

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO. 416 OF 2013**

**KEFA SEMPANGI..... PLAINTIFF**

**VERSUS**

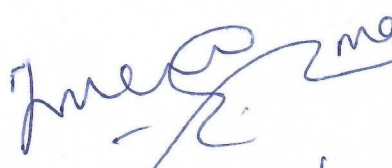
- 1. FRANCIS BABU**
- 2. MIDLAND PROPERTY DEVELOPERS LIMITED**
- 3. SPEED BIRD PROPERTIES LIMITED**
- 4. RAMESH CHATRAKHUJ MASRANI**
- 5. MRUDULU RAMESH MISRANI**
- 6. MIRA RAMESH MASRANI**
- 7. KAMPALA DISTRICT LAND BOARD**
- 8. REGISTRAR OF TITLES..... DEFENDANTS**

**BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA**

**JUDGMENT**

The Plaintiff's claim against the defendants jointly and /or severally is for:

- i. A declaration that the Plaintiff is the rightful owner of the land comprised in **LRV 1465 Folio 22 Plot 5-6 Hill Close Kololo** measuring approximately 0.547 Hectares, hereinafter referred to as "the suit land."
- ii. A declaration that the acquisition and registration of the 1<sup>st</sup> defendant on the 23<sup>rd</sup> December 1993 as the proprietor of land described as **LRV 2200 Folio 11, Plot 5-6, Hill Close, Kololo** measuring approximately 0.547 hectares was void ab initio as there was no land available for allocation and /or lease to the 1<sup>st</sup> defendant.



- iii. A declaration that the cancellation of the plaintiff's lease title extension of 99 years on 20<sup>th</sup> January 2009 is illegal, unlawful and procedurally wrong.
- iv. An order directing the 8<sup>th</sup> defendant to reinstate the plaintiff's lease extension for 99 years.
- v. A declaration that the 7<sup>th</sup> defendant's grant and extension of leases over the suit land were illegal and /or unlawful.
- vi. A declaration that the 1<sup>st</sup> defendant's lease and title to the suit land was null and void and procured through fraud.
- vii. A declaration that the transfer and registration of the suit land (then described as **LRV 2200 Folio 11 Plot 5-6 Hill Close, Kololo**) into the 2<sup>nd</sup> defendant on 20<sup>th</sup> June 1995 under Instrument No. 271371 was null and void ab initio as the 1<sup>st</sup> defendant had no land to transfer to the 2<sup>nd</sup> defendant.
- viii. A declaration that the allocation, grant and subsequent registration of a fresh lease over the suit land (**then described as LRV 2803 Folio 15 Plot 5-6 Hill Close, measuring approximately 0.547 Hectares**) to the 2<sup>nd</sup> defendant was unlawful, contrary to law, fraudulent and void.
- ix. A declaration that the transfer of the suit land to the 3<sup>rd</sup> defendant was void ab initio fraudulent and unlawful.
- x. A declaration that the transfer of the suit land to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants and the registration of it in their names was procured through fraud, connivance and was unlawful.
- xi. An order directing the Registrar of Titles to cancel the certificate of title to the suit land known and described as **LRV 2803 Folio 15 Plot 5-6, Hill**





**Close , Kololo approximately 0.547 Hectares** in the names of the 4<sup>th</sup> , 5<sup>th</sup> and 6<sup>th</sup> defendants.


- xii. A permanent injunction to issue against the 4<sup>th</sup> to 6<sup>th</sup> defendants restraining them, their agents, servants and any other person deriving title from them from entering, removing or otherwise interfering with the suit property.
- xiii. An order for eviction of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants from the suit land and /or an order for demolition of any development on the suit land and vacant possession.
- xiv. An order for compensation of the Plaintiff by the defendants for loss occasioned to the plaintiff as a result of the unlawful demolition of the plaintiff's developments on the suit land and for loss of user.
- xv. In the alternative but without prejudice to the foregoing, an order for compensation of the plaintiff by the defendants for the land in event the same is irrecoverable, at the prevailing market rate.
- xvi. Special damages.
- xvii. An award of punitive and general damages, costs and any other relief deemed fit by Court.

The facts constituting the plaintiff's claim against the defendants jointly and /or severally arose as hereunder:

- i. That following his application, the Plaintiff was on the 16<sup>th</sup> May 1986 offered land comprised in **Plot 5-6 Hill Close, Kololo**.
- ii. That the Plaintiff duly accepted the lease offer by paying the requisite fees and after the survey was conducted, the plaintiff was issued with a certificate of title for the land comprised in **LRV 1465 Folio 22 Plot 5-6 Hill Close, city of Kampala** measuring approximately 0.547 hectares.



- iii. That at the time of the said allocation the suit land was a hill requiring grading and site preparation before development.
- iv. That under Clause 4 of the lease agreement, the lease would deem to have extended automatically for ninety nine years and henceforth be read and construed as if the said term of ninety nine years had been originally granted hereby if the Plaintiff complied with the building covenant and did not breach any term of the lease express or implied.
- v. That the Plaintiff did not take possession of the and commenced grading the same in preparation for construction but in the process a stone rolled from the site into a neighbouring plot owned by the American Embassy extensively damaging the swimming pool.
- vi. That prior to the incident with the American Embassy, the Plaintiff had executed and put up a foundation for the construction of his storeyed residential house and the cumulative development cost of the developments at the time made by the Plaintiff exceeded thirty million shillings (30,000,000/=).
- vii. That the development activity on the suit land was halted for the time being for security reasons while negotiations were being done between the Plaintiff and the American Embassy.
- viii. That subsequently it was agreed that the Plaintiff would have to plant trees and grass to hold the loamy soil in addition to creating two retention walls and repairing the swimming pool which the plaintiff did at the cost of \$100,000.
- ix. That the Plaintiff through M/S Katongole, Mukasa Advocates applied for a lease extension and duly paid the requisite fee following which the lease was extended for four years.





- x. That on the 3rd day of April, 1990, Kampala City Council extended the Plaintiff's lease to four years effective 1<sup>st</sup> May 1988 in its meeting of 21<sup>st</sup> May, 1990.
- xi. That following the said extension, the plaintiff commenced full scale developments of the suit land and constructed thereon the 1<sup>st</sup> floor of his planned storeyed residential house up to the window sill as well as two retention walls.
- xii. That the Plaintiff continued to develop his land and remained in possession of the same whilst paying ground rent and in 1999 reminded the controlling authority of his desire to have the lease extended to full term.
- xiii. That subsequently the Plaintiff's lease was extended to ninety nine years and the said extension was noted on the Register under Instrument No. KLA 232515.
- xiv. That the Plaintiff retained control and possession of the suit land for all the time until around 2009 when the defendants led by the 1<sup>st</sup> defendant started laying claim over the land.
- xv. That the Plaintiff did confront the 1<sup>st</sup> defendant about the claim but he denied knowledge of the same.
- xvi. That in or around 2009, the defendants started laying claim over the suit land and around 2011, the 4<sup>th</sup> to 6<sup>th</sup> defendants descended on the plaintiff's land and demolished his developments thereon and commenced construction on the same despite protests from the plaintiff.
- xvii. The plaintiff has since 2009 following a search in the Land Registry and District Land Offices and the Company Registry discovered that:



- (a) On 27<sup>th</sup> December, 1993 under Instrument No. 260929, the 1<sup>st</sup> defendant obtained a leasehold certificate of title over the suit land for three (3) years comprised in **LRV 2200 Folio 11** unknown to the plaintiff.
- (b) Around 23<sup>rd</sup> March, 1994 the 2<sup>nd</sup> defendant was incorporated by Paul Ekochu and Richard Ekochu.
- (c) On the 18<sup>th</sup> October 1994, the 2<sup>nd</sup> defendant filed a return of allotment of shares wherein the 1<sup>st</sup> defendant had been allotted 300 shares in the 2<sup>nd</sup> defendant company and had simultaneously been appointed a director of the 2<sup>nd</sup> defendant.
- (d) That on 20<sup>th</sup> June 1995, the 1<sup>st</sup> defendant transferred the said land to the 2<sup>nd</sup> defendant vide Instrument No. 271371 in which he was a shareholder whilst without consideration.
- (e) That from Land Form 6 of 27/02/1995, the 1<sup>st</sup> defendant claimed to have developed the suit land with an unfinished small building up to the window sill level and the same transferred to the 2<sup>nd</sup> defendant for no consideration.
- (f) That on 13<sup>th</sup> November 1998, the 3<sup>rd</sup> defendant was incorporated by Peter Ekochu and Richard Ekochu.
- (g) That on the 22<sup>nd</sup> December 1999 in its return of allotment, the 3<sup>rd</sup> defendant allotted the 4<sup>th</sup> and 5<sup>th</sup> defendants 55 and 47 shares respectively and were vide a special resolution dated 14<sup>th</sup> December 1999 appointed Directors of the 3<sup>rd</sup> defendant.
- (h) That on the 30<sup>th</sup> January 2009, the 8<sup>th</sup> defendant cancelled the plaintiff's lease extension of ninety nine years claiming forged extension.





