

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

**CIVIL SUIT NO. 3199 OF 2016**

- 1. GEORGE WILLIAM EGADDU**  
**2. JANE GRACE EGADDU :::PLAINTIFFS**

***VERSUS***

- 1. REGISTRAR OF TILES**  
**2. SILVER SPRINGS HOTEL (1969) LTD**  
**3. RHINO INVESTMENTS LTD :::DEFENDANTS**

**BEFORE: HON. JUSTICE BERNARD NAMANYA**

**JUDGMENT**

**Introduction:**

1. On the 1<sup>st</sup> March 1971, the 2<sup>nd</sup> defendant (Silver Springs Hotel (1969) Limited) was granted a lease for the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 with a duration of 2 years. The directors of the 2<sup>nd</sup> defendant were thereafter expelled from Uganda by the then military regime.
  
2. On the 1<sup>st</sup> March 1990, Rev. John Obokech and Catherine Obokech were granted a 2-year lease in respect of the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala. On the 28<sup>th</sup> June 1997, the lease was extended to a term of 95 years effective from 1<sup>st</sup> March 1992. Rev. John Obokech and



Catherine Obokech constructed on the leased land and started operating the business of “St. John’s Guest House”.

3. On the 24<sup>th</sup> May 1999, the Government through the Minister of Finance issued a certificate to the 2<sup>nd</sup> defendant (Silver Springs Hotel (1969) Limited) authorising the repossession of the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 under the *Expropriated Properties Act (Cap 87)*. After obtaining the repossession certificate, the 2<sup>nd</sup> defendant was issued with a leasehold certificate of title for the land for a further period of 2 years with effect from 24<sup>th</sup> May 1999.
4. On the 15<sup>th</sup> December 2001, the plaintiffs purchased land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala from Rev. John Obokech and Catherine Obokech and continued operating St. John’s Guest House.
5. On the 11<sup>th</sup> November 2003, the 1<sup>st</sup> defendant (Registrar of Titles) wrote to Rev. John Obokech and Catherine Obokech informing them that the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close was illegally and wrongfully obtained contrary to *Section 2* of the *Expropriated Properties Act (Cap 87)*. The duplicate certificate of title was cancelled and retained by the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant informed the plaintiffs that the land that was purchased by the plaintiffs is part of the land that was re-possessed by the 2<sup>nd</sup> defendant.
6. In June 2006, the 3<sup>rd</sup> defendant (Rhino Investments Limited) purchased the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 3729 Folio 8 which

includes land measuring 0.205 Hectares comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala claimed by the plaintiffs

7. Aggrieved by these developments, the plaintiffs brought this suit seeking among other reliefs, reinstatement of their certificate of title that was cancelled by the 1<sup>st</sup> defendant. The suit was initially filed in the High Court of Uganda at Nakawa (Civil Suit No. 310 of 2013). Hearing of the suit initially proceeded ex parte and Judgment was delivered by Justice Wilson Masalu Musene on the 26<sup>th</sup> May 2015 in favour of the plaintiffs. The 2<sup>nd</sup> defendant successfully applied to set aside the Judgment on the 20<sup>th</sup> November 2015. On the 2<sup>nd</sup> December 2015, the 3<sup>rd</sup> defendant successfully applied to be joined to the suit. The suit was transferred to the Land Division of the High Court and hearing of the suit began afresh.

### **Representation:**

8. At the hearing of the suit, the plaintiffs were represented by Mr. Wandera Ogalo of Victoria Advocates. The 1<sup>st</sup> defendant was represented by Mr. Moses Sekitto of the Office of Titles. The 2<sup>nd</sup> defendant was represented by Mr. Richard Bwayo of M/s Nangwala, Rezida & Co. Advocates. The 3<sup>rd</sup> defendant was represented by Mr. Geoffrey Turyamusiiima of M/s Wameli & Co Advocates.

### **The plaintiffs' evidence:**

9. The plaintiffs produced 4 (four) witnesses to prove their case. PW1 (George William Egaddu), PW2 (Jane Grace Egaddu), PW3 (Bishop John Obokech) and PW4 (Paul Mungati).

10. The plaintiffs adduced evidence of the following documents that were exhibited:

Exh.P1 – Agreement of sale between Bishop Obokech and Mrs. Catherine Obokech and Mr and Mrs. George William Egaddu;

Exh.P2 – Certificate of title for plot 4, Port Bell close;

Exh.P3 – Assessment of stamp duty;

Exh.P4 – Payment receipt of stamp duty;

Exh.P5 – Notice for cancellation under section 92 of the Land Act;

Exh.P6 – Letter cancelling the title for plot 4 Port Bell, LRV 2568 Folio 9;

Exh.P7 – Letter to Divesture Committee, Departed Asians Property Custodian Board dated 11<sup>th</sup> October 2013;

Exh.P8 – Reply from chairman Divesture Committee, Departed Asians Property Custodian Board dated 17<sup>th</sup> October 2013;

Exh.P9 – Letter to Executive Secretary D.A.P.C.B dated 6<sup>th</sup> February 2018;

Exh.10 – Certificate of title for plot 80-82 and M191, Port Bell Road;

Exh.P11 – Letter by 2<sup>nd</sup> defendant to KDLB dated 12<sup>th</sup> February 2001;

Exh.P12 – Survey and Valuation report;

Exh.P13 – Letter from the plaintiffs to the Commissioner Land Registration;

Exh.P14 – Letter by the 2<sup>nd</sup> defendant to the plaintiffs;

Exh.P15 – Letter to the Registrar of Titles requesting for a special certificate dated 28<sup>th</sup> July 1999;

Exh.P16 – Certificate of title for plot 80-82 and M191, Port Bell Road Bugolobi;

Exh.P17 – Certificate of title for plot 4, Port Bell Close;

Exh.P18 – Mortgage between Rev. John Obokech and Catherine Obokech and Uganda Commercial Bank dated 1<sup>st</sup> March 1991;

Exh.P19 – Statement of search from the office of Commissioner Land Registration;

Exh.P20 – Extension of the lease for plot 80-82 and M191 Port Bell Road;

Exh.P21 – Statement of search at land offices dated 2<sup>nd</sup> April 2013;

Exh.P22 – Letter to the secretary KDLB dated 4<sup>th</sup> February 2000;

Exh.P23 – Letter from City Council of Kampala dated 12<sup>th</sup> August 2002;

Exh.P24 – Lease agreement between KDLB and the 2<sup>nd</sup> defendant;

Exh.P25 – Certificate of title for plot 80-82, Port Bell Road;

Exh.P26 – Statement of search report dated 10<sup>th</sup> May 2011;

Exh.P27 – Transfer letter from 2<sup>nd</sup> defendant to 3<sup>rd</sup> defendant; and

Exh.P28 – Application for consent to transfer / transfer form.

