THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 244 OF 2008

KYAMPAGI FARM ESTATES LIMITED

MWESIGYE SAM :: PLAINTIFFS

VERSUS

BYAMUKAMA FRED :::::::::::::::::: DEFENDANT/COUNTER CLAIMANT

VERSUS

1. KYAMPAGI FARM ESTATES LTD
2. MWESIGYE SAM
3. COMMISSIONER LAND REGISTRATION
4. MUGARURA PETER :::::::::::::::::::::::::::::: COUNTER DEFENDANTS

BEFORE: HON. JUSTICE DR. FLAVIAN ZEIJA

JU D G M E N T:

The 1st Plaintiff is a limited liability company incorporated in Uganda with the objective of carrying out farming and the 2nd Plaintiff is a director and shareholder of the 1st Plaintiff Company. The Plaintiffs' case is that the Plaintiffs entered into a transaction with the Defendant / Counter Claimant in the year 1993 for the sale of 30% shares in the 1st Plaintiff Company for a consideration of UGX. 10,800,000 (Ten Million Eight Hundred Thousand Uganda Shillings) which was duly paid. That a similar transaction happened in August 2000 between the Plaintiffs and Defendant for the sale of 49% shares in the 1st Plaintiff Company for a consideration of UGX. 15,700,000 (Fifteen Million Seven Hundred Thousand Shillings). That the agreement of August 2000 followed a verbal agreement between the parties for the Defendant to buy an extra 19% on top of the 30% earlier purchased in 1993 to make a total of 49% shares. It is the Plaintiffs' case that the agreement of August 2000 was reached in pursuance of the terms of the 1993 agreement albeit with a change in the Defendant's shares from 30% to 49%. However, instead of paying for the extra 19% shares to

make 49% as agreed, the Defendant only paid for an extra 10% to make a total of 40% shares and has never paid for the remaining 9% of the shares purchased. It is also the Plaintiffs' case that Certificates of Title comprised in **LRV 2396 Folio 25 Block 773 Plot 10** and **LRV 2414 Folio 6 Singo Block 771 Plot 11** were handed over to the Defendant / Counter Claimant in the year 2005 for purposes of valuation to enable the Plaintiffs and Defendant collectively secure a loan from Centenary Rural Development Bank for purposes of executing a rice growing project, only for the 2nd Plaintiff to later discover that the Defendant / Counter Claimant had forged his signatures and fraudulently transferred the title of Plot 10 from the 1st Plaintiff's names into the Defendant's names who has also retained the title of Plot 11 to-date. A case of forgery was instituted against the Defendant / Counter Claimant but was later withdrawn by the Plaintiffs who chose to pursue the current civil dispute instead.

The Defendant/ Counter Claimant's case on the other hand is that in execution of both the 1993 and 2000 agreements, he was purchasing physical land and not shares in the 1st Plaintiff Company. That when he first purchased 30% shares in land on 10th July 1993, he immediately constructed 2 valley dams, a homestead and a silo as storage for cereal crops. That in the year 2000, the Plaintiffs offered to sell 49% shares in land (486.4) acres of the 1st Plaintiff's land and another 250 acres for a consideration of UGX. 15,700,000 (Fifteen Million Seven Hundred Thousand Shillings) which was paid in full. It is after execution of the Memorandum of sale of the said land that certificates of title for both plot 10 and plot 11 were handed over to him, and a transfer instrument in respect of plot 10 executed in his favour on 1st December 2005. It is the Defendant's /Counter Claimant's case that the parties had an agreement to execute a transfer in respect to Plot 11 after the 2nd Plaintiff mutating off his residue of 93.4 Hectares but this was never done but the 2nd Plaintiff instead obtained a special certificate of title for Plot 11 on the pretext that it was lost yet he well knew that the Defendant had custody of it. It is also the Defendant's / Counter Claimant's case that the 2nd Plaintiff connived with the Office of the Commissioner Land Registration to fraudulently deregister him from Plot 10 to which he was entitled following the transfer duly executed in his favour by the 1st Plaintiff.

The 4th Counter Defendant's claim is that he is entitled to Plot 11 having purchased the same from the 2nd Plaintiff in the year 2011 as a bonafide purchaser for value without notice of the Defendant / Counter Claimant's interest therein.