- (i) That on 17<sup>th</sup> May 2000, the 2<sup>nd</sup> defendant was issued with a fresh title over the suit land comprised in **LRV 2803 Folio 15** for initial five years and subsequently twenty years the other lease having expired.
- (j) That on the 11<sup>th</sup> January 2002, the 2<sup>nd</sup> defendant transferred the suit land to the 3<sup>rd</sup> defendant sister company for no consideration.
- (k) That on 21<sup>st</sup> January 2003, Paulo Ekochu and Richard Ekochu transferred their shares in the 3<sup>rd</sup> defendant to the 4<sup>th</sup> and 5<sup>th</sup> defendants and resigned from their directorship in the 3<sup>rd</sup> defendant company as well as being secretary to the 3<sup>rd</sup> defendant company and transfer of share stock forms were executed and filed in the company registry as well as company form 8.
- (l) That on 30<sup>th</sup> October 2008, the lease in respect of the suit land was extended for ten years effective 1<sup>st</sup> February 2009 and later twenty years.
- (m) That on the 12<sup>th</sup> January 2010, the 3<sup>rd</sup> defendant resolved to sell and transfer the suit land to the 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> defendants.
- (n) That on the 15<sup>th</sup> February 2012 under Instrument No. 463140, the 3<sup>rd</sup> defendant transferred the suit land into the names of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants.

That all the above constituted fraud, illegality and deprivation of the plaintiff of his land hence this suit.

The Plaintiff further contends that the acquisition, subsequent renewals and transfers and transactions amongst the defendants were illegal, unlawful, void ab initio and procured through fraud and connivance.

The Plaintiff listed the particulars of fraud and illegality as follows:

- (i) The 1<sup>st</sup> defendant and later the 3<sup>rd</sup> defendant applying for land in occupation and possession of the plaintiff.



- (ii) Making a false declaration /claim while seeking consent to transfer the land by the 1<sup>st</sup> defendant claiming he had developments on the suit land whereas not.
- (iii) The 1<sup>st</sup> defendant passing off the plaintiff's developments as his own in order to procure a consent to transfer.
- (iv) All defendants procuring registration and lease over land in respect of which there is a subsisting and running lease.
- (v) The defendants knowingly and deliberately disregarding the Plaintiff's interest and /or procuring registration so as to defeat the plaintiff's interest in the land well known to the defendants by virtue of the developments on the land.
- (vi) The defendants causing issuance of certificates of title with different LRVs and Folios in order to defeat the plaintiff's claim.
- (vii) Causing transfer of the suit land by the defendants amongst themselves and not in accordance with the lease agreements.
- (viii) The defendants conniving and /or conspiring through creation of different companies and allotment of shares in these companies to themselves to defeat the plaintiff's interest and conceal their fraudulent deeds.
- (ix) Applying for and obtaining a fresh lease by the defendants under the umbrella of the 2<sup>nd</sup> defendant in 2000 so as to confuse or hide their fraudulent scheme.
- (x) Transferring the suit land amongst themselves for no value and/or consideration.





- (xi) Under declaring for tax purposes the actual value of the land so as to cheat the Government of revenue.
- (xii) Transferring the suit land on the basis of documents not properly executed in accordance with the law.
- (xiii) Failing and /or deliberately not conducting due diligence expected of the defendants before applying for and securing a lease over the suit land leading to a web of all subsequent transactions.
- (xiv) Causing extension of the fraudulently acquired leases without basis in the law.
- (xv) Participating and/or acting in connivance to further the fraudulent scheme through incorporating entities, allotting shares amongst themselves, appointing themselves as Directors, resigning and transferring shares at will to conceal the fraud.
- (xvi) The defendants demolishing the plaintiff's developments on the suit land without compensating him and ignoring his pleas.
- (xvii) The defendants taking advantage of the wrongful acts of the officials of the controlling authority.
- (xviii) Generally acting in a manner that is consistent with fraud, dishonesty and illegality.

The Plaintiff further avers and contends that the 7<sup>th</sup> defendant acted wrongfully and fraudulently in issuing a lease over the suit land and the subsequent extensions in as far as:

- i. They never consulted the Plaintiff as a person with interest in the suit land.
- ii. Issued a lease over an existing leasehold title.



- iii. Never accorded an opportunity to the Plaintiff to be heard before granting the lease.
- iv. Failure to advise the defendants on their application for a lease.
- v. Consented to dealing with the suit land not in accordance with the law.

The Plaintiff further avers and contends that the 8<sup>th</sup> defendant's acts were illegal and unlawful in as far as:

- i. They cancelled the plaintiff's extension without basis.
- ii. Failed to follow procedure under the law.
- iii. Acted without according the plaintiff an opportunity to be heard.
- iv. Acted beyond its mandate.
- v. Exercised mandate not vested in it.

The plaintiff further avers and contends that as a result of the defendants conduct, he has suffered loss arising out of demolition of his developments on the suit land for which he will seek compensation to a tune of two hundred million shillings (200,000,000/=) being the cost of developments unlawfully demolished that included a semi-finished house, retention wall, swimming pool replacement, grass and trees planted on the suit land.

The Plaintiff further contends that the combined acts of the defendants jointly and severally including the tactical taking over of physical possession and use of the suit land has denied the plaintiff the beneficial use of the same and as such the plaintiff seeks for recovery of mesne profits.

The Plaintiff further contends that as a result of the defendant's fraudulent conduct, he has been deprived of land and has been greatly inconvenienced, failed to fulfil his plans for which he seeks special and general damages.

The Plaintiff further contends that the defendants' actions amount to:





- i. Appropriation of the Plaintiff's land;
- ii. Violation of the Plaintiff's right to own property;
- iii. Interference with the Plaintiff's use, quiet enjoyment and development of his land for which he will seek redress.

The Plaintiff prays for judgment against the defendants jointly and /or severally and is seeking for the following orders:

- i. A declaration that the Plaintiff is the rightful and exclusive owner of all that land comprised in **LRV 1465 Folio 22 Plot 5-6 Hill Close Kololo measuring approximately 0.547 hectares.**
- ii. A declaration that the acquisition and the registration of the 1<sup>st</sup> defendant on the 23<sup>rd</sup> December 1993 as proprietor of the land described as **LRV 2200 Folio 11 Plot 5-6 Hill Close, Kololo** measuring approximately 0.547 hectares was void ab initio as there was no land available for allocation and /or lease to the 1<sup>st</sup> defendant.
- iii. A declaration that the cancellation of the Plaintiff's lease title extension of 99 years on the 20<sup>th</sup> January 2009 is illegal, unlawful and procedurally wrong.
- iv. An order directing the 8<sup>th</sup> defendant to reinstate the Plaintiff's lease extension of 99 years.
- v. A declaration that the 7<sup>th</sup> defendant's grant and extension of leases over the suit land were illegal and /or unlawful.
- vi. A declaration that the 1<sup>st</sup> defendant's lease and title to the suit land (herein described as **LRV 2200 Folio 11 Plot 5-6 Hill Close, Kololo**) was null and void and procured through fraud.