**The defendants' evidence:**

11. The defendants produced 3 (three) witnesses to prove their case. DW1 (K. Chandra Sekhara Rao) – for the 2<sup>nd</sup> defendant; DW2 (Hope Mugenyi) – for the 3<sup>rd</sup> defendant; and DW3 (Bamwiite Emmanuel) – for the 1<sup>st</sup> defendant.
  
12. The defendants adduced evidence of the following documents that were exhibited:
  - Exh.D1 – Certificate of title for plot 4, Port Bell close;
  - Exh.D1(b) – Certificate authorising repossession dated 22<sup>nd</sup> May 1999;
  - Exh.D2 – A copy of the application letter from Silver Springs Hotel Ltd for renewal of lease dated 12<sup>th</sup> February 2001;
  - Exh.D3 – A copy of the letter from KDLB granting the application dated 18<sup>th</sup> April 2001;
  - Exh.D4 – A copy of the letter from KDLB dated 2<sup>nd</sup> May 2006;

Exh.D5 – Statement of search report dated 10<sup>th</sup> May 2011;

Exh.D6 – Statement of search report dated 25<sup>th</sup> May 2011;

Exh.D7 – A copy of the letter from KDLB approving lease extension to 2<sup>nd</sup> defendant dated 11<sup>th</sup> March 2011;

Exh.D8 – Kampala Capital City Authority Bank Payment Advice form serial No. 93192 for 2010 ground rent;

Exh.D9 – City Council of Kampala Bank payment form for ground rent dated 8<sup>th</sup> October 2009;

Exh.D10 – City Council of Kampala, Nakawa Division Ground rent Demand Note;

Exh.D11 – Bank of Africa receipt to KCC dated 23<sup>rd</sup> September 2009;

Exh.D12 – City Council of Kampala bank payment form;

Exh.D13 – Copy of ruling in Civil Suit No.335 of 2013, Charles Ssempawo & others v. Silver Springs Hotel (1969) Ltd;

Exh.D14 – Certificate of title for land comprised in LRV 804 Folio 12, Plot 80-82 and M191 of Port Bell Road;

Exh.D15 – Certificate of title for land comprised in LRV 3521 Folio 15, Plot 80-82 and M191 of Port Bell Road, Bugolobi;

Exh.D16 – Leasehold Certificate of title, LRV 3729, Folio 8, plot 80-82 Port Bell Road;

Exh.D17- Leasehold Certificate of title, LRV 2568, Folio 8, plot 9 Port Bell Road;

Exh.D18 – A copy of the judgment delivered by Justice Wilson Masalu Musene dated 26<sup>th</sup> May 2015;

Exh.D19 – A copy of the ruling delivered by Justice Wilson Masalu Musene;

Exh.D20 – A copy of the survey report from Ministry of Lands, Housing and Urban development dated 14<sup>th</sup> May 2018;



Exh.D21 – Certificate of title for land comprised in plot 80-82 and M191, LRV 804, Port Bell Road;

Exh.D22 – Certificate of title for LRV 2568, Folio 9, plot 4 Port Bell close;

Exh.D23 – Certificate Authorising Repossession;

Exh.D24 – Notice to the plaintiffs - intention to cancel the certificate of title dated 30<sup>th</sup> January 2003;

Exh.D25 – Letter to the Ag. Commissioner of Lands and Surveys dated 1<sup>st</sup> December 2003; and

Exh.D26 – Letter to Commissioner for Land Registration dated 10<sup>th</sup> March 2003.

**Locus in quo visit:**

13. On the 17<sup>th</sup> day of January 2023, I carried out a locus in quo visit to the suit land located at along Port Bell Road in Bugolobi in the presence of all counsel in personal conduct of the suit.
14. The witnesses present at the locus in quo visit included: Egaddu George William and Jane Grace Egaddu for the plaintiffs; and Hope Mugenyi for the 3<sup>rd</sup> defendant.
15. The 1<sup>st</sup> plaintiff (Egaddu George William) swore in and gave evidence at the locus in quo visit and was cross examined by Mr. Geoffrey Turyamusiima (counsel for the 3<sup>rd</sup> defendant). Hope Mugenyi on behalf of the 3<sup>rd</sup> defendant swore in and gave evidence at the locus in quo visit and was cross examined by Mr. Wandera Ogalo (counsel for the plaintiffs).

16. I then inspected the suit land and made the following observations:
- i). On the suit land (Plot 4), is a storied building housing St. John’s Guest House.
  - ii). Neighbouring the disputed land, is Salama Springs, Bugolobi Flats, and Bugolobi Market.
  - iii). There is a perimeter wall around the suit land; and
  - iv). Other than St. John’s Guest House (which sits on Plot 4), the rest of the suit land is vacant. There were no other noticeable developments on the land.
17. According to the Joint Scheduling Memorandum, the parties agreed on following issues for court’s determination:
- i). Whether the land in dispute was ever expropriated and therefore subject to repossession?
  - ii). If so, whether the 2<sup>nd</sup> defendant lawfully repossessed the suit land?
  - iii). Whether the purchase by the plaintiffs after the purported repossession is extinguishable by reason of the Expropriated Properties Act?
  - iv). Whether the 2<sup>nd</sup> defendant was involved in forgery and fraud of both the repossession certificate and the land title in respect to the suit land and its application to Kampala District Land Board and if so, whether the 3<sup>rd</sup> defendant took good title?
  - v). Whether the Minister of Finance became functus officio upon issuing the certificate of repossession and if so, whether that fact overrides questions of fraud if proved?
  - vi). Whether the 2<sup>nd</sup> defendant possessed any interest in the land and the sale to the 3<sup>rd</sup> defendant extinguished the plaintiffs’ interest?
  - vii). Whether the 3<sup>rd</sup> defendant is a bona fide purchaser?



viii). What remedies are available to the parties?

**Preliminary point of law:**

18. The 3<sup>rd</sup> defendant raised a preliminary point of law to the effect that after the 3<sup>rd</sup> defendant was added as a party to the suit, the plaintiffs were required to amend their pleadings but they did not. He argued that this was contrary to the mandatory requirement provided for in *Order 1 rule 10(4)* of the *Civil Procedure Rules*.
19. In response, counsel for the plaintiffs argued that the 3<sup>rd</sup> defendant is not prejudiced in any way, that the 3<sup>rd</sup> defendant was made aware of the plaintiffs' case and the 3<sup>rd</sup> defendant has fully participated in defending the suit.
20. I have considered the submissions of both parties on the preliminary objection. In my opinion, the 3<sup>rd</sup> defendant was made fully aware of the plaintiffs' case and has fully participated in defending the case. The 3<sup>rd</sup> defendant even filed a counter claim against the plaintiffs. Accordingly, I find no merit in the preliminary objection. It is overruled. I will now proceed to consider the merits of the case.
21. I shall address the issues in the following order. Issue No.1 shall be considered first followed by Issue No.3. I will then address Issues No.2 & 5 jointly. This will be followed by Issues No.4, 6 & 7 which shall also be addressed jointly. Issue No. 8 shall be addressed last.

