THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 624 OF 2016

RWENZORI COTTON GINNERS COMPANY LTD :::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. **KAMPALA DISTRICT LAND BOARD**
2. **KAMPALA CAPITAL CITY AUTHORITY**
3. **ATTORNEY GENERAL**
4. **UGANDA LAND COMMISSION**
5. **COMMISSIONER LAND REGISTRATION :::::::::::::::::::::::::::::::: DEFENDANTS**

BEFORE: HON JUSTICE DR. FLAVIAN ZEIJA

JUDGMENT

In an action instituted by a plaint that was subsequently amended, Rwenzori Cotton Ginners Company Ltd, the plaintiff herein, sued the defendants jointly and severally for declarations that it is the rightful owner of land comprised in FRV 1443 Folio 23 Plot 4 First Luzira Close Kampala measuring 3.584 Hectares *(suit land)*; is entitled to quiet possession and use thereof without interference from any of the defendants; an order of a permanent injunction prohibiting the 4th and 5th defendants, their officers, agents or anyone acting on their behalf from interfering in any way with the plaintiff's certificate of title, ownership, possession and use of the suit land, general damages, interests and costs. In the alternative, the plaintiff prays for an order that the 1st, 2nd and 3rd defendants fully and adequately compensate it for the value of the suit land, costs incurred in acquiring the suit land, loss of income, special damages, general damages, interest and costs of the suit land.

The 1st, 2nd, 3rd, 4th and 5th defendants in their respective statements of defence denied all the plaintiff's allegations. The 1st, 2nd, 3rd and 4th defendants averred in their defences that they shall raise preliminary objections to the effect that the plaint does not disclose cause of action against them and is therefore barred in law and ought to be struck out. Additionally,

the 2nd defendant in its defence pleaded fraud against the plaintiff particulars of which I shall discuss in the course of determination of the matter.

The parties agreed to proceed by witness statements which were tendered and exhibited in court. All the witnesses appeared and were subsequently cross examined and reexamined on the same. The plaintiff relied on the witness statement of Amdan Khan (the company director of the plaintiff), **PW1 Kore Ali** (Former LC1 Executive Committee, **PW2 Bakasibira Sulaiman** LC1 Chairman from 1989 to date, **PW4 Kalema Edward** former Chairman Area Land Committee, **PW5 Kusiima Sarah** former Secretary of the 1st defendant, **PW6 Muhereza Yason** an auditor. The plaintiff's exhibits were tendered in court together with the trial bundle and written submissions which are all on Court record.

The 1st and 2nd defendants both adopted the witness statement of **DW1 Jacqueline Hellen Atungonza** Acting Secretary of the 1st defendant and relied on two documents on their trial bundle to wit Letters dated 19th August 2016 and 17th October 2016. The 3rd and 4th defendants relied on one document which was a copy of a certificate of title for FRV 216 Folio 12 and led the evidence of Dr. George Muge and Benon Kigenyi, respectively. On the other hand the 5th defendant called two witnesses to wit; Kasirye Francis and Bamwite Emmanuel and relied on four documents namely, the Notice of intention to effect changes in the register, the topographical map, the cadastral sheet and orthophoto of land comprised in FRV 216 Folio 12.

With the exception of the 1st defendant the rest of the parties duly filed written submissions which are on record.

Background

The bare facts of this dispute as discerned from pleadings can be summarized as follows;

The plaintiff applied for and was granted a freehold interest in the suit land and was accordingly registered thereon on the 11th October 2013. The plaintiff's case is that around the year 2010 it was searching for land to put up stores for the company. After engaging

different brokers, the plaintiff was reliably informed that the suit land was available. The plaintiff asserts that through its director, PW7 Mr. Amdan Khan, physically went and duly inspected the suit land and found various persons who were then in occupation and use of the suit land as customary owners/bibanja holders for allegedly over 30 years. After successfully negotiating with the then occupants, the parties agreed that the plaintiff would compensate them in exchange of relinquishing their interests on the suit land and that they would vacate immediately. Mr. Amdan Khan allegedly paid a commitment fees and proceeded to apply for the conversion of the suit land to a freehold title on the 10th January 2011. Further that Amdan Khan approached the Area Land Committee who confirmed that the suit land was available and after inspecting the suit land on 4th February 2011 advised him to attach deed prints after the survey. The then chairman of the area land committee PW4 Edward Kalema forwarded the inspection report to the 1st defendant for further consideration. On the 31st March 2011 vide KDLB/FH/2011 the then secretary of the 1st defendant PW5 Kusiima Sarah wrote to the applicant notifying it that its application for conversion from customary tenure to freehold had been approved by the board under minute number KDLB/7.11/2011 upon payment of conversion fees of UGX. 50,000/= and handling fees of UGX. 20,000/= payable to the 1st defendant within 30 days from the date of receipt of the letter. Further the plaintiff was instructed to present copies of the receipts of payment to the Assistant Commissioner Land Inspectorate who had been copied to, in the correspondence. Upon alleged fulfillment of all the requirements for the grant of the freehold interest, the plaintiff was eventually issued a certificate of title. That the plaintiff proceeded to fence off the suit land with treated poles and engaged architects who prepared architectural and structural plans for construction of commercial warehouses for rental purposes with a projected monthly income of UGX. 294,695,000/=.

That just about when the plaintiff was about to fully take possession of the suit land, it was served with a Notice of intention to effect changes on the register by the 5th defendant on allegation that the suit land belongs to the 4th defendant having been granted title on the 12th July 1962. That around May 2016 officers of Uganda Prisons Service, for whose actions the

3rd defendant is liable, acting in their course of employment, destroyed the fence, unlawfully entered upon parts of the suit land and excavated soil, made bricks thereon and constructed structures to the plaintiff's detriment. The plaintiff insists that it lawfully acquired the suit property upon reliance on the representations of the 1st defendant which indicated that it was the controlling authority of the land, preparations and approvals of the deed prints, inspection of the suit land and instructions to issue the certificate of title by the officers of the 1st, 2nd, 3rd and 5th defendants acting in the course of their employment. That the plaintiff incurred huge sums in the acquisition of the suit land and neither adverse claims nor third party interests and the certificate of title of 1962 was never brought to the plaintiff's attention at the time. That the actions of the defendants have greatly inconvenienced the plaintiff whose interest in the suit land has been jeopardized by the defendants or their officers who are at times armed. As a result of the defendant's actions the plaintiff has suffered gross financial distress and economic strangulation for which he now seeks damages.

