

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO.2029 OF 2016**

1. LUDUDULA FRED)
2. BIZIMUNGI JOHN)
3. KALEMANJINGO JOHN)
4. NYAYISANGA BEATRICE)PLAINTIFFS
5. MBABAZI SYLVIA)
6. ASIIMWE FLORENCE)
7. MUTAGUBYA DAN)

VERSUS

REV. CANON ERIYA LUZINDA)DEFENDANT
(Executor of the will of the late)
Kulanimba Kaaya)

AND

REV. CANON ERIYA LUZINDA)COUNTER-CLAIMANT
(Executor of the will of the late)
Kulanimba Kaaya)

VERSUS

1. EDWARD KIWANUKA SEKANDI)
2. DR ALICE NAKIWOGA)
3. MUWANGA SAMUEL)
4. LUDUDULA FRED)
5. BIZIMUNGI JOHN)COUNTER-DEFENDANTS
6. KALEMANJINGO JOHN)
7. NYAYISANGA BEATRICE)
8. MBABAZI SYLVIA)
9. ASIIMWE FLORENCE)
10. MUTAGUBYA DAN)

BEFORE: HON. MR. JUSTICE LAWRENCE TWEYANZE

JUDGMENT

Introduction

The Plaintiffs' action against the Defendants is for a declaration that the Plaintiffs are the legal owners of the land comprised in Freehold Register Volume 1406 Folio 23 Plot 9 Bulemezi Block 769 Luwero District, a permanent injunction stopping the executors of Will and beneficiaries of the Estate of the late Kulanimba Kaaya from

interfering with the Plaintiffs use and enjoyment of their rights in the above land and costs of the suit.

Plaintiffs' claim

The Plaintiffs' claim is that: they applied for and were granted a freehold offer by the Luwero District Land Board over 777.424 hectares of land comprised in Freehold Register Volume 1406 Folio 23 Plot 9 Bulemezi Block 769; sometime in March 2014, the Plaintiffs instructed surveyors to demarcate the land for them but they were stopped by people claiming to be the children and beneficiaries of the Estate of the late Kulanima Kaaya without any colour of right; they are the legal and beneficial owners of the land and are entitled to enjoy the use thereof without interference or hindrance from anyone.

The Defendants' claim

The Defendant denied all the Plaintiffs' allegations in the written statement of Defence and even set up a counter-claim against the Plaintiffs. The Defendant's claim is that the Plaintiffs' Certificates of title was illegally obtained because there was a valid certificate of title in respect of the same land issued to Kulanima Kaaya which was subsisting at the time of issuance of the Plaintiffs' title. That the agents sent by the Plaintiffs were trespassers on Kulanima Kaaya's land.

Defendant's Counter-claim

In the counter-claim, the Defendants seek for: a declaration that the new titles in their respective names are illegal and or fraudulently obtained; for cancellation of the said titles; a permanent injunction to stop the Counter-Defendants and or their agents or anyone claiming under them or any of them from interfering in any way in the suit premises or any part thereof; general damages and costs of the suit.

It is his claim that: the Estate of the late Kulanima Kaaya which he administers comprised of among others property described as LRV 736 Folio 5 Plots 5,1, 5 and 3 Bulemezi Blocks 769, 753, 767 and 769 at Tondegejerako measuring 4480 acres being leasehold interest for 99 years with effect from 1st April, 1969; the late Kulanima Kaaya and his family have at all times since the grant of the title and lease interest used the land and been known as the owners, occupants and are in possession of a valid, continuing and lawful certificate of title; the Estate of Kulanima Kaaya have discovered that the Counter-Defendants have illegally and fraudulently obtained new titles in respect of the suit property in a manner which breaches the Counter-Claimant's proprietary interest without compensation and rights to property; the Counter-Claimant's title was issued by Uganda Land Commission, the land was surveyed since 1969 and it could not have been subject to another grant

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from any authority while the Counter-Claimant's title subsisted. Alternatively, that the Estate of the late Kulanima Kaaya has been in occupation of the land and was entitled to the first right before any other authority could deal with it and offer to the Counter-Defendants.