**Issue No.1: Whether the land in dispute was ever expropriated and therefore subject to repossession?**

22. To determine if the land in dispute was ever expropriated, I will start by examining the relevant provisions of the *Expropriated Properties Act (Cap 87)* whose main purpose was to return properties to former owners who had been dispossessed by the military regime in the period 1972 to 1979.

23. As to the purpose of the *Expropriated Properties Act (Cap 87)*, in the case of the *Registered Trustees of Kampala Institute v. Departed Asians Property Custodian Board, Supreme Court Civil Appeal No. 21 of 1993 (Coram: Wambuzi C.J., Odoki, J.S.C., and Platt, J.S.C)*, the Supreme Court held that:

*“This is a remedial statute; it is putting right what the Legislature in 1982 thought had been unfortunately decreed or done a decade earlier. It was aiming at returning property to the former owners. Such an Act should be given a liberal interpretation.”*

24. Under section 1 (c) of the *Expropriated Properties Act (Cap 87)*, a:

*“former owner” means and includes any person who was either the registered owner or proprietor of any real or movable property in Uganda or was a shareholder in a business or enterprise registered in Uganda and who was either expelled or forced to flee from Uganda during the period of the military regime or was in any other way dispossessed of the property or business; and anybody who is the legal heir or successor of that person;*” (underlining is mine for emphasis)

25. It was not the purpose of the *Expropriated Properties Act (Cap 87)* to facilitate or aid persons who had been expelled or forced to flee by the military regime in the period 1972 to 1979 to acquire properties that they did not own in the first place.
26. The fact that the directors of the 2<sup>nd</sup> defendant are Asians who left Uganda following their expulsion by the military regime is not contested. But was the 2<sup>nd</sup> defendant a “former owner” within the meaning of the law as defined above? The issue for me to decide is whether the property was ever expropriated in the first place. This question is examined in the following paragraphs.
27. It was argued for the plaintiffs that the lease for the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 initially had a duration of 2 years from the 1<sup>st</sup> March 1971. The lease expired on the 28<sup>th</sup> February 1973. The *Assets of Departed Asians Act (Cap 83)* commenced on 7<sup>th</sup> December 1973. Accordingly, that by the time the Government expropriated and vested properties of the departed Asians in Government, the lease had expired and the property had reverted to the controlling authority (City Council of Kampala). On this ground, the plaintiffs argue that the *Expropriated Properties Act (Cap 87)* was not applicable to the suit land. They argue that the property was not expropriated and was therefore, not subject to repossession by the Minister of Finance. For this submission, the plaintiffs relied on the case of *Chris Akena Onapa v. Mohamed Hussein Rashid Punjani, Supreme Court Civil Appeal No. 5 of 1995 (Coram: Manyindo, D.C.J., Odoki, J.S.C., & Tsekooko, J.S.C)*.

28. On the other hand, it was argued for the 2<sup>nd</sup> defendant that the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 was expropriated by the Government during the period 1972 to 1979.
29. In the case of *Chris Akena Onapa (supra)*, the brief facts of the case were that the respondent (Mohamed Hussein Rashid Punjani) held a three-year lease on Plot 7A, Acacia Avenue granted by Kampala City Council (K.C.C) for purposes of constructing a house. The lease was to run up to 31<sup>st</sup> October 1972. The respondent started to construct a storied residential house on it. Because he had not completed the construction of the house, in September 1972, he applied to the K.C.C for the extension of the lease which was granted. The lease extension was to run from 1<sup>st</sup> November 1972 for a further period of 12 months subject to fulfilling certain conditions. The respondent was among the Asians expelled from Uganda and he left without declaring his assets and before he received the offer of the extension of the lease. On the 3<sup>rd</sup> July 1984, the appellant applied for Plot 7A and was granted a lease offer for 2 years. By a letter dated 31<sup>st</sup> March 1987, K.C.C granted to the appellant a full-term lease for Plot 7A. On the 16<sup>th</sup> November 1992, the Minister of Finance issued the respondent with a certificate authorizing repossession of Plot 7A. After an unsuccessful attempt to evict the tenants from Plot 7A, the respondent instituted these proceedings. One of the issues framed for determination of the trial Judge was whether Plot 7A lawfully vested in the Departed Asians Property Custodian Board? The trial Judge decided that Plot 7A lawfully vested in the Departed Asians Property Custodian Board. The appellant appealed to the Supreme Court on grounds that the Judge erred in law in declaring that the appellant's title for Plot 7A Acacia Avenue was affected by the *Expropriated Properties Act, 1982*. The Supreme Court of Uganda held that there was no

lease to vest in Government when the respondent left Uganda in February 1973. The Court further held that for *Sections 2(2)(b) of the Expropriated Properties Act (Cap 87)* to apply:

“[...] the property affected must have vested in the Government, when the lease, agreement for a lease or any other specified tenancy was still in force. Subsequent expiry of such a lease or agreement for the lease or tenancy would not affect the status of the property so long as at the time of expropriation (vesting in the Government) the lease or agreement for the lease or tenancy was subsisting. In the circumstances of the case before us there was no lease or agreement for a lease to vest in Government when the respondent left Uganda in February, 1973. With respect I think that the learned trial Judge erred in holding that the lease of Plot 7A Acacia Avenue, Kampala, subsisted at the date of his expulsion and the trial Judge further erred when he declared that the lease granted to the appellant by K.C.C. is null and void. In my view ground one must succeed.” (underlining is mine for emphasis)

30. For a property to come within the ambit of the *Expropriated Properties Act (Cap 87)*, it must have been vested in the Government in the period 1972 to 1979. If the property was a lease, such a lease had to be subsisting for it to vest in Government. In the case of *Registered Trustees of Kampala Institute (supra)*, where former Asian property owners successfully argued that the property was governed by the *Expropriated Properties Act (Cap 87)*, evidence was adduced to prove that there was a subsisting lease at the time of expulsion which ran from the 18<sup>th</sup> July 1932 to 17<sup>th</sup> July 1981.