Negating the factual assertions, the 1st, 2nd **3rd** and 5th defendants raised a preliminary objection to the effect that the plaint does not disclose a cause of action against them and ought to be struck out with costs. The 2nd defendant pleaded fraud against the plaintiff. The defendants contention is that the suit land was not available for grant to the plaintiff as the same is part of government land and was already titled and registered in favor of the 4th defendant way back in **1962 via Freehold Register Volume 216 FOLIO 12** and the title which was allegedly issues to the plaintiff was issued in error. It was upon realization of this error that a notice to effect changes was duly sent to the plaintiff. Having been issued first in time, the 4th defendant's title prevails over the plaintiff's as envisaged under Section 64 of the Registration of Titles Act Cap 230. Further that the 2nd defendant denies ever granting the plaintiff the alleged conversion of the customary land to freehold and that no fees have ever been paid in relation to the alleged conversion. The 2nd defendant imputed fraud on the plaintiff's acquisition of the letter purporting to grant it a conversion well knowing that the said letter was not genuine. The defendants insist that the plaintiff is not entitled to any

reliefs since its claim is founded on a transaction that is illegal, unlawful, void and founded on fraud.

Representation

The plaintiff was represented by M/s Tumusiime, Kabega & Co Advocates. The 1st defendant was represented by M/s Shonubi, Musoke & Co. Advocates whereas the 2nd defendant was represented by its Directorate of Legal Affairs. The 3rd and 4th defendants were represented by Counsel Johnson K. Natuhwera from the Attorney General's Chambers, while the 5th defendant represented itself.

During scheduling the following issues were agreed upon for determination by this Court;

1. ***Whether the plaintiff has a valid legal interest in the suit land?***
2. ***Whether the plaintiff obtained the suit land fraudulently?***
3. ***Whether the threatened cancellation of the plaintiff's certificate of title is lawful?***
4. ***Whether the actions of Uganda Prisons officers in respect of the suit land are lawful?***
5. **What remedies are available to the parties?**

Before I proceed to determine the above issues, I will first resolve the preliminary objections raised by some of the parties.

Preliminary objections

Prayer to strike out the written statement of defence for the 3rd and 4th defendants for containing evasive denials.

Counsel for the plaintiff in his submissions raised a preliminary objection to the effect that the 3rd and 4th defendants Written Statements of Defence were evasive, contained general denials of liability and prayed for the same to be struck out under Order 6 rule 8 and 10 CPR. Citing the case of **Eco Bank Ltd Vs Kalsons Agrovet Concern Ltd & 2 Ors Hccs No. 573 Of 2016** counsel submitted that apart from merely denying the facts pleaded in the plaint and stating that the plaintiff shall be put to strict proof thereof, the 3rd and 4th defendants did not specifically traverse each allegation of the fact as required by law and prayed for the same to be struck out with costs.

In reply, the Advocate for the 3rd and 4th defendants submitted that paragraphs 3 of their respective defences denied the allegations against them and during trial the witness statements of DR. George Muge and Mr. Benon Kigenyi denied in detail all the accusations against them and were later cross examined by the plaintiff on the same hence rendering the objection redundant.

It is settled law that where a written statement of defense contains general denials to the plaintiff's allegations, it offends the provisions of O 6 r 8 *of the Civil Procedure Rules* which requires each party to deal with each allegation of fact as denied.

Order 6 rule 8 CPR provides:

> ***"It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages."***

Rule 10 thereof provides -

> ***Evasive denial***
>
> ***When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer***

the point of substance. Thus, if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that particular amount, but he or she must deny that he or she received that sum or any part of it, or else set out how much he or she received. If the allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

I have duly considered the arguments of both parties on this issue. In considering an objection like this one the court is required to look at the pleadings which are sought to be struck out.

The powers given by order 6 rule 30 to strike out pleadings are discretionary. Order 6 rule 30 of the Civil Procedure Rules provides as follows:

"30. Striking out pleading.

(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just."

There are two important aspects under the above rule which ought to be noted. One is that the rule by using the word "may" gives the court discretionary powers whether to strike out a pleading or not even if it does not disclose a reasonable answer to the claim. Secondly, it must be shown by the pleadings only that the defence is frivolous or vexatious.

While exercising this discretion, the Court looks at the pleadings and the attachments thereto and assumes that the facts pleaded by either party are true. The facts pleaded by either party are only proved or disproved after hearing the parties, in accordance with the law.

In respect of the preliminary objection at hand, the question for this court to addresses whether the defences raised in the written statement of defence of the 3rd and 4th

defendants, have a reasonable chance of succeeding if proved and whether in the circumstances this court should exercise its discretional powers to strike out the defences.

Looking at the amended plaint but without reproducing all details in the plaint, the 3rd defendant was sued on behalf of the Government of Republic of Uganda for alleged illegal actions or omissions in respect of the suit land, allegedly committed by officers of the Ministry of Lands, Housing and Urban Development and Uganda Prisons Service. This is precisely the case against the 3rd defendant.

In Paragraph 4 of the written statement of defence, the 3rd defendant traversed paragraph 4 (a) to (f) of the plaint and contended therein that the agents of the 3rd defendant acted within their mandate and in accordance with all the relevant laws. This is a very specific denial of the allegations labelled on the 3rd defendant by the plaintiff. The allegation by the plaintiff's Counsel that the defence is an evasive denial cannot therefore, stand.

In respect of the 4th defendant, the case against the 4th defendant as discerned from paragraphs 4 (f) & (i) of the amended plaint, is that when the plaintiff was scheduled to commence development of the suit land, the plaintiff received a notice to effect changes issued by the 5th defendant claiming that the suit land belongs to the 4th defendant. From the pleadings, that precisely why the 4th defendant was sued in this suit. In the written statement of defence, the 4th defendant avers that the plaintiff has no cause of action against the 4th defendants and brands the suit incompetent, frivolous and vexatious. From the nature of the allegation in the plaint, the answer by the 4th defendant is a specific denial to the allegation in the plaint. It cannot in anyway be said to be an evasive denial.