1st Counter-Defendant's claim

The 1st Counter-Defendant denied all the Counter-Claimant's allegations in the counterclaim. His claim is that: he lawfully purchased the land comprised in FRV 1406 Folio 25 Plot 11 Bulemezi Block 769 from the then registered proprietors Kanini Jackson, Munvanesa Everest, Mujjasi Godfrey and Mugarura Andrew, upon making a diligent search in the land registry and discovery that the land had no encumbrance at all; he got registered as proprietor on 25th June 2013; the variation lease of the Counter-Claimant dated 4th January, 2012 was unlawful and wrongful as Uganda Land Commission did not have power/authority over the land by law. Alternatively, that he is a bonafide purchaser for value without notice of the alleged fraud.

2nd & 3rd Counter-Defendants' claim

The 2nd and 3rd Counter-Defendants denied all the Counter-Claimant's allegations in the counter-claim. It is claimed in their defence that: the 2nd Counter-Defendant's father and grandfather owned a Kibanja at Misange'ekunya, Kakabala Parish since 1950s which was occupied and used by her father and his siblings to date without interference from anyone including the Estate administered by the Counter-Claimant; they had believed that they had Kibanja interest on public land since no one demanded from them Busulu or ground rent payments as landlords; they applied to Luwero District Land Board for conversion of their customary interest into freehold following the procedures under the Act. Alternatively, the Counter-Claimant slept on his rights and failed to effectively use the land and renew/extend the lease before it expired; that the 2nd & 3rd Counter-Defendants have a valid and superior title to that held by the Counter-Claimant.

4th -10th Counter-Defendants/Plaintiffs claim

The Counter-Defendants denied all the allegations of the Counter-Claimant in the counterclaim. Their claim is that: for over a decade, 4th -6th Counter-Defendants have been in occupation and use of the suit land at Nabugoza and Katambula villages in Butuntumula Luwero District as customary tenants honestly believing the same to be public and unregistered land; during this time, neither the Counter-Claimant, any other person and nor the beneficiaries of the deceased's Estate ever notified them that the land they were occupying and using was registered land; in 2011, the 4th - 10th Counter-Defendants applied to the Luwero District Land Board to convert their

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customary interest which they honestly believed was kibanja into freehold; the Luwero District Land Board granted them Freehold interest over 777.424 hectares and the title deed was issued as FRV 1406 Folio 23 Plot 9 Bulemezi Block 769 on 21st May 2013 after following all due legal processes; the reversionary interest in the land leased to the deceased in 1969 was vested in Luwero District Land Board which is the rightful controlling authority over the land; the Counter-Claimant failed to extend his lease and the same expired; the alleged extension of lease from 44 to 99 years was based on a deed of variation signed by an entity that has no interest in the suit land and the extension is of no effect, null and void ab initio; the Counter-Claimant had abandoned the portion of the land which the 4th – 10th Counter-Defendants got a title deed for.

The agreed facts by the parties are that:-

- 1) Kulanima Kaaya was granted a lease under the Public Lands Act 1969 over land comprised in Bulemezi Block 769 Plot 5, Block 753 Plot 1, Block 767 Plot 5 and Block 769 Plot 3 measuring approximately 4480 acres vide LRV 736 Folio 5 for 44 years effective 1st April, 1969.
- 2) The lease period was extended to 99 years vide variation of lease instrument No.461724 of 25th January 2012 signed by Uganda Land Commission and Kulanima Kaaya on 4th January 2012. The leasehold title exists in the name of Kulanima Kaaya.
- 3) The 1st Counter-Defendant is a registered owner of 332.448 hectares of land comprised in FRV 1406 Folio 25 Plot 11 Bulemezi Block 769 vide instrument number 483198 of 25th June 2013, having purchased and transferred it from Kanini Jackson, Munvanesa Everest, Mujjasi Godfrey and Mugarura Andrew who obtained the Freehold on the 21st May 2013. He is in possession of the title deed.
- 4) The 2nd and 3rd Counter-Defendants are the registered owners of 349.12 hectares of land vide instrument number 482594 of 21st May 2013 comprised in FRV 1407 Folio 3 Plot 10 Bulemezi Block 769.
- 5) The Plaintiffs/4th – 10th Counter-Defendants are the registered proprietors of 777.424 hectares of land comprised in FRV 1406 Folio 23 Plot 9 Bulemezi Block 769 vide instrument number 482596 of the 21st May 2013.
- 6) Out of approximately 4480 acres in the title deed in LRV 736 Folio 5, a total of 1458.992 hectares (3,605.169 acres) were converted by Luwero District Land Board to freehold.