31. I have examined Exh.D21 (certificate of title and lease by the City Council of Kampala for the land comprised in Plot 80-82 and M191, LRV 804, Port Bell Road). The lease is dated 2<sup>nd</sup> December 1971, and it is between the City Council of Kampala and Silver Springs Hotel (1969) Limited. Clause 1 of the lease provides that the duration of the lease shall be for 2 years with effect from the 1<sup>st</sup> March 1971. Under clause 2(b) of the lease, the 2<sup>nd</sup> defendant covenanted as follows:

*“(b) to erect on the said land buildings [...] of a value of not less than shillings five hundred thousand (Shs. 500,000) in accordance with plans and specifications which shall be approved by the Lessor.”*

32. The evidence on record does not show that the 2<sup>nd</sup> defendant ever complied with the covenant to construct buildings with a value of not less than Shs. 500,000. DW1 (K. Chandra Sekhara Rao) under cross examination testified that:

*“The 2<sup>nd</sup> defendant has not constructed anything on Plot 80-82 [...] We have never submitted any building plans to KCCA.”*

33. The 2<sup>nd</sup> defendant having failed to comply with clause 2(b) of the lease which required them to erect on the said land buildings of a value of not less than Shs. 500,000, it follows that the lease for the land comprised Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 expired on the 28<sup>th</sup> February 1973.

34. There being no such subsisting lease, the implication for the decision in the *Chris Akena Onapa case (supra)* to the case before me is that the 2<sup>nd</sup> defendant's lease expired on the 28<sup>th</sup> February 1973 before the lease was vested

in the Government by the *Assets of Departed Asians Act (Cap 83)* whose commencement date was 7<sup>th</sup> December 1973. Can the 2<sup>nd</sup> defendant say that they were dispossessed of property that they never owned in the first place?

35. The result is that the *Expropriated Properties Act (Cap 87)* did not apply to the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12, and by extension to the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala since it is claimed that Plot 4 is part of Plot Plot 80-82 & M191 Port Bell Road. The lease was never expropriated and therefore could not be subject to repossession under *Expropriated Properties Act (Cap 87)*.
36. The second reason advanced by the plaintiffs that the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 was never expropriated by the Government is that the *Expropriated Properties Act (Cap 87)* ceased to apply to Plot 80-82 & M191 Port Bell Road when the 2<sup>nd</sup> defendant's lease expired on 23<sup>rd</sup> May 2001. This would mean that by the time the 1<sup>st</sup> defendant cancelled the certificate of title for Plot 4 on grounds that it formed part of Plot 80-82 & M191 that was purportedly repossessed by the 2<sup>nd</sup> defendant, the *Expropriated Properties Act (Cap 87)* had ceased to apply because the lease had expired and had not been renewed. It was argued for the plaintiffs that when the Minister of Finance issued a certificate of repossession to the 2<sup>nd</sup> defendant (Silver Springs Hotel (1969) Ltd) on the 24<sup>th</sup> May 1999, in accordance with *Regulation 13 of The Expropriated Properties (Repossession and Disposal) (No. 1) Regulations (S.I 87-8)*, the 1<sup>st</sup> defendant (Registrar of Titles) extended the 2<sup>nd</sup> defendant's lease for the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 for a further period of 2 (two) years from 24<sup>th</sup> May 1999 (see Exh.P20, D14 & D21). The plaintiffs



argue that the 2<sup>nd</sup> defendant's lease expired on 23<sup>rd</sup> May 2001 and was never renewed. It is the plaintiffs' argument that on the 15<sup>th</sup> December 2001, when they purchased land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala from Rev. John Obokech and Catherine Obokech, the *Expropriated Properties Act (Cap 87)* had ceased to apply on account of the expiry of the lease. Accordingly, it is argued by the plaintiffs, that the cancellation of the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close on the 11<sup>th</sup> November 2003 was illegal because the *Expropriated Properties Act (Cap 87)* had ceased to apply to the land in dispute on account of the expiry of the lease. For this argument, the plaintiffs relied on the case of *Olango Joseph v. Too-Rom Richard, Civil Appeal No. 39 of 2019 (High Court of Uganda at Gulu)* where it was held that when a lease expires, it cannot be extended, and parties can only create a new lease agreement with a new term.

37. The argument raised by the plaintiffs is interesting because, if indeed the 2<sup>nd</sup> defendant's lease procured pursuant to the repossession certificate issued by the Minister of Finance had expired on 23<sup>rd</sup> May 2001, how could the 1<sup>st</sup> defendant (Registrar of Titles) have effected cancellation of the certificate of title for Plot 4 on account of the *Expropriated Properties Act (Cap 87)* on the 11<sup>th</sup> November 2003 more than 2 years after the expiry of the lease?
38. Despite the interesting arguments raised by the plaintiffs, I will not make any findings on this line of argument, because, I have already decided above that the *Expropriated Properties Act (Cap 87)* did not apply to the land in dispute and was not subject to repossession.
39. Issue No.1 is therefore answered in the negative.



**Issue No.3: Whether the purchase by the plaintiffs after the purported repossession is extinguishable by reason of the Expropriated Properties Act**

40. This issue brings into focus the role of the 1<sup>st</sup> defendant (Registrar of Titles) in the cancellation of the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala. In Exh.D22 which is a certificate of title for Plot 4, the 1<sup>st</sup> defendant endorsed the following reason for the cancellation of the title:

*“THIS CERTIFICATE OF TITLE IS HEREBY CANCELLED AS IT WAS ILLEGALLY OR WRONGFULLY OBTAINED, VIZ CONTRARY TO THE PROVISIONS OF SECTION 2 OF THE EXPROPRIATED PROPERTIES ACT, 1982”* (underlining is mine for emphasis)

41. It was argued for the defendants that the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 included the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala previously owned by Rev. John Obokech and Catherine Obokech, and later purchased by the plaintiffs, measuring approximately 0.205 Hectares (Exh.P2).

42. Prior to the purported repossession of the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 by the 2<sup>nd</sup> defendant, PW3 (Rev. John Obokech) and Catherine Obokech had on the 1<sup>st</sup> March 1990 obtained a 2-year lease (Exh.P17) in respect of the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala. On the 28<sup>th</sup> June 1997, the lease was extended to a term of 95 years effective from 1<sup>st</sup> March 1992. A certificate of title was issued by the Registrar of Titles (Exh.P2). PW3 (Rev. John Obokech) testified

that after acquiring the lease, he started constructing a guest house. He mortgaged Plot 4 Port Bell Road to Stanbic Bank and obtained a loan, and used the money to finish construction of the guest house. He paid back the loan in 1999 and the Bank caveat was removed. He then obtained an occupational permit from KCC and began the business of a guest house.