- vii. A declaration that the transfer and registration of the said suit land into the 2<sup>nd</sup> defendant on the 20<sup>th</sup> June 1995 under Instrument No. 271371 was null and void ab initio as the 1<sup>st</sup> defendant had no land to transfer to the 2<sup>nd</sup> defendant.
- viii. A declaration that the allocation, grant and subsequent registration of a fresh lease over the suit land to the 2<sup>nd</sup> defendant was unlawful, contrary to law, fraudulent and void.
- ix. A declaration that the transfer of the suit land to the 3<sup>rd</sup> defendant was void ab initio, fraudulent and unlawful.
- x. A declaration that the transfer of the suit land to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants and registration of it in their names was procured through fraud, connivance and was unlawful.
- xi. An order directing the Registrar of Titles to cancel the Certificate of Title to the suit land in the names of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants.
- xii. A permanent injunction to issue against the 4<sup>th</sup> to 6<sup>th</sup> defendants restraining them, their agents' servants and any other person deriving title from them from entering, removing or otherwise interfering with the suit property.
- xiii. An order for eviction of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants from the suit land and /or an order for demolition of any development on the suit land and vacant possession.
- xiv. An order for compensation of the Plaintiff by the defendants for the loss occasioned to the Plaintiff as a result of the unlawful demolition of the plaintiff's developments on the suit land and for loss of user.





- xv. In the alternative but without prejudice to the foregoing, an order for compensation of the Plaintiff by the defendants for the suit land at the prevailing market rate in event the same is unrecoverable.
- xvi. Special damages.
- xvii. An award of punitive and general damages, costs and any other relief deemed fit by court.

In their written statement of defence, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants stated inter alia:

1. That on the 9<sup>th</sup> March 1982 the City Council of Kampala as it then was, granted a lease on the suit property to M/S Ringa Enterprises for an initial term of two years extendable to 99 years and registered as **LRV 1213 Folio 16 Plot 5-6 Hill Close**.
2. That M/S Ringa Enterprises lease expired and on the 1<sup>st</sup> May 1986 and the City Council of Kampala then generated a lease to Rev. Dr. Kefa Sempangi (the plaintiff) for an initial term of two years extendable to 99 years and was further extended from 1<sup>st</sup> May 1988 for a further period of four years.
3. That the Plaintiff's lease was registered as **LRV 1465 Folio 22 Plot 5-6 Hill Close**.
4. That the Plaintiff's lease expired on 30<sup>th</sup> April 1992 and was not renewed or further extended by the City Council of Kampala.
5. That on 14<sup>th</sup> January 1993 by Minute DC.2 /21/93-21.12 the City Council of Kampala granted a lease on the property to Francis Babu and a lease was executed on the 23<sup>rd</sup> December 1993 and was registered as LRV 2200 Folio 11 Plot 5-6 Hill Close Kololo.
6. That upon execution of the lease, the 1<sup>st</sup> defendant took possession of the property and duly paid the premium and ground rent.



7. That sometime in 1994 the 1<sup>st</sup> defendant mortgaged the same to the Bank of Baroda.
8. That by letter dated 20<sup>th</sup> December 1994 the City Council of Kampala consented to the transfer of the suit property to Midland Properties limited and the transfer was registered on the title under Instrument No. 271371 on the 20<sup>th</sup> June 1995.
9. That the City Council of Kampala and its successor landlord Kampala District Land Board duly extended the initial term of the 2<sup>nd</sup> defendant's lease.
10. That on the 9<sup>th</sup> May 2000 a new lease was executed between the 2<sup>nd</sup> defendant and Kampala District Land Board for the initial term of five years with effect from 1<sup>st</sup> February 1999 extendable to 93 years and registered as **LRV 2803 Folio 15 Plot 5-6 Hill Close Kololo**.
11. That on or about January 2002 the 2<sup>nd</sup> defendant transferred the suit property to the 3<sup>rd</sup> defendant and subsequently the Kampala District Land Board extended the initial term of the lease for a period of 20 years with effect from 1<sup>st</sup> February 2009.
12. That by letter dated 25<sup>th</sup> November 2011 the Kampala District Land Board consented to the transfer of the suit property to the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> defendants and the transfer was registered on the title under Instrument No. 463140 on the 15<sup>th</sup> February 2012.
13. That at all material times the defendants have been in possession of the suit property during their respective proprietorship without any lawful challenge whatsoever from the Plaintiff in the last 21 years.
14. That there were no buildings on the land when the 1<sup>st</sup> defendant took possession of the suit property and the defendants have on several





occasions mortgaged the suit property to raise funds for building on the same.

15. That the 2<sup>nd</sup> defendant began work on the property sometime in 1998 and the 3<sup>rd</sup> defendant began proper development on the property in or around April 2004 with grading and levelling the suit property and they had possession of the land.

16. That the defendants have respectively observed their covenants with their respective landlords at all material times and are not in breach of any covenant of the lease agreement.

17. That on the expiry of his lease in 1992, the plaintiff's interest in the suit property ceased and he had no further claim to the property without due extension of the lease by the City Council of Kampala.

18. The defendants further contend that their respective leases on the suit property were procured lawfully and no fraudulent acts have been committed as alleged or at all.

19. The defendants further contend that they obtained their respective leases on the property bona fide for valuable consideration without notice of any third party interests in the property.

20. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants further contend that they have developed the property on the suit land to completion as a residence of high value.

21. The defendants further contend that the plaintiff has engaged in acts of moral turpitude, by uttering an expired lease certificate of title to the public and to government officials with a forged endorsement of extension of lease on it, and comes to court with unclean hands.

The said defendants pray that the plaintiff's suit against them be dismissed with costs.



In their written statement of defence the 7<sup>th</sup> defendant stated inter alia:

1. That the 7<sup>th</sup> defendant is the successor controlling authority over land to the then City Council of Kampala (KCC) by virtue of the Constitution of Uganda, 1995 and the Land Act Cap 229.
2. That the suit property is among the several plots that were by law vested in the 7<sup>th</sup> defendant herein.
3. That the Plaintiff failed to fulfil his obligations under the lease agreement between himself and KCC as it then was.
4. That the Plaintiff's lease on the suit land expired on the 30<sup>th</sup> April 1992 and was not renewed or extended by KCC.
5. That on expiry of the lease on the suit property, the land reverted to and was vested in KCC as the then landlord with full power and authority to deal or transact with it in accordance with the law.
6. That all the transactions undertaken by the 7<sup>th</sup> defendant and its predecessor on the suit property have been lawfully done in accordance with the powers vested in the 7<sup>th</sup> defendant and its predecessor by law.
7. That the 1<sup>st</sup> to the 6<sup>th</sup> defendants have at all respective material times been in possession of the suit property with the full knowledge and authority of the 7<sup>th</sup> defendant and its predecessor in title as landlords and have also been lawful grantees of the leases in the suit property at different times .
8. That currently the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants are the lawful property lessees of the suit property and are in lawful possession thereof and the 7<sup>th</sup> defendant shall rely on documents/records of the suit property showing the grant of the leases to the 1<sup>st</sup> to 6<sup>th</sup> defendants.





9. That the plaintiff's claim over the suit property is thus unlawful, untenable and an afterthought.

10. The 7<sup>th</sup> defendant further contends that the plaintiff's lease on the suit property was never extended in any way as alleged or at all and the plaintiff has no interest in the suit property which he requires to be cancelled.

11. The 7<sup>th</sup> defendant further contends that all its acts and transactions in respect of the suit property were lawful and the Plaintiff's claims and allegations are spurious and misconceived.

12. That the plaintiff is not entitled to any reliefs sought.

13. The 7<sup>th</sup> defendant prays that the suit against it by the Plaintiff be dismissed with costs.

The 8<sup>th</sup> defendant never filed a defence.

In their joint scheduling memorandum the following issues were raised for determination.

