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The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Civil Appeal No. 0028 of 2023
(Arising from Kumi Civil Suit No. 16 of 2021)

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1. Kedi Kolostica
2. Opio John Bosco
3. Otuna Anthony

..... Appellants

Versus

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Anyonga Alfred Respondent

*(An appeal from the judgement and orders of the Chief Magistrates Court of
Kumi holden at Kumi delivered on the 14th day of December 2022 by H/W
Maloba Ivan Grade 1 Kumi)*

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Before: Hon. Justice Dr Henry Peter Adonyo

Judgement on Appeal

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1. Introduction:

This is an appeal arises from the judgement and orders of the Chief
Magistrates Court of Kumi holden at Kumi delivered on the 14th day of
December 2022 by H/W Maloba Ivan Grade 1 Kumi.

Anyonga Alfred, the respondent filed Civil Suit No. 0016 of 2021 in Kumi

30 Chief Magistrates against Kedi Kolostica, Opio John Bosco and Otuna
Anthony, who are the appellants herein, for the declaration that he is the

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- 5 rightful owner of a piece of land described as Plot 36 Ramathan Road situated at Oduka Cell, Ongino Town Council.
- Anyonga Alfred additionally prayed for general damages against the appellants and an order of vacant possession against the 2nd appellant, permanent injunctive relief and the costs of the suit.
- 10 In his claim before the lower trial court, Anyonga Alfred told the court that he was at all material times been the lawful owner of Plot 36 Ramathan Road situated at Oduka Cell, Ongino Town Council of which he had lawfully acquired from Ongino Sub County for a consideration of Shs. 500,000/= paid to Ongino Sub county in 2008.
- 15 That his acquisition of the plot in dispute is within the knowledge of Ongino Sub County and that since 2008 he has been in quiet and exclusive possession of the suit land without any third party claims until around 2018-2019 when the 1st appellant began laying claims over the same.
- 20 That in July 2020 during the Covid-19 Lock down, when he was informed that the suit property had been fraudulently or illegally surveyed by the appellants he approached Ongino Sub county which called a meeting chaired by the LC III and both parties were asked to produce receipts of purchase and he was the only one who produced his while the 1st appellant only produced a portrait of her son.
- 25 That later in early 2021 he heard that the 2nd appellant had transacted with the 1st appellant over the suit plot and on the 19th of July 2021 he was informed that the 2nd appellant had started developing the suit plot forcing him to call the area local council which convened a meeting and it was during that meeting that a photocopy of a receipt was produced by the 1st
- 30 appellant which was, however, denied by the Sub county representative in the meeting which denial was further highlighted on 22nd July 2021 when

5 Ongino Sub county authorities denied the receipt presented by the 1st appellant and assured the respondent of his ownership of the suit plot.

That subsequently, when he Anyonga Alfred on 5th August 2021 engaged a surveyor to begin the titling process he was blocked in doing so and was later to learnt that the 3rd appellant was the one who had sold the suit land
10 to the 2nd appellant.

That the 1st appellant has since illegally taken possession of the plot in dispute and had deposited building materials and had started constructing a permanent commercial building.

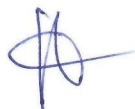
Kedi Kolostica, Opio John Bosco and Otuna Anthony in their written
15 statement of defence in the lower trial court denied the respondent's allegations and contended that Kedi Kolostica and Otuna Anthony sold their interest to Opio John Bosco who on the 23rd December 2019 lawfully acquired interest in the suit land by way of purchase and a deed sale executed by and between the appellants.

20 Kedi Kolostica and Otuna Anthony averred that just like other owners of adjacent plots they acquired the suit land from Ongino Sub-county so many years ago at the cost of Ugx. 30,000/=.

That they acquired the plot form an ad hoc committee which was formed at that time and was in charge of allocating and demarcating plots of land.

25 That upon purchase Otuna Anthony was issued with a receipt date 24th August 2001 and ever since 2001 when the appellants constructed a pit latrine on the suit land with the full knowledge of Anyonga Alfred who had been in full knowledge of their presence.

That even Kedi Kolostica and Otuna Anthony were in possession of the suit
30 land for 18 years before they sold it to Otuna Anthony with Anyonga Alfred



5 later in 2021 starting to lay false claims to the suit land without any justification and all effort to settle the matter were frustrated by him.

The trial magistrate after having heard the parties and considered their evidence, entered judgement in favour of Anyonga Alfred and issued the following orders;

10 a) That Anyonga Alfred is the rightful owner of Plot 36 Ramathan Road, Ongino Town Council, Kumi Municipality.

b) Kedi Kolostica, Opio John Bosco and Otuna Anthony were trespassers on the suit land.

c) An order of vacant possession was issued against Opio John Bosco.

15 d) An order of General damages of shs. 6,000,000/= (six million Uganda shillings) was issued against Kedi Kolostica, Opio John Bosco and Otuna Anthony for inconvenience caused to Anyonga Alfred.

e) An order of permanent injunction was issued against b) Kedi Kolostica, Opio John Bosco and Otuna Anthony from further interfering with the

20 Anyonga Alfred's ownership of the suit land.

f) Costs of the suit awarded to Anyonga Alfred.

Kedi Kolostica, Opio John Bosco and Otuna Anthony being dissatisfied with this judgement and orders of the lower trial court appealed to this court citing the following grounds;

25 1. The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record which showed that the 1st and 3rd appellants acquired the land in 2000 from Ongino Sub-county and had been in effective possession for eighteen years until they sold to the 2nd appellant and this occasioned a miscarriage of

30 justice to the appellants.

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2. The learned trial Magistrate erred in law and fact when he failed to make a finding that the respondent's receipt of purchase was tainted with glaring inconsistencies and contradictions which irregularities were ignored by the trial Magistrate.

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3. The learned trial Magistrate erred in law and fact in holding that the appellants were trespassers on the suit land.

4. The learned trial Magistrate erred in law in awarding general damages to the respondent which was unjustified and excessive.

2. Duty of the 1st appellate court:

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This court is the first appellate court in respect of the dispute between Kedi Kolostica, Opio John Bosco, Otuna Anthony and Anyonga Alfred.