43. This means that by the time the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 was purportedly repossessed by the 2<sup>nd</sup> defendant on the 24<sup>th</sup> May 1999, Rev. John Obokech and Catherine Obokech had in their possession a full-term lease of 95 years on Plot 4 Port Bell Road. Not only did Rev. John Obokech and Catherine Obokech own a full-term lease of 95 years, they had also developed on the leased land, a guest house which was operational. According to Exh.P12 (Survey and Valuation Report by M/s East African Consulting Surveyors & Valuers) and the testimony of PW4 (Paul Mungati), in the year 2014, the developments on Plot 4 Port Bell Road were valued Uganda shillings 2 billion.
44. On the 15<sup>th</sup> December 2001, the plaintiffs purchased land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala from Rev. John Obokech and Catherine Obokech.
45. According to the 1<sup>st</sup> defendant (Exh.P5), the land that was purchased by the plaintiffs is part of the land that was re-possessed by the 2<sup>nd</sup> defendant pursuant to *sections 4 & 5 of the Expropriated Properties Act (Cap 87)*.
46. On the 11<sup>th</sup> November 2003, the 1<sup>st</sup> defendant wrote to Rev. John Obokech and Catherine Obokech informing them that the transfer of the land comprised in

LRV 2568 Folio 9 Plot 4 Port Bell Close to the plaintiffs, could not be effected because the land was illegally and wrongfully obtained contrary to *Section 2* of the *Expropriated Properties Act (Cap 87)*. The duplicate certificate of title was cancelled and retained by the 1<sup>st</sup> defendant.

47. The law applicable at the time (2003) was the *Land Act (Cap. 227)* before it was amended by *The Land (Amendment) Act, 2004* that introduced *sections 91 (2), (2a) & (2b)* and repealed *section 69* of the *Registration of Titles Act (Cap 230)*.
48. The special powers of the Registrar of Titles (now Commissioner for Land Registration under *The Land (Amendment) Act, 2004*) were set out in *section 91* of the *Land Act (Cap 227)* before it was amended. The special powers of the Registrar of Titles include the power to cancel illegally or wrongfully obtained certificates of title.
49. The exercise of the powers of the Registrar of Titles was regulated by *sections 91 (8) & (9)* of the *Land Act (Cap 227)* before it was amended in 2004, which provided that:
  - “(8) *In the exercise of any powers under this section, the registrar shall—*
    - (a) give not less than twenty-one days’ notice in the prescribed form to any party likely to be affected by any decision made under this section;*
    - (b) provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given;*

*(c) conduct any such hearing in accordance with the rules of natural justice but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law;*

*(d) give reasons for any decision that he or she may make.*

*(9) The registrar shall communicate his or her decision in writing to the parties and the committee.” (underlining is mine for emphasis)*

50. *Sections 91 (2), (2a) & (2b) of the Land Act (Cap. 227) (as amended by The Land (Amendment) Act, 2004)), impose similar requirements on the Commissioner for Land Registration to observe the rules of natural justice and accord any affected parties a fair hearing as required by the Constitution of Uganda (1995) as amended.*

51. Under *sections 91 (8) & (9) of the Land Act (Cap 227)*, it was a mandatory requirement of the law, as it is now, for the 1<sup>st</sup> defendant (Registrar of Titles) to give **notice of 21 days** to the registered proprietor (Rev. John Obokech and Catherine Obokech) prior to proceeding with cancellation of the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close. Whereas the 1<sup>st</sup> defendant appears to have issued such notice (Exh.D24, dated 30<sup>th</sup> January 2003), there is no evidence of its receipt by Rev. John Obokech and Catherine Obokech, and other affected parties.

52. Equally, the 1<sup>st</sup> defendant had a duty to accord a hearing to the plaintiffs who owned an equitable interest in the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close as transferees.

53. According to *Megarry & Wade: The Law of Real Property, 9<sup>th</sup> Edition, Stuart Bridge, Elizabeth Cooke and Martin Dixon, Sweet & Maxwell, London, 2019 at paragraphs 14-051 to 14-061*), an equitable interest in the land is enforceable against third parties. As Justice Stephen Mubiru held in the case of *Erina Lam Oto Omgom v. Opoka Bosco and Anor (Civil Appeal No. 91 of 2019) [2020] UGHC 185*:

*“An equitable interest is valid against the entire world, except for the bona fide purchaser of a legal estate for value without notice actual, constructive or imputed. The onus is on the purchaser to establish himself as such; and it is a heavy burden to discharge.”* (underlining is mine for emphasis)

54. In summary, prior to cancellation of the certificate of title for the land, the Registrar of Titles ought to have complied with the following:

i). **Issue a twenty-one days’ notice to any party likely to be affected.**

In the case before me, the parties likely to be affected included the plaintiffs (George William Egaddu & Jane Grace Egaddu); the 2<sup>nd</sup> defendant (Silver Springs Hotel (1969) Ltd); Kampala District Land Board; and Rev. John Obokech and Catherine Obokech;

ii). Conduct a public hearing with the affected parties on the matter in accordance with the rules of natural justice and fair hearing; and

iii). Provide an opportunity to be heard to any party likely to be affected by the decision of the 1<sup>st</sup> defendant.

55. Regarding the first requirement, there is evidence that the Registrar of Titles issued a twenty-one days’ notice of a hearing (Exh.P5). However, issuing of the notice was not all that was required of the Registrar of Titles. The Registrar

of Titles had a legal obligation to ensure that the notice of a hearing was duly received by the affected parties. I have reviewed the evidence on the record and there is no proof that the notice that was issued by the Registrar of Titles was actually received by any of the affected parties. During cross examination, Mr. DW3 (Bamwiite Emmanuel) failed to provide proof of service of the twenty-one days' notice on the affected parties. It is not open to the Registrar of Titles to simply state that a notice of a hearing was issued. The critical question is whether the notice of a hearing was actually received by the affected parties? The answer is NO. The absence of proof of service of the notice of hearing on the affected parties means that there was no notice at all. The conclusion, is that there was non-compliance, by the Registrar of Titles, with the legal requirement to issue a twenty-one days' notice of a hearing to the affected parties.

56. Regarding the second and third requirements, DW3 (Mr. Bamwiite Emmanuel) failed to provide proof that a public hearing as required by the law was conducted and the affected parties given an opportunity of being heard. If the public hearing took place, the Registrar of Titles ought to have made a record of proceedings but none was tendered in evidence. The conclusion, is that the 1<sup>st</sup> defendant did not conduct a public hearing, which is a clear breach of the law.

57. The other important question that I must consider is whether the Registrar of Titles could lawfully cancel a leasehold certificate of title without according the lessor, Kampala District Land Board, an independent constitutional body established under *article 241 of the Constitution of Uganda (1995 as amended)*, a fair hearing.