1. **Whether the suit property was lawfully leased to the 1<sup>st</sup> defendant.**
2. **Whether the transfer of the suit property to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants was fraudulent.**
3. **Whether the 7<sup>th</sup> and 8<sup>th</sup> defendants acted fraudulently in respect of the suit property.**
4. **The remedies available to the parties.**



**ISSUE 1: Whether the suit property was lawfully leased to the 1<sup>st</sup> defendant.**

**Submissions on issue one by counsel for the Plaintiff**

Counsel for the Plaintiff submitted that steps the 1<sup>st</sup> defendant took in acquiring the suit premises should be considered.

The Plaintiff referred to **Clause 2(b)** of the Plaintiff's lease agreement which was exhibit 24 which enjoined the plaintiff to erect on the suit land a building of not less than thirty million shillings (30,000,000/=) in two years. Counsel submitted that the building covenant had been complied with as far as 1992 when the Plaintiff erected a building up to the window sill level of the proposed three storeyed residential building and that the value of the structure exceeded thirty million shillings. Counsel submitted the testimony of the incomplete building was corroborated by photographs showing the said incomplete building on the suit land. Counsel referred to the Plaintiff's exhibit 25 that was tendered in court and the application to transfer the suit land from the 1<sup>st</sup> to the 2<sup>nd</sup> defendant as was shown in exhibit P.10 which stated that there was a development of an unfinished building up to the window sill level and that the value of the suit property was forty five million shillings (45,000,000/=).

Counsel for the plaintiff submitted that the 1<sup>st</sup> defendant (DW3) stated that he had never seen the said building and stated during cross-examination that he had not carried out any developments on the suit land at the time he transferred it to the 2<sup>nd</sup> defendant save for a little mabati store. That this could not be considered as a development on the land of the value of forty five million shillings (45,000,000/=). Counsel contended that since DW3 was unaware of the incomplete structure on the land, it was clear that it was erected by the plaintiff and the 1<sup>st</sup> defendant never carried out due diligence of visiting the suit land before obtaining his title.

Counsel for the Plaintiff further contended that existence of a building up to window sill level on the land was proof that the plaintiff was in possession. That DW3 lied under oath in paragraph 9 of his witness statement that the suit plot was vacant and a hilly bush without any developments before he obtained title to it. Counsel contended that constructive notice was imputed on the 1<sup>st</sup> defendant since there was a building on the land. That the 1<sup>st</sup> defendant ought to have inquired who the owner of the incomplete structure was but he chose not to do so or omitted to do so. Counsel for the plaintiff cited the case of





***Nabanoba Deziranta and another versus Kayiwa Joseph and another –H.C.C.S No. 496 of 2005*** quoting the case of ***UP&TC versus Abraham Katumba[1997] IV KALR 103*** where it was held that as the law stands , a person who purchases an estate which he knows to be in occupation and use of another other than the vendor without carrying out due inquiries from the persons in occupation and use commits fraud. Counsel cited several authorities to define what fraud was.

Counsel further submitted that the 1<sup>st</sup> defendant was aware of the plaintiff's interests in the land through constructive notice of the incomplete building and he did not inquire as to its ownership or if he inquired, it did not stop him from dealing with the suit land which was an act of fraud. That therefore the allocation and transfer of the suit land by the 1<sup>st</sup> defendant was unlawful and fraudulent and the title is void for fraud.

Counsel further submitted that the 1<sup>st</sup> defendant did not prove to court that he carried out a search in the Lands Registry before he applied for a lease on the suit land or before transfer of the same into his names.

Counsel contended that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not carry out a search in the lands office until around 30<sup>th</sup> January 2009 when the Lands Registrar inscribed on the white page that the Plaintiff's 99 years was forged as shown in a letter that was tendered in court and marked as defence exhibit 26. That this showed that from 1992 to 2009 when the 8<sup>th</sup> defendant cancelled the plaintiff's title there had been no search carried out in the land office about the suit land. That this proved that the 1<sup>st</sup> defendant omitted to carry out a search investigating the 7<sup>th</sup> defendant's title which imputes that he wilfully abstained from inquiring from the Lands office to avoid notice of an existing interest on the land. That this was calculated to deprive the plaintiff of his interest in the land and further for the 1<sup>st</sup> defendant's financial gain over the plaintiff's loss which imputed fraud on the 1<sup>st</sup> defendant making his title unlawful.

Counsel further submitted that it was not in dispute that the plaintiff obtained his title to the suit land for an initial period of two years automatically renewable to the full term of 99 years if he adhered to the building covenants in the lease agreement. That the Plaintiff led evidence to prove that he has the Duplicate Certificate of Title which was tendered in court and marked as exhibit P.24 which initially had the two years and then it was extended for 99 years under Instrument No. 232515 after he complied with the building





covenant and whose value of the building exceeded thirty million shillings. Counsel cited **Section 64 (1) of the RTA** which provides that the estate of the registered proprietor is paramount and is indefeasible except in cases of fraud.

Counsel further submitted that the defendants did not lead evidence to prove fraud or forgery and hence the Title is paramount. Counsel contended that there was already an existing lease of 99 years on the suit land in the names of the Plaintiff at the time it was leased to the 1<sup>st</sup> defendant and therefore the 7<sup>th</sup> defendant did not have a good title to pass it to the 1<sup>st</sup> defendant.

Counsel for the plaintiff cited the case of ***Agandra versus Etomu –H.C.C.S No. 007 of 2011 (ARUA HIGH COURT)*** where it was held that land is available for leasing by the District Land Board when it is either:

- (a) Vacant and there are no conflicting claims to it.
- (b) It is occupied by the applicant and there are no where adverse claims to the occupation.
- (c) Where the applicant is not in occupation but has a superior equitable claim to that of the occupant.
- (d) Where the applicant is not in occupation but the occupant has no objection to the applicant.

Counsel contended that the 7<sup>th</sup> defendant had already leased the suit land to the plaintiff and as such at the time the land was leased to the 1<sup>st</sup> defendant, the 7<sup>th</sup> defendant no longer had a legal estate in the suit land and could not get a better title than it possessed. That the lease granted to the 1<sup>st</sup> defendant was therefore unlawful by virtue of the Nemo Dat principle. Counsel for the plaintiff cited the cases of ***Vivo Energy (u) Limited versus Shire-Petroleum Co. Ltd, Ahmed Abdinassir and Arua District Land Board-H.C.C.S No. 008 of 2016 (Arua High Court) and Kampala District Land Board and Chemical Distributors versus National Housing and construction Corporation –S.C.C.A No. 02 of 2004*** to buttress his submissions.

Counsel further submitted that DW2 (Atugonza) in her testimony failed to prove to court that the 1<sup>st</sup> defendant ever made an application to the 7<sup>th</sup> defendant for a lease over the suit land. That DW2 further failed to prove to





court that the 1<sup>st</sup> defendant was lawfully granted a lease over the suit land. That no minutes of the said meeting were tendered in evidence and that there were only receipts of payment in September 1993 and title to the 1<sup>st</sup> defendant was issued in December 1993. Counsel contended that at the time the 1<sup>st</sup> defendant was granted a lease offer on the land, it was in the plaintiff's possession amidst construction. That the plaintiff had workers on the ground guarding the premises and carrying out construction work. That the Plaintiff testified that he was in occupation of the suit land until when his guards and workers were evicted by the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> defendants or their agents.

Counsel contended that the 7<sup>th</sup> defendant ought to have given the priority to the plaintiff or inquired from him since he was a sitting tenant before the grant to the 1<sup>st</sup> defendant. That no evidence was led by the 7<sup>th</sup> defendant that he had granted the Plaintiff an opportunity to be heard before allocating the land to the 1<sup>st</sup> defendant.

Counsel further submitted that the Plaintiff had a conflicting claim to the suit land and had the Plaintiff been aware of the application for a lease, he would have had an objection to the application by the 1<sup>st</sup> defendant. That on the basis of the above criterion therefore, the 7<sup>th</sup> defendant failed to prove that the suit land was lawfully leased to the 1<sup>st</sup> defendant, thus making the transfer/allocation to the 1<sup>st</sup> defendant fraudulent and illegal.

