began laying the foundation of a building. Attempts by the local authority, the police and Arua Municipal Council to stop the defendant's construction were futile, hence the suit.

In its written statement of defence, the first defendant refuted the plaintiff's claim and instead contended that it is the plaintiff who acquired the plot fraudulently in an attempt to deprive him of the plot. The defendant was the prior allocatee of the plot by virtue of Municipal Authority minute No. DWC 4/93 at its meeting of 17th February, 1994. He therefore counter-claimed against the defendants to the counterclaim for cancellation of the plaintiff's title to the land on grounds that the plaintiff acquired it fraudulently. The defendant upon securing allocation of the

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plot in dispute, proceeded to procure permission to develop it sometime during the years 2000-2001 whereupon he began to construct a two-storied commercial building. In the year 2011, during the process of seeking extension if the lease, the defendant discovered that the street name in the description of the plot had changed from Transport Road to Gulam Close and the plot number from plot No. 6A to plot No. 8. As he was processing the title deed, he received a notice from the Municipal authorities requiring him to cease the ongoing construction on the plot only to be sued by the plaintiff soon thereafter. He contends the plaintiff's acquisition of the same plot was fraudulent in that he procured a title deed over a plot he well knew was in possession of the defendant. He therefore seeks cancellation of the plaintiff's title deed, general damages for the inconvenience and loss he has suffered as a result of the actions of the defendants to the counterclaim, interest and costs.

In his reply to the written statement of defence and defence to the counterclaim, the plaintiff contended that in November 1993, the defendant applied for and was given plot No. 6A Transport Road and in March, 1994 was granted an initial term of only two years within which to build a commercial building thereon worth not less than shs. 150,000,000/= failure of which the permission and the option to extend the lease to full term would be withdrawn. By the time the defendant commenced construction in the year 2000 - 2001, his two year offer had lapsed and his activities on the plot constituted acts of trespass. By the time the defendant secured a new lease offer on 10th June, 2011 for a five year initial term, the same plot of land had already been leased to a one Bakole Joseph Adroa on 9th November, 2010 by Arua District Land Board for an initial five year term effective from 1st October, 2010. Bakole Joseph Adroa being the registered proprietor of the plot, then sold it to the plaintiff on 12th April, 2011 whereupon the plaintiff became the new registered proprietor. The plaintiff denied having engaged in nay fraudulent acts in the process of that transaction and contended that he is a bonafide purchaser fro value without notice. He sought the counterclaim to be dismissed with costs.

In their joint written statement of defence to the counterclaim, the second, third and fourth defendants refuted the defendant's claim and contended instead that the defendant applied for plot No. 6A Transport Road on 3rd November, 1993 for the construction of a commercial building. He was on 4th March, 1994 allocated the plot for an initial term of two years subject to

a building covenant, breach of which would result into automatic termination of the offer. The defendant was never granted a lease offer and he did not pay the requisite premium and ground rent and neither did he substantially develop the plot in accordance with the building covenant. The defendant's subsequent activities on the plot including excavation of a foundation in the year
5 2000 - 2001 were illegal since he had no approved plans and the two year offer had long since lapsed. When on 28th January, 2001 the defendant purported apply for extension of a lease, paid a premium and ground rent in respect of plot No. 8 Gulam Close, he did so without any prior lease offer to him for that plot. His said application was in error and so was the subsequent lease offer for a five year initial term given to him on 10th June, 2011 since by that time a title deed for
10 a five year initial term effective from 1st October, 2010 in respect of plot No. 5 Gulam Close, had on 22nd March, 2011 been issued to a one Bakole Joseph Adroa. The defendant's activities on the plot were therefore rightly stopped since he had no planning permission and in light if the erroneous offer of a lease that had been extended to him. The three defendants to the counterclaim denied any involvement in fraudulent acts and contended that the mix-up in the
15 allocation was caused by the defendants' uncertainly as to the numbering of the plot in respect of which he desired to create an interest. They therefore prayed that the counterclaim be dismissed with costs.

P.W.1 Mr. Alex Agandru testified that he got to know the defendant on 19th October, 2011
20 following his complaint to Arua Municipal Council of his (the defendant's) illegal activities on the plot in dispute, plot No. 5 Gulam Close. He purchased the plot from Bakole Joseph Adroa by an agreement dated 12th April, 2011 (exhibit P. Ex.1), at the price of shs. 52,500,000/= He knew the plot before he bought it because it was near the place he had developed already and at the time he purchased it, it was bushy. It lay in between his plot and another on which a foundation
25 had been laid. His search at the Municipal Council had revealed that the plot had been allocated to Bakole Joseph Adroa. The seller gave him a set of documents including the allocation letter, the lease offer, receipts for payment of the requisite dues and other documents relating to the acquisition of the lease (exhibits P. Ex.2 - P. Ex.6). The seller as well gave him the title deed to the plot issued on 8th February, 2011 (exhibit P. Ex.7), on basis of which he caused a transfer of
30 the title into his names on 6th May, 2011.

Upon seeking to up-date the records of Arua District Land Board by introducing himself as the new owner of the plot, he was informed that there was confusion over that plot pursuant to a claim by the defendant who was in the process of undertaking illegal activities on the land. He was furnished with a copy of a letter by which the defendant had been stopped. He then on 31st August, 2011 proceeded to the land registry and undertook a search of title where he obtained confirmation that the first registered proprietor of the plot was Bakole Joseph Adroa (exhibit P. Ex.8). At a meeting convened by the Municipal authorities in a bid to resolve the conflict, the defendant only presented an allocation letter for a plot along Transport Road, for an initial term of two years. The issue was left unresolved due to disruption of that meeting by persons in attendance on behalf of the defendant. The defendant then on or about 24th September, 2011 engaged labourers to begin excavation at the site prompting the plaintiff to report to the police which stopped all activities on the land. The documents he received from Bakole Joseph Adroa (exhibits P. Ex.2 - P. Ex.6) indicated it as plot No. 8 Gulam Close while the title deed indicated it was plot No. 5 Gulam Close. A survey was commissioned to establish the correct plot number of the plot in dispute and the report dated 17th January, 2012 confirmed that it is plot No. 5 Gulam Close (document marked I. D.(P) 2). He reiterated the prayers contained in the plaint.