The issues for determination as agreed upon by the parties during scheduling are;

1. Whether there was a sale of land or sale of shares between the Plaintiffs and the Defendant and if so, how much land or shares was bought?
2. Whether any of the parties is liable for fraud?
3. Whether the 2nd Plaintiff lawfully caused the cancellation of the Defendant's registration on plot 10 and if the Defendant is entitled to restoration thereon?

4. Whether there was trespass by the Defendant on the suit land?
5. Whether the 4th Counter Defendant Peter Mugarura lawfully acquired land comprised in LRV 2414 Folio 6 Singo Block 771 Plot 11? (This issue though not raised at scheduling is by agreement of both parties pertinent to determine the Counter Claim)
6. What remedies are available to the parties?

Representation.

The 1st and 2nd Plaintiffs were represented by Adsum Advocates, the Defendant / Counter Claimant was represented by M/S Magna Advocates while the 4th Counter Defendant was represented by M/S Jason & Co. Advocates.

The guiding principles

Before I delve into the assessment of evidence in this case, I consider it necessary to state the law on some aspects I consider pertinent in this case.

First, the burden of proof and standard of proof.

In law, a fact is said to be proved when Court is satisfied as to its truth. The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When such a person adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut the presumption. The standard of proof is on a balance of probabilities with a few exceptions. Relating the above principle to this case, the Plaintiffs have alleged that they sold shares in the 1st Plaintiff Company and not land. They have also alleged that the total number of shares sold to the Defendant by reason of both the 1993 agreement and the 2000 agreement were 49% but only a total of 40% were paid for and for that reason therefore, the Defendant / Counter Claimant is only entitled to 40% shares in the 1st Plaintiff Company and not in land perse. The Plaintiffs have further alleged that the Defendant fraudulently executed a transfer instrument in respect of Plot 10 and consequently got himself registered thereon through fraud. Finally, the Plaintiffs have alleged that as a result of the Defendant's unlawful occupation of the suit land they were deprived of significant monetary value. The burden rests on them to prove these allegations. A similar burden is placed on the Counter Claimant to prove that the 4th Counter Defendant obtained title to plot 11 by fraud. The Defendant /Counter Claimant is also faced with a burden to prove that he purchased land from the Plaintiffs and not shares in the 1st Plaintiff Company and that he was deregistered by the Commissioner land registration from Plot 10 fraudulently.

Second, the parole evidence rule.

This rule is to the effect that evidence cannot be admitted (or even if admitted, it cannot be used) to add to, vary or contradict a written instrument. In relation to contracts, it means that where a contract has been reduced to writing, neither party can rely on evidence of terms alleged to have been agreed, which is extrinsic in nature and not contained in the document itself. Where, however, there is a dispute as to what transpired between the parties, as in the instant case, evidence can be adduced to show that a written contract has been varied or modified.

Resolution of Issues

The first issue for this court's determination is whether there was a sale of land or shares between the Plaintiffs and the Defendant and if so, how much land or shares was bought?

The evidence of the 2nd Plaintiff (PW1) both in examination in chief and in cross examination was that he sold shares in the 1st Plaintiff Company to the Defendant and not land as the Defendant would want court to believe. During cross examination, the 2nd Plaintiff (PW1) testified that at the time of incorporation, he held 180 shares in the 1st Plaintiff Company while his two minor biological children each held 10 shares. That it was later in 2008 that he sold shares to the children and he remained with only 100 shares. If the 2nd Plaintiff's testimony in this regard is anything to go by, was the Defendant's purchased shares transferred to him whether in 1993 or in 2000 in pursuance of any one of or both agreements? Throughout the trial, the Plaintiffs adduced no evidence to indicate that there was any valuation of shares of the 1st Plaintiff Company, there was no company resolution for the transfer of shares from the 1st Plaintiff Company to the Defendant, there was no return of allotment of shares, no share transfer certificate and the Defendant has never been entered in the register of company members as required by law. Nevertheless, that is more of actualisation of transaction than anything else. Can we then say that the defendant purchased shares where there was no resolution of the company to sell such shares? Ordinarily, there should be a resolution of the company to enable a transaction of shares to take place. In this case however, the Director of the company who is the second plaintiff is not denying that there was a sale of shares. In the case of Re Discoverers Finance Corporation Ltd, Lindlar's Case,7 Buckely J, held that, by the Companies Acts;-"...it is provided that the shares in a company under these Acts shall be capable of being transferred in manner provided by the regulations of the company (Read Articles). The regulations of the company may impose fetters upon the right of transfer. In the absence of restrictions in the articles, the shareholder has by virtue of the statute the right to transfer his shares without the consent of anybody to any transferee, though he be a man of straw, provided it is a bona fide transaction in the sense that it is an out-and-out disposal of the property without retaining any interest