Therefore, the defences by the 3rd and 4th defendant raise genuine triable issues warranting determination by the court. I'm at loss to imagine which denials/answers Counsel for the plaintiff expected from the 3rd and 4th defendants, in view of the nature of the allegations as stated in the plaint against the 3rd and 4th defendants. Did counsel for the plaintiff expect the 3rd and 4th defendants to traverse allegations that are attributed to other defendants in the

suit? It should be emphasized that where a case is instituted against two or more defendants jointly or severally, a defendant does not have a duty to traverse allegations that are not attributed to him or her. It is sufficient for the defendant in his/her defence to traverse only those allegations against him or her. Multiple allegations can as well be traversed by one and the same answer and that does not qualify that answer as an evasive denial.

Owing to the above reasons, I do not find merit in the preliminary object and it is hereby overruled.

Even if I had found that the above defences were evasive denials, I would still be inclined not to rule otherwise. This is because there is no prejudice to be suffered by any party to this case. Because in the instant case, triable issues were framed by all parties, evidence was led, the parties were heard and the matter is at the advanced stage of judgment. And from the evidence and testimonies adduced in court, it is abundantly clear that the instant suit raises triable issues key amongst which is the determination of the original ownership of the suit land and whether indeed illegalities and fraud as pleaded by the 1st defendant had indeed been committed by the plaintiff and whether the plaintiff is entitled to the prayers sought. To rule otherwise would be a travesty of justice.

Preliminary objection on whether the suit discloses a cause of action against the 2nd 3rd and 5 defendants

Although the 1st 2nd 3rd and 5th defendants had intimated that they would raise preliminary objections on whether the suit established a cause of action against them it was only the 2nd defendant who raised it in its submissions.

Counsel for the 2nd defendant submitted that Section 64(1) of the Land Act establishes land committees and Section 64(1) provides that the committees shall only assist the boards in an advisory capacity on matters relating to land. Counsel submitted that the plaintiff did not show any right that which the 2nd defendant violated and it can't be held for any acts

allegedly committed by the area land committee which had advised the plaintiff that the suit land was free of encumbrances and advised them to attach deed prints and forwarded the file to the 1st defendant for further consideration.

In reply counsel for the plaintiff submitted that whereas the area land committee's primary duty is in an advisory capacity to the 1st defendant, liability arising from the committee's actions and omissions entirely accrues to the 2nd defendant as the appointing authority.

A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. ***(Cooke vs Gull LR 8E.P 116, Read v Brown 22 QBD P.31).*** It is disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. This position has been reiterated in the Supreme Court decision of ***Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of2001.***

The question of whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. ***See; Kebirungi v Road Trainers Ltd & 2 others [2008] HCB 72, Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000.***

From the amended plaint, the facts constituting the cause of action are contained in paragraph 4 thereof, where the plaintiff asserts a right of ownership in the suit land, claims its rights on the suit land were violated and contends that the defendants are liable. Therefore the suit discloses a cause of action.

Be that as it may, I also agree with counsel for the plaintiff in his submissions referenced above. Section 64 of the Land Act is clear. It states thus;

64. Establishment of land committees.

(1) There shall be for each parish a land committee consisting of a chairperson and three other members appointed by the district council on the recommendation of the sub county council.

(2) There shall be for each gazetted urban area and each division in the case of a city, a land committee consisting of a chairperson and three other members appointed by the council on the recommendation of the urban council, and in the case of a city, on the recommendation of the city division council.

(6) The committee shall assist the board in an advisory capacity on matters relating to land, including ascertaining rights in land, and shall perform any other function conferred on it by or under this Act or any other law

The land committees have no legal existence of their own. The 2nd defendant is only trying to shield itself from liability well knowing that as it is the appointing authority of the area committee and any liability arising from the committee actions and omissions accrues to it as the appointing authority. In the instant case the plaintiff alleges that the area land committee confirmed that the suit land was indeed available and advised the plaintiff to attach deed prints and forwarded the file to the 1st defendant for further consideration. This was done and it does not matter whether erroneously or not but the 1st and 2nd defendant acted on it which marked the beginning of a series of this matter. It is no wonder that documents written by the area committee were on the 2nd defendant's letter head which they never disputed at trial. EXP3 EXP9. I therefore find that the plaint discloses a cause of action against the 2nd defendant.

Resolution of issues:

I shall determine issues 1 and 2 concurrently.

Issue 1: Whether the plaintiff has a valid legal interest in the suit land?

Issue 2: Whether the suit land was acquired fraudulently.

Only the 1st and 2nd defendants pleaded fraud against the plaintiff. The 1st defendant filed a counter claim. The 2nd defendant pleaded fraud in its written statement of defence. Counsel for the plaintiff submitted that the 2nd defendant's allegations on fraud as incompetently before this court as they contravened order 8 rule 7 and 8 CPR as they were raised in their defence and not on a counter claim. I disagree. **Order 8 rule 7** provides;

> ***Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he or she shall, in his or her statement of defence, state specifically that he or she does so by way of counterclaim.***

It is not provided anywhere in law that it is mandatory to file a counter claim when pleading fraud in defence. That is false. The pleading of fraud does not automatically lead to a counter claim. A counter claim is a separate action and fraud can be raised either in the defence itself or pleaded in a cross action i.e. a counter claim.

The 1st defendant in its counterclaim pleaded four particulars of fraud;

1. Forging/creating a non-existent minute purporting that the same was discussed at a meeting of the 1st defendant and passed by the 1st defendant whereas not.
2. Forging a letter purportedly issued by the 1st defendant to the plaintiff communicating the forged minute.
3. Lodging the letter with the forged minute with the ministry of lands claiming that the 1st defendant had granted the conversion of the customary ownership to freehold whereas not.
4. Knowingly and intentionally misrepresenting to government offices and registries that they had been authorized by the 1st defendant to convert the customary ownership over the suit property to freehold whereas not.

It is not disputed that the plaintiff holds a certificate of title having produced a copy of the title, a bundle of photographs, application for conversion from customary to freehold, deed

prints, certified copies of area land sheet, numerous compensation receipts and correspondences from area land committee, land administration and the board.