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Representation

At the hearing of the suit, the Plaintiffs, 2nd and 3rd Counter-Defendants were represented by Counsel Richard Adubango and Tuhumwiize Collin, the Defendant/Counter-Claimant was represented by Counsel Babu Rashid and Serunjogi Jimmy Rogers Katende while the 1st Counter-Defendant was represented by Counsel Francis Katabalwa.

Issues

At scheduling, the parties agreed upon the following issues for determination of Court: -

- 1. Whether or not the Defendants/Counter-Claimant's lease title LRV 736 Folio 5 expired.*
- 2. Whether or not the 1st Counter-Defendant is a bonafide purchaser for value without notice of land comprised in FRV 1406 Folio 25 Plot 11.*
- 3. Whether or not the 2nd and the 3rd Counter-Defendants obtained registration of their respective Freehold interests and titles in FRV 1407 Folio 3 Plot 10 Bulemezi Block 769 and FRV 1406 Folio 23 Plot 9 Bulemezi Block 769 fraudulently.*
- 4. What remedies are available to the parties?*

The Plaintiffs/4th – 10th Counter-Defendants called one witness to prove their case against the Defendant/ Counter-Defendant to wit Lududula Fred, the 1st Plaintiff (PW1) and he was cross-examined on his witness statements.

The Defendant/ Counter-Claimant on the other hand called three witness to defend/prove their case to wit: Rev Richard Kaaya (DW1), Luganza Nathan (DW2) and Sunday Semwanga Kaaya (DW3). The three witnesses were cross examined on their witness statements.

The 1st Counter-Defendant (Edward Kiwanuka Sekandi) filed a witness statement but never appeared in Court for cross examination. This means that he never adduced evidence to support his claim. Accordingly, his Witness statement is expunged from the record and will not form part of this judgment.

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The 2nd and 3rd Counter-Defendants called one witness to wit Dr Alice Nakiwogo (CD1) and she was cross examined on her witness statement.

Locus Visit

When Court visited locus, it observed that: the suit land was under-utilized by the Counter-Claimants as much of the land was virtually vacant; the land applied for by the plaintiff was vacant, recently fenced and with no developments; there was no signs of graves on the suit land.

After the hearing, Court directed both Counsel to file their written submissions, the details which are on Court record and I have considered them in my judgment. Counsel for the 1st Counter-Defendant never filed his written submissions.

Determination of issues

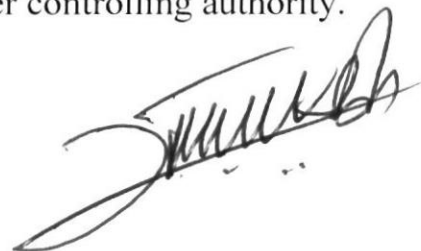
I will resolve the issues in the following order; 1, 2&3, and 4

Issue 1: Whether or not the Defendants/Counter-Claimant's lease title LRV 736 Folio 5 expired.

Counsel for the Plaintiffs/2nd-10th Counter-Defendants submitted that DW1 Rev Kayizi Richard Kaaya produced a certificate of title DEX1 which showed that it was granted for 44 years effective 1st April, 1969 and was due to expire on 31st March 2013. That DW1 testified that his father, the late Kulanima Kaaya extended the lease to 99 years in 2012 before he passed away using a variation deed DEX2 which his father signed with Uganda Land Commission. That indeed the Certificate of title DEX1 reflects the 99 years as a result of the registration of the variation deed under instrument number 461724 which is the instrument number indicated on DEX2.

Counsel for the Plaintiffs posed a question which begs for an answer as: between Luwero District Land Board (hereinafter called DLB) and Uganda Land Commission (hereinafter called ULC), which body has the right to extend the lease?