in the shares-that the transferor bona fide divests himself of all benefit. In the absence of restrictions, it is competent to a transferor, notwithstanding that the company is in extremis, to compel registration of a transfer to a transferee notwithstanding that the latter is a person not competent to meet the unpaid liability upon the shares.

Reading the Articles of Association, there was no bar to the transfer of shares by any member, but it provides for preemption rights. In essence, before a member transfers his shares, they must first be offered to the existing members.
Nevertheless, the Memorandum of Sale dated 24th of August 2000 read together with the agreement dated 10th June 1993 clearly show that the defendant was buying shares in the company. The two agreements cannot be read in isolation of each other. They are supplementary to each other. What is the effect of these agreements then? Do they entitle the defendant to Land? The Answer is in the negative. If the agreement of 2000 intended to sell land, then the description of the land would have been indicated in the agreement since at the time, the land in issue had a title. As the agreement stands, you cannot tell with certainty whether the defendant was purchasing part of plot 10, plot 11 or both. There would be no need to mention the word shares since the sale would be for part of the land. If I were to hold that the agreement of 2000 was procuring land, then the land is unknown because it is not described by its title description. The contra proferentem rule which comes from the Latin maxim "*verba chartarum fortius accipiuntur contra proferentem*", meaning that ambiguous words should be construed in the sense in which a prudent and reasonable person on the other side would understand them. So, when a term of a contract is uncertain or ambiguous, the term is to be construed against the party attempting to rely on it (***See the case sof Maye v Colonial Mutual Life Assurance Society (1924) 35 CLR 14)***

Having found that the parties were selling shares, it was held in the case of ***Salomon v Salomon & Co Ltd*** **[1896] UKHL** that a company upon incorporation is a body corporate which is recognized by law to have a separate legal entity from its members and officers. The company and members are two separate bodies. This is known as the veil of incorporation. As a legal entity by itself, company can: Enjoy perpetual existence and has its own legal personality; is separate from its members and officers and the change of its members and officers does not affect its legal personality; Sue and be sued in its own name; own and deal with property itself and is liable for its debts.

Therefore, in essence, what the defendant needs to claim is a return of allotment to have him included on the register of shares. However, that is also not possible given that a decision to sale shares is by the shareholders. No such valid resolution by shareholders was made. In any case, since the articles of association provide for pre-emption rights, such a sale by one shareholder without the consent of other shareholders is ultra vires. The defendant attempted to present a resolution dated 15th

August 2000. However, a close look at the resolution shows a significant difference in the signature of Sam Mwesigye and that on the Agreement for the sale of shares. Even the signature of Rose Muheirwe the Secretary on the resolution is significantly different from other documents. The resolution is therefore, suspect. Though I am not a handwriting expert, the differences are visible to a naked eye. In any case, it is not clear whether the resolution was from a meeting of shareholders or from a meeting of Directors. The resolution is ambiguous and suffers from the same contra proferentem rule. It is not clear whether this was an extraordinary General meeting or annual general meeting. The agreement of 2000 itself does not state the land being sold! How then does one claim that he was buying land and not shares! The land belonged to the company and not Sam Mwesigye as an individual. What is even more interesting is that at the time the agreement of 2000 was signed, there were two directors of the company and the company Secretary. Rose Muheirwe was the Company Secretary while Sam Mwesigye was the managing director. The resolution appointing them was made on the 16th of January 1997. Even the shareholding had significantly changed. Mwesigye Sam had 100 ordinary shares. Muheirwe Rose had 45 ordinary shares while Mugume Ronald had 50 ordinary shares. Article 5 of the Articles of association clearly states that any member who wants to transfer shares must give notice in writing to his fellow shareholders specifying the number of shares he intends to transfer. The fellow shareholders shall take the first priority to buy shares before they are offered to an outsider like the defendant. Was this done? The answer is no. therefore; such a transaction would be ultra vires.