58. Under *section 60 (2) (c)* of the *Land Act (Cap 227)*, Kampala District Land Board has power to lease land held by it. The evidence before me does not show that Kampala District Land Board ever participated in any hearing prior to cancellation of the leasehold certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala.
59. Kampala District Land Board had the overall legal responsibility for the lease on the suit land. In pursuance of its legal responsibility, Kampala District Land Board granted a 95-year lease on Plot 4 to the plaintiffs. Did Registrar of Titles accord Kampala District Land Board a fair hearing prior to reaching a decision to cancel the leasehold certificate of title for Plot 4?
60. The Registrar of Titles (now Commissioner for Land Registration) had a legal obligation to accord a hearing to the lessor (Kampala District Land Board) before taking a decision on cancellation of leasehold certificate of title for plaintiffs. District land boards are established under the Constitution of Uganda (1995) and their independence is protected under *article 241 (2)* of the *Constitution of Uganda* which provides that:
- “In the performance of its functions, a district land board shall be independent of the Uganda Land Commission and shall not be subject to the direction or control of any person or authority but shall take into account national and district council policy on land.*
- (underlining is mine for emphasis)
61. Exh.P22 (letter dated 4<sup>th</sup> February 2000 by Mr. Edward Karibwende to the Secretary of Kampala District Land Board) demonstrates the kind of engagement that the 1<sup>st</sup> defendant ought to have had with Kampala District

Land Board prior to cancelling the leasehold certificate of title for the land claimed by the plaintiffs. In this letter, the 1<sup>st</sup> defendant implores the 2<sup>nd</sup> defendant to give up Plot 80-82 because it was re-allocated and there are existing developments. The last two paragraphs of the letter state as follows:

*“In my opinion, the Management of Silver Springs Hotel (1969) knows of the re-allocation of Plot 80-82 as they can see the developments thereon. They can easily give up the re-allocated plot and retain M.191 which they occupy and use up to today.*

*The purpose of this letter therefore, is to advise your Board to get in touch with M/s Silver Springs Hotel (1969) Ltd with a view of getting the plot in question formally surrendered before we can be asked to prepare fresh titles for subsequent allocatees”*

62. The provisions of *sections 91 (8) & (9) of the Land Act (Cap 227)* are a mandatory legal requirement, and there is no reason why the Registrar of Titles should not have effected service of the notice of intention to cancel the certificate of title on the affected parties, and complied with the law by conducting a public hearing with all the affected parties prior to cancellation of the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close.

63. In the case of *Birus Property Services Ltd v. The Commissioner Land Registration & Anor (Miscellaneous Cause 1 of 2015) [2015] UGHCCD 155*, where an applicant challenged the actions of the Commissioner for Land Registration, who was the 1<sup>st</sup> respondent in the case, Justice Godfrey Namundi held that:



*“In summary the failure to comply with the provisions of Section 91 of the Land Act as amended rendered the actions and decisions of the 1<sup>st</sup> Respondent illegal and nugatory. Notice was not given in accordance with Section 91 (8) of the Land Act. As such there was no proper hearing. The Applicant was denied a right to a hearing which is an essential element of natural justice. There was no effective communication of the decision by the 1<sup>st</sup> Respondent. There could accordingly be no appeal against the hearing or decision that never was.”*

64. In the case of *Wamala v. Commissioner for Land Registration (Misc Cause 16 of 2021) [2021] UGHCLD 207*, court considered the implications of non-compliance by the Commissioner for Land Registration with the provisions of sections 91 (8) & (9) of the *Land Act (Cap 227)* and held that:

*“The Applicant has proved that the Respondent reached his decision irregularly and improperly without following the procedure under Section 91 of the Land Act and granting the Applicant a fair hearing hence the decision is also unreasonable. The Respondent therefore acted ultra vires in reaching the decision to cancel the Applicant’s certificate of title. A prerogative order of Certiorari is hereby issued against the Respondent, quashing and setting aside the decision of the Respondent cancelling the Applicant’s certificate of title for land comprised in LRV 4057 Folio 17 Plots 34-38 situate at Matooke Road.”*

65. The importance of strict compliance with the procedure laid out under sections 91(8) & (9) of the *Land Act (Cap. 227) (as amended by Act 1 of 2004)* by the

Commissioner for Land Registration cannot be over-emphasised. It is meant to accord a party whose certificate of title for land faces cancellation by the Commissioner for Land Registration the right to be heard and present its case. This is in pursuance of the rules of natural justice and the right to a fair hearing guaranteed by *Article 28 (1) & (5) of the Constitution of Uganda (1995)*.

66. Fundamental aspects of a right to a fair hearing (or audi alteram partem) include, firstly, prior notice of a hearing to affected parties. Under this aspect, a person against whom a decision is contemplated is entitled to adequate notification of the date, time, place of the hearing as well as detailed notification of the case to be heard. This allows the person to adequately prepare for the case against him or her. Secondly, a person should be allowed to present his or her case. Thirdly, the adjudicator must ensure that there is a conducive environment for a person to consider, challenge or contradict any evidence. Fourthly, the adjudicator must render a decision and the reasons for it, including a record of the proceedings leading to the decision. In *R v. Dudley Magistrates' Court, ex parte Payne [1979] 2 All ER 1089* it was held (*per Robert Goff, J*) that:

*“The audi alteram partem rule requires that a party should have the opportunity to present his case; it therefore contemplates notice of the hearing being given to him to enable him to have the opportunity.”*

67. In the case of *Mpungu Sons & Transporters Ltd v. Attorney General & Anor, Supreme Court Civil Appeal No. 17 of 2001*, Justice Bart Katureebe (J.S.C) emphasized the importance of adhering to the right to a fair hearing holding that:

*“I agree that the **Audi Alteram Partem** rule is a cardinal rule in our administrative law and should be adhered to. Simply put the rule is that one must hear the other side. It is derived from the principle of natural Justice that no man should be condemned unheard. (See **Black's Law Dictionary**) 6<sup>th</sup> Edition. However, one would have to prove that one had a right to be heard which had been breached, and that the decision arrived at by the administrative authority had either deprived him of his rights or unfairly impinged on those rights thereby causing damage to the individual concerned. Most cases involving the right to be heard have dealt with situations where a person was being deprived of his property or livelihood.”*

68. In the case of *Lutalo (Administrator of estate of the late Lutalo Phoebe) v. Ojede Abdellah Bin Cona (Administrator of the Estate of the Late Cona Bin Gulu (Civil Appeal 15 of 2019) [2021] UGSC 12*, the Supreme Court held that the right to a fair hearing is non-derogable and must be strictly observed (per Hon. Justice Mike Chibita, J.S.C, at page 22). The Supreme Court of Uganda further held (at page 55) while ordering for cancellation of a lease agreement granted by Lira District Land Board that:

*“This, therefore means that long before 2005, when Lira District Land Board granted the appellant’s predecessor a lease, Lira District Land Board did not have any title to pass to the appellant. The lease agreement between the land board and the appellant was void ab initio and therefore illegal. This illegality vitiates the transfer of title to the appellant.”*