In the hierarchy of courts in Uganda, the appellate court is a higher court that reviews the decision of a lower court.

It does so by hearing an appeal from a lower court and its primary function is to review and correct errors made by a trial court.

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In addition, an appellate court may deal with the development and application of law.

In carrying out its duty, the appellate court can do one of the following:

Review decisions made by lower trial court;

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- a. Affirm the decision of the trial court, in which case the verdict at trial stands;
- b. Reverse the decision to the trial court, in which case a new trial may be ordered;
- c. Modify an order or a decree;
- d. Remand the case back to the lower court for further proceedings;
- e. Dismiss the case.

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5 This Honourable Court being the first appellate court in respect of the dispute between the parties herein is obligated to re-hear the case which was before the lower trial court by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and to re-appraise the same before coming to its own conclusion as was held in *Father Nanensio Begumisa and Three Others v. Eric Tiberaga* SCCA 17 of 2000; [2004] KALR 10 236.

The duty of the first appellate court was well stated by the Supreme Court of Uganda in its landmark decision of *Kifamunte Henry Vs Uganda, SC, (Cr) Appeal No. 10 of 2007* where it held that;

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"...the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it"


20 In rehearing afresh, a case which was before a lower trial court, this appellate court is required to make due allowance for the fact that it has neither seen nor heard the witnesses and where it finds conflicting evidence, then it must weigh such evidence accordingly, draw its inferences and make its own conclusions. *See: Lovinsa Nakya vs. Nsibambi*

25 [1980] HCB 81.

In considering this appeal, the above legal provisions are taken into account.

3. Representation:

The appellants were represented by M/s Alaka and Co. Advocates while
30 the respondent was represented by M/s Opio and Co. Advocates.

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5 This matter proceeded by way of written submissions which will be considered in the determination of this appeal.

4. Determination:

a. Ground 1,2 and 3.

10 Counsel submitted on this grounds concurrently. Counsel for the appellant submitted that there is ample evidence even from the testimony of the Respondent to prove that he has never been in occupation of the suit land. That it is mysterious why the trial magistrate ignored the provisions of the Limitation Act and awarded the Respondent land in the occupation of the 1st and 2nd appellants for over 18 years.

15 Counsel noted that at page 3 para 10 of the record of proceedings the respondent under cross-examination admitted that ***"I was not leaving on the plot the subject of dispute"***.

Counsel relied on sections 5, 11, 16 and 21 of the Limitation Act and the authority ***of Hope Rwaguma (The Administrator of the Estate of Dr. 20 Rwaguma B.E) Versus Jingo Livingstone (The administrator of the estate of the late Yowana Mukasa) High Court Civil Suit No. 508/2012, Land Division*** where the court reviewed the authorities and the relevant sections of the limitation act and came to the finding that even a person with a registered interest can lose their interest to the adverse possessor.

25 Counsel submitted that the aforementioned sections of the law clearly precluded an award of land to the Respondent and had the trial magistrate properly analysed the import of the law of limitations for recovery of land as laid out above together with the general evidence regarding the 1st and 3rd Appellant's long stay on the land he would surely have come to a
30 different conclusion in his judgement. Rather, he casually dismissed the arguments about the legal implication of the Limitation Act and the



5 relevant sections, ignored that the basis of the 1st and 3rd appellant's case lay on their long occupation of the land as an adverse possessor and therefore they were protected from any ejectment/eviction from the suit land.

Counsel further submitted that the respondent did not discharge the
10 burden of proof at trial when he failed miserably to adduce evidence explaining the two receipts; one containing plot number 36 and the other with no plot number with the same receipt number (04-08/09-2004).

That the respondent at page 3 para 17 when asked about the originals casually explained it away when he testified that *"my wife took the*
15 *originals."*

That PW 3 made matters worse when under cross examination he testified that he did not look at the original when certifying the respondents' alleged receipt of purchase.

Counsel submitted that the respondent/plaintiff is still in possession of a
20 blank receipt that he will keep editing and inserting plot numbers as when he wishes provided he sets his eyes on any other plot that was acquired by anyone in Ongino Sub-County through the adhoc committee.

Counsel additionally submitted that the trial court was never furnished with the original copies of the receipt of purchase by the respondent and
25 neither did the appellants have the opportunity to examine them. That one wonders why the respondent could be in possession of photocopies of the receipt have them certified and not be in possession of the original.

Counsel for the appellants brought to this court's attention that the respondent filed an application for a temporary injunction on the 12th day
30 of August 2021 and attached the receipt of payment marked as annexure

5 A1 duly commissioned and referred in the affidavit of the respondent sworn on the 11th day of august 2021 without a plot number.

That a similar receipt is attached and marked as annexure A2 on the plaint with a plot number inserted but with the same receipt number.

Counsel added that to make matters more suspicious PEX2 which is a letter
10 issued on 3rd November 2008, the sub county chief by then noted that the respondent had paid development fee for a plot of land yet the payment is allegedly made on the 15th day of December 2008.

Counsel submitted that the above evidence highlighting the inconsistencies were brought to the attention of the trial magistrate and
15 their attempt to have the two receipts admitted in evidence were erroneously rejected by the trial magistrate thus leading to a wrong a conclusion that the respondent/plaintiff had proved ownership of the plot in dispute by way of purchase.

Counsel invited this honourable court to intervene in the findings of the
20 trial magistrate in this respect on the basis that they were based on a misconception of the evidence which resulted in the trial court acting on the wrong principles of law while reaching those findings.

Counsel for the appellants further submitted that the trial magistrate failed to consider contradictions and inconsistencies in the respondent's
25 evidence regard. That the trial magistrate also misdirected himself regarding the second appellant's exhibit of the agreement the respondent had signed as a witness which showed the 3rd appellant was owner of the disputed plot of land but totally ignored evidence of DW2 which was to the effect that the 1st appellant had been in undisturbed possession of the suit
30 land for over eighteen years.

5 That both DW1 and DW2 had actual, open, notorious, exclusive, and continuous possession of the land for the prescribed statutory period. In this regard, the trial court found the 1st and 3rd appellant's evidence of activities on the land to have been unsatisfactory.

Furthermore, before the trial court was the evidence of the 2nd appellant
10 himself who testified that he occupied the land without any problem and at one time when he deposited materials and commenced with the construction since there was no court order stopping him.