The manner in which this agreement was drafted leaves a lot more of unanswered questions than it renders answers to the current dispute. Was this agreement a separate agreement from the earlier agreement of 1993 or was it a modification of the earlier terms to bring clarity to the earlier contractual arrangement between the parties? What is the description of the land the parties had in mind at the execution of this agreement of August, 2000 (was it plot 10, plot 11 or both?)

DW1 testified in his witness statement that by both agreements read together, he purchased a total of 763.4 acres from the Plaintiffs but he occupied and utilised the whole 1000 acres since 1993 to 2018 without any interruption. However, DW1 clarified in court that the 763.4 acres was a typing error and that his claim is instead a total of 755.7 acres. This attempted correction by DW1 in court simply worsened an already ambiguous situation as one wonders how the figure of 755.7 acres was arrived at. Going by what is contained in the agreement dated 24th August 2000, the subject land forming this particular transaction comprised of 49% (486.4 acres) in the names of Kyampagi Farm Estates (vendor) and an additional 250 acres in the names of Ronald Mugume. It is strange that the two parties would even include land in the agreement that is in the names of another person without a Court order. Separating the acreages contained in in the agreement of 1993 and the one of 2000 and adding all of them together would otherwise result in an unintelligible figure which is above and beyond the disputed land.

During cross examination, the 2nd Plaintiff (PW1) testified that the sum of UGX. 15.7 million shillings contained in the agreement of August 2000 was for a purchase of 49% shares in total with the view that the Defendant was only supposed to pay for the extra 19% shares having paid for the 30% shares in 1993 at the execution of the 1993 agreement. However, the Defendant only paid for 10% shares and left the 9% unpaid up to date. On the other hand, the Defendant (DW1) during cross examination testified that he purchased 49% (486.4 acres) from the Defendant and that this portion was comprised in Plot 10 and that he paid for all the 49% shares in full. My view is that the Defendant is being untruthful in this regard. Clause V of the agreement dated 24th August 2000 clearly stated that at the time of executing the agreement, 9% shares were not yet paid for. The Defendant contradicted himself when he stated that the certificates of title for both Plot 10 and Plot 11 were handed over to him on the same day of executing the agreement and that he had paid for the 49% in full. There is therefore, a disparity between clause 5 of the agreement dated 24th August 2000 and the Defendant's testimony. The parole evidence rule when applied to this contradiction is in favour of the 2nd Plaintiff's testimony that the Defendant has never paid for 9% of the 49% in the company. A close scrutiny of the Defendant's evidence in chief indicates that the agreement of August 2000 was a modification of the terms of the 1993 agreement as opposed to a stand-alone agreement. In the total sum, the only reasonable conclusion is that the Defendant paid a total consideration for 40% and not 49% of shares. In the Defendant's own testimony during cross examination, the purchased land is constituted in Plot 10. By mathematical calculation, 40% of the suit land as described in the 1993 agreement is equivalent to 400 acres out of a total of 1000 acres. But as I have stated, the defendant purchased shares and therefore, cannot claim rights in the land.

But what about the 250 additional acres out of 500 acres lease offer by Kiboga district land board asked for in the names of Mugume Ronald (vendor's son) dated 8th May 2000? This portion of land is also contained in agreement dated 24th August 2000 as a subject of sale. The Defendant (DW1) conceded that the 250 acres contained in the agreement of August 2000 was neither property of 1st or 2nd Plaintiff but rather the property of a one Ronald Mugume who is a son to the 2nd Plaintiff. The said Ronald Mugume has never been privy to this contract. When asked whether the subject 250 acres were part of Plot 10 or Plot 11, the Defendant stated that they were part of Plot 11. However, looking at the certificate of title for Plot 11, it has never been the property of Ronald Mugume who the Defendant alleged to have purchased from. In essence, the Defendant's claim on 250 acres forming part of Plot 11 is misplaced to say the least. In the result, even if this court was to find that defendant bought land (which is not the case) he would be only entitled to 400 acres on land comprised in LRV 2396 Folio 25 Plot 10, nothing more nothing less!