With regard to non-compliance with the lease offer, counsel for the Plaintiff submitted that **Section 5 of the Contracts Act** provides that an offer may be revoked at any time before communication of its acceptance is complete. That **Section 6** provides that an offer is revoked by lapse of time prescribed in the offer for its acceptance.

Counsel submitted that DW2 testified that the lease offers are granted on condition that acceptance of the same is made within a month from its issuance and this was corroborated by the Plaintiff's exhibit 1 which was a lease offer. That DW3 stated that he was given a lease offer on 12<sup>th</sup> February 1993 and that he paid on the 28<sup>th</sup> September 1993 as was shown in exhibit D 27. That the Plaintiff testified that he made payments for ground rent and lease extensions in August 1993 as shown in the Plaintiff's exhibit 5. That therefore the acceptance of offer through payments by the 1<sup>st</sup> defendant in September 1993 was out of the stipulated time of one month and by the time he paid the lease offer had been revoked and the Plaintiff had also been granted the 99 year lease.





Counsel further submitted that PW1 testified that he had instructed his lawyers M/S Katongole & Mukasa Advocates to handle the lease extensions from the 7<sup>th</sup> defendant's office and indeed his advocates handled the work as instructed and handed him a certificate of title which was tendered in court and marked as exhibit 24 of 99 years entered under Instrument No. 232515. That the defendants never adduced proof of forgery against the Plaintiff on the 99 year lease and thus his title still stands making the allocation of the suit land to the 1<sup>st</sup> defendant by the 7<sup>th</sup> defendant unlawful.

Counsel further submitted that the building covenant was vague as it never specified the value of the building. Counsel cited **Section 22 and 23 of the Public Lands Act** which provides 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. That in the current case Clause 2 (b) of the 1<sup>st</sup> defendant's lease agreement with the 7<sup>th</sup> defendant as shown in exhibit DEXH. 18 reveals that no value was attached to the building covenant in the lease agreement with the 1<sup>st</sup> defendant which is highly suspect and indicative of fraud and collusion, illegality and unlawfulness between the 1<sup>st</sup> and 7<sup>th</sup> defendant's predecessor.

Counsel further submitted that the 1<sup>st</sup> defendant (DW3) admitted that there was no development on the land carried out by him which in essence was a breach of the lease agreement leading to its forfeiture. That it was an implication that the lease agreement made by the 7<sup>th</sup> defendant and the 1<sup>st</sup> defendant was fraudulent as both parties were aware that the 1<sup>st</sup> defendant would not comply with the building covenant thus no value was attached thereto.

#### **Submissions by the 1<sup>st</sup> -7<sup>th</sup> defendants on Issue one.**

Counsel for the said defendants submitted that the City Council of Kampala (KCC) lawfully leased the suit land to the 1<sup>st</sup> defendant. That this was because the land was available for leasing and all the legal procedures were followed.

Counsel submitted that the following were some of the agreed facts:

- i. That on the 23<sup>rd</sup> May 1986, the Plaintiff became the registered proprietor of the suit land and was issued with a certificate of title for land comprised in **LRV 1465 Folio 22 Plot Nos 5-6 Hill Close of Kampala** as shown in exhibit DEX 16.





- ii. That the Plaintiff's lease and title on the suit property expired on the 30<sup>th</sup> April 1988.
- iii. That the then lessor, City Council of Kampala, extended that Plaintiff's lease for a period of 4 years with effect from 1<sup>st</sup> May 1988 as shown in exhibit PEX 4.
- iv. That on the 7<sup>th</sup> August 1993 the Plaintiff wrote to the Town Clerk Kampala City Council informing him that his lease on the suit property had expired on the 31<sup>st</sup> May 1992 and in the same letter he applied for an extension of 4 years with effect from the 31<sup>st</sup> May 1992 and in the same letter he applied for extension of 4 years from 1<sup>st</sup> June 1992 as shown in exhibit DEX 17.
- v. That it is an agreed fact that the then lessor Kampala City Council did not extend the Plaintiff's lease nor grant him a fresh lease.

Counsel for the defendants submitted that when the Plaintiff's four year lease expired on the 31<sup>st</sup> May 1992 he made an application for its extension for 4 years which was rejected as shown in exhibit DEX 1. That the then Kampala City Council was entitled to reject the Plaintiff's application and grant the lease to the 1<sup>st</sup> defendant for the following reasons:

- i. That it was an admitted fact that the Plaintiff's lease expired on the 31<sup>st</sup> May 1992 and the application for renewal was made on the 7<sup>th</sup> August 1993. That it is trite that an expired lease can neither be renewed nor extended and one can only apply for and obtain a fresh lease. Counsel cited the case of ***Dr. Adeodanta Kekitinwa and three others versus Edward Maudu Wakida –C.A.C.A No. 3 of 1997*** to buttress their submissions. Counsel contended that the Plaintiff's application for renewal as shown in exhibit DEX 17 was incompetent and the then lessor (KCC) was entitled to disregard it. That such renewal or extension application could only have been before the 31<sup>st</sup> May 1992.
- ii. That the suit land was available for leasing after the 31<sup>st</sup> May 1992. That the Plaintiff having not applied for a lease extension or renewal before 31<sup>st</sup> May 1992, then the controlling authority (KCC) as the lessor was entitled to lease it to someone else in this case the 1<sup>st</sup> defendant. That



this was because the Plaintiff had ceased to have any interest in the suit land whether legal or equitable and hence the suit land reverted back to KCC and it was entitled to lease it to the 1<sup>st</sup> defendant. Again counsel cited the case of ***Dr. Adeodanta Kekitinwa and three others versus Edward Mauda Wakida(supra)*** to buttress his submissions.

- iii. With regard to the claim that the Plaintiff's lease had been extended for 99 years, counsel for the defendants contended that during the cross-examination of the Plaintiff, he admitted that he had no application for a lease extension for 99 years and that he had no offer from the then lessor KCC for the 99 years. That at the trial the Plaintiff relied on the Certificate of Title, exhibit PEX 24 as proof of the extension of his lease for 99 years. That the Plaintiff further admitted during cross-examination he had no minute from KCC for the 99 years extension and no documentary evidence was presented to court as proof that the plaintiff ever acquired a lease of 99 years and therefore the Plaintiff's claim that his lease was extended for 99 years was baseless and unsustainable.

Counsel further submitted that facts which are admitted by the parties need not be proved as provided for under **Section 57 of the Evidence Act Cap 6**. That the Plaintiff having admitted in the joint scheduling memorandum that his lease was not extended after 31<sup>st</sup> May 1992 and that he was not granted a fresh lease on the suit land, he cannot now turn around and claim that he was granted a lease for 99 years.

Counsel for the defendants further submitted that the Plaintiff relied on exhibit PEX 24 to claim a lease of 99 years. That a term of two years appears on the title but it is crossed and replaced with 99 years. Counsel contended that the title expired together with the lease and therefore the Plaintiff cannot claim that he holds a valid lease title when he has no lease itself.

Counsel for the defendants submitted that when on the 30<sup>th</sup> April 2013 M/S GP advocates then acting on behalf of the 4<sup>th</sup> to 6<sup>th</sup> defendants inquired from the land registry about the authenticity of the title, the Commissioner Land Registration responded in his letter dated 3<sup>rd</sup> May 2013 that the extension of 99 years had been forged on the 30<sup>th</sup> January 2009 as shown in exhibit DEX 26.





Counsel contended that the purported title does not show the minute for the lease extension for 99 years as would be the case if it was authentic.

Counsel further submitted that the Plaintiff had a forged Certificate of Title and had thus come to court with dirty hands. That the Plaintiff should not be allowed to rely on forged and non-existent documents to make a claim for a lease of 99 years.

Counsel for the defendants further submitted that exhibit DEX 17 which was a letter dated 7<sup>th</sup> August 1993 was proof that the Plaintiff had made an application for renewal or extension of the lease after the expiry of the lease which was not sustainable in law. That the said letter also shows that the Plaintiff intended to apply for extension of 4 years with effect from the 1<sup>st</sup> June 1992 which meant that the Plaintiff never made an effort to apply for a lease of 99 years.