The testimony of DW1 was to the effect that at the time they bought the land, there were big tree stamps that required clearing and uprooting. The
15 testimony of DW1 and DW2 was to the effect that they sold one plot of land to the 2nd appellant who took possession of the suit land immediately. The testimony of DW6 the immediate neighbour was to the effect that he used to see the 1st and 3rd appellants growing crops on the disputed land and even dug a pit latrine and deposited construction materials, that of
20 DW4 was that he was a speaker by then. The 1st and 3rd appellants purchased the plot in dispute from Ongino Sub County.

The receipts were not headed, the minutes ratifying the actions of the adhoc committee are there at the sub-County.

Counsel for the respondent in reply submitted that both parties' claims to
25 the suit land were based on documentary acquisition per their respective documents PEx1, DEx1 and DIDI and under section 58 of the Evidence Act provides that all facts, except contents of a document may be proved by oral evidence.

That further under section 91 of the same Act provides that when the
30 terms of a contract or of a grant, or of any other disposition of property,

5 have been reduced to the form of a document no evidence shall be given in proof of the terms of that contract except the document itself.

Counsel submitted that in the instant case the respondent tendered PExh1 as proof of his acquisition of the suit land from Ongino Sub county without objection from the entire defence. That PW2 a former parish chief gave a
10 chronology on how the respondent acquired the suit land and the rest of respondent's witnesses corroborated it. He relied on ***Mugisa vs Burungule HCT-01-LDCA 21/16*** where it was opined that in law once a party relies on documentary evidence, that document can be proved in any of the ways provided for under section 60 of the Evidence Act.

15 Relying on the above case counsel stated that the burden therefore shifted to the Appellants to prove the Respondent's case otherwise, which they failed to do.

That DExh1 as presented by the 1st and 3rd appellants were a clear manifestation of fraud by both of them, the 1st and 3rd appellants lay their
20 claim to an ad hoc committee of "***Ongino Trading Centre Development Fund***", however, the said assertion is devoid of any merit to support their claim.

That the appellants failed to produce any evidence to show that there was ever such a committee charged with dealing with the suit land as alleged.
25 He added that moreover having admitted that the suit land was former government land, there is therefore no way a third entity not affiliated to Ongino Sub-county could have legally dealt with the suit land, except by way of fraud propagated by the Appellants.

Counsel referred this court to ***Okullo vs Opiyo Civil Appeal No. 26/2016 UGHCCD*** where court stated that;
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5 *"As regards the claim of acquisition by purchase, when considering the
validity of a claimed purchase of unregistered land, the court needs
first to establish the root of title. This means identifying as far back in
time, a proven original owner to use as a point of reference, to
commence the chain of ownership which will end with the current
10 owner. Once the root is established, it is then necessary to show an
unbroken chain of ownership from the root to the seller."*

He submitted that in the instant case, not only did the appellants fail to
prove the root of ownership, it was evident that the said Ad hoc committee
15 does not exist at all, while the respondent was able to demonstrate the
existence of Ongino Sub County through its former parish chief (DW2) as
well PEx1 and other documents tendered in.

Counsel additionally submitted that the discrepancy in the names in DEx1
and DIDI was never explained, further that DExh1 does not refer to plot 36
20 at Ongino Sub county in anyway yet DIDI talks about sale of land to the 2nd
Appellant of plot 36. Dexh1 does not show who issued it and is full of
unexplained alterations, there is therefore no proof to establish the 3rd
appellant's root of title to the suit land other than demonstrating that they
are fraudsters on the Respondent's land.

25 Counsel for the respondent also pointed to inconsistencies and
contradictions in the appellants' case relating to the acquisition of the suit
land which he stated go to the root of the matter and point to deceit.

5 b. Findings of court on grounds 1, 2 and 3:

From the parties' pleadings and evidence adduced in court it is not in dispute that the suit plot was originally public land owned by Ongino Sub County.

Both the appellants and the respondent claim to have been allocated the
10 suit plot by Ongino Sub county, with the respondent claiming direct acquisition from Ongino Sub county in 2008 and the 1st and 3rd appellants claiming acquisition from Ongino s/c through an adhoc committee in 2001. The respondent, **Anyonga Alfred testifying as PW1** stated that he acquired the suit plot from Ongino Sub county at a consideration of Ugx. 500,000/= in 2008 and he made all the necessary payments.

PW2 Otienya John Charles testified that in 2008 Ongino s/c where he was serving as Parish Chief had several plots available for purchase by the public and he recalls one Omeri Joseph whom he learnt to be the respondent's brother paid Ugx. 500,000/= to Ongino s/c for the current
20 disputed plot.

That at that time the sub county used to issue only numbered and headed receipts in the name of Kumi District Local Government with the official stamp.

That as was the practice then, he together with the then sub-county chief
25 Dr. Achoroi Charles and LC3 Chairperson then the late Openyi Festus identified that plot 36 was available, they proceeded to show and hand over the plot to the respondent's brother since it was available for purchase having been former Ongino livestock market.

PW4 Omeri Joseph testified that he is the biological brother of the
30 respondent and in 2008 the respondent sent him Ugx. 500,000/= with

5 instructions to go and pay for an available plot with Ongino sub county since they were all aware that plots were offered for purchase.

That on 15th December 2008 upon payment and being issued a receipt, he in the company of his brother Osire Alphonse were showed Plot 36 which is now in dispute.

10 That representing Ongino Sub county were the then LC3 Chairperson Late Openyi Festus together with Dr. Achoro Charles the then acting Sub county chief and Otianya John Charles the then Parish Chief. That he recalls one Ichilat Stephen who had also bought a plot was shown plot 38 just next to the disputed land while plots 40 and 42 next to his were bought by the
15 respondent in his wife's name.

He was thereafter advised to pick up an allocation receipt which he got with a letter forwarding the respondent to the District Lands Officer Kumi for purposes of formalising his ownership.

During cross-examination he stated that he did not visit the plot, he was
20 not the seller, it was the sub county. That at the time he was paying the money he paid at the sub county and the date of identification was a different date. He got the receipt after paying the money but they did not indicate the plot number on that date. He was dealing with instructions from the sub county, he got to know that he paid for plot 36 on the day he
25 went to the sub county to ask for plots.