Counsel submitted that the two bodies were created by the 1995 constitution. That **Article 238(1)** of the **1995 Constitution** and **S.46(1)** of the **Land Act Cap 227** establishes the Uganda Land Commission and that the functions of ULC include to hold and manage land in Uganda which is vested in Government in accordance with the Constitution while **Article 240(1)** and **S.56(1)** of the Land Act establishes District Land Board (DLB) in each District in Uganda and that under **S.59(1)(a)** the functions of the DLB include: to hold and allocate land in the Districts which is not owned by any person or authority; (c) takeover the role and exercise the powers of the lessor in the case of a lease which is granted by a former controlling authority.



Counsel further submitted that **S.59(8)** of the Land Act enjoins the DLB *to hold in trust for the citizens the reversion on any lease to which subsection (1)(c) relates and may exercise in relation to the lease and the reversion the powers of a controlling authority under the Public Lands Act, 1969, as if that Act has not been repealed; but subject to the foregoing, that Act shall, in respect of any such lease or reversion, have effect with such modifications as may be necessary to give effect to this Act and shall be subject to the provisions of the Constitution.*

Counsel submitted that Section 1(m) of the Land Act defines the former controlling authority as to mean the Uganda Land Commission.

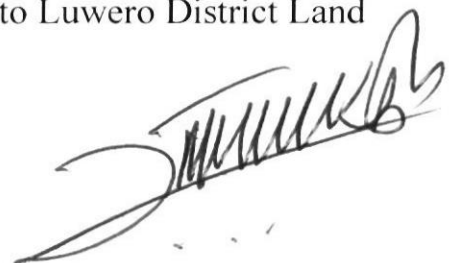
While referring Court to the cases of **Ojede Adulla Bin Cona Vs Phoebe Lutalo C.A.C.A No.126 of 2012** and **Nicholas Kanyanya Vs Paul Elvis Owori C.A.C.A No. 11 of 2013**, Counsel submitted that ULC did not have authority over the reversionary interest in the lease to the Defendant/Counter-Claimant. That the reversionary interest was vested in Luwero District Land Board, the District in which the said land is situate by operation of law as per S.59(1)(c) and (8) of the Land Act. That accordingly, the deed of variation which ULC signed with Kulanima Kaaya was invalid. That this therefore means that the lease lapsed/expired by effluxion of time on 30th March 2013.

Defendant's submissions

Counsel for the Defendant/Counter-Claimant cited **Article 239** of the Constitution and **S.53** of the Land Act which spell out the functions of ULC. Counsel also cited **Article 241** of the Constitution and **Sections 59(1)** and **60** of the Land Act which spell out the functions of the District Land Boards. That this essentially means that the ULC has its own land it administers and the District Land Boards have their own land they administer.

Counsel submitted that **Article 241 (1) (a)** of the **Constitution** provides that the functions of the District Land Board are to, "*hold and allocate land in the District which is not owned by any person or authority*". That **Section 59(1)(a)** of the **Land Act** provides the same in *pari materia*. That **John T. Mugambwa** in **Principles of Land Law in Uganda** at page 34 states, "*The land envisaged is that which does not belong to an individual, family, clan or other identifiable authority*".

Counsel argued the land in issue was acquired by the Government of Uganda from the Crown Government and was held by the ULC on behalf of the Government of Uganda. (**Article 239 of the Constitution**). The ULC did not vest or transfer the land to the urban authority as the Plaintiffs/4th to 10th counter defendants would like court to believe nor had it created a statutory lease thereof to Luwero District Land



Board. That it was the ULC which held the lease in 1969 and as lessor, it varied its own lease and extended it to 99 years for Kulanima Kaaya. That the Luwero District Land Board did not have the power to hold or allocate the Kaaya land to anyone because as of 2011 – 2013 the land was owned by the Kaaya family (Kulanima Kaaya) on account of the lessor (ULC) as an identifiable authority. (**Section 59 (1) (a) Land Act and Article 241(1) (a) Constitution**).