Counsel for the defendants further submitted that there was nothing like an automatic renewal or extension of leases especially those with building or development covenants and this was because lessors especially those responsible for public land like the 7<sup>th</sup> defendant, take into consideration certain aspects before granting renewals or extensions for full terms. That they would have to consider whether serious breaches of conditions and covenants exist under the original lease. That the lease was granted on policy considerations for promoting certain objectives such as commercial agriculture or industrial development and whether the policy consideration was still valid or not. Counsel cited the cases of ***Kabarole District Land Board versus Gapco (Uganda) Limited –C.A.C.A No. 179 of 2011 and Chris Akena Onapa versus Mohamed Hussein Rashid Punjani-S.C.C.A No. 05 of 1995*** to buttress his submissions.

Counsel contended that in this instant case, it was an agreed fact that the lease offer was restricted for residential purposes and upon completion of construction of the residence on the suit land an extension of a term of 99 years would be granted. He emphasised that a lease in law was not automatically renewed or extended in this case after the 31<sup>st</sup> May 1992. That the Plaintiff did not adduce any evidence that he had complied with the building covenant in the lease of erecting a building of a value of not less than thirty million shillings as shown in exhibit DEX 16. That the Plaintiff admitted during cross examination that he did not have any approved building plans, bills of quantities to show that he had indeed complied with the building





covenant. That the Plaintiff having breached the building covenant and his lease having expired without renewal, entitled KCC to lease the suit land to the 1<sup>st</sup> defendant. That the suit land was available for leasing as the Plaintiff's lease had expired on the 31<sup>st</sup> May 1992 without renewal or extension.

Counsel for the defendants further submitted that the 1<sup>st</sup> defendant (DW3) testified in court that KCC pinned a list at its offices of properties that were available for leasing in Kampala and he picked interest in the suit land. He carried out a search at the Land Registry, visited the suit land and did not find any development on it. That he then applied for a grant of a lease on the suit property and pursuant to Minute DC.2/21/93 of 14/1/1993, the City Council of Kampala granted him a lease for a term of three years effective 1<sup>st</sup> February 1993. That he paid the necessary premium and rent as shown in exhibit DEX 18.

Counsel for the defendants further contended that the 1<sup>st</sup> defendant lawfully acquired the lease on the suit property which was almost a year after the Plaintiff's lease had expired without renewal. That the Plaintiff failed to prove that he was granted a lease of 99 years and instead relied on his own forged title which this court should reject.

#### **Plaintiffs submissions in rejoinder on Issue one.**

Counsel for the Plaintiff submitted that counsel for the defendants in making their submissions did not address their mind to the terms of the lease agreement between the Plaintiff and the 7<sup>th</sup> defendant's predecessor as shown in exhibit P24. That the Plaintiff testified that he had instructed his lawyers M/S Katongole, Mukasa & Co. Advocates to process extension of his lease to 99 years.

Counsel cited Clause 2(b) of the lease agreement as shown in PExh. 24 which enjoined the plaintiff to erect on the suit land a building of not less than thirty million shillings. That Clause 4 of the same agreement stated that ***"when the lessee shall have complied with the building covenant herein and if there shall not at the time be any existing breach or non-observance of any of the covenants and conditions in the lease whether express or implied, the said term shall be enlarged to 99 years from 1<sup>st</sup> May 1986 automatically and this lease shall thenceforth be read and construed as if the said term of 99 years had been originally granted hereby."***






Counsel submitted that the said provisions were in no way ambiguous and clearly mean that in the event that the lessee abided by the binding covenant and such other conditions of the lease, the lease would be automatically extended for 99 years. That this means that with the Plaintiff abiding by the building covenant in the lease, there would be no requirement for him to submit an application for extension of the lease since it was automatically granted as per the lease agreement. That if this requirement was existent there, it would have been clearly stipulated by the lessor in the agreement. Counsel cited the case of ***Kabarole District Land Board versus Gapco (Uganda) Limited*** to buttress her submissions. Counsel contended that in the current case the automatic clause was activated in as far as by 1992 as the Plaintiff had built a structure on the suit land whose value exceeded thirty million shillings as required by the lessor. Counsel further submitted that the case of ***Dr. Adeodanta Kekitinwa and three others versus Edward Maudu Wakida – C.A.C.A No. 3 of 1997*** was distinguishable from the current case since in this case the lease was automatically renewed for complying with the building conditions, unlike in the said case where the lease agreement had expired before the lessee had complied with the building covenant.

Counsel submitted that the Plaintiff testified that by 1992 he had erected a building up to the window sill level and the truth in his testimony was reflected in the application for consent to transfer the suit land from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant /land, form 6 (PEXh .10) which stated that development on the land included an unfinished small building up to window sill level as shown in exhibit P Exh 25. That the Chief Government valuer in the same document valued the property at Uganda Shillings forty five million shillings which exceeded the thirty million shillings minimum value set out in the building covenant. That it should be noted that DW1 testified during cross-examination that he did not carry out any developments on the land. That the said structure was therefore clearly erected by the Plaintiff who in doing so abided by the building covenant in his lease and as such the lease was automatically extended since the automatic clause therein had been activated.

Counsel for the Plaintiff further submitted in rejoinder that the case of ***Chris Akena Onapa versus Mohamed Husein –S.C.C.A No. 05 of 1995*** as cited by counsel for the defendants was distinguishable from the current case in as far as the Onapa case dealt with the scenario where the lessee had not abided with a building covenant within the stipulated time and was applying for its extension. That in the current case, the Plaintiff as evidenced by the valuation





of the suit property in the application for consent to transfer (PExh.10) as well as the pictorial evidence of the structure built by the defendant (P.Exh .25) had complied with the building covenant of 1992 thereby automatically triggering the 99 year renewal clause in his lease agreement.

Counsel further submitted that at the trial the plaintiff testified in court that he did not apply for a 99 year lease because it was automatically based on his compliance with the building covenant. That the Plaintiff testified that he had instructed the firm of M/S Katongole Mukasa & Co. Advocates which had earlier handled the lease extensions of the lease of 1988 to 1992 and were instructed to handle the 99 years extension. That the Plaintiff further testified that the Hon. Retired Justice Lameck Mukasa handled the extension of the lease and gave him a Certificate of Title (P.Exh. 24) that was tendered in evidence. That the same could not testify in court since he was sick. That by the time the Plaintiff wrote the letter to the 7<sup>th</sup> defendant as shown in D.Exh 17 for extension of the lease, unknown to him the lease extension had been handled by his lawyers M/S Katongole, Mukasa Advocates who had already obtained the Certificate of Title of 99 years on his behalf.

Counsel contended that there was no need for an application of 99 years nor was there need for an offer but a Minute from the City Council extending the lease to 99 years since the plaintiff had complied with the lease covenants. That as a result at the time the lease was offered to the 1<sup>st</sup> defendant in 1993, the 7<sup>th</sup> defendant (the lessor) no longer had a legal interest in the land and could not give a better title than it had.

Counsel further contended that since the lease had been automatically renewed at the time the 7<sup>th</sup> defendant granted a lease to the 1<sup>st</sup> defendant, it no longer had a legal interest in the suit property and therefore, by law could not give away what it did not possess.

Counsel for the Plaintiff submitted in rejoinder that with regard to the allegation by the defendants that the Plaintiff had a forged Certificate of Title (P.Exh. 24), the defendants did not lead evidence to prove that the Plaintiff forged the Certificate of Title that was tendered in court as P.24 and therefore the submissions raised in that regard were submissions from the bar and should be disregarded.

Counsel submitted in rejoinder that the allegation that there was no access road shows that the 1<sup>st</sup> defendant did not carry out due diligence by visiting

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the suit land otherwise if he had, he would have established that there was a temporary road leading to the suit land. That the 1<sup>st</sup> defendant claimed that there was no access road to the suit land and hence impossible to construct on the suit land and yet in his application for consent to transfer the suit land to the 2<sup>nd</sup> defendant, the development of the first floor up to the windowsill level was clearly indicated and valued by the Chief Government Valuer who arrived at that figure by visiting the suit land to establish the developments thereon. That this showed that the 1<sup>st</sup> defendant was aware of the developments on the suit land and went ahead to purchase the suit land without conducting proper inquiries.