DW1 Kedi Kolostica testified that she bought the suit plot together with the 3rd appellant from Ongino Sub-county at a price of Ugx. 30,000/= in the presence of a number of witnesses and the transaction was sanctioned by a number of witnesses.

30 That at the time she bought the plot there was an ad hoc committee in place that was in charge of allocating and demarcating plots of land at

5 Ongino Trading Centre and she was one of the people who acquired land through this committee.

That at the time of the transaction the respondents father Omoen Radius who is still alive was the issuing officer and treasurer of the ad hoc committee and the money was handed over to him in the presence of
10 other committee members. That the members of the adhoc committee were Nyangan David (Chairperson), Late Openy Lawrence (Vice Chairperson), Ononge Paul (Secretary), Osemwa Amorokose (member), Orasi John (member) and Omoen Radius (treasurer).

That just like other purchasers a receipt was issued acknowledging
15 payment of Ugx. 30,000/=, in the names of the 3rd appellant.

That together with her family members she immediately took possession of the land, deposited construction materials thereon and dug a pit latrine on the land. She used the land for farm work and has been in occupation of the same for 18 years until they sold it to the 2nd appellant who lawfully
20 acquired interest in the plot by way of purchase on the 23rd December 2019. That the respondent began laying false claims to the plot in 2021 without any justification.

That since 2001 when she constructed the pit latrine the respondent has been in full knowledge of their presence on the suit plot. During cross-
25 examination she stated that the land was not vacant and between 2001 and 2021 there was a structure on the suit land. She stated that she bought the land from Ongino Sub-county and there were 7 witnesses to the purchase and there was an agreement in 2001 confirming the transaction and she was named a purchaser in the said agreement.

30 Together with the 3rd appellant they purchased the suit plot at Ugx. 30,000/= and she did not pay the money to the sub-county.

5 All the seven people who were present signed the agreement and Otuna was a child in 2001. She handed over the money to the seller in the presence of Otuna as her heir, she confirmed that she was showed the plot after paying. That in 2019 when the plot was sold to the 2nd appellant the LC1 was not present, they did not go to the sub county with the 2nd 10 appellant before the transaction was conducted. She admitted that the sub county summoned her and the respondent and it rejected the document she presented as proof of purchase.

She further stated that she did not know the name of the ad hoc committee but she remembers the members and she can't tell whether 15 they are the very people on the committee today. She admitted that the sub county of Ongino mentioned that the respondent is the owner of the plot but she rejected. She does not remember who or when the pit latrine was dug but she dug a pit latrine on the plot.

She continued to state that Emukade her late son died in 2017, that the 20 plot was his and he gave Otuna to care of her up to now. That it is true that in 2017 Emukade tried to dig a pit latrine then he passed on in 2018. During re-examination she stated that the things on the land were a pit latrine and a big hole where they dug out tree roots.

She further stated that she bought the plot alone and David Nyangan gave 25 her a receipt for the Ugx. 30,000/= paid. She could not recall the date when the 2nd appellant bought the suit plot.

DW2 Otuna Anthony had the same evidence in chief as DW1.

During cross-examination he stated that it is the old woman (1st appellant) who has the agreement of the sale that reads Ongino Sub-county. He could 30 not recall the name of the committee that sold them the land, or when it was formed but he knew its work was to allocate land in Ongino Trading

5 centre. He stated that Ongino Trading Centre and Ongino Sub county are different entities. That it is true that the land was acquired from Ongino Sub county, that the members of the ad hoc committee were no longer members in 2021.

He further stated that there is no home on the plot but there was a pit
10 latrine dug thereon in 2017 and it was Emukade who spearheaded the digging of the pit latrine. He also admitted that when they met the sub county together with the respondent their receipt was rejected, that it also rejected the respondent's papers.

He stated that he paid the money to the committee and the money was
15 paid to Omwany the father of the respondent and he purchased the land together with the 1st appellant and it is his name which is written on the agreement as purchased with the committee.

He confirmed that the LC1 chairman was present when the plot was sold to the 2nd appellant but they did not go to the sub county before executing
20 the sale.

DW3 Nyangan David testified that he is formerly the chairman of the ad hoc committee called Ongino Traders Development Association with members as named by DW1. That the 1st and 3rd appellants are among the persons that acquired a plot of land from Ongino sub-county through the
25 ad hoc committee.

That the suit plot is for the appellants who paid 30,000/= and were issued with a receipt acknowledging payment.

That Omoen Radius the respondent's father was the issuing officer and treasurer of the ad hoc committee and the money was handed over to him
30 in the presence of the committee, him inclusive.

5 During cross-examination he stated that Ongino Traders Association is not the same as Ongino Sub county. He testified that sub county authorities established the ad hoc committee through elections but there are no minutes of the council establishing this committee. Further that the committee did not receive terms of reference and was not registered. That
10 the 2nd appellant has built on two plots that is plot 36 and 38.

That there were no headed receipts by then and he did not receive money from the 1st appellant as the chairperson of the committee and Kedi Kolostica lied when she told court that she gave him money.

He further stated that he was not there when the 1st appellant paid money
15 as he was busy doing some work in Mbale.

That both plot 36 and 38 were sold to the 1st appellant and at that time the plot was 30,000/=, the receipts did not bare the plot numbers.

During re-examination he stated that Ongino Trading Centre Development Association was formed after the sub county failed to raise funds for
20 surveying and gazetting of the trading centre as required by the urban planner, Kumi District.

The parish chief had been given authority to collect money from developers and intending developers headed by the then Chief Omoding John Jumula but they ended up squandering the money that is why the ad
25 hoc committee was created, headed by sub county chief the late Omongot David and late Openy Festus who was the LC III Chairman.

That the money was not given to him by the 1st appellant but to the committee, the Ugx. 30,000/= was for two plots since it had a pit, the committee gave the 1st appellant, if she finished filling it, it would be for
30 her benefit.



5 That after forming the committee it was tasked to collect money from developers and intending developers so as to pay surveyors and this money was paid through the sub county.