P.W.2 Mr. Bakole Joseph Adroa testified that Arua District Land Board allocated him plot No. 5 Gulam Close. Having lost his job soon after acquisition of title to the plot, he secured a buyer and sold it off to the plaintiff, who owned an adjacent plot. He sold it off on 12th April, 2011 at the price of shs. 52,500,000/= and handed over all documents relating to the plot, to the buyer, the plaintiff. At the time the plot was allocated to him. it was un-developed, vacant and there was no foundation slab on it. None of the immediate neighbours to the plot were involved in the process of its acquisition.

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P.W.3 Mr. Jobile Cornelius, the Assistant Town Clerk of Arua Municipal Council testified that according to the records kept by his office, the defendant was allocated plot 6A Transport Road in 1994. It was for a period of two years conditional on the defendant constructing a commercial building worth not less than shs. 150,000,000 failure of which the offer would lapse. In the year 2000, the defendant began to develop the plot but was stopped by the office of the Town Clerk for failure to comply with the conditions set in 1994. In January, 2001 the defendant paid ground

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rent and premium for the plot and then sought a lease extension for the Arua District Land Board for plot 6A Gulam Close. In the year 2010, Arua District Land Board allocated plot 8 Gulam Close to Bakole Joseph Adroa and granted him a lease offer for an initial five year term and in the year 2011 he obtained a title deed to plot 5 Gulam Close, a correction that was done by the Ministry of Lands. In the same year during April, 2011, Bakole Joseph Adroa sold the plot to the defendant. In May, 2011 Arua District Land Board allocated plot 8 Gulam Close to the defendant, granted him a five year initial term lease offer whereupon the defendant proceeded to pay ground rent and premium to Arua Municipal Council. When he began developing the plot, the Municipal Council received complaints from the plaintiff of encroachment onto his plot by the defendant. In response the Office of Town Clerk wrote stopping the defendant from undertaking further developments on the land. Efforts by the Municipal Council to mediate the dispute were unsuccessful, hence the suit. Despite the variation in plot numbers, plot Nos. 6A Transport Road, 8A and 5 Gulam Close all refer to the same plot of land. The defendants' first activities in developing the land were undertaken in the year 2000 and were thereafter resumed in the year 2011. By 15th March, 2011 the Municipal Council had not been notified that the plot had been allocated to Bakole Joseph Adroa. Allocation to him was on 25th September, 2011.

P.W.4 Mr. Moses Oyile testified that early in the year 2011 he obtained information from a one Matia Mafu that the plot now in dispute was on sale. He obtained the phone contact of the seller Bakole Joseph Adroa, and later a photocopy of the land title from him and began looking for a buyer. He had during the year 2005 sold plot 3 Gulam Close to the plaintiff and he therefore approached him again with the offer of selling him this plot as well. At the time of sale, the plot was vacant, bushy and used as a rubbish dumping site by the locals. There were trenches though already dug for laying the foundation of a building.

P.W.5 Mr. Ayikubwa Cephas, the District Land Valure and also the Secretary to Arua District Land Board testified that he assumed office as Secretary in November 2015. Before that there were transactions handled by the land Board in respect of plot 8 Gulam Close. He obtained the relevant information from the records available in the Ministry of Lands in Kampala where all minutes for any Land Board meeting are submitted. He was given certified copies of extracts of the minutes on the date they were received by the Ministry in respect of that plot. The minutes of

24th September 2010 and 19th October 2010 were combined as one and received by the Ministry on 3rd September 2010. Among other applications there was an applicant Bakole Joseph Odra in respect of a Commercial property and the land Board under Min. No. ADLBM 23/ 2010-2011 (of 24th September 2010) approved his application for an initial five years.

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Later the property was bought by the plaintiff who transferred the title into his names. The transfer was within the five years. The minutes of 31st May 2011 were submitted to the Ministry. There were applications for new leases, urban, freehold urban, lease extensions under ADLBM 61/ 2010-2011 (of 31st May 2011) Etoma Francis applied for the same plot and was granted 5
10 years of lease subject to re-planning. On the mapping records at Entebbe, the plot was re-named as plot No. 5. The period granted to Etoma was running concurrently with the earlier one and this was very irregular.

At a meeting of the District land Board of 12th September 2011 as per the minutes received by
15 the Ministry on 21st November 2011, in respect of plot No. 5 Ghulam Close, there were two applications for plot 8 Gulam Close. Plot 6A Transport Road was applied for by Etoma and plot 8 by Bakole Joseph. When both parties produced plans it was realised it was all on the same plot. The Board found it had allocated it to Etoma in the 1990s and he had a slab on the plot but individuals in the Council had fraudulently sold it to Bakole who had acquired a title. The Board
20 recommended cancellation of the title to enable Etoma register his interest. He did not know whether the cancellation was effected. (minutes of Arua District Land Board of 24th September 2012, 19th October 2010 and 31st May 2011 were received in evidence and marked Exhibits P. Ex. 4, P. Ex. 5 and P. Ex. 6 respectively). The Board recommended cancellation of the title. Exhibit P. Ex. 5 para 6 revoked allocations including the property on plot 5 Gulam Close. He could not
25 tell from reading it what exactly was revoked. That was the close the plaintiff's case.