2. **The 2nd issue is whether any of the parties is liable for fraud.**

PW1 adduced evidence in chief that the Defendant approached him in the year 2000 and claimed that the 1993 agreement between the parties was misplaced and requested that a new sale agreement be executed between them. That a draft sale agreement was made and the Plaintiff amended it in his own handwriting to make it look like the agreement of 1993 with some modification to cater for an extra 19% shares in land although only 10% shares were paid for. Later in 2004, a government project of growing upland rice through Butemba Farmers Association necessitated the need to hire out 200 acres on plot 10 and 200 acres on plot 11 to the Association on terms that the Association would be paying an occupational fee of UGX. 40,000 per year. That in furtherance of the project, the 2nd Plaintiff handed over the certificates of title for Plot 10 and 11 to the Defendant to assist in evaluation for purposes of securing a loan from Centenary Rural Development Bank since the Defendant /Counter Claimant had held himself out as potentially connected to the bank. That instead of using the certificates of title for the said purpose, the Defendant forged the 2nd Plaintiff's signature and fraudulently transferred Plot 10 into his own names. The 2nd Plaintiff made a search in the land office and discovered that Plot 10 had been registered in the Defendant's names and mortgaged by the Defendant to secure a loan for himself which prompted the 2nd Plaintiff to file a case of forgery which was later withdrawn in preference to pursuing the current civil dispute. On the other hand, the Defendant DW1 testified that the certificates of title for both Plot 10 and Plot 11 were handed over to him for custody pending the transfer of Plot 10 and part of Plot 11 which he had duly purchased into his names.

PW3 who was at the time the Acting Director Forensic Services with a speciality in forensic examination of documents testified that in his opinion the person who provided specimen signatures S1-S7 is not the same one who signed on the land transfer form for Plot 10. When it came to examining the specimen signatures on the agreement between the parties dated 24th August 2000, PW3 opined that the quality of the photocopy of the agreement provided for examination was not clear enough therefore, he could not come to a conclusive opinion without the original agreement. In my view, though the opinion of PW3 was inconclusive on the comparison between the Memorandum of sale of shares of 2000 and the Transfer form for plot 10, at least he was conclusive that the signature on the transfer form was different from other questioned documents signed by the 2nd plaintiff. It is not in dispute that the agreement dated 24th August 2000 was executed between the parties. That said, the only allegation of forgery for this court's determination is in respect to the Land Transfer Instrument for plot 10. Whereas PW3 found that there was a significant disparity between the specimen signatures S1-S6 allegedly belonging to the 2nd Plaintiff and the specimen signature on the transfer instrument Q1, he could not confirm during cross examination whether the specimen signatures S1-S6 were authored by the 2nd Plaintiff since he did not sign before him. Nevertheless, this is not a criminal case that must be proved beyond reasonable doubt. The mere fact that

differences in documents were identified, though they were photocopies, they raise the stake in the balance of probability although the standard is higher for fraud.

In the circumstances I find the allegations of fraud against the defendant proved. This is based on the fact that given circumstances under which Kiboga Agricultural Cooperative society came to occupy the land and to construct the stores on plot 10, it is not possible that the plaintiff had signed a transfer form and at the same time a corporative society occupied the same land to the extent of constructing stores on the land. It should also be noted that the second director Muheirwe Roseline both in the criminal proceedings and in her statement to police denied ever entering into such a transaction hence raising doubt about the authenticity of the resolution. It should be noted that in 2000, she was already of age. In her statement to police, she stated:

"If any resolution surfaced, it it's a false one. Our company has never sold shares to any person. I have never signed any transfer. The claim by Byamukama Fred that he bought shares is a fraud"

She repeated this assertion in her testimony in criminal proceedings against the defendant. If she was not aware of the resolution, in which meeting was it passed?

In this case, the reason given for deregistration of the Defendant can be viewed as an error which the Commissioner Land Registration is empowered to correct under section 91 of the Land Act as amended. The third issue is equally resolved in favour of the plaintiffs and deregistration of the Defendant from Plot 10 certificate of title was lawful. As such, the Defendant is not entitled to restoration thereon.

The 4th issue for court's determination is whether there was trespass by the Defendant on the suit land.