Counsel referred to the case of **Nyumba Ya Chuma Ltd Vs ULC & AG C.C.C.P. No. 13 of 2010** and **Kampala District Land Board & Another Vs National Housing & Construction Corporation S.C.C.A No. 2 of 2004** and concluded by submitting that at the time the lease was varied and renewed, it was only the ULC which could renew and vary it. That it is simple logic that only a party to a subsisting contract can vary and alter its terms and not a third party thereto. That therefore the lease of the defendant/counter claimant did not expire and still subsists.

Courts Decision

In the instant case, it is not in dispute that the late Kulanima Kaaya was granted a lease of 44 years by the Uganda Land Commission which was due to expire in March 2013. It is also not in dispute that the late Kaaya varied the lease agreement with the ULC to 99 years in 2012 before its expiry.

The question to be determined by Court is between the Luwero District Land Board and ULC, which of the two authorities had the authority to vary late Kaaya's Lease?

Both Counsel in my view correctly cited the law that establishes the two bodies to wit: **Article 239** of the **Constitution** and **S.41** of the **Land Act** for establishment of ULC and its Functions; and **Article 241** of the 1995 Constitution and **S.59(1)** and **60** of the Land Act for the establishment of the DLB and their functions. Also the cases cited by both Counsel are relevant to the issue.

Uganda Land Commission

Article 239 of the 1995 constitution provides that *the Uganda Land Commission shall hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the provisions of this Constitution and shall have such other functions as may be prescribed by Parliament, (emphasis mine).*

Section 49(a) of the Land Act provides for the functions of the Commission which among others include to hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution.

District Land Board



Article 241 of the Constitution provides for the functions of the District Land Board to wit: (a) to hold and allocate land in the District which is not owned by any person or authority; (b) to facilitate the registration and transfer of interests in land; and (c) to deal with all other matters connected with land in the District in accordance with laws made by Parliament. (2) 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. (Emphasis mine).

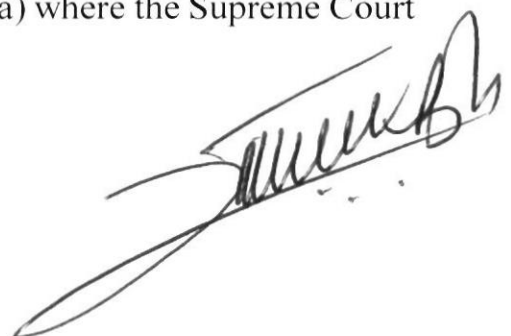
The above provision should be read together with S.59 and 60 of the Land Act.

S.59 of the Land Act Provides for the functions of a Board to wit (1) to— (a) hold and allocate land in the District which is not owned by any person or authority; (b) facilitate the registration and transfer of interests in land; (c) take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority; (d) cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents; (e) compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed; (f) review every year the list of rates of compensation referred to in paragraph (e) of this subsection; and (g) deal with any matter which is incidental or connected to the other functions referred to in this subsection. (8) The Board shall hold in trust for the citizens the reversion on any lease to which subsection (1)(c) relates and may exercise in relation to the lease and the reversion the powers of a controlling authority under the Public Lands Act, 1969, as if that Act has not been repealed; but subject to the foregoing, that Act shall, in respect of any such lease or reversion, have effect with such modifications as may be necessary to give effect to this Act and shall be subject to the provisions of the Constitution.

Section 1(m) of the **Land Act** defines the former controlling authority to mean the Uganda Land Commission.

Section 60(1) of the **Land Act** reiterates the provisions of Article 241(4). **Section 60(2)(c) of (ibid)** permits the Land Board to sell, lease or otherwise deal with the land held by it.

These functions of the District Land Boards were also reiterated in the case of **Lutalo Moses (Admin of the Estate of the late Lutalo Phoebe) Vs Ojede Abdallah Bin cona (Admin of the late Cona Bin Gulu) S.C.C.A No.15 of 2019** where Court cited with approval the case of **Kampala City Council Authority & Anor Vs National Housing & Construction Corporation** (Supra) where the Supreme Court stated that:-

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"The main functions of the Land Commission was to hold and manage any land vested in or acquired by the government of Uganda. The functions of the District Land Board included holding and allocation of land in a District which is not owned by anybody and to facilitate the registration and transfer of interests in the land. It seems to me, therefore, that the District Land Boards became successors in title to controlling authorities or urban authorities in respect of public land which has not been granted or alienated to anybody or authority. The District Land Boards became successors by operation of law because land was vested in them by law, not by grant or registration under S.59(8) of Land Act."