D.W.1 Mr. Francis Etoma, testified that he knew the plaintiff as a neighbour and owner of a plot adjacent to the one now in dispute. The land does in dispute does not belong to the plaintiff but to him (the defendant) because he acquired it by applying through the Municipality. This was on
30 3rd November, 1993. When he applied the land was vacant and he paid the application fees of shs. 500,000/= and shs. 250,000/= for ground rent, to the Municipal Council on 4th March, 1994

and was given General Receipt (exhibit D. Ex.1). He asked for permission from the Municipal Council to start construction of a commercial building. I was given permission to start construction. He later applied for a lease title over the land and he received a lease offer (exhibit D. Ex.2). He started digging the foundation and left the foundation to settle. After five years had elapsed, he went and applied for extension of the lease. He was given an extension by the District Land Board and the Municipal Council by way of a lease offer dated 28th August, 2011(exhibit D. Ex.3). He started construction of the building but was then stopped by the plaintiff after he sued him in court. By that time he had paid shs. 300,000/= and had been issued with receipt dated 28th January, 2011(exhibit D. Ex.4). He had also paid other dues, in a total amount of shs. 190,000/= being payment of ground rent on 15th June, 2011; payment of the premium on 15th June, 2011; payment of ground rent on 28th January, 2011 and payment for land registration fee on 10th June, 2011 (exhibits D. Ex. 5 - D. Ex. 8 respectively). By the time the plaintiff sued him, he (the defendant) had cast a slab on the land. Hr therefore prayed for and an order of eviction against the plaintiff. He prayed that the plot be declared as his property, award him general damages for the cement, iron bars, timbers, gravel, and sand he lost and the costs of the suit and the counterclaim

Under cross-examination he stated that (D. Ex. 2) relates to plot No. 6A Transport Road and was an offer for two years. It is indicated at the back that he was supposed to submit a building plan within the two years. He submitted the plan in 2001in Form "A" required to be submitted together with the building plan. He also submitted the notice of intention to erect a building on 23rd June, 2001. He began construction in 2001 and completed the foundation but was stopped from giving notice of completion of foundation for inspection because of this suit. The offer was given to him on 4th March, 1994 valid for two years. It had not expired by 5th March, 1996. By that date he had done some work on the land and was still clearing the land since it was bushy. At first it was a dumping ground and he had to remove the rubbish, then he started construction. The money he had was not sufficient to put up a building and he only secured the money in the year 2001.

Arua Municipal Council wrote him a letter in 2011 to stop him from further construction. I was told to first conclude the issues in court. He applied for a fresh lease offer in 2011 for plot 6A

Transport Road and later it was changed to Gulam Road. He was not aware by then of the existence of a lease given to the plaintiff on 24th September, 2010. He only learnt of it when he was sued. He had submitted a building plan and obtained approval on 17th February, 2011 although he had never been granted permission to start construction. Page nine of the bundle of documents annexure "C4" to the defence, is the permission he obtained to construct It is dated 17th May, 2001 (exhibit P. Ex.19). When he was stopped, he took all the documents the Municipal Council demanded for. The Municipal Council gave him a letter dated 15th March, 2011 showing that the plot is his (exhibit P. Ex.20). That letter was written without his knowledge and it indicates that he paid in January 2011 for lease extension. The offer was made on 10th June, 2011. On 27th September, 2011, he was stopped by the Municipal Council from continuing with development on the land (page 34 of the defence bundle; exhibit P. Ex.21).

Under re-examination he testified that (exhibit D. Ex. 2) the initial term is five years and not two years. He had an approved building plan the original of which is with the engineer. He submitted the plan to the Town Council in the year 2001. Since he was stopped from construction, he has not resumed and he is still waiting for the court decision.

D.W.2: Mr. Alu Wilfred, testified that he is an architectural Consultant and Contractor. He was undertaking construction of a commercial building during the year 2011 on plot 6A Transport Road on behalf of the defendant but was stopped. They started by making the building plans way back in 1997 which were submitted them to Arua Municipal Council for approval in December 1997. He paid the approval fee but it took some time for the approval to be completed and so they applied for permission to start development on that plot in November, 2000 to the Town Clerk. The letter was received but there was no response. It is dated 13th November, 2000 (exhibit D. Ex.9). It related to plot 6A and was seeking permission to carry on development. The second letter followed on 3rd May, 2001(exhibit D. Ex.10). It was handwritten and it too was addressed to the Town Clerk of Arua Municipal Council.

In June, 2001 the Town Clerk replied granting permission to start development. The permission sought was to start construction. It was granted (exhibit P. Ex. 19). In that same year they started construction. He mobilised material on site, set the building and began excavating for the

foundation, cast the foundation putting in the reinforcement bars for the column and started raising the foundation walls. This was in 2001. They did not complete the construction because they were stopped in 2011. The information was brought by the defendant who said the plot had a problem which had to be sorted out in court.

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Under cross-examination he testified that he submitted the building plans for approval in December, 1997 but could not trace the receipts. There are forms that are filled in when the building plans are being submitted which he filled in. They were attached to the plans. By 13th November, 2000 the building plan had not been approved yet but the technical points had been cleared. Approval is a process; the Health Officer, the Municipal Engineer, Land Officer and the Town Planner had to put their comments for the final sitting of the approval. All these officers had given positive comments. He knew that this because he used to follow it up with the various officers. He was interacting with them for clarification at each stage.

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By the time he wrote the letter of 3rd May, 2001 the plans had been approved but not stamped yet. They had been approved by 17th May, 2001 (exhibit P. Ex. 19) there had been an approval and this explains that letter. A building plan is approved when the stamp of approval is affixed. The approval is given and signed by the Town Clerk. He could not remember when the stamp on the defendant's plan was affixed. According to the stamp he was shown in court, the plans were approved in the year 2011 but the stamp is not necessarily affixed on the day of approval. It may have been stamped later. The plan was approved in 2001. It is the Town Clerks' letter which showed that. They were permitted to begin construction as Council processes the approval. He could not remember being stopped from further construction during that year. They started excavating the foundation in 2001. In 2011 they were stopped by the Municipal Council but he got that information from his client, the defendant.

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D.W.3 Mr. Engo Alfred Eguma, testified that the defendant was allocated the plot in dispute in 1994 and he got to know this because he happens to have a small plant for honey processing near the plot. The defendant asked him to be his caretaker for the plot. His role was to see that the area is slashed and no one interferes with it until in 2001 when work started there. All the

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building material would be kept in his place. He made him employ the an askari to safeguarded the iron bars for the columns. That was the close of the defence case.