Further the testimonies of the plaintiff witnesses also confirmed that the plaintiff is the registered owner of the suit land having applied for it and the same was granted.

What is in dispute is whether the suit land was acquired legally or fraudulently by the plaintiff since all the defendants unanimously state that the suit land was titled way back in 1962 and granted to the 4th defendant and a certificate of title to prove the same was produced and exhibited in court.

The plaintiff's claim is founded on fraud. The Supreme Court in the case of ***Fredrick Zaabwe Vs Orient Bank & Others SCCA No, 4 of 2006***, defined fraud to mean the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

In ***Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992***, Supreme Court held that;" *fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters*, it was further held that; "*The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.*"

Therefore, a party alleging fraud must specifically plead the particulars of fraud and specifically lead evidence to prove the allegations of fraud.

To prove the alleged fraud, the 1st and 2nd defendants relied on the testimony of one witness, to wit DW1 Jacquline Atungonza, who is the Ag. Secretary of the 1st defendant. Under

paragraphs 4, 5, 6 and 7 of her witness statement, DW1 stated that the plaintiff has never validly obtained nor converted the suit land from customary tenure to freehold. Further that the plaintiff has never paid fees in relation to the purported conversion of the suit property to freehold tenure and the purported conversion of the suit property to freehold certificate of title was irregular and illegal since it was based on a forged minute granting the said conversion.

Aside from that she did not have any documents to support her statements. When cross examined DW1 testified that when she went to the archives she traced for the minute in the documents as well as the file pertaining to the transaction but did not find anything hence had nothing to avail. The 1st and 2nd defendant's trial bundle did not do much either. It contained two correspondences dated 19th August 2016 and 17th October 2016 written by the 1st defendant's Secretary to the 2nd defendant stating that it had cross checked with the board's records and there was no file matching the availed particulars.

To dispute the allegations, the plaintiff had led the evidence of **PW5 Kusiima Sarah** who was the then secretary of the 1st defendant. When shown exhibit P2 and P4, PW5 owned up to them and admitted that she had indeed signed on them and that the minute **KBLB./7.11/2011** where the board granted the conversion on 23rd March 2011 existed. However, she stated that when the instant matter arose, she was no longer working for the 1st defendant but went to the board to trace the file where she was informed that the file was unavailable. In reexamination she stated that when she went to the land administrator he confirmed to her that he had indeed seen the minute.

In the instant case the allegations of fraud seem to revolve around the minute allegedly issued by the 1st defendant. Does it exist? The plaintiff through its witness **PW5 Kusiima Sarah** who was the then secretary of the board insisted that the minute existed and acknowledged her signature on the correspondence granting the plaintiff the conversion where the said minute is referred to. It is important to set out clearly the role of the secretary of the board. According to Section 61 of the Land Act the role of the secretary of the board is to give technical advice to the board in its deliberations, to write minutes and

correspondences of the board, keeping safe custody of records of the board, scheduling board minutes on advice of the board and any other duties assigned to by the board. It can safely be concluded that PW5 Kusiima Sarah who was then the Secretary of the Board was in attendance when the meeting took place (if any) and allegedly took the minutes which can now not be traced. Therefore, PW5 is a crucial witness to refute the claims raised by the defendants.

However, as the defendants are the ones claiming that the minute was forged, the burden is on them to prove the allegation to the required standard. **Section 107** of the **Evidence Act**, provides as follows:-

> ***"(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***
>
> ***(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."***

Therefore, to succeed in claiming fraud, the defendants not only need to plead but also particularize it by laying out water tight evidence upon which the court would make such finding. The law requires that fraud must not only be specifically pleaded but also strictly proved. And although the standard of proof of fraud is not proof beyond a reasonable doubt, it is higher than proof on a balance of probabilities required in other civil claims.

Fraud is a serious allegation. On one hand we have documents from the office of the 1st defendant duly signed by **PW5 Kusiima Sarah**, which she strongly holds on to, proving that the minute existed and on the other we have the evidence of **DW1 Jacquline Atugonza** the current Secretary of the board with no evidence except her words that the minute was forged. Even in their trial bundle, the 1st and 2nd defendants rely on two correspondences which state that the files cannot be traced. That's all. General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice. It is not allowable to leave fraud to be inferred

from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and distinctly proved. **(See: Davy Vs Garrett (1878) 7 Ch.D. 473 at 489).** I find that DW 1 gave evidence but fell short of proving that the board minute was forged. The defendants did not take extra vigilance in proving this allegation. In as much as they state that the particular file is missing or does not exist, the defendant fell shown in producing any other evidence to corroborate this. For instance the quorum of the board under Section 62 of the Land Act when holding meetings is three. Any of the members could have been called to give evidence just like the plaintiff did with PW5 Kusiima Sarah who was the secretary of the board back then.

The plaintiff in its trial bundle also relied on the correspondence of a one Satya Semu Mangusho who by a letter dated 8th May 2012 wrote;

To: C/LR

From: SLI/LI

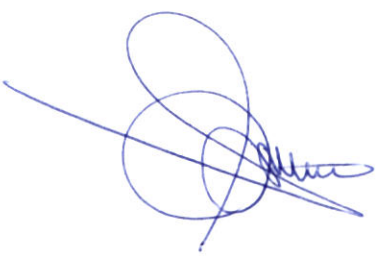
Date: 24/5/2012

RE: REQUEST TO ISSUE A FREEHOLD TITLE PLOT NO. 4 FIRST LUZIRA CLOSE, LUZIRA KAMPALA

Please issue a Freehold title in respect of the above mentioned land as approved by Kampala District Land Board under Minute No. KDLB./7.11/2011 of its meeting held on 23rd March 2011.

User- Commercial purposes

Restriction- The land shall be used in accordance with planning regulations of the area.



All necessary fees have been paid. The deed plans and Memorandum and Articles of Association of M/s Rwenzori Cotton Ginners Company Ltd are hereto attached.

The title is issued in favor of Rwenzori Cotton Ginners Company Ltd of P.O Box 164, Kasese.

<u>The minute number has been checked and confirmed correct.</u> (Underlined for emphasis is mine)

This witness was never called to rebut any of this. It is not enough for the defendants to only state that the file where the purported forged minute was captured cannot be traced. More concrete evidence is needed to prove an allegation as serious as fraud.