That the suit plot is under Ongino Trading Centre as an administrative unit of Ongino Sub county.

10 **DW4 Oliemo John Wilson** testified that he was formerly the sub county speaker of Ongino Sub county for three consecutive terms and during his time in office the management of Ongino Trading centre was in the hands of Ongino Traders Association and the members were as named by DW1. The 1st and 3rd appellants acquired the suit plot from this ad hoc committee
15 after paying the purchase price of Ugx. 30,000/= and subsequently the Council gazetted and eventually the management of Ongino Trading Centre was taken over by Ongino Sub-county and the previous ad hoc committee was ratified.

During cross-examination he stated that Ongino Trading Centre is different
20 from Ongino sub county and the suit plot belonged to Ongino sub county. Ongino sub county established the ad hoc committee but he does not have these minutes, he claimed they were at the sub county. He stated that he had terms of reference to the ad hoc committee, he further stated that he does not have the resolution ratifying the actions of the ad hoc committee
25 and its not Ongino Sub county that actually sold the land. He served as a speaker from 2001 to 2018 and in 2008 the sub county of Ongino issued receipts for those that purchased land in Ongino.

During re-examination he stated that according to the local government, financing and accounting regulation, reg.34 empowers the sub-county
30 chief who works under the council to liaise with the chief finance to appoint a revenue collector and that is why the chief was able to appoint



5 the adhoc committee which is not supposed to use government receipts
apart from theirs.

That by then the trading centre was not gazetted and that is why the
receipts do not have a plot. The ad hoc committee was appointed to collect
revenue for gazetting the trading centre and the gazetting took place in
10 2003.

That it was the adhoc committee that sold the suit plot and it was
appointed by the council to collect revenue for the council. The council sat
and passed a resolution authorising the sub county chief to appoint the
adhoc committee on behalf of the council, after its authorisation, the
15 committee was doing the activities independently but being supervised by
the council and this committee was targeting the developers to raise
money because the sub county had limited resources.

That the difference between Ogino Sub county and Ongino Traders
Association is that the former is an administrative unit and the latter is an
20 association appointed by the sub county to collect revenue on behalf of
the council.

DW5 Opio John Bosco testified that he is the rightful owner of the suit
property having purchased the same from the 3rd appellant on the 23rd
December 2019. That this purchase was through due process of law and
25 he immediately cleared the land and embarked on construction of a
commercial house uninterrupted way back in 2020 till 2022 when he
received summons to file a defence. During cross-examination he
confirmed that in 2021 he was summoned together with the other
appellants and the respondent by the sub county over the issue of plots,
30 specifically the suit land. That the sub county did not disown the receipt
presented by the 1st and 3rd appellants. He further confirmed that the LC1

5 did not sign on his sale/purchase agreement, he also did not go to the sub county to make inquiries about the plot before entering into a transaction with the 1st and 3rd appellants.

That he has built on both plot 36 and 38 and the sale agreement indicates he purchased plot 36. That DEX1 indicates the issuing authority which is
10 Ongino Trading Centre Development Association but the plot in issue did not belong to it.

DW6 Obelon Peter Omwany testified that he is an immediate neighbour to the suit land and he also acquired his plot in 2002 from the ad hoc committee that was in charge of allocating plots of land, he paid Ugx.
15 30,000 which he personally handed over to Omoen Radius, the father of the respondent.

That he got when the 1st and 3rd appellants had already purchased the suit plot and were doing all sorts of things including agriculture and they had poured hard core on the suit land.

20 During cross-examination he stated that the pit latrine that was dug was established in 2018 by Emukadde and Otuna. He was present when the 2nd appellant bought plot No. 36, no LC1 was present at the time of purchase and Opio did not go to the sub county prior to the purchase.

That plot 36 formerly belonged to the sub county which is different from
25 the ad hoc committee which was called Ongino Trading Centre Development Fund. He does not recall when it was established but it is the traders that established the ad hoc committee due to community demand who wanted to develop the area, so they came up with a committee to enable development. It was not registered entity.

30 That in 2021 when the sub county called a meeting regarding plot 36 he was present and the appellants receipt was not rejected. That the

5 respondent has plot 40 in that area. In re-examination he stated that in 2008 are Kedi Kolostica and Otuna not Emukadde, that Ongino Trading Centre Development Fund was formed by the community to help them guide in allocating plots.

From the evidence above it is agreed that the suit plot was formerly public
10 land belonging to Ongino sub county. The respondent claims he acquired it directly from the sub county in 2008 while the 1st and 3rd appellant, from whom the 2nd appellant derives interest, claim they acquired it from the sub county through it ad hoc committee in 2001. There thus exist two competing interests on the same plot.

15 Given that both parties claim to have acquired the land from Ongino Sub county, the equitable principle of priority in time would easily resolve this issue with the appellants being the owners of the suit land given that they acquired the land earlier interests in the suit land than the respondent, however, given the instant facts especially regarding the issuing bodies for
20 each party I cannot apply this principle without analysing the legality of each acquisition.

I find it pertinent to first understand the authority of the issuing bodies in respect of both parties. The respondent's claim is clear, that he acquired the land from Ongino Sub County. The 1st and 3rd appellants on the other
25 hand claim they acquired from Ongino Sub County through an ad hoc committee that was allocating land at that time.

An ad hoc committee is a body created for a particular purpose or need. Usually after this purpose is accomplished the committee ceases to have authority.

5 It is necessary to understand when this committee was established, the period for which it was established, by whom it was established and its purpose.

When this ad hoc committee was created and how long it existed cannot be deciphered from the evidence on record as none of the witnesses gave
10 these details. The name of the ad hoc committee is either Ongino Trading Centre Development Fund per DW6 or Ongino Trading Centre Development Association per DW3 and DW4.

The respondent stated that he was not aware of this committee that was in charge of allocating land.

15 PW2 stated that the committee he knew of was allocating land out of government land however he did not name it or when it allocated land. PW4 on the other hand stated that he knew of its existence and it was for development.

The 1st and 3rd appellant did not know the name of this committee but
20 knew its members.

DW3 Nyangan David the chairperson of this committee and DW4 Oliemo, a former sub county speaker of Ongino Sub county stated that the sub county authorities established the ad hoc committee with DW4 adding that this was through elections.