Counsel for the Plaintiff contended that in this case the 1<sup>st</sup> defendant was clearly aware of the developments on the suit land but abstained from inquiring into who was in occupation thereof so as to avoid being put on notice of the Plaintiff's occupation and legal interest in the suit land.

Counsel further submitted that according to defence exhibit 7 a temporary access road was given to DW4 through Kalekezi close until a permanent road was constructed through Kololo Hill Lane but this did not mean that there was no earlier temporary access to the suit land.

#### **Decision of Court on Issue one.**

According to Plaintiff exhibit 24 which was a certificate of title that contained a lease agreement between the Plaintiff and the City Council of Kampala, it was agreed inter alia as follows:

2. The Lessee hereby jointly and severally covenants with the lessor as follows:

(a) to observe and perform all the conditions and covenants implied by law in this lease or otherwise herein contained or referred to.

(b) to erect on the said land buildings (hereinafter called "the said buildings") of a value not less than thirty million shillings...

**(c) to complete the said building for occupation and use to the satisfaction of the Lessor on or before the 30<sup>th</sup> day of April 1988.**

(d) not without the prior consent of the Lessor to use or suffer to be used the said land and buildings or any part thereof other than for residential.

(e) not without the prior written consent of the Lessor to erect any engine or machinery on the said land or in the said buildings save and except such engine





or machinery as shall be necessary to or consistent with the use of the said land or building as stipulated herein.

(f) in addition to any covenant implied herein the Lessee shall not until he has completed the said buildings and obtained a final occupation permit in respect thereof, sell or sublet or part with the possession of or suffer anyone to use or confer on anyone an equitable interest in or in any way mortgage the said land or building or any part thereof without having first obtained the written consent of the Lessor.

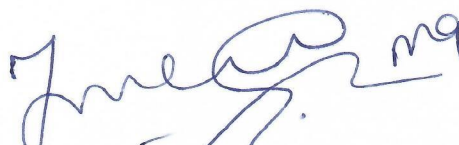
(g) to keep insured the said buildings to the full value thereof in a responsible insurance office against loss or damage by fire and upon the request of the Lessor to produce the policy of such insurance and the receipt for the last premium and to cause all sums received in respect of such insurance to be forthwith laid out and expended in rebuilding or repairing or otherwise reinstating the said buildings and to make up any deficiency in such sums out of the Lessee's own money.

(h) not to make or allow to be made any alterations or additions to any of the said buildings nor to cut, injure or demolish or allow to be cut, injured or demolished the roof or any of the walls or floors thereof without the prior written consent of the Lessor.

(i) not at any time during the said term to use, exercise or carry on or permit or suffer to be used, exercised or carried on in or upon the said land or buildings or any part thereof any noxious, noisome or offensive art trade business occupation or calling or to allow any act matter or thing whatsoever to be done at any time during the said term in or upon the said land or building which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the adjoining lands and properties.

(j) Such consent under 2(h) above shall not be required where the occupational permit has not obtained and where there are minor additions, alterations such as modifications of windows, doors say by changing their position putting up an additional garage and the like, provided such addition and alterations are approved by the planning authority .

3. It is hereby expressly declared and agreed as follows:

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(i) that if this lease is to be enlarged as hereinafter provided, the rent herein reserved shall be revisable by the Lessor at any time after the expiration of the first ten years thereafter

(ii) that the cost of re-aligning covering in or protecting any public or private services which may be on or pass under or over the said land and any works incidental thereto shall be the liability of the Lessee.

(iii) when the Lessee shall have complied with the building covenant herein and if there shall not at the time be any existing breach or non-observation on the part of the Lessee of any of the covenant and conditions in this lease whether expressed or implied the said term shall be enlarged to ninety nine years (99) years from the 1<sup>st</sup> day of May 1986 automatically and this lease shall thenceforth be read and construed as if the said term ninety nine years had been originally granted hereby.

The lease was made on the 23<sup>rd</sup> May 1986 as clearly shown in exhibit P.24.

The Plaintiff in his evidence states that he complied with the building conditions and as a result the lease automatically extended to a full term of 99 years and the extension was noted under Instrument No. KLA 232515 and a title was issued to that effect.

On proper scrutiny of the lease, under Clause 2(c) of the lease agreement, the Plaintiff was expected to complete the building for occupation and use to the satisfaction of the lessor on or before the 30<sup>th</sup> day of April 1988. The lease offer was restricted for residential purposes.

It is my considered view that the automatic extension of the lease to 99 years was subject to the condition that the Plaintiff was to construct a building for occupation to the approval of the lessor. The Plaintiff's lease was extended for another period of four years by the then lessor, the City Council of Kampala which expired on the 30<sup>th</sup> April 1992 as clearly shown in exhibit PEX 4. There is no evidence that the Plaintiff's lease on the suit land was extended beyond that time and no evidence was adduced to that effect by the Plaintiff. The suit land in my view was available for leasing by the lessor after the Plaintiff's lease on the suit land expired and having failed to comply with the conditions in the lease agreement as I have already shown.

It was held in the case of ***Sebuliba versus Attorney General –S.C.C.A No. 13 of 1991*** that when a lease expires, the lessee ought to be evicted and should pay





rent for the period of holding over. It was also held in the case of ***Daphine Musoke versus Sam Investments –C.A.C.A.No. 85 of 2003*** that whenever a lease expires, the land automatically reverts to the lessor and the lessee ceases to have an interest on the land.

The Plaintiff in his submissions had contended that he had erected a building up to the window sill level of the proposed 3 storeyed building and that the value of the structure exceeded thirty million shillings.

It is my considered view that this was a breach of the covenant he had made with the City Council of Kampala as he was required to complete the said building for occupation before 30<sup>th</sup> April 1988 as was clearly stated in Clause 2(c) of the lease agreement and as clearly shown in the Plaintiff's exhibit P.24. So it was a condition precedent that the building structure should have been completed for use and should have been worth at least thirty million shillings or over for the Plaintiff to be entitled to an automatic renewal of the lease for 99 years.

The Plaintiff claimed that his lease had been extended for 99 years and he relied on a Certificate of Title to prove that fact. The Certificate of Title was tendered in Court and marked as exhibit PEX 24.

On proper scrutiny of the said Title that was tendered in court as an exhibit, a term of two years which had appeared on the title had been crossed and replaced with 99 years. Ideally if the lease had been extended to 99 years as the Plaintiff intimates the lease agreement would be attached to the Certificate of Title. The lease to that effect was not attached. The said title does not show the minute for the lease extension for 99 years as is normally the case.

In a letter by the Commissioner Land Registration to M/S GP Advocates dated 3<sup>rd</sup> May 2013 and which was tendered in Court and marked as exhibit DE 26 this is what he wrote in respect of a request for a search on **LRV 1465 Folio 22 Plot 5-6 Hill Close**:

***"This is in response to yours dated 30<sup>th</sup> April 2013 wherein you requested for a search statement on the status of the same.***

***The plot is registered in the names of KEFA SEMPANGI of P.O Box 4100 Kampala who got registered on the 23<sup>rd</sup> May 1986 under instrument NO.KLA225871. The area is approximately 0.547 hectares.***





***However, the lease over this plot was extended under unclear circumstances to 99 years with effect from 1<sup>st</sup> May 1986. This is stated by the Commissioner Land Registration on the Registry copy of the title with a phrase "Forged Extension on the 30<sup>th</sup> January 2009."***

***All this means that the 2 years initially granted expired in 1988 and to date no lease subsists.***

***Yours faithfully***

***Karuhanga John***

***For Commissioner Land Registration.***

This evidence was never rebutted by the Plaintiff who had the onus to prove that the extension of his lease of 99 years on the suit land was authentic. The Plaintiff had to prove that he had complied with the initial lease agreement for him to be entitled to an automatic lease of 99 years. As I have already stated, the Plaintiff breached the building condition that required him to have completed the building for occupation and to the satisfaction of the Lessor. In his own evidence, the Plaintiff stated that he had built a structure up to window sill level. This by his own admission was not a completed structure ready for occupation as was stipulated in the lease agreement.