The position of the law as correctly cited by both counsels for the Plaintiffs and the Defendant is as was enunciated by the Hon. Justice Mulenga in the case of **Justine E.M. N Lutaaya vs. Stirling Civil Engineering Company Limited SCCA N0. 11 of 2002** wherein he held that;

> ***"Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed, not against the land, but against the person who is in actual or constructive possession of the land.....For purposes of this rule however, possession does not mean physical possession. The slightest amount of possession suffices"***

It also follows that a person who is in possession of a certificate of title to land has, by virtue of that title, legal possession in land and can sue in trespass.

The Plaintiffs pleaded that in the year 1998, the 1st Plaintiff allowed the Defendant on

its land to temporarily graze and fatten his cattle from there while the defendant prepared to transfer the same cattle to the neighbouring land the defendant was intending to purchase. During cross examination, PW1 testified that in the year 2007, the Defendant chased him away from Plot 10 and Plot 11 with guns and he fled for fear of losing his life and that is how the Defendant came to occupy both Plot 10 and Plot 11 until later in January 2019 when he (PW1) returned with 200 men and forced his way back onto the suit land and occupied Plot 10 to date. PW2 testified that Butemba Farmers Association which later became Kiboga Agricultural Association was formed in the year 1996 with the 2nd Plaintiff as its Chairman and PW2 as the Secretary General with the objective of equipping farmers with modern farming skills and it is in 1998 when the 2nd Plaintiff informed the Association that the Defendant was temporarily fattening cows on Plot 10 as he awaits acquisition of some other land belonging to Dr. Steven Chebrot to which he would move his cattle. PW2 further testified that in 2006, the activities of the association stalled due to lack of funds and in 2007, the Defendant brought armed guards who drove away the association and took possession of the association's offices and store building.

On the contrary, DW1 testified that in 1993, after the 1993 agreement, he immediately took possession of both Plot 10 and Plot 11 exclusively without any protests from the Plaintiffs. It was also his evidence however, that by the 1993 agreement alone, he purchased 300 acres out of 1000 acres and that the said 300 acres were on Plot 10. One then wonders how the Defendant could have taken possession of both Plot 10 and Plot 11 in 1993 as owner thereof yet he had just paid for 300 acres which is but a parcel of Plot 10! At locus, the Defendant appeared totally oblivious of the boundaries of the disputed land and chose to generally maintain that he did not see the need to have boundaries separating Plot 10 and Plot 11 because all of it was his land. Court was also able to observe the stores which were constructed on Plot 10 by the association in 2005. The 2nd Plaintiff's testimony, that he was chased off the suit land by the Defendant in December 2007 and was not using the land until 2019 when he forcefully returned, remained uncontroverted even at the locus. The demeanour of the Defendant / Counter Claimant was suspect throughout the locus proceedings as he did not seem to have the surety of the boundaries of the land he allegedly owns. It therefore, follows that the defendant is and has at all material times been a trespasser in respect of Plot 10 and Plot 11.

It was also contended for the Defendant / Counter Claimant that he was entitled to the suit land by adverse possession. Raising the defense of adverse possession by the Defendant /Counter Claimant who at the same time is asserting ownership by purchase makes his entire claim contradictory to say the least. Throughout the trial, the basis of the Defendant's claim rested entirely on having purchased the suit land comprising of both Plot 10 and Plot 11. It would therefore, be a contradiction to rely on adverse possession even if it was in the alternative because a party claiming title by adverse possession asserts ownership even though he or she recognises that the legal title is in another and rests his claim not on his entitlement to the legal title as a