Be that as it may, the origin of the processing of the title by the plaintiff is crucial in determining whether the plaintiff was fraudulent or not. Looking at the application form for conversion of customary land to free hold, a critical analysis can provide a bird's eye view of whether there was fraud or not. Evidence was led to prove that the processing of the title by the District Land Board depends on the information obtained from the Area Land Committee.

The Plaintiff's Managing Director did admit that he is the one who filled the application form for conversion of the disputed land from customary to freehold. I need to point out the falsehoods that the Managing director put in the application form (Exb P2):-

1. When filling the question whether the land was occupied, he replied that the plaintiff was the one in occupation. Yet in cross-examination, he admitted that at the time he filled the form, the land was still occupied by the Bibanja tenants. In fact, the Chairman Area Land Committee confirmed this during cross-examination thus:
   Qn. *You just answer my Question, at the time of the hearing* (Which in my view was never conducted) *were the third parties of customary or Bibanja whatever they are called still the owners of the property? Answer: Yes.*

Clearly the agreements which were exhibited were entered into in 2014 long after the plaintiff had acquired the title. Though he claimed that he had paid the deposit to the Bibanja holders, it is inconceivable that a business person of the plaintiffs standing would simply release money without any written evidence of acknowledgement of receipt. He claims that the contracts were oral but land transactions are supposed to be in writing. In any case, once a document/contract is written, no oral evidence can be adduced to alter its contents with few exceptions which are not relevant here.

2. The current land use, he stated it was commercial, yet he admitted during cross-examination that it had Bibanja holders on it.
3. He left the portion of the owners of adjacent land unfilled.
4. He represented to the District land board that the land was held under customary tenancy yet he presented evidence that these were Bibanja holders who cannot pass interest without the consent of the land lord save for inheritance.
5. The plaintiff misrepresented that it was a customary holder of land whereas not.
6. From the evidence adduced, it is not possible that a public hearing was conducted by the Area land committee. While the Managing Director (MD) of the plaintiff claimed to have attended the public hearing, the Chairman LC I (PW1) was categorical that he never attended any public hearing. Yet the MD of the plaintiff Hadan Khan claimed that the Chairman LC one attended the public hearing. PW1 when asked whether there was a public hearing, he stated:

   "Qn: Are you aware whether a public hearing was held before the grant of a freehold was made? Answer: No".

Though he later claimed that it was held, when pressed further he claimed that the meeting was attended by the Bibanja holders, the plaintiff and Local Council. He claimed the meeting was conducted by the LC I chairperson. PW 3 Yassin who claimed to have been a Kibanja holder stated that he obtained his Kibanja in the year 2000. When asked whether he attended the public hearing, he stated:

Qn: Mr Yasin, did you receive a copy of the notice of a hearing of an application to grant a freehold which was filed by the plaintiff? Ans: He reached to us as a person. Qn: So you did not receive a copy? Answer: Yes.

He eventually turned out to be an employee of the plaintiff as an Askar. Indeed, in further cross-examination, he confirmed that he never attended any meeting. The MD of the plaintiff Hamdan Khan himself stated that there were three meetings held; one in the office of the Chairman Area Land Committee; another at the site and the third one at the LC chairman's place. In essence, he did not understand what a public hearing is. When pressed further, he stated it was held at the site, yet the Chairman, Area Land Committee stated that the public hearing was held at the Chairman's home. Whereas the Chairman LC I stated he attended no such meeting.

In essence, there was no public hearing. This was a "desk" hearing which the MD of the applicant acquiesced in its execution.

7. While he claimed to have voluntarily compensated the Bibanja holders, PW2 stated during cross examination thus:

   QN: As the LC chairperson Mr Sulaiman, do you know the various people that sold the Bibanja interest to the plaintiff? Answer: I got to know them when there was a dispute between the Bibanja Holders and the plaintiff because they wanted to be reconciled and also seeking for compensation"

He estimated this was in 2016. That means that at the time he applied for the land, he had not compensated the Bibanja holders if any. In fact, PW2 stated that the plaintiff took possession of the land in 2016.

In essence, there was glaring fraud on the part of the applicant. I am fortified by the findings in the case of **Derry v Peek (1889)14 App. Cas. 337, HL** which established a 3-part test for fraudulent misrepresentation, whereby the defendant is fraudulent if he: (i) knows the statement to be false, or. (ii) does not believe in the statement, or. (iii) is reckless as to its

truth. The plaintiff made false misrepresentations upon which the District Land Board acted upon. This clearly constitutes fraud.

The question now to be answered is whether it can now be said that the plaintiff has a good title or valid interest in the suit land? In order to extensively answer the above question, it is imperative to set out the procedure on how both the plaintiff and the 4th defendant each acquired their respective Certificates of titles.

The 4th defendant led uncontroverted evidence that it is the controlling authority of the suit land and holds a certificate of title FRV 216 Folio 12 registered on the 12th July 1962 as government land. **DW6 Benon Kigenyi** the secretary of the 4th defendant stated that the suit land has at all material times been used by the Uganda Prisons Service. This was corroborated by the evidence of Dr. George Muge the Commissioner for Prisons. This is the position of the 5th defendant who led the evidence of **DW2 Kasirye Francis**, a cartographer, who testified and confirmed that FRV 1443 Folio 23 falls within the land comprised in FRV 216 Folio 6. That the plaintiff obtained a certificate of title 51 years after the 4th defendant was registered as proprietor of the suit land.

The plaintiff on the other hand also holds a certificate of title of the suit land issued to it on the 11th October 2013. **PW1 Koire Ali**, who was a member of the LC1 Executive Committee stated that prior to the plaintiff's acquisition the suit land was initially occupied by Bibanja tenants. That the plaintiff expressed his interest to buy their rights which they accepted and they were all fully compensated and compensation agreements were executed. Upon compensation the occupants demolished their structures and left. Further that a statutory public notice was issued for the grant of freehold and no person objected to it. That the area land committee where he was a member, inspected the suit land and recommended the plaintiff to the 1st defendant for the grant of freehold tenure which was later granted.