69. Non-compliance with the mandatory requirements of *sections 91 (8) & (9) of the Land Act (Cap. 227) (as amended by Act 1 of 2004)* is fatal. The results and decisions of a process undertaken by the Commissioner for Land Registration in breach of the foregoing provisions of the law cannot be sanctioned by a court of justice.
70. Accordingly, it is my decision that the Registrar of Titles (1<sup>st</sup> defendant) acted in breach of *sections 91 (8) & (9) of the Land Act (Cap. 227)* and consequently, the purported decision cancelling the certificate of title for land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close is void ab initio, illegal and of no legal consequence.
71. I am fortified in this conclusion by the decisions in the cases of *Lududula & 6 Others v. Rev Canon Luzinda & Others (Civil Suit 2029 of 2016) [2023] UGHCLD 6*; and *Lutalo (Administrator of estate of the late Lutalo Phoebe) v. Ojede Abdellah Bin Cona (Administrator of the Estate of the Late Cona Bin Gulu (Civil Appeal 15 of 2019) [2021] UGSC)*.
72. For the foregoing reasons, I answer Issue No. 3 in the negative.

**Issue No.2: If so, whether the 2<sup>nd</sup> defendant lawfully repossessed the suit land?**

**Issue No.5: Whether the Minister of Finance became functus officio upon issuing the certificate of repossession and if so, whether the fact overrides questions of fraud if proved?**



73. Issues No.2 & 5 shall be addressed jointly.

74. Since the land comprised in Plot 80-82 & M191 Port Bell Road, Kampala LRV 804 Folio 12 was never expropriated, it follows that the land could not be subject to repossession under *Expropriated Properties Act (Cap 87)*. The certificate by the Minister of Finance (*Exh.D23*) dated the 24<sup>th</sup> May 1999 authorising the repossession of Plot 80-82 & M191 to the 2<sup>nd</sup> defendant (Silver Springs Hotel (1969) Ltd) was issued in error. The 2<sup>nd</sup> defendant never lawfully repossessed Plot 80-82 & M191.

75. Issues No.2 & 5 are therefore answered in the negative.

**Issue No. 4: Whether the 2<sup>nd</sup> defendant was involved in forgery and fraud of both the repossession certificate and the land title in respect of the suit land in its application to the District Land Board and if so whether the 3<sup>rd</sup> defendant took good title.**

**Issue No.6: Whether the 2<sup>nd</sup> defendant possessed any interest in the land and the sale to the 3<sup>rd</sup> defendant extinguished the plaintiffs' interest?**

**Issue No.7: Whether the 3<sup>rd</sup> defendant is a bona fide purchaser?**

76. Issues No.4, 6 & 7 shall be addressed jointly.

77. It is the plaintiffs' contention that the 2<sup>nd</sup> defendant was involved in fraudulent conduct in the process of having the lease extended. The plaintiffs asserted that the 2<sup>nd</sup> defendant concealed the fact that the lease had expired when they made

their application for extension of the lease. It was also argued that the circumstances under which Kampala District Land Board handled the application for extension and its failure to conduct due diligence and visit the suit land amounted to fraudulent conduct.

78. In the case of *Kampala District Land Board & Chemical Distributors v. National Housing and Construction Corporation*, Civil Appeal No. 2 of 2004, the Supreme Court of Uganda (per Benjamin Odoki, CJ) held that:

*“It is now well settled that to procure registration of title in order to defeat an unregistered interest amounts to fraud.”*

79. In the case of *Kampala District Land Board & Chemical Distributors (supra)*, the Supreme Court of Uganda (per Benjamin Odoki, CJ) citing the case of *John Katarikawe v. William Katweremu & Others (1977) H.C.B.187*, further held that:

*“Although mere knowledge of unregistered interest cannot be imputed as fraud under the Act, it is my view that where such knowledge is accompanied by a wrongful intention to defeat such existing interest that would amount to fraud.”*

80. The evidence on record shows that on the 29<sup>th</sup> March 2006, the 2<sup>nd</sup> defendant was granted a new lease by Kampala District Land Board and a certificate of title was issued (Exh.P16). The new lease granted to the 2<sup>nd</sup> defendant purports to include land claimed by the plaintiffs (Plot 4 measuring 0.205 Hectares). The circumstances under which the new lease was granted by Kampala District Land Board are not clear.

81. Going by the procedures for obtaining new leases laid out in the *Land Regulations (2001)*, Kampala District Land Board ought to have conducted due diligence on the land sought to be leased including a physical inspection of the land, in which case they would have discovered that the plaintiffs hold an equitable interest in the land in the form of St. John's Guest House, as confirmed by court during the locus in quo visit.
82. In short, Kampala District Land Board acted in error by granting a new lease to the 2<sup>nd</sup> defendant that purported to include the land and developments owned by the plaintiffs without taking into account the plaintiff's equitable interest.
83. DW2 (Hope Mugenyi) in her testimony (cross examination) stated that:  
*"I visited the land before purchase. There were so many structures including a house/structure. I don't know if it was a guest house [...] When court visits the land, I can show you the structure in question [...] When I visited the land the seller was with me [...] I have never taken possession of the plaintiffs' land. I never filed any suit against the plaintiffs [...] I have never developed the land because our plan includes the area where the guest house is."*
84. It is abundantly clear that the 3<sup>rd</sup> defendant purchased the land subject to the equitable interest of the plaintiffs. DW2 (Hope Mugenyi) confirmed that she inspected the land in the presence of the seller prior to signing the purchase agreement and saw a building on the land. She stated that she did not know if that was St. John's Guest House. However, during the locus in quo visit to the land, I was shown the building housing St. John's Guest House which sits on the suit land (Plot 4).



85. The position of the law as stated above is clear (*see Kampala District Land Board & Chemical Distributors (supra)*). There is no way that the equitable interest of the plaintiffs that was so visible to all the interested parties could be defeated by the 3<sup>rd</sup> defendant procuring a certificate of title.
86. It is my holding therefore, that the inclusion of the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares owned by the plaintiffs in the lease granted to the 2<sup>nd</sup> defendant was fraudulent.
87. On the basis of the evidence on court record and as per my findings in Issues No. 1 & 3, it is my finding is that the 3<sup>rd</sup> defendant did not acquire good title over the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares owned by the plaintiffs. Kampala District Land Board had no legal capacity to lease land over which the plaintiffs owned an equitable interest in the form of physical developments on the land (St. John Guest House).
88. The plaintiffs own property on land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala, which according to the uncontested evidence on record is valued at UGX 2 billion (see Exh.P12 and the testimony of PW4 (Paul Mungati)).
89. It was not possible in law, for the grant of a certificate of title for the land comprised in land comprised Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 to the 2<sup>nd</sup> defendant and the subsequent sale to the 3<sup>rd</sup> defendant to extinguish the equitable interest in Plot 4 owned by the plaintiffs.