true owner but rather upon holding adversely to the true owner for the period prescribed by the statute of limitations. Where a claim of adverse possession succeeds, it has the effect of terminating the title of the original owner of the land to the extent that the limitation period sets in to bar the land owner from bringing an action for recovery of land which has been in adverse possession for a period of over twelve (12) years. One cannot claim to be an adverse possessor when such possession was acquired with the consent or permission of the owner who henceforth acquiesced in the continued possession. No matter how long the real owner is out of actual possession, his or her title and his or her constructive possession remain until an actual hostile possession is taken. Otherwise, time stops running when the owner asserts his or her right or if the adverse possessor admits that the owner has a superior right. ***See; Okullo vs Apiyo (Civil Appeal 26 of 2016).*** In this case, the Defendant / Counter Claimant by his own evidence conceded that in 1993 he purchased 300 acres which was part of Plot 10. By implication, the Defendant admitted the Plaintiffs' superior right over the residue of Plot 10 and the whole of Plot 11 at least until the year 2000 when the parties entered into another agreement dated 24th August 2000. It is after this latter agreement that for the first time the Defendant / Counter Claimant appears to assert rights over the entire Plot 10 and Plot 11 as belonging to him. To rely on adverse possession therefore, the Defendant / Counter Claimant should have adversely been in possession of the suit land from August 2000 to August 2012 without any contestation from the original land owner. However, the circumstances in this particular case are quite different. The Plaintiffs lodged a caveat in 2006 forbidding the registration of the Defendant / Counter Claimant or any other person on Plot 11 Singo Block 771 Kyampagi Butemba Kiboga. This suit was lodged in 2008 contesting the Defendant / Counter Claimant's claim over Plot 10 and Plot 11 and a criminal case of forgery was lodged against the Defendant / Counter Claimant in 2009. All this is an indication that at all material time after the agreement dated 24th August 2000 but before the expiration of the 12-year limitation period, the Defendant/ Counter Claimant's title on the suit land was contested. From the moment the Defendant / Counter Claimant expressed the intention to hold the suit land against the interests of the true owner and all the world, he started to face resistance from the Plaintiffs and cannot therefore, succeed on the defense of adverse possession.

The 5th issue is whether the 4th Counter Defendant Peter Mugarura lawfully acquired land comprised in LRV 2414 Folio 6 Singo Block 771 Plot 11

The evidence presented by the 4th Counter Defendant is that by a sale agreement dated 24th March 2011, he purchased the land comprised in LRV 2414 Folio 6 Singo Block 771 Plot 11 and took physical possession of the same having carried out a search at the land registry and inspected the physical land which had no squatters or trespassers on the land at the time except that there were people who were grazing on one side of the land who he did not chase away because they were good neighbours. When he started fencing the land, he was stopped by a court order dated 10th November 2011 for cessation of hostilities on the suit land in the interest of public

peace, restraining the 2nd Plaintiff Sam Mwesigye from accessing the land and preserving the suit land in the hands of the Defendant until the disposal of the criminal matter against the Defendant vide Criminal case No. 0389 of 2009 which was a case for forgery in respect to transfer and registration of the Defendant / Counter Claimant on Plot 10. However, during cross examination, it came to light that at the time when the 4th Counter Defendant purchased Plot 11 in the year 2011, there was a pending suit instituted in the year 2008 in respect to Plot 11 and there was equally a caveat on Plot 11 by the 2nd Plaintiff in 2006. It should be noted however, that this was a caveat lodged by the registered proprietor to protect his interest and not the defendant. There was no reason for the 4th counter defendant to be put on notice by a caveat of the vendor. Reading the caveat, however, especially the affidavit in support thereof, the reason given for lodging the said caveat was the fear that the Defendant / Counter Claimant may dispose of the land since he was already claiming it as his own on the premises of the sale agreement of the year 2000. The agreement of 2000 however does not mention plot 11. The caveat does not mention that there was a case already pending in court. The 4th Counter Defendant testified that he did not get notice of the said caveat because it is his lawyer who was acting for him. A vendor's caveat is not an encumbrance to his/her transferring of the land. The 4th counter defendant was an innocent bonafide purchaser for value without notice of defect in title. In any case, the defendant does not have any agreement whatsoever relating to plot 11. I have already found that the Defendant / Counter Claimant has no legitimate claim on Plot 11. As such, since the 2nd Plaintiff agrees that he sold Plot 11 to the 4th Counter Defendant, I find the 4th Counter Defendant lawfully acquired land comprised in LRV 2414 Folio 6 Singo Block 771 Plot 11 and the Defendant has no legitimate claim thereto.

5. What remedies are available to the parties

Refund of Money Paid by the defendant

The Agreement of 2000 provides insights into what may happen when the obligations under the agreement are not honoured. Part IV provides:

In event of default of the above, the vendor to refund the purchaser in proportion of the shares not recorded in favour of the purchaser in the proportion to the purchase price at an additional interest of 25% per annum of the price of default fee from June 1993.