In the instant case we have two parties with different certificate of titles issued by the relevant office over the same land. The question left for this court to determine therefore, is which of the titles should prevail? The one issued on 11th October 2013 or the one issued on

12th July 1962? I have already concluded above that the process initiating the acquisition of the title of the plaintiff was fraudulent.

Where questions of title to land arise in litigation, the court is concerned only with the relative strengths of the titles proved by the rival claimants. Consequently, the plaintiff must succeed by the strength of his or her own title and not by the weakness of the defendant's.

In the case of **Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] eKLR,** Munyao J held as follows;

> ***'A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.'***

Further in the case of **Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal number 239 of 2009,** [2013] eKLR *the Court of Appeal of Kenya held as follows;-*

> ***"We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title***

and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register."

In the instant case it is uncontroverted that the 4th defendant is the controlling authority of the suit land and holds a certificate of title FRV 216 Folio 12 registered on the 12th July 1962 as government land. **DW6 Benon Kigenyi** and Dr. George Muge also testified to this fact. This evidence was further corroborated when court visited locus where it was established that the suit land was occupied by Uganda Prisons and prison barracks were seen on site. There was also presence of two lagoons and a railway line adjacent to the suit land concrete proof that the property was government owned. This was never rebutted by the plaintiff. Perhaps, I should also note at this stage that the MD of the plaintiff Hamdan Khan who claimed to have compensated the Bibanja Holders did not know the land when we visited the locus. He was relying on some unknown gentleman to show him the land. When I stopped the gentleman, the MD of the plaintiff was completely blank. The land also clearly shows that these lagoons in the land have been in use for a long time. Indeed, the prison official witness who testified in court stated that they have used them for treating their sewage for a long time. The land also had some concrete like fortress which the prisons authorities indicated were used as observation posts in the past.

On the other hand the plaintiff's managing director **PW7 Amdan Khan** testified that he deals in real estate and that he was the one who initiated the procedure of acquiring the suit land. PW7 testified that once he was informed that the suit land was "available" he proceeded to the site where he found several bibanja holders to whom he expressed his desire to purchase their interests to which they accepted. That he proceeded to the chairman of the area land committee who advised him to put the compensation of the bibanja interests in writing which he did. It was **PW7** own admission that he did not bother to establish whether there were any neighbors surrounding the suit land and that was the procedure he has always taken as a real estate dealer. Furthermore that once the area

land committee visited the suit land, it recommended the plaintiff to the board for his application of conversion of customary tenure to freehold which was subsequently granted.

During trial the plaintiff and its witnesses were constantly questioned about the occupants, if any that were found and compensated by PW7 Amdan Khan. They unanimously stated that they were bibanja holders. However, in its plaint the plaintiff stated that it purchased customary interest. Therefore, the plaintiff could not have acquired any customary interest in the land. In fact, the only Kibanja holder the plaintiff introduced as a witness indicated that he bought his kibanja in 2000 and endeed confirmed that he was a kibanja holder.

In the Republic of Uganda, land is held under four (4) tenure systems namely Freehold, Mailo, Leasehold and Customary. **See: Article 237 (3) of the 1995 Constitution of Uganda and Section 2 of the Land Act**. **Freehold Tenure** refers to land held/owned by an individual registered on the certificate of title as the land owner for life. There are no tenants by occupancy and Kibanja holders on this land. **Mailo Tenure** is land held by a land owner which has its roots from the 1900 Uganda Agreement and 1928 Busullu Envujjo Law. It is mainly in the Buganda region, currently central Uganda. **Leasehold Tenure** is land which a land owner allows another person to take exclusive possession for a specific period of three years or more in exchange for rent. **Customary Tenure** is where the land is owned based on the norms and traditions of a given society or community.

If this court was to agree with the plaintiff's assertions *(which is not the case here)* that the suit land was occupied by bibanja holders as evidenced by the compensation agreements under Exhibit P5, that particular customary tenancy within Section 3 of the Land Act was not proved. Such proof would entail not just long occupation on the land, but also recognition of the landlord and evidenced by payment of ground rent. Even the occupancy must be proved to have been in accordance with customary rules accepted and binding in that area. Consent of the landlord is mandatory before any kibanja interest is sold. An agreement purporting to sell and transfer a kibanja holding is not sufficient proof of acquisition of a lawful kibanja holding in the absence of proof of the essential fact that would constitute creation of the kibanja holding, namely consent of the Landlord. **See: Muluta Joseph Vs.**

Katama Sylvano S.C. Civil Appeal No. 11 of 1999. The procedure for obtaining that consent was explained in **Tifu Lukwago Vs. Samwiri Mudde Kizza and another, S. C. Civil Appeal No. 13 of 1996** as follows;

> ***"Whenever a kibanja is sold, the seller introduces the buyer to the owner of the mailo land on which the kibanja is. If the owner had an agent who looks after that land the buyer is introduced to the agent, who in turn introduces him to the owner. In either case, the buyer upon being so introduced gives to the mailo land owner or to the agent as the case may be, a gift called a 'kanzu'. Thereupon the buyer is recognized by the owner as the new kibanja holder."***

We can substitute freehold for Mailo in the Instant case.

In the instant case the plaintiff has not adduced evidence that proves compliance with the requirements of seeking the consent of the freehold owner first before allegedly compensating the bibanja holders. Moreover, land is not acquired merely by compensation. It is acquired either by purchase, inheritance, gift or operation of law from those with a good title. The plaintiff told court that he simply walked to the suit land, found occupants who had allegedly lived thereon for over 30 years and expressed his interest to purchase their rights which they agreed to. The plaintiff, a well renowned real estate dealer, never found it prudent to exercise further investigation and inquiries about the ownership of the suit land before parting away with huge sums of money in the name of compensation. If indeed the occupants were bibanja holders as the plaintiff asserts, consent of the landlord was mandatory to obtain before the alleged compensation. Proof of any payment of ground rent was never tendered. Since this was not done I find that the plaintiff acquired no interest from the alleged occupants. As I expressed above the plaintiff interchangeably asserted that the suit land was occupied by bibanja owners or customary tenure.

Customary tenure is defined under **Section 1 (I) of the Land Act Cap 227** as follows;

"(l) "customary tenure" means a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons the incidents of which are described in section 3..."