25 DW4 further stated that the council sat and passed a resolution authorising the sub county chief to appoint the adhoc committee on behalf of the council.

DW6 Obelon testified that it was established by the traders due to community demand who wanted to develop the area. The minutes of the
30 meeting through which this ad hoc committee was created were not tendered in evidence though per DW4 they should be at the sub county

5 while DW3 stated that there are no minutes establishing this committee. The terms of reference which would define the purpose and structures of the committee were also not tendered in court though DW4 claimed he had them while DW3 Nyangan on the other hand stated that the committee did not receive terms of reference.

10 Next is the purpose of the ad hoc committee, the 1st and 3rd appellant claimed this committee was created to allocate land.

DW3 Nyangan stated that Ongino Trading Centre Development Association was formed after the sub county failed to raise funds for surveying and gazetting of the trading centre as required by the urban
15 planner, Kumi District.

The parish chief had been given authority to collect money from developers and intending developers headed by the then Chief Omoding John Jumula but they ended up squandering the money that is why the ad hoc committee was created, headed by sub county chief, the late Omongot
20 David and late Openy Festus, who was the LC III Chairman.

That after forming the committee it was tasked to collect money from developers and intending developers so as to pay surveyors and this money was paid through the sub county.

DW4 Oliemo told court that Regulation 34 of the Local Government
25 financing and accounting regulations empowers the sub-county chief to liaise with the chief finance of the district to appoint a revenue collector and that is why the chief was able to appoint the adhoc committee.

He added that the ad hoc committee was appointed to collect revenue for gazetting the trading centre and the gazetting took place in 2003. Further
30 that after its authorisation, the committee was doing the activities independently but being supervised by the council and this committee was

5 targeting the developers to raise money because the sub county had limited resources.

DW6 Obelon stated that the committee was established to enable development.

From the above what is clear is that while there is no documentary
10 evidence on record, a committee for developing public land in Ongino Sub county existed. That committee was created for the purpose of revenue collection and for the development of the trading centre as is seen in its name, the absence of terms of reference, meeting minutes and sub county council resolution creating notwithstanding for given that the testimonies
15 above especially that from the former chairperson, it is clear that revenue collection was the major reason for the committee's creation and it only follows that the said committee had no authority to allocate land as land allocation and revenue collection are two different administrative roles given the fact that Ongino Sub county was an administrative body under
20 Kumi district which had the authority to allocate land to persons interested in the same.

Also for a public body with mandate to allocate land to delegate this duty to another body there must be clear instruments transferring this power from which the delegatee and any person claiming under them can base
25 actions.

This instrument would then legalize any subsequent transactions by the delegatee and persons allocated land through it.

In this instance it is not clear when this ad hoc committee was created, for how long it lasted, from where it derived its authority and the extent of its
30 authority.

- 5 As noted the ad hoc committee was not even registered, there are no records of reports on the work it did for whatever period it lasted. The claim this committee and its activities was ratified by Ongino Sub county as testified by DW4 was not substantiated in evidence as the council meeting minutes or resolution were never tendered in court.
- 10 Allocation of public land is a process governed by law with the district land board and its subordinates like the sub county in this case bearing the responsibility to allocate the same.
- Exercise of this duty by a third party without proper instruments cannot be taken as legal.
- 15 As clearly stated by the appellants' witnesses, Ongino Sub county and Ongino Traders Association were different bodies, therefore those committees cannot be seen to take on the roles which fall within the mandate of the district unless there is clear evidence before to show that. Accordingly, I find that on a balance of probabilities the legality of the ad
- 20 hoc committee's allocation has not been proved by the evidence on record and as such the allocation to the 1st and 3rd appellant was illegal.
- This is probably why the DEX1 the 1st and 3rd appellant's purchase receipt was rejected by the sub county in 2021 when a meeting was called over the disputed land. Even the 1st and 3rd appellants admitted that this receipt
- 25 was rejected by the Sub county though their witnesses tried to claim otherwise.
- PW3 Ekuwe Stephen a parish chief of Kapolin Parish Ongino Sub county testified that in 2021 the sub county authorities convened a meeting to resolve the issue of the plot in dispute and both parties were asked to
- 30 produce receipts of purchase and it was only the respondent who produced his receipt issued by the sub county, the sub county authorities

5 denied the receipt presented by the 1st appellant and confirmed the one produced by the respondent.

DEX1 which was tendered in by the appellants as proof of purchase of the suit plot, is not on headed paper, does not bear the particulars of any issuing body, reason for payment or plot number.

10 It basically indicates 24th August 2001 with a number 96 (the essence of this number is not indicated), it is issued to Mr Otuna Anthony, indicates thirty thousand shillings and bears the initials O.T.C.D.F and a signature.

DW3 Nyangan stated that the receipt was not headed because the committee was not a registered entity and the receipt does not bare plot
15 36 and 38 because by then it was for payment of the surveyors.

DW4 Oliemo stated that the receipts given by the sub county at the time were not headed and stamped. He further stated that this receipt did not bear the particulars of Ongino sub county because it was a receipt used by the ad hoc committee and the government receipts used at the sub county
20 level are only used by the sub county chief, sub accountant and parish chief for collecting revenue.

DW5, Opio, who is the 2nd appellant claimed the receipt showed 96 because this number was issued before plotting of the suit land.

DEX1 further shows that the allocation of the suit plot to the 1st and 3rd
25 appellant was irregular, it is a hand written document bearing no stamp or header of the issuing body, it further does not indicate what the payment was for and DW3 complicates matters when he says it was for payment of surveyors, these surveyors are not mentioned and or clarified on by any other witness.

30 More so, in DW4 stating that this receipt did not bear the particulars of Ongino sub county because it was a receipt used by the ad hoc committee

5 and the government receipts used at the sub county level are only used by the sub county chief, sub accountant and parish chief, he only confirmed that the fact of the ad hoc committee and the sub county being two separate entities yet there is no evidence that the latter had not authorised the former to allocate land.

10 Ideally if the sub county had delegated the ad hoc committee to allocate the suit plot, it would permit it so using of its headed receipts or create a receipt that indicated it as the body through which the ad hoc committee was acting, however, this is not the case in the instant matter.