At the scheduling conference, it was agreed by all parties that the plaintiff is the registered
5 proprietor of land comprised in LRV 4194 Folio 10 and that on 27th September, 2011 the defendant was stopped by Arua Municipal Council and the area Local Council Executive from undertaking any further developments on the land. The parties and their counsel as well agreed on the following issues for the determination of court;

- 10 1. Whether the dispute between the plaintiff and the defendant is over the same piece of land.
2. Whether the plaintiff acquired good title or alternatively whether the title that was issued to the plaintiff was acquired fraudulently.
3. If so, whether the defendant is a trespasser on the land in dispute.
- 15 4. What remedies are available to the parties?

In his written final submissions, counsel for the plaintiff Mr. Samuel Ondoma contended that despite the various plot number specifications contained in the documentation relied upon by either party, their dispute is indeed over the same plot of land now known as Plot No. 5 Gulam
20 Close. In his acquisition of title to that plot, the plaintiff had no actual or constructive knowledge of the defendant's claim to the plot and therefore he is a bona fide purchaser for value without notice. His title deed in valid and unimpeachable. He honestly purchased the property from the then registered proprietor, Mr. Bakole Joseph Odroa for valuable consideration of shs. 52,500,000/= the lease having been created on 8th February, 2011. The defendant had not proved
25 the allegation of fraud against the plaintiff to the required standard. It is the defendant who trespassed on the disputed plot in September, 2011. The defendant failed to comply with the conditions attached to the five year lease offer made to him on 4th March, 1994. His activities on the land thereafter, including the laying of a foundation for a building around May, 2001, were illegal. He instead without authorisation deposited money for the premium and annual rent onto
30 the account of Arua Municipal Council, applied for a fresh lease and connived with officers at the District Land Board to secure a lease offer on 10th June, 2011 yet by that time a five year

lease had already been granted to Mr. Bakole Joseph Odroa over the same land on 9th November, 2010. He thereafter unlawfully influenced the District Land Board to revoke the latter lease., which revocation was stopped by the Ministry of Lands, Housing and Urban Development. The defendant is therefore a trespasser on the land in dispute which he has refused to vacate since
5 October, 2011. Hence judgment should be entered in favour of the plaintiff against the defendant in the terms of the prayers contained in the plaint.

In his written final submissions, counsel for the defendant Mr. Peter Settimba in response contended that the evidence shows that the defendant had in 1993 applied for and granted an
10 offer of a lease over the plot in dispute by Arua Municipal Council. He commenced the digging of and construction of a foundation on the plot before he was stopped in 2001, pending approval of his building plans. The defendant therefore had an equitable interest in the land. When Mr. Bakole Joseph Odroa was subsequently granted a lease over the same plot, it was done in violation of the defendant's equitable interest. When purchasing the plot from Mr. Bakole Joseph
15 Odroa, the plaintiff did not undertake a proper search of title since he never inspected the land. Had he done so he would have discovered the defendant's structure on the land and he would then have been put on inquiry. Having taken physical possession of the land in 1994 following an lease offer from Arua Municipal Council, the defendant is not a trespasser on the land. The suit therefore should be dismissed with costs and judgment entered in favour of the defendant
20 against the plaintiff and the rest of the counter defendants on the counterclaim in accordance with the prayers contained therein.

First issue: Whether the dispute between the plaintiff and the defendant is over the same piece of land?

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The testimony of the plaintiff on this point is that the defendant was in fact undertaking construction on Plot No. 5 Gulam close until he was stopped by Arua Municipal Council on or about 24th September, 2011. P.W.3 Mr. Jobile Cornelius too stated that despite the variation in plot numbers, plot Nos. 6A Transport Road, 8A and 5 Gulam Close all refer to the same plot of
30 land. According to P.W.5 Mr. Ayikubwa Cephass who stated that according to the mapping records at Entebbe, plot 8A Gulam Close was re-named plot No. 5 Gulam Close. On or about

21st November 2011, when Arua District Land Board considered an application for plot No. 5 Ghulam Close otherwise described as plot 8 Gulam Close by Bakole Joseph Adroa and Plot 6A Transport Road applied for by Etoma Francis, when both parties produced their building plans the Board realised they were both claiming one and the same plot and that the Board had
5 allocated it to Etoma Francis in the 1990s and he had a slab on the plot but individuals in the Council had fraudulently sold it to Bakole who had acquired a title to it.

On his part, the defendant testified that after being offered a lease over plot No. 6A Transport Road by Arua Municipal Council and obtaining permission from the Municipal Council to start
10 construction of a commercial building, he later discovered that it was changed to Plot 8 Gulam Close and subsequently Plot 5 Gulam Close. On 27th September, 2011, he was stopped by the Municipal Council from continuing with developments on the land. D.W.2: Mr. Alu Wilfred testified that during December, 1997 he submitted architectural drawings to the Municipal Council for approval in respect of the planned construction of a commercial building to be
15 undertaken on Plot 6A Transport Road on behalf of the defendant. On 13th November, 2000 he sought permission to carry on development on the same Plot 6A Transport Road. However, in the year 2011 further construction on the plot was stopped because of a dispute over that property whereby the plaintiff claimed the same plot.

20 Having considered the evidence on this point as adduced by both parties, I find that plot No. 6A Transport Road, Plot No. 8 Gulam Close and Plot No. 5 Gulam close are one and the same plot now in dispute. The variance in numbering appears to have arisen from lack of coordination between Arua District Land Board as the land management agent, Arua Municipal Council as a planning authority and the Ministry of Lands, Housing and Urban Development, as the custodian
25 of the cartographic maps and drawings of the area now in dispute. There is no doubt at all that the plot on which the plaintiff had began construction is the one now claimed by the plaintiff. This issue therefore is answered in the affirmative.