From the foregoing, it is clear that the District Land Boards took over the role and exercised the powers of the lessor in the case of a lease granted by a former controlling authority.

Section 95(3) of the **Land Act** provides that on the coming into force of this Act, a former controlling authority shall cease to deal with any land matter, which was pending before it, and any such matter shall be transferred to the Board.

In the instant case, it is my finding that it is the Luwero District Land Board that took over the role and exercised the powers of the lessor (Uganda Land Commission) which was a former controlling authority in respect of the lease for the suit land. To me, it is Luwero District Land Board that has the power/authority over the suit land.

My finding is buttressed by the Bukedde Newspaper notice PEX9 wherein, the Luwero District Land Board in 2007 called upon all people with leases on the land within Luwero District to report to the Land Board with their documentation and proof of payment of ground rent. According to this notice, the late Kulanima Kaaya was among the people listed in the notice to report to the Land Board with his documentation and proof of payment of ground rent. I have not found evidence on record to show that the late Kulanima Kaaya responded to the said notice by the Luwero District Land Board.

On this issue, I respectfully disagree with the submission of Counsel for the Defendant/Counter-Claimant that Uganda Land Commission had power/authority to vary the lease since it is the one that issued it. The variation of the lease by the Uganda Land Commission was illegal because it had no authority over the said lease after the coming into force of the 1995 Constitution.

It was held in the case of **Makula International Ltd Vs. His Eminence Cardinal Nsubuga & Anor. (1982) HCB 11**, that an illegality once brought to the attention of Court cannot be allowed to stand. Such an illegality overrides all questions of pleadings including any admissions made. The import of the case law to this case is

that once an illegality is discovered and is brought to Court's attention then whatever actions which were accruing therefrom collapse along with it. No one can be allowed to benefit from the fruits of an illegality.

It is the Luwero District Land Board that had power to vary the lease for the suit land from 44 years to 99 years. For avoidance of doubt, the Uganda Land Commission had no authority over the lease for the suit land and therefore its lease variation was of no effect, null and void abinitio.

The Lease

With regard to the lease, the late Kulanima Kaaya was granted a lease (See DEX1) by the Uganda Land Commission for 44 years effective 1969 and was meant to expire in March 2013. Under the said lease, the late Kaaya was required to pay ground rent to the then Lessor, the Uganda Land Commission as per Article 1 of the Lease.

Upon the coming into force of the 1995 Constitution, Luwero District Land Board took over the lease as the lessor as per Section 59(1)(c) and (8) of the Land Act. This meant that the late Kaaya was required to pay ground rent now to Luwero District Land Board as the new Lessor. However, I have not come across receipts or any other payment of the said rent to the Luwero District Land Board for the period between 1995 - 2013 which translates to 18 years. This clearly means that the late Kulanima Kaaya breached the key term of the Lease agreement. The fact that the late Kaaya never paid ground rent to the Land Board was confirmed by DW1 in his cross-examination.

The fact of non-payment of ground rent as per the Lease to the Luwero District Land Board was further strengthened by the neglect and/ or failure by the late Kulanima Kaaya to apply for extension/variation of the Lease to the District Land Board. This clearly portrayed his lack of interest in the suit land.

It is my finding therefore that failure by the late Kulanima Kaaya to apply to the Luwero District Land Board for variation of his lease meant that his Lease expired in March 2013 and upon its expiry the suit land reverted back to the Luwero District Land Board which had the power to allocate it to other people who applied for it.

In the case of **Daphine Negesa Musoke Vs Samu Investments Ltd C.A.C.A No.85 of 2003** referring to the case of **Dr. Adeodanta Kekitiinwa & 3 Ors Vs Edward Mando Wakida C.A.C.A No.03 of 1997**, it was held that *once a lease for a definite term expires, the lessee or tenant ceases to have any legal right on the property and is merely a trespasser. The possession automatically reverts back to the Lessor.*



In this case, since the Lease was for a definite period of 44 years, upon its expiry in March 2013, the possession of the suit land reverted back to the Luwero District Land Board. Therefore, the occupation of the suit land by the Defendant and/or the Estate of the late Kulanima Kaaya from March, 2013 onwards amounted to trespass.