A refund is what the defendant/counterclaimant is entitled to. However, when it comes to interest, it cannot be computed from 1993 as provided for above. The defendant indicated that he was occupying the whole land since 1993 up to the time of 2019 when the plaintiff gained entry onto the land by force. The 2nd plaintiff on the other hand claims that he was evicted from the land in 2007 using the army and he only regained possession in 2019. In essence, the defendant was benefiting from the land belonging to the plaintiff if we go by his testimony and that of the plaintiffs. If

he is to receive a refund, it can only be with interest for the period he was not in occupation of the land.

General Damages

Counsel for the Plaintiffs submitted that the Plaintiffs have been evicted from the suit land measuring over 500 acres whose value is in excess of UGX. 1 Billion from 2008 to 2022 being a period of 14 years and have only occupied part of the property for the last three years and as such, the Plaintiffs have suffered economic loss, stress, inconvenience, fraud, trespass, deprivation of property and all their upland projects were destroyed all at the hands of the Defendant. Counsel for the Plaintiffs therefore, prayed for damages of UGX. 600,000,000 (Six Hundred Million Uganda Shillings). On the contrary, Counsel for the Defendant / Counter Claimant submitted that general damages were prayed for but not expressly pleaded nor proved during the trial and as such the Plaintiffs were not entitled to any compensation in form of general damages.

With regard to proof, general damages are what a Court may award when the Court cannot point out any measure by which they are to be assessed, except the opinion and judgement of a reasonable man. ***See; Prehn V. Royal Bank of Liverpool (1870) L.R. 5 Ex. 92 at 99-100.*** The submission of Counsel for the Defendant / Counter Claimant that general damages ought to be pleaded and proved is without legal basis given that general damages are the direct probable consequence of the act complained of. **See also; *Haji Asuman Mutekanga vs. Equator Growers (U) Ltd SCCA No. 7 of 1995.***. The uncontroverted evidence of PW1 both in court and at locus is that in December 2007 the Defendant chased away the Plaintiffs from the suit land until they forcefully returned in January 2019 and occupied part of the land. It therefore, follows that between December 2007 and January 2019, the 1st Plaintiff was only deprived of Plot 10 for approximately 11 years and the 2nd Plaintiff was equally deprived of economic benefit of Plot 11 for approximately 3 years from December 2007 till May 2011 when Plot 11 was sold by the 2nd Plaintiff to the 4th Counter Defendant. The 2nd Plaintiff cannot therefore claim any economic loss on Plot 11 for the period beyond 2011 when he disposed it off by selling it. General damages to a tune of UGX. 100,000,000 (One Hundred Million Uganda Shillings) would therefore be appropriate. It therefore follows that the defendant's money he paid under the agreement of 2000 and 1993 should be offset from the general damages hereto awarded. The option of being registered as a shareholder cannot apply given that the Articles of Association mandates the Directors to refuse to register any shareholder upon transfer of shares to him/her.

In the total sum, I make the following orders;

1. The Defendant / Counter Claimant purchased 40% shares in the plaintiff company, but his being registered as a shareholder is subject to the directors

agreeing to enter him in the register in accordance with the Articles of association.

2. The 4th Counter Defendant is the legally recognised owner of land comprised in Singo County Block 771 Plot 11.
3. A permanent injunction is hereby issued restraining the Defendant /Counter Claimant, his agents, assignees and successors in title from any future trespass on the suit land.
4. Let a Government surveyor open boundaries for both Plot 10 and Plot 11 and cause the necessary subdivision to give effect to the orders above. The Plaintiffs and 4th Counter Defendant will equally foot the surveyor's costs.
5. The Defendant is ordered to pay the Plaintiffs general damages to a tune of UGX. 100.000,0000 (One Hundred Million Shillings) at an interest of 6% per annum.
6. The defendant/counterclaimant is entitled to offset from the general damages in (5) above, the money he paid under the agreements of 1993 and 2000.
7. The Counter Claim fails.
8. The defendant/counterclaimant shall bear the costs to the 1st plaintiff in both the main suit and the counterclaim and costs to the 3rd and 4th counter defendants in the counterclaim.
9. The 2nd plaintiff and the defendant shall meet their own costs in the main suit and the counterclaim.

Dated at Kampala this 26th day of August 2022

Flavian Zeija (PhD)

PRINCIPAL JUDGEs