Furthermore, the 1st appellant claimed this payment was done by her and
15 she handed the money over to DW3 Nyangan David and he gave her the receipt but he denied this in his testimony claiming he was in Mbale when the appellant paid for the land.

DW2 Otuna claimed he paid the money to the committee specifically to Omwany who he claims is the respondent's father, yet the record indicated
20 Omeon Radius as the respondent's father. It should also be noted that the 3rd appellant was a child in 2001 as admitted by his mother, though he claimed the age in his witness statement was wrong.

The 1st appellant also stated that there was an agreement for the land sale and it has 7 witnesses, the 3rd appellant also stated that the old woman (1st
25 appellant has the agreement for sale that reads Ongino sub county however this agreement was never adduced in evidence.

The respondent on the other hand acquired the land directly from Ongino Sub county and paid for the same in 2008.

This was corroborated by PW2 Otienya John Charles that in 2008 Ongino
30 s/c where he was serving as Parish Chief had several plots available for purchase by the public and he recalls one Omeri Joseph whom he learnt to

5 be the respondent's brother paid Ugx. 500,000/= to Ongino s/c for the current disputed plot.

That at that time the sub county used to issue only numbered and headed receipts in the name of Kumi District Local Government with the official stamp. That as was the practice then, he together with the then sub-county
10 chief Dr. Achoro Charles and LC3 Chairperson then the late Openyi Festus identified that plot 36 was available, they proceeded to show and hand over the plot to the respondent's brother since it was available for purchase having been former Ongino livestock market.

PW4 Omeri Joseph testified that he is the biological brother of the
15 respondent and in 2008 the respondent sent him Ugx. 500,000/= with instructions to go and pay for an available plot with Ongino sub county since they were all aware that plots were offered for purchase. That on 15th December 2008 upon payment and being issued a receipt, he in the company of his brother Osire Alphonse were showed Plot 36 which is now
20 in dispute.

That representing Ongino Sub county were the then LC3 Chairperson Late Openyi Festus together with Dr. Achoro Charles the then acting Sub county chief and Otianya John Charles the then Parish Chief.

Counsel for the appellants argued that respondent's documents especially
25 the receipts were fraudulently acquired.

PEX1 is a receipt headed Kumi DLG with an unclear voucher number that could be 200 or 200 with an additional figure at the end. This receipt bares the number 04-08/09-2004 dated 15/12/2008, the payer is Anyonga Alfred the respondent with the address as Ongino Kapasak. The receipt is for Five
30 Hundred Thousand only being payment for one commercial plot in Ongino T/C with revenue code 1422-19.

5 This is the same receipt attached to the plaint and the application for a temporary injunction mentioned by counsel for the appellant (MA 13/2021 filed on 12 October 2021).

However, the receipt attached to respondent's and PW4 Omeri's witness statements bares the same details except the addition of Plot 36 Ramathan
10 Road.

PW1 the respondent Anyonga stated that the voucher number was 2004, he stated that it is not the same person who wrote the plot number on the receipt. He is admitted that PEX4 which is a receipt for the two plots bought by his wife do not bear plot numbers.

15 PW2 Otienya stated that the receipt dated 15/02/2008 was issued by the sub-accountant of Ongino sub county called Adome Moses. That this receipt was given to Omeri (PW4) and at the time he went to hand over the plot it was in possession of the respondent.

PW3 Ekuwe in cross-examination stated that the he certified the receipt
20 produced by the respondent but he did not look at the original at the time of certifying. He added that he saw the letter Pex2 in which the sub county chief is forwarding the respondent to Kumi DLB and added that currently such letters do not work but only worked during that time; this letter is dated 3rd of November 2008. He admitted that the receipt came after the
25 letter which forwarded the respondent to Kumi DLB.

PW4 Omeri stated that the day he paid money to the sub county was different from the identifying date. He stated that he got the receipt after paying the money but no plot number was indicated that day, he got to know he was paying for plot 36 when he went to the sub county to ask for
30 plots. He admitted that the two receipts were different with one indicating

5 a plot number and the other not and stated that all these receipts were issued to him, he does not know why the sub county issued him two.

DW4 Oliemo when cross-examined on PEX1 admitted that in 2008 the sub county of Ongino issued receipts for those that purchased land in Ongino, he further admitted that PEX1 is the receipt issued by Ongino sub county
10 and the certification confirms its authenticity. DW1 Kedi, in cross-examination stated that during the 2021 meeting the sub county of Ongino mentioned that Anyonga (respondent) was the owner of the plot but she rejected.

From the above while there is a distinction in the receipts issued to the
15 respondent in respect to presence of the plot number, his acquisition is clear compared to the that of the 1st and 3rd appellants.

Civil matters are determined on a balance of probabilities. In *Komakech & 7 Ors v Ayaa & Anor (Civil Appeal No. 28 of 2016) [2018] UGHCCD 54*, Justice Stephen found thus;

20

*"The question as to whether the appellants discharged the burden of proof on a balance of probabilities depends not on a mechanical quantitative balancing out of the pans of the scale of probabilities but, firstly, on a qualitative assessment of the truth and / or inherent
25 probabilities of the evidence of the witnesses and, secondly, an ascertainment of which of two versions is the more probable. The enquiry is two-fold: there has to be a finding on credibility of the witnesses; and there has to be balancing of the probabilities. When the law requires proof of any fact, the court must feel an actual
30 persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of*

5 *probabilities independently of any belief in its reality (see Wigmore on*
Evidence (2nd ed. 1923) v, s. 2498). The probabilities must be high
enough to warrant a definite inference that the allegations are true.
The law of evidence allocates the burden of proof. The party who
bears the burden must produce evidence to satisfy it, or his or her case
10 *is lost. In a civil suit, when the evidence establishes conflicting versions*
of equal degrees of probability, where the probabilities are equal so
that the choice between them is a mere matter of conjecture, the
burden of proof is not discharged (see Richard Evans and Co. Ltd v.
Astley, [19U] A.C. 674 at 687). The facts proved must form a
15 *reasonable basis for a definite conclusion affirmatively drawn of the*
truth of which the trier of fact may reasonably be satisfied
(see Bradshaw v. McEwans Pty Ltd, (1959) 101 C.L.R. 298 at 305). The
law does not authorise court to choose between guesses, where the
possibilities are not unlimited, on the ground that one guess seems
20 *more likely than another or the others”.*

In the instant case the I find that the respondent proved that he was lawfully allocated the suit land by Ongino sub county in 2008. He proved this through his witnesses who included his brother that made the payments, a parish chief who was present during the allocation and the
25 parish chief who was present during the 2021 meeting with Ongino Sub county authorities when they confirmed his receipt.