Second issue: Whether the plaintiff acquired good title or alternatively whether the title that was issued to the plaintiff was acquired fraudulently.

At the time the defendant came into possession of the land in dispute with the authorisation of Arua Municipal Council, *The Public Lands Act, 1969* had renamed what was formally Crown land after and vested in the Uganda Land Commission. Under section 25 of the Act, the Uganda Land Commission was empowered to make a grant in freehold or leasehold of public land. The marginal note to section 15 provided for "leases to urban authorities" and stated that;

where by operation of this Act either at the commencement thereof or any time thereafter land which is situated in an area over which an urban authority exercises jurisdiction is vested in or transferred to a land board shall be the responsibility of the land board.

Section 23 (2) of the Act empowered the Commission to grant to Urban Authorities of designated areas, such leases and on such terms and conditions as the Minister would direct and any lease so granted would be deemed to be a statutory lease. Subsequently, under section 1 of *The Land Reform Decree of 1975* all land in Uganda was 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. As an Urban Authority, Arua Municipal Council could only derive the capacity to offer a lease to the defendant in this case as it did in March 1994 (exhibit D. Ex.2 dated 4th March, 1994) from its status as a controlling authority, presupposing therefore that it had been granted a statutory lease over public land within its area of jurisdiction, by the Uganda Land Commission.

The defendant applied for a lease over what was then plot 6A Transport Road and was offered on a five year initial term (exhibit D. Ex.2 dated 4th March, 1994) to be extended to 49 years upon payment of the requisite fees and fulfilment of the building covenant which required him to construct a building worth shs. 150,000,000/= within that period. Although the defendant was required to pay the requisite fees within 30 days of the offer as stipulated by condition No. 1 of the offer, and he duly did so (as per exhibit D. Ex.1 dated 26th March, 1994), he did not fulfil the building covenant. Although according to D.W.2 Mr. Alu Wilfred, he had by December, 1997 submitted architectural drawings to the Municipal Council for approval in respect of the planned

construction of a commercial building to be undertaken on Plot 6A Transport Road on behalf of the defendant, in the defendant's own admission, by 1999 at the expiry of the initial term, he had not began construction due to financial constraints. It is undisputed that all leases of public land at the time were granted subject to standard development conditions, breach of which could result in forfeiture of the land (See sections 22 and 23, *The Public Lands Act, 1969*).

According to Regulation 10 of *The Public Lands Rules S.I 201-1* (revoked in March 2001 by rule 98 of *The Land Regulations, S.1. 16 of 2001*), being the law in force at the time, an offeree of a lease on public land was a mere tenant at sufferance and he could only acquire interest at registration. It provided that:

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.

The expression “shall be on sufferance only” as used in that rule was not defined. The common law definition of a tenancy at sufferance is the situation which arises where a tenant, having entered upon the land under a valid tenancy, holds over at the end of the tenancy, without the landlord’s assent or dissent. (See *Remon v. City of London Real Property Co. Ltd., [1921] 1 KB 49, 58*). *Halsburys Laws of England (4th Edition)* says this of tenancy at sufferance;

A person who enters on land by a lawful title and, after his title has ended, continues in possession without statutory authority and without obtaining the consent of the person then entitled, is said to be a tenant at sufferance.

At common law, a tenancy at sufferance arises where a tenant, having entered upon the land under a valid tenancy, holds over without the landlord’s assent or dissent (See *Remon v. City of London Real Property Company Limited [1921] 1 KB 49 at 58*). Within the context of the rule, until registration of the lease, a person receiving an offer of a lease from a Controlling Authority was in a position akin to that of a tenant holding over demised premises at the end of a lease without the landlord’s assent and whose occupancy therefore could be terminated at will. The implication of Rule 10 of *The Public Lands Rules* therefore was that an offerree of a lease by a Controlling Authority did not acquire an interest in the land so offered until actual registration of that lease. At common law a tenancy at sufferance may be terminated at any time and recovery of possession effected.

It is trite that when a lease expires, the land automatically reverts to the lessor (see *Dr. Adeodanta Kekitiinwa and three others v. Edward Maudu Wakida, C.A. Civil Appeal No 3 of 2007; [1999] KALR 632*). Therefore upon expiry of the five year initial term on 4th March, 1999, the land reverted to Arua District Land Board, which upon the promulgation of *The Constitution of the Republic of Uganda, 1995*, by article 286 thereof revoked the powers and mandate of Arua Municipal Council over this land and transferred it to the Arua District Land Board. Arua District Land Board became successor to Arua Municipal Council as lessor by operation of law since the land was vested in it by section 59 (8) of *The Land Act*, not by grant, transfer or registration.

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When the land reverted to Arua District Land Board, it then had the option to renew the lease in favour of the defendant or re-allocate it to another person. The law however does not specify the principles and criteria which should guide it in making that decision. Nevertheless, land is available for leasing by a District Land Board to an applicant when it is either; (i) vacant and there are no conflicting claims to it, (ii) or is occupied by the applicant and there are no adverse claims to that occupation, (iii) or where the applicant is not in occupation but has a superior equitable claim to that of the occupant, (iv) or where the applicant is not in occupation but the occupant has no objection to the application.

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Whereas it is trite that upon the expiry of a lease, and that the land reverts to the lessor, a lessee who remains in occupation after a lease term has expired, but before the lessor demands the lessee to vacate the property, is a tenant at sufferance (see *Remon v. City of London Real Property Co. Ltd., [1921] 1 KB 49, 58*) and *Halsburys Laws of England (4th Edition) Vol. 18 para. 16*). A tenancy at sufferance arises by implication of law not by contract. A tenant at sufferance acquires no interest in the land he or she occupies.