During the Joint Scheduling Conference between the Plaintiff and the defendants the following were the agreed facts:

- i. That the suit property is Plot No. 5-6 Hill Close Kololo – Kampala measuring 0.547 Hectares.
- ii. That on the 16<sup>th</sup> May 1986, the then lessor of the suit property, City Council of Kampala offered the Plaintiff an initial lease of a term of two years effective 1<sup>st</sup> May 1986.
- iii. That the lease offer was restricted for residential purposes and upon completion of the building of the residence on the suit land an extension of a term of 99 years would be granted.



- iv. That on the 23<sup>rd</sup> May 1986 the Plaintiff became the registered proprietor of the suit property and was issued with a certificate of title vide **LRV 1465 Folio 22 Plot Nos. 5-6 Hill Close, City of Kampala.**
- v. That the Plaintiff's lease and title on the suit property expired on the 30<sup>th</sup> April 1988.
- vi. That the lessor, City Council of Kampala extended the Plaintiff's lease for a period of 4 years with effect from 1<sup>st</sup> May 1988.
- vii. That on the 7<sup>th</sup> August 1993, the Plaintiff wrote to the Town Clerk Kampala City Council informing him that his lease on the suit property had expired on the 31<sup>st</sup> May 1992 and in the same letter he applied for an extension of 4 years with effect from 1<sup>st</sup> June 1992.
- viii. That the then lessor Kampala City Council did not extend the Plaintiff's lease or grant him a fresh lease.
- ix. That the 1<sup>st</sup> defendant applied for a grant of a lease on the suit property and pursuant to Minute DC.2 /21/1993, the City Council of Kampala granted him a lease for a term of three years effective 1<sup>st</sup> February 1993.
- x. That on the 23<sup>rd</sup> December 1993, the 1<sup>st</sup> defendant became the registered proprietor of the suit property vide **LRV 2200 Folio 11, Plot 5-6 Hill Close Kololo.**

I agree with the submission by counsel for the defendants that facts which are admitted by the parties do not need to be proved. **Section 57 of the Evidence Act Cap 6** provides that ***"No fact need be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; except that the court may, in its***





***discretion, require the facts admitted to be proved otherwise than by such admission."***


It was an agreed fact as seen in the Joint Scheduling Memorandum that the then lessor Kampala City Council did not extend the Plaintiff's lease or grant him a fresh lease. Therefore the Plaintiff having admitted in the Joint Scheduling Memorandum that his lease was not extended after 31<sup>st</sup> May 1992 and that he was not granted a fresh one, he cannot turn around and claim that he was granted a lease of 99 years. The question would now arise as to what under circumstances was the Plaintiff's lease on the suit land extended for another 99 years as he claims?

The answer lies in what the witness of the 7<sup>th</sup> defendant Jacqueline H. Atugonza, an acting Secretary of the 7<sup>th</sup> defendant when she stated in her evidence that the Plaintiff forged a Certificate of Title to show that his lease was extended to 99 years whereas not. She buttressed her evidence with a letter from the Commissioner Land Registration which was tendered in Court and marked as DE 26.

It is therefore my finding that the Plaintiff was not entitled to an automatic renewal of his lease as he had breached a fundamental clause to the lease agreement he entered into with the then lessor. It was held in the case of ***Kabarole District Land Board versus Gapco (Uganda) Limited –C.A.C.A.No. 179 of 2019*** that the automatic renewal clause is subject to compliance of building covenants by the lessee. It is not simply automatic as such. The lessee's compliance has to be carried out first and if it is satisfactory then the automatic clause is activated. See also the case of ***Chris Akena Onapa versus Mohamed Hussein Rashid Punjani-S.C.C.A. No. 5 of 1995.***

This court cannot turn a blind eye on the communication by the Commissioner Land Registration which I have already alluded to, that the extension of 99 years on the suit property the Plaintiff was relying on was a forged extension. It was held in the case of ***Lazarus Estates Limited versus Beaslev (1956) 1 Q.B 702*** that no court in this land will allow a person to keep an advantage which he or she obtained by fraud. No judgment of court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

In their written statement of defence(paragraph 5 ) the 7<sup>th</sup> Plaintiff had contended that that the Plaintiff's lease on the suit property was never extended in any way as alleged or at all. The onus was therefore on the





Plaintiff to prove that the lease was lawfully extended. The burden to prove that fact was imperative in light of the evidence adduced by the 7<sup>th</sup> defendant that the 99 year extension the Plaintiff alleged was granted to him was a forged extension. **Section 103 of the Evidence Act Cap 6** provides that ***"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person"***. Once it was alleged that the Plaintiff had obtained the 99 year lease lawfully and the allegation to that effect having been challenged, the onus was on the plaintiff to prove that he obtained the extended lease lawfully. It is my considered view that the Plaintiff failed to discharge that burden.

Evidence was led by the 1<sup>st</sup> and 7<sup>th</sup> defendants that the first defendant applied for a grant of lease on the suit property and pursuant to Minute DC. 2/21/93 of 14<sup>th</sup> /01/93 the City Council of Kampala granted him the lease for a term of three years effective 1<sup>st</sup> February 1993. That the 1<sup>st</sup> defendant became the registered proprietor of the suit land vide **LRV 2200 Folio 11** and that the 1<sup>st</sup> defendant took possession of the suit land. The suit land was available for leasing as the Plaintiff's lease had expired on the 31<sup>st</sup> May 1992 without renewal or extension. The Plaintiff was not entitled to an automatic renewal of 99 years because of the reasons I have already adduced.

The 1<sup>st</sup> defendant applied for the suit land after the lessor pinned a list of properties that were available for leasing and he picked interest in the suit land, carried out a search at the land registry and also visited the suit land and never found developments on it. He then applied for a grant of a lease on the suit property and pursuant to Minute DC.2/21/93 of 14/1. /93 the City Council of Kampala granted him a lease of three terms effective 1<sup>st</sup> February 1993. The 1<sup>st</sup> defendant adduced evidence that he paid the necessary premium and rent as shown in DEX 27 and he subsequently acquired a Certificate of Title in his name as shown in DEX 18.

The 7<sup>th</sup> defendant who is the lessor of the suit property testified that the 1<sup>st</sup> defendant complied with all the requirements before he was granted a lease on the suit land.

The Plaintiff had no locus standi to challenge the allocation of the suit land by the 7<sup>th</sup> defendant to the 1<sup>st</sup> defendant as his interest in the suit land had expired.

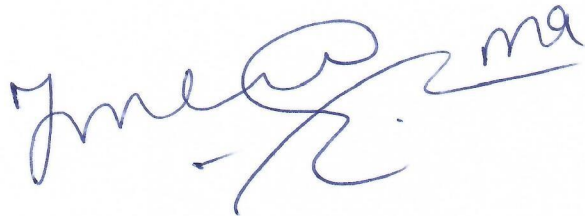




I equally find that the Plaintiff had no locus standi to institute this suit as he had no interest in the suit land.

The resolution of the subsequent issues therefore becomes superfluous having resolved that the Plaintiff had no locus standi to institute this suit. Even if this court was to find that the subsequent transfers from the 1<sup>st</sup> defendant to the other defendants were irregular or illegal, the suit land would still revert to the 1<sup>st</sup> defendant and that would be of no consequence to the Plaintiff as the suit land would not revert to him. It can therefore only be the 1<sup>st</sup> defendant or the 7<sup>th</sup> defendant who would have the locus standi to complain about the subsequent illegal transfers to the other defendants but not the Plaintiff.

The Plaintiff's case will therefore be dismissed with costs to the 1<sup>st</sup> to the 7<sup>th</sup> defendants.



**Hon. Justice John Eudes Keitirima**

**09/07/2021**