Section 3 to which above definition makes reference provides for incidents of forms of customary tenure as follows;

"3. Incidents of forms of tenure.

(1) Customary tenure is a form of tenure—

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

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

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

(d) subject to section 27, characterized by local customary regulation;

(e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;

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

(g) in which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and

(h) which is owned in perpetuity."

Going by the above stated incidents of customary tenure it is clear enough that customary tenure applies to a specific area and specific group of people and can be established by any activity on the land. PW7 stated that when he purchased the suit land there were occupants thereon but made no mention of any activity on the suit land. Merely staying on the land for 30 years and above, as the plaintiff alleged, does not automatically confer customary

interest on any party. In any case, the only Kibanja tenant he brought as a witness had stayed on the land for 10 years upon purchasing it. It was not actually proved that the tenants had been on the land for 30 years. That said, he did not tell court under which custom the land was being occupied.

From the definition of customary tenure, a Kibanja is not defined as one of the incidents of customary tenure. It should be emphasized that merely being a Kibanja holder does not *perse* establish customary tenure in the land. Cogent evidence must be adduced for one to fall within the ambit of the legal definition of a customary tenant.

In the instant case, the plaintiff has not shown that the people he compensated were part of a class of persons who utilized the suit land under a certain particular custom or culture. In any case, all the witnesses confirmed that the tenants were Bibanja holders.

The plaintiff has not adduced any evidence that he exercised any due diligence to establish the true ownership of the suit land before his alleged compensation for the occupants. The plaintiff even stated that he did not deem it necessary to find out if there were any neighbors. Such conduct especially from a person who is well conversant with land purchases and transfers is unbelievable unless PW7 deliberately omitted to conduct extensive search for fear of finding out that the suit land was already owned and he could not purchase it. And whereas it is now known, the suit land was, and is registered land under the operation of the Registration of Titles Act. It is not even public land. It has a freehold title issued in 1962 registered in the name of the Uganda Land Commission (the 4th defendant) for land comprised in FRV 216 Folio 12 and known as Prison site, port bell.

Regarding the other purported occupants that the plaintiff compensated there was no evidence that they were either bibanja or customary occupants or that they had obtained consent of the registered owner before they allegedly relinquished their interests. Superior Courts have held that any transfer of kibanja or customary holding without giving notice to the prescribed authority as registered owner renders such a transfer void. **See: Buwule M vs. Asumani Mugenyi CACA No. 24 of 2010 and Kisseka Saku vs. Seventh Day Adventist church SCCA No.8 of 1993.**

In this case since the alleged occupants had no lawful interest in the suit land which they could pass to the plaintiff, the purported sale/ relinquishing of interests to the plaintiff was rooted in illegalities hence void *ab initio*.

The importance of prior consent of the registered owner of the land was underscored by the Supreme Court and the Court of Appeal in their respective decisions in **Kisseka Saku vs. Seventh Day Adventist Church SCCA No.8 of 1993; and in Buwule M vs. Asumani Mugenyi CACA No. 24 of 2010.** Both Superior Courts held to the effect that any transfer of kibanja or customary holding without giving notice to the prescribed authority as registered owner renders such a transfer void.

On strengths of the above decisions, the purported vendors could not lawfully sell the suit land to the plaintiff without the consent of the registered owner or prescribed authority. Therefore, the purported sale or relinquishing of interest is void.

Without prejudice to the above it is imperative for this court to point out the atrocities of key actors in this matter. The plaintiff herein was issued a certificate of title on the 11th October 2013. On the 24th March 2015 the Commissioner of Land Registration, the same person who had issued the title to the plaintiff, issued a notice to effect changes on the register on grounds that it had been issued in error. The plaintiff filed the instant suit on 28th September 2016. Seven days prior the plaintiff made an application for a search of the suit land at the Ministry of Lands. On the 19th September 2016 the Commissioner Land Registration, a one Ssekitto Moses, who is now counsel representing the 5th defendant wrote back to the plaintiff informing him that the suit land is registered in the names of the plaintiff and that there were no encumbrances.

During hearing this court questioned the secretary of the land board on the procedure it takes to ensure that land is available for allocation when they receive an application. It was put to this court that there's land that the board off head ordinarily knows is government land/public land for example the Constitutional Square and cannot be allocated to a private

person. However, in most applications of land it is only when there's a dispute that the board moves to visit the site. Otherwise the board just acts on what is recorded and recommended by the technical personnel and the area land committee. When further questioned as to how the board was unable to have records of an already existing title by the 4th defendant it was put to this court that it was an old title and had not been put in the electronic system as yet and hence it was difficult to ascertain at the time.

This court is disappointed with the manner in which many Land Boards across the country are conducting themselves while handling applications for land. The country is experiencing an inefficient title registration system characterized by poor administration and maintenance. The inadequate security of physical files and records has paved way for fraudulent and corrupt activity negatively affecting the integrity of title registry. It is absurd that the institutions such as District Land Boards and Uganda Land Commission, the organs legally mandated to protect people's land rights are the very ones in the face of such illegalities. It is because of such reckless incidents that courts of law are flogged with numerous land disputes which have eroded security of tenure for genuine land owners. It is mind blogging how a title on government land can casually be issued to another person. The sequence of how all these officials actively participated in these illegalities is clear on the record. The same person who issued the plaintiff title wrote back to cancel it. The board which had approved the plaintiff's application is suddenly denying the existence of the minute number that passed the conversion and is asserting that the files are not in their possession. Minutes of a meeting are just notes reflecting what transpired during a meeting and the issues and recommendations discussed. Minutes of what transpired on a particular day cannot miraculously disappear. The board when considering applications do not sit to discuss one matter. The practice is that on an appointed day the board sits and discusses several applications. This being the case, there must be records of other applications that were discussed on the day the plaintiff's application was allegedly discussed. The 1st defendant was surprisingly unable to produce a single record of what transpired when the board sat or if at all it sat. It stated that the records cannot be traced and that particular

minute was forged. Contritely **PW5 Kusiima Sarah** the secretary of the board who was part of the meeting owned up to the existence of the minute stating that she was present when it was passed! This is the same person who admitted in court that she was laid out of her former positions and files were taken away by the police on allegations of fraud! The level of illegalities discerned in this matter is beyond comprehension. It is quite disheartening how this is even possible. The land boards have been in the center of a sequence of multiple allegations of fraud in issuing of titles. The Chairman area Land Committee admitted that he appeared before the Bamugemereire commission because he had authorized titles in the swamp. It is no wonder that the secretaries of the board who both testified stated that their offices were raided by the police on allegations of fraud. This is done in tandem with land grabbers who identify such properties and approach the said officials to process the titles and share the root. Public schools, public hospitals and other public institutions have been disposed of their land without their consent by such arrangements between crooks and public officials The circumstances now that the parties find themselves in is their creation and a matter that must squarely fall at the door step of all of them. They all participated and are fully aware about what led to this matter. I thought I should take judicial notice of this common scenario.