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Despite being a tenant at sufferance on the land, the defendant, through D.W.2 Mr. Alu Wilfred on 13th November, 2011 (exhibit D. Ex.9), and subsequently on 3rd May, 2001 (exhibit D. Ex.10) applied for permission to begin construction on the land. That permission was granted on 17th May, 2001(exhibit P. Ex.19) the condition that he was to "ensure that the building to be constructed conforms to the building plans presented to Council for approval and ensure that, all

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other unpaid dues of Council are effected before actual construction commences, e.g. premium, ground rent, plan inspection fee, commencement fee, service fee, setting fee and VAT 17%" This permission was granted despite the fact that the initial term offered to the defendant had expired two years before, on 4th March, 1999. It was the testimony of D.W.2 Mr. Alu Wilfred and the
5 defendant that construction began immediately and continued intermittently thereafter until it was finally stopped by Arua Municipal Council on or about 27th September, 2011 for lack of approved building plans, among other issues (exhibit P. Ex.11).

Although by the time the defendant's activities on the land were stopped he had not acquired a
10 legal interest in the land, he had acquired an equitable interest in it on account of the principle of legitimate expectation. A legitimate expectation is said to arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority. Therefore it extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive. When such a legitimate
15 expectation of an individual is defeated, it gives that person the *locus standi* to challenge the administrative decision as illegal. Thus even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial remedy.

Where the court considers that a lawful promise or practice has induced a legitimate expectation
20 of a benefit which is substantive, not simply procedural, authority now establishes that the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. It may be possible though for a decision-maker to justify frustrating an established legitimate expectation where there is an overriding public interest. Hence, once the legitimacy of the expectation is established, the court will have
25 the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy (see *Regina v. North and East Devon Health Authority ex parte Coughlan and Secretary of State for Health Intervenor and Royal College of Nursing Intervenor*, [2001] 1 QB 213, [2000] 2 WLR 622, [1999] Lloyds LR 305). As held by Lord Denning in *Schmidt v. Secretary of State for Home Affairs*, [1969] 1 All ER 904; [1969] 2 Ch 160, even in cases, where
30 there is no legal right, a person may still have "legitimate expectation" of receiving the benefit or privilege. In such cases, the court may protect his "expectation" by invoking principle of "fair

play in action." The court may not insist that a public authority to act judicially, but may still insist that it too acts fairly.

5 A claim for violation of a legitimate expectation will arise where a public authority either (a) alters rights or obligations of a person which are enforceable by or against him in private law; or (b) deprives him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the
10 decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn (see *Council for Civil Service Unions v. Minister for the Civil Service* [1985] 1 AC 374, [1984] 3 All ER 935, [1984] 3 WLR 1174).

15 A legitimate expectation arises when a public body by representation or by past practice aroused expectation which it would be within its powers to fulfil. Claims based on legitimate expectation do not necessarily require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppels. In the instant case though, reliance was proved to have been placed on the said representation and that the defendant thereby suffered
20 detriment. This is because when Arua Municipal Council granted the defendant permission to commence construction on the plot, two years after expiry of the initial term and before approval of building plans he had submitted to the Council, the Council made an implied promise that not only would it approve his building plans but also that the lease would be renewed in his favour. Acting on that representation, the defendant dug the foundation, laid a slab and had commenced
25 raising the columns to support the first floor when he was stopped. He had therefore invested some considerable sum of money into construction on the plot before he was stopped. The assumption the in equity is that, where a public body states that it will or will not do something, a person who has reasonably relied on that statement should be entitled to enforce it.

30 For example the Supreme Court of Seychelles in *Allen Jean and another v. Wellington Felix and another* (2013) SLR 205, had the occasion to consider the applicability of this doctrine even in

private contract law. In that case, the defendants were the owners of a commercial building which was originally designed for and used as supermarket in the past. The defendants leased out the building to the plaintiffs, for commercial use, as restaurant for 3 years and, thereafter renewable every three years on terms mutually agreed upon by them. The defendants also
5 authorised the plaintiffs to effect necessary alterations, additions and improvements to the building at the plaintiff's own cost to make the building suitable for restaurant business. The defendants also signed the necessary documents for change of use and submitted them to the government authorities. However, the lease deed never contained any clause requiring the defendants to indemnify the plaintiff for the cost incurred in alteration and improvisation of
10 building, if defendants do not renew the lease. It was only during the third year of the lease period, building got ready to run as restaurant. Even the license to run the restaurant was received during the third year. While so, before the expiry of lease, plaintiffs requested the defendants to renew the lease, however, the defendants refused to do so. Having no other option, the plaintiffs had to close down the restaurant. Thereafter, the defendants sold the building,
15 which included investment made by the plaintiffs, to a third party.

Thus, the plaintiffs filed the suit against the defendants to recover the investment they made in the building during the tenure of the lease. The claim made by the plaintiffs was on the strength of this Doctrine of "legitimate expectation" i.e., the defendants would renew the lease so as to
20 enable them to carry on the restaurant business in the building for a relatively a longer term since they invested a large sum of money on improvements and alterations of the building and recovering the investments and reaching profitability would take time. The Supreme Court, accepted the plea of "legitimate exception" and awarded damages to the Plaintiff. The Court held;

25 the defendants through their conduct, consent and approval impliedly agreed that the plaintiffs might take a bank-loan and invest on the improvement and restructuring of their building and thereby convert its use from that of a supermarket to a restaurant. The defendants also signed the necessary documents for change of use as required by the government authorities such as Licensing and Planning. Furthermore, I find it
30 quite strange on part of the defendants that the property which they offered to sell for Rs3.5 million to the plaintiffs, was sold to a third party for Rs 2 million, which is an improbably generous discount. All these swing the balance of probabilities in one clear direction.

Although it is doubtful that the concept of legitimate expectation would apply to contractual situations in Uganda, since our jurisprudence suggests that as soon as a contract becomes concluded, the expectation, if any, comes to an end whereafter the parties will be bound only by the terms thereof, the decisions illustrates that legitimate expectation applies the principles of fairness and reasonableness to a situation where a person has an expectation or interest in a public body retaining a long-standing practice or keeping a promise. Just like other equitable interests, which are either created or imposed on the basis of fairness.