90. Therefore, it is my finding that the plaintiffs own an equitable interest in land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala.
91. Further, it is my finding that the subsequent acquisition of the land comprised Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 by the 3<sup>rd</sup> defendant had no effect on the plaintiffs' equitable interest in Plot 4.
92. The plaintiffs failed to adduce evidence to prove fraud to wholly impeach the 3<sup>rd</sup> defendant's certificate of title for the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 (*see Bugembe v Eriaku & Anor [2018] UGHCLD 16*). The plaintiffs have only succeeded in proving that their land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares does not form part of the 3<sup>rd</sup> defendant's certificate of title.
93. Accordingly, it is my finding that certificate of title for the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 shall be rectified to deduct land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares. The 3<sup>rd</sup> defendant shall be the lawful owner of the remainder of the land after the plaintiffs' land measuring 0.205 Hectares has been deducted.

**Issue No.8: What remedies are available to the parties?**

94. This court is vested with power to direct the Commissioner for Land Registration to cancel illegally obtained certificates of title; rectification of certificates of title containing errors; and reinstatement of certificates of title

wrongfully cancelled. *Section 177 of the Registration of Titles Act (Cap 230)* provides that:

***“177. Powers of High Court to direct cancellation of certificate or entry in certain cases***

*[...] the High Court may [...] direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the registrar shall give effect to that order.”*

95. In the case of *Hilda Wilson Namusoke & 3 Others v. Owalla’s Home Investment Trust (E.A) Ltd & Commissioner for Land Registration, Supreme Court Civil Appeal No. 15 of 2017* the Supreme Court of Uganda (per Prof. Tibatemwa-Ekirikubinza) held that:

*“Section 177 of the RTA vests powers in the High Court to direct the Commissioner to effect any order of cancellation of a certificate of title made by the High Court.”*

96. I will shortly issue orders to the Commissioner for Land Registration on basis of the powers vested in this Court.

### **Exemplary damages**

97. Exemplary damages may be awarded in any of the following three categories of cases: i) where there has been oppressive, arbitrary or unconstitutional action by the servants of government; ii) where a defendant’s conduct has been calculated by him or her to make a profit which may well exceed the

compensation payable to the plaintiff; and iii) that some law for the time being in force authorises the award of exemplary damages (*Rookes v. Bernard [1946] ALL ER 367*).

98. Having regard to the evidence on record and the law, it is my decision that the plaintiffs are not entitled to an award of exemplary damages.

### **General damages**

99. The plaintiffs prayed for the award of general damages. According to the evidence on record, despite the existence of a legal dispute between the parties, the plaintiffs have all along been in possession of land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close on which they operate a business known as St. John's Guest House. In my opinion, a claim for general damages has not been established, and I therefore decline to award general damages.

### **Costs**

100. In the interest of promoting reconciliation between the parties as required by *Article 126 (2) (d) of the Constitution of Uganda (1995) as amended*, I order that each party shall bear its own costs.

### **Summary of main findings:**

101. Before I issue my final orders in this case, I wish to summarise my main findings as follows:

- 1) The main purpose of the *Expropriated Properties Act (Cap 87)* was to return properties to former owners who had been dispossessed by the military regime in the period 1972 to 1979. It was not the purpose of the Act, to facilitate or aid persons who had been expelled or forced to flee by the military regime to acquire properties that they did not own in the first place.
- 2) For a lease property to come within the ambit of the *Expropriated Properties Act (Cap 87)*, the lease must have been subsisting (in force) at the time of the coming into force of the *Assets of Departed Asians Act (Cap 83)* whose commencement date was 7<sup>th</sup> December 1973. In the case before me, the 2<sup>nd</sup> defendant's lease expired on the 28<sup>th</sup> February 1973 before the lease was vested in the Government.
- 3) In the exercise of special powers vested in the Commissioner for Land Registration under *section 91 of the Land Act (Cap. 227) (as amended by The Land (Amendment) Act, 2004)*, he or she has a legal obligation to observe the rules of natural justice and accord any affected parties a fair hearing as required by *article 28 (1) & (5) the Constitution of Uganda (1995) as amended*.
- 4) Not only is the Commissioner for Land Registration legally obliged to issue a twenty-one days' notice to any party likely to be affected by his or her decision, but he or she must ensure that the notice is actually received by the parties likely to be affected by the decision.
- 5) Non-compliance with the mandatory requirements of *sections 91 (2), (2a) & (2b) of the Land Act (Cap. 227) (as amended by The Land*

(Amendment) Act, 2004)) is fatal. The results and decisions of a process undertaken by the Commissioner for Land Registration in breach of the foregoing provisions of the law cannot be sanctioned by a court of justice and are void ab initio, illegal and of no legal consequence.

- 6) In light of the constitutional and legal mandate of District Land Boards, as provided for under *article 241 (2) of the Constitution of Uganda (as amended)* and *section 60 (2) (c) of the Land Act (Cap 227)* regarding leasing of land, the Commissioner for Land Registration is legally obliged to accord Land Boards a hearing prior to cancelling leasehold certificates of title.

**Final orders of the Court:**


102. Pursuant to the powers vested in this Court, I grant the following remedies:

- 1) An order directing the Commissioner for Land Registration to rectify the certificate of title for the land comprised in Plot 80-82 Port Bell Road, Kampala LRV 804 Folio 12 and deduct land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala measuring 0.205 Hectares owned by the plaintiffs.
- 2) An order directing the Commissioner for Land Registration to reinstate the certificate of title for the land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close measuring 0.205 Hectares.



- 3) An order directing the Commissioner for Land Registration to transfer land comprised in LRV 2568 Folio 9 Plot 4 Port Bell Close, Kampala from Rev. John Obokech and Catherine Obokech to the plaintiffs.
- 4) Each party shall bear its own costs

**I SO ORDER.**

  
**BERNARD NAMANYA**  
**JUDGE**  
**9<sup>th</sup> March 2023**


9 March 2023 at 9:22am.

Wandera Ogallo	Counsel for the plaintiffs
Richard Bwayo	Counsel for the 2 <sup>nd</sup> defendant
Geoffrey Turyamusiima	Counsel for the 3 <sup>rd</sup> defendant
George William Egaddu	1 <sup>st</sup> plaintiff
Jane Grace Egaddu	2 <sup>nd</sup> plaintiff
Hope Mugyenyi	A representative of the 3 <sup>rd</sup> defendant
Winnie Nabule	Court Clerk

Wandera Ogallo: The matter is for Judgment. We are ready to receive the Judgment.

**Court:**

Judgment delivered in open chambers.

  
**BERNARD NAMANYA**  
**JUDGE**  
**9<sup>th</sup> March 2023**