It is clear from the evidence that both the plaintiff and the 4th defendant were issued titles over the same piece of land. This being a case of double allocation of land, the question then becomes between the plaintiff and the 4th defendant, whose claim over the suit land is superior to the other?

It is trite law that when there are two competing titles, the first in time will prevail. This position was emphasized in the case of **Wreck Motors Enterprises Vs. The Commissioner of Lands and Others Civil Appeal Civil Appeal No. 71 of 1997**, where the court held that:

'Where there are two competing titles the one registered earlier is the one that takes priority

'

In the instant case since the 4th defendant's title was the first in time and as equity teaches in its maxim that; ***"when two equities are equal, the first in time prevails"***, the 4th defendant's title was the first in time and should prevail there having been no evidence called by the plaintiff to challenge the same.

Balancing the two competing titles, this court finds that the 4th defendant holds good title to the suit property. The title of the plaintiff in my view, and in the absence of evidence to rebut the same, was only obtained either by the illegalities, recklessness or the mistake of the land officials and the plaintiff.

As already stated even when court visited locus it was crystal clear that the suit land was occupied by Uganda Prisons and the plaintiff was alien to the features thereon. The plaintiff could not identify any feature on the suit land and depended on other persons to show court around yet he had testified in court that prior to the acquisition he had physically inspected the land. The plaintiff could not even explain the presence of a lagoon and prison barracks visibly on the suit land.

In the circumstances therefore, I find that the plaintiff does not have any legal interest in the suit land by virtue of it having been first issued to the 4th defendant and also since the plaintiff purportedly purchased its interests from persons who had no rights to sell in the first place.

Issue 3: Whether the threatened cancellation of the plaintiff's certificate of title is lawful?

Issue 4: Whether the actions of Uganda Prisons Officers in respect of the suit land are lawful?

This court having already established above that the plaintiff does not have any valid interest in the suit land. It follows therefore, that the title it holds was issued in error. The 5th defendant, is clothed with special powers under **Section 91(2) of the Land Act** to call for the duplicate certificate of title for cancellation, correction or delivery to the proper party where;

(a) It is issued in error;

(b) Contains a misdescription of land or boundaries;

(c) Contains an entry or endorsement made in error;

(d) Contains an illegal endorsement;

(e) Is illegally or wrongly obtained

(f) Is illegally or wrongfully retained.

In the instant case upon realization that the 4th defendant already had title covering the suit land which was registered and issued in 1962, it issued the plaintiff a Notice of intention to effect changes in the register. The evidence in this case puts no one in doubt that the plaintiff's title was obtained illegally, procedurally or through a corrupt scheme. Bearing the illegalities and irregularities found in the plaintiff's acquisition of the suit land and the 4th defendant's title having been issued first in time, the logical conclusion is to cause the cancellation of the plaintiff's title and I find so. In the circumstances therefore issue 3 is answered in the affirmative and the actions of the Uganda Prisons officers in entering the suit land is lawful as the suit land covers the area of the land it legally acquired and was granted by the 5th defendant. Issues 3 and 4 are answered in the affirmative.

Issue 5: What remedies are available to the parties?

The plaintiff prayed for a declaration that it is the rightful owner of the suit land and entitled to quiet possession and use thereof without inference from the defendants; a permanent injunction against the defendants; special and general damages and interest and costs. However, in light of my findings above the plaintiff is not the rightful owner of the suit land and therefore, not entitled to any of the prayers sought.

In the alternative, the plaintiff prayed for compensation for loss of interest in the suit land to the tune of UGX. 18,724,339,834/=. Similarly, this Court has already held that the manner in

which the plaintiff's title was acquired is tainted with illegalities. The plaintiff has not come to court with clean hands and is therefore, not entitled to compensation sought.

I retaliate the words of Hon. Justice Onyancha in **Alberta Mae Gacci – vs – Attorney General & 4 Others (2006) eKLR,** thus:

> ***"Cursed should be the day when any crook in the streets of Nairobi or any town in this jurisdiction, using forgery, deceit or any kind of fraud, would acquire a legal and valid title deceitfully snatched from a legal registered innocent proprietor. Indeed, cursed would be the way when such a crook would have the legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration. For my part, I would want to think that such a time when this court would be called upon to defend such crooks, has not come and shall never come...."***

In the end result, judgment is entered for the defendants against the plaintiff in the following terms;

a. The head suit is dismissed for lack of merit and with costs to the 2nd, 3rd, 4th and 5th defendants.

b. The counterclaim succeeds in part in so far as there is evidence of fraud and illegalities committed by the plaintiff. However, there is also a clear sequence of evidence that officials of the counterclaimant orchestrated the fraud committed by the plaintiff.

c. A declaration doth issue that the 4th defendant is the owner and legally registered proprietor of the suit land comprised in FRV 1443 Folio 23, Plot 4 Luzira Close, Kampala. And the suit land is owned for the benefit of Uganda Prisons. Uganda Prisons cannot be disposed of their land without their consent.

d. A declaration doth issue that the plaintiff's purported purchase of the suit land and acquisition of a freehold certificate of title thereof, is illegal, null and void.

e. An order doth issue directing the 5th defendant to cancel the freehold Certificate of title granted to the plaintiff in respect of the suit land.

f. Consequent to paragraph (b) above, the counterclaimant is not entitled to costs both in the counterclaim and the main suits nor is the counterclaimant entitled to damages.

I so order.

Dated at Kampala this ..... 24th ..... day of ..... June 2022

Flavian Zeija (PhD)

PRINCIPAL JUDGE