The case also illustrates the point that equitable interests are created according to justice and fairness, and may be expressly created, implied by the circumstances, or imposed by a court. Their existence does not conflict with legal ownership because they are recognised and enforceable in a separate jurisdiction. It is on that basis that in cases such as *Kampala Distributors Land Board and Chemical Distributors v. National Housing and Construction Corporation S.C. Civil Appeal No. 2 of 2004*, the Supreme Court held that the sitting tenants should be given the first priority to lease land if it is being leased. In that case, the respondent had occupied the suit land since 1970 and had used the land as a play ground for children residing in its adjoining estate, among other uses. It had fenced the land and constructed a toilet on it. The 1st appellant granted a lease over the suit land to the 2nd appellant ignoring the objections of the respondent and local council officials of the area. The respondent sued the appellants claiming that the grant of the lease to the 2nd appellant was unlawful and fraudulent. The respondents' claim was upheld.

The court further held that since the respondent in that appeal was in possession of the suit land when it was offered by Kampala District Land Board to the second appellant, the respondent was a bona fide occupant and was entitled to the first option to be leased the land. In that case, equity was invoked to protect its rights of occupancy against persons who acquired title for the dominant or sole purpose of evicting it. This was an equitable interest imposed by court on the basis of fairness. Whether described as squatters, tenants of a tentative nature, licensees with possessory interest, or bona fide occupiers, persons with possessory interests of this nature are protected from administrative injustice (see *Kampala District Land Board and Another v. Venansio Babweyaka and Others, S.C. Civil Appeal No.2 of 2007*).

In the instant case, P.W.2 Mr. Bakole Joseph Adroa testified that Arua District Land Board allocated him plot No. 5 Gulam Close and at the time the plot was allocated to him, it was undeveloped, vacant and there was no foundation slab on it. He admitted though that none of the immediate neighbours to the plot were involved in the process of its acquisition. No evidence was led as to the process through which he acquired the plot. To the contrary, the plaintiff who purchased the plot from him barely three months after executing the lease agreement with Arua District Land Board (the lease agreement was executed on 3rd January 2011 while the agreement of sale was executed on 12th April, 2011) who testified that at the time he purchased it, it was bushy but he could see that a foundation had been laid. I therefore find as a fact that by 3rd January 2011, when the plaintiff's predecessor in title, P.W.2 Mr. Bakole Joseph Adroa, acquired title to the plot, the defendant was already in possession and had acquired equitable possessory right in it. He conducted the transaction mainly through agents and could not provide details of the process through which he acquired it. What is clear though is that Arua District land Board erred in granting a lease to P.W.2 Mr. Bakole Joseph Adroa in violation of the defendant's legitimate expectation of extension of his lease and in violation of his right to be given a first option in light of his possessory rights as the person then in possession of the plot. the manner in which P.W.2 acquired the plot smacks of dishonest dealing, hence fraud.

Fraud has been defined to include dishonest dealing in land or sharp practice intended to deprive a person of an interest in land, including an unregistered interest (see *Kampala Bottlers Limited v. Damanico Llimited*, S.C. Civil Appeal No. 22 of 1992; *Sejjaaka Nalima v. Rebecca Musoke*, S.C. Civil Appeal No. 2 of 1985; and *Uganda Posts and Telecommunications v. A. K. P. M. Lutaaya* S.C. Civil Appeal No. 36 of 1995). To procure registration of title in order to defeat an unregistered interest amounts to fraud (see *Katarakawe v. Katwiremu* [1977] H.C.B 187 where it was held that: "Although mere knowledge of unregistered interest cannot be imported as fraud under the Act, it is my view that where such knowledge is accompanied by a wrongful intention to defeat such existing interest that would amount to fraud"). P.W.2 clearly secured registration to the land in dispute with intention of depriving the defendant of his unregistered equitable possessory interest and the right to first option for grant of a lease. However, the fraudulent conduct of P.W.2 cannot be the basis of impeaching the plaintiff's title. This can only be done on basis of actual fraud attributable to the plaintiff.

P.W.2 Mr. Bakole Joseph Adroa testified that soon after he acquired title to the plot comprised in L.R.V. 4194 Folio 10, Plot 5 Gulam Close being 0.047 Hectares, he lost his job soon hence he sold it off to the plaintiff , who owned an adjacent plot. He sold it off on 12th April, 2011 at the price of shs. 52,500,000/= and handed over all documents relating to the plot, to the buyer, the plaintiff.

Scrutiny of the title deed reveals that it was issued on 22nd March, 2011. The lease was to run for five years with effect from 1st October, 2010 (it therefore expired on 1st October, 2015). The plaintiff became registered proprietor thereof on 6th May, 2011. According to clause 2 (f) of the lease agreement, the first registered proprietor P.W.2 Mr. Bakole Joseph Adroa (who was registered on 8th February, 2011) covenanted that "not, until he / she has completed the said buildings and obtained a final occupation permit in respect thereof, sell sublet or part with the possession of or suffer anyone to use or confer on anyone an equitable interest or in any way mortgage the said land or buildings or any part thereof without having first obtained the written consent of the Lessor." Clause 2 (b) of the lease agreement required P.W.2 to erect on the plot a building whose value was not to be less than shs. 50,000,000/= When the parties executed the agreement of sale on 12th April, 2011 (exhibit P. Ex.1) P.W.2 had not put up any construction on the plot and there is no evidence that he sought the prior written consent of the Lessor, Arua District Land Board, before that transaction. From the very beginning therefore, the plaintiff was put on notice as to the speculative nature of Mr. Bakole Joseph Adroa's acquisition of the plot.

Despite that notice, the plaintiff did not undertake a meticulous physical inspection of the land. In his testimony, he stated that he stood by the roadside and saw from a distance that there was a foundation on the plot covered in bush. Although he owned a the neighbouring Plot 3 Gulam Close, he never bothered to make inquiries as to who had laid that foundation. He therefore had constructive notice of the defendant's possessory rights over this plot at the time he purchased it from P.W.2 Mr. Bakole Joseph Adroa.