The 1st and 3rd appellant on the other hand failed to prove the authenticity of the ad hoc committee that allocated them the land, where it derived its authority from and the expanse of this authority.

30 Having failed to prove their ownership the subsequent sale to the 2nd appellant was thus illegal.

5 Counsel for the appellants also submitted that the suit by the respondent was time barred, given that the 1st and 3rd appellants were on the suit land for 18 years before they sold the same to the 2nd appellant.

The 1st and 3rd appellants claimed immediately they acquired the suit land in 2001 they took possession, poured construction materials and grew
10 crops on the same. They also claimed they dug a pit latrine on the land. The pit latrine per DW2 Otuna and DW6 Obelon this latrine was dug in 2018 and not earlier as claimed by the 1st appellant. The 1st and 3rd appellants both stated that they never stayed on the land because there is no house.

15 Their cultivation on the suit land was also never proved in evidence and as such the time period in which they used the land is not clear and as such they cannot claim adverse possession.

Furthermore, it was the testimony of PW4 that at the time he paid for the plot it had grass, PW2 stated at the time of allocating plot 36 it was
20 available having been a former livestock market and there was never any dispute over the land and even in 2013 when he was transferred he left knowing it belongs to the respondent.

Given that the usage of the land by the 1st and 3rd appellant for the 18 years claimed by Counsel for the appellant was never proved, I find that they
25 cannot claim to be adverse possessors or rely on the law of limitation.

I therefore agree with the findings of the trial magistrate that the respondent proved that he was the rightful owner of the suit plot, plot 36 Ramathan road in Ongino and consequently the appellants, especially the
30 2nd appellant, are trespassers on the same. Grounds 1, 2 and 3 accordingly fail.

5 Ground 4:

Counsel for the appellant submitted that Article 126(2) (c) of the Constitution of Uganda, 1995 as amended provides that adequate compensation shall be awarded to the victims of wrongs. The general principle that underlies the award of damages is that damages are
10 discretionary remedies and in order to award damages, it is incumbent upon the appellant to discharge the burden of the proof that there were damages or that it suffered loss as a result of the acts and omissions of the Respondents in respect to the suit land as held by *Pago (U) Ltd – versus-Fort Portal Municipality Council [2008] H.C.B 105.*

15 He further submitted that in *Uganda Commercial Bank versus Deo Kigozi [2002] 1 E.A 35*, court gave guidance on how to assess the quantum of damages that, the consideration should mainly be the value of the subject matter, the economic inconvenience that a party may have been put through, the nature and extent of the breach of injury suffered by the
20 innocent.

That in this instance the Respondents suit was based on vacant land, he had never entered on the land since the land was occupied and utilized by the 1st and 2nd appellants.

Throughout his testimony the Respondent did not state that he had mental
25 stress which would have been the basis of an award of general damages, he also never testified that he was obstructed from use of the land and as such the award of general damages to the Respondent was excessive and illegal.

Counsel for the respondent in reply submitted that the respondent sought
30 general damages for trespass, inconvenience and the expenses incurred. That the respondent having proved that the appellants trespassed on his

5 land he is entitled to an award of general damages. That the 2nd appellant has since put building materials on the suit land and constructed a permanent structure and as such the trial magistrate was right to award the quantum of damages.

The trial magistrate in his judgement awarded general damages of shs. 10 6,000,000/= for the inconvenience caused by the appellants to the respondent.

The respondent in his plaint prayed for general damages for trespass, in his examination in chief he stated that the actions of the defendants have caused him pain and suffering by depriving him usage of his land.

15 It was also his testimony that he does not stay on the land and in fact there was no evidence that he was planning to develop the land.

It is trite law that damages are the direct probable consequences of the act complained of.

An appellate court may interfere with the award of damages where the 20 trial court in assessing the damages took into consideration an irrelevant factor, failed to take into account relevant factors, or otherwise applied the wrong principle of law.

The appellate court may also interfere where the amount awarded is inordinately low or high that it is a wholly erroneous estimate of damages 25 suffered.

The fundamental principle for award of damages is *restitutio integrum* which means that the plaintiff is to be restored as nearly as possible to a position he would have been at had the injury not occurred.

The general rule regarding the measure of general damages is that, the 30 award is such a sum of money that will put the party who has been injured or who has suffered as adjudged by Court in the same position as he or she

5 would have been had he or she not sustained the wrong for which he or she is getting the compensation. (*Kabandize & 21 Ors v Kampala Capital City Authority (Civil Appeal No. 36 of 2016) [2019] UGCA 48*)

In the present case while the respondent did purchase the suit plot, there is no indication that he had made any plans to develop the same. The trial magistrate also did not indicate the reason behind his assessment of Ugx. 6,000,000/= as general damages to the respondent.

10 While it is true that he was inconvenienced when he discovered that the 2nd appellant was occupying the suit plot and constructing on the same, I find that the award of Ugx. 6,000,000/= was excessive in the circumstances.

15 This ground accordingly succeeds.

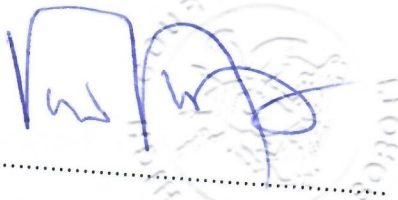
5. Conclusion:

This appeal fails in terms of grounds 1 to 3 but succeeds only in terms of ground 4 on general damages.

Accordingly, the judgement and orders of the lower court are upheld except the order as to general damages is reduced to Shs. 600,000/= only which I find to be a reasonable as general damages in the circumstances to the respondent.

I do so order.

25



Hon. Justice Dr Henry Peter Adonyo

Judge

30
3rd October, 2023.