According to Cheshire and Burns in their book *Modern Law of Real Property, 16th Edition page 60*; constructive notice is generally taken to include two different things: (a) the notice which is implied when a purchaser omits to investigate the vendor's title properly or to make reasonable

inquires as to the deeds or facts which come to his knowledge; (b) the notice which is imputed to a purchaser by reason of the fact that his solicitor or other legal agent has actual or implied notice of some fact. This is generally called imputed notice. In *Hunt v. Luck (1901) 1 Ch 45* the court considered the nature of constructive notice. Farwell J said: “Constructive notice is the
5 knowledge which the courts impute to a person upon presumption so strong of the existence of the knowledge that it cannot be allowed to be rebutted, either from his knowing something which ought to have put him on further enquiry or from wilfully abstaining from inquiry to avoid notice.”

10 Constructive notice applies if a purchaser knows facts which made "it imperative to seek an explanation, because in the absence of an explanation it was obvious that the transaction was probably improper" (see *Macmillan v. Bishopsgate Investment Trust (No. 3) [1995] 1 WLR 978*). He acquired knowledge of circumstances which would put an honest and reasonable man on inquiry (see *Baden v. Societe Generale pour Favoriser le Developpement du Commerce et de
15 l'Industrie en France SA, [1993] 1 WLR 509*), and yet he did not undertake the necessary inquiries. Had he made the necessary inquiries at the land registry, he would have discovered that; P.W.2 Mr. Bakole Joseph Adroa had acquired L.R.V. 4194 Folio 10, Plot 5 Gulam Close in Arua Municipality with the intention of defeating the defendant's possessory rights therein and in violation of his right to be given a first option to lease the plot; that he had not complied with
20 clause 2 (f) of the lease agreement; that the slab existing on the plot belonged to the defendant who was therefore the person in possession. When a person wilfully abstains from inquiry to avoid notice, such person cannot claim to have acted in good faith (see *The Zamora [1921] AC*; *Royal Brunei Airlines Sdn Bhd v. Tan [1995] 2 AC 378 at 812* and *English and Scottish Mercantile Investment Co v. Brunton 1982] 2 QB 700*).

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A person becomes privy to a fraudulent transaction either by being an active participant in its perpetration by action or omission, or when having acquired knowledge of its perpetration by others or third parties, knowingly and wilfully seeks to take benefit from it. A transferee who knowingly takes advantage of the illegalities committed by a transferor, becomes privy to the
30 illegalities and thus cannot claim to be a bonafide purchaser for value without notice.

According to section 77 of *The Registration of Titles Act*, any certificate of title, entry, removal of encumbrance, or cancellation, in the Register Book, procured or made by fraud, is void as against all parties or privies to the fraud. Similarly, section 176 (b) of *The Registration of Titles Act* allows actions for recovery of land against the person registered as proprietor under the Act where that person was registered as proprietor of that land through fraud. For that reason, any person who fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or instrument or of any entry in the Register Book, or knowingly misleads or deceives any person authorised to require explanation or information in respect to any land or the title to any land under the operation of the Act in respect to which any dealing is proposed to be registered, that person commits an offence by virtue of section 190 (1) of *The Registration of Titles*. The combined effect of all these provisions is that fraud in the transaction will vitiate a title.

In the final result, I find that the defendant has proved to the required standard that the plaintiff's acquisition of title to the plot in dispute was tainted with fraud on his part. that being the case, although L.R.V. 4194 Folio 10, Plot 5 Gulam Close expired on 1st October, 2015, for the avoidance of doubt, that certificate of title is hereby cancelled. The plaintiff did not acquire good title to the land since he purported to acquire it fraudulently but rather it is the defendant who has an equitable proprietary interest in the land in dispute.

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Third issue: If so, whether the defendant is a trespasser on the land in dispute.

Having found that defendant to have a legitimate equitable proprietary interest in the land in dispute, he is therefore not a trespasser on the land. He has since been granted a lease offer (exhibit D. Ex.3 dated 10th June, 2011) and has paid the requisite fees (exhibits D. Ex.8 dated 10th June, 2011; D. Ex.7 dated 15th June, 2011; D. Ex.6 dated 15th June, 2011; D. Ex.5 dated 28th January, 2011 and D. Ex.4 dated 28th January, 2011). Arua District Land Board should therefore go ahead and execute the necessary lease agreement to enable him secure registration of the plot in his names.

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Fourth issue: What remedies are available to the parties?

The plaintiff having failed to prove his case on the balance of probabilities, and the court having found instead that his acquisition of the land in dispute was tainted with fraud, the suit is hereby dismissed with costs to the defendant. In his counterclaim, the plaintiff sought cancellation of the certificate of title issued to the plaintiff, (which has been granted), general damages for the inconvenience and losses occasioned to him, punitive damages, interest and costs. As regards general damages, guided by the value of the property in 2011, which the plaintiff purported to buy at shs. 52,500,000/= in 2011. I have applied a 40% rate to that capital value as the damages for the inconvenience caused by delayed construction. This translates into shs. 21,000,000/= per annum and for the last seven years, shs. 147,000,000/= which is award as general damages. I have not found any justification for an award of punitive damages.

In the final result, the suit is dismissed and Judgment is entered in favour of the defendant in respect of the counterclaim against the plaintiff in the following terms;-

- a) An order of cancellation of LRV 4194 Folio 10 registered in the plaintiff's name.
- b) A permanent injunction against further acts of trespass by the plaintiff, his agents or persons claiming under him.
- c) Execution of a lease by the third defendant in respect of plot 5 Gulam Road to the defendant to enable him secure a title deed to the land.
- d) General damages of shs. 147,000,000/=
- e) Interest on the award in (d) above at the rate of 8% per annum from the date of judgment until payment in full.
- f) The costs of the suit and of the counterclaim.

Dated at Arua this 9th day of April, 2018

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Stephen Mubiru
Judge,
9th April, 2018.