For avoidance of doubt on this issue, it is the Luwero District Land Board that had authority over the suit land as discussed above and the Defendants/Counter-Claimant's lease title LRV 736 Folio 5 expired in March 2013.

Therefore, having found that the Defendant's/Counterclaimant's title expired in March 2013, a consequential order is issued directing the Commissioner Land Registration in accordance with Section 177 of the Registration of Titles Act Cap 230 to cancel the Defendant's/Counterclaimant's Lease title comprised in LRV 736 Folio 5 from the Lease Register as it was irregularly extended because the Lease had already expired and of course it was extended by an Authority that had no power to do so. Issue one is answered in the affirmative.

Issue 2: Whether or not the 1st Counter-Defendant is a bonafide purchaser for value without notice of land comprised in FRV 1406 Folio 25 Plot 11.

and

Issue 3: Whether or not the 2nd-3rd Counter-defendants and the Plaintiffs/ 4th – 10th Counter-defendants obtained registration of their respective freehold interests in FRV 1407 Folio 3 Plot 10 Bulemezi Block 769 and FRV 1406 Folio 23 Plot 9 Bulemezi Block 769 fraudulently.

With regard to issues 2 and 3, I have decided to handle them concurrently because they have been overtaken by events and rendered moot by the resolution of issue 1 above.

In the case of **The Environment Action Network Ltd vs Joseph Eryau, C.A.C.A No. 98 of 2005**, the Court of Appeal cited with approval its earlier decision in **Uganda Corporation Creameries Ltd & Another vs Reamaton Ltd, Civil Reference No. 11 of 1999**, where it held that it is a well-known principle of law that Courts adjudicate on issues which actually exist between litigants and not academic ones. The Court went ahead to hold that courts do not decide cases for academic purposes because Court orders must have practical effect and must be capable of enforcement. The Court concluded that such a case would be driven into the limbo of legal mootness.

In the instant case in relation to issues 2 and 3, the Defendant's Written Statement of Defence with a counter-claim and the evidence are all hinged on an expired lease title. As such, my understanding is that the Defendant's Cause of action in the



Counter-Claim based on expired lease against the Plaintiffs/Counter-Defendants has been rendered moot.

The net effect of the above finding is that the Plaintiffs/Counter-Defendants Freehold certificates of title have remained unchallenged by the Defendant/Counterclaimant.

Under **Section 59** of the **Registration of Titles Act Cap 230** provides that "*No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all Courts as evidence of particulars set forth in the certificate and of entry of the certificate in the register book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any Estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that Estate or interest or has that power*".

In the case of **Haji Numani Akulamusa Vs Friends Estates Limited C.A.C.A No.104 of 2018** Court cited with approval the case of **Hariprasad Ramabai Patel Vs Babubhai Kalidas Patel H.C.C.S No.981 of 1990** where Karokora J (as he then was) stated as follows:

"A certificate of title is conclusive evidence of ownership of the suit property. No submission or oral evidence can be called to vary the certificate of title unless fraud, lack of consideration or illegality is proved".

It is my finding that the Plaintiffs'/1st -10th Counter-Defendants' freehold titles comprised in FRV1406 Folio 23 Plot 9 Bulemezi Block 769, FRV 1406 Folio 25 Plot 11 and FRV 1407 Folio 3 Plot 10 Bulemezi Block 769 have not been challenged by the Defendant/Counter-Claimant.

It is also my finding that the Defendant's counterclaim fails having been based on an expired lease title.

Issue 4: What remedies are available to the parties.

With regard to remedies, the Plaintiffs prayed for: a declaration that they are the legal owners of the land comprised in Freehold Register Volume 1406 Folio 23 Plot 9 Bulemezi Block 769 Luwero District; a permanent injunction stopping the executors of Will and beneficiaries of the Estate of the late Kulanima Kaaya from interfering with the Plaintiffs' use and enjoyment of their rights in the above land and costs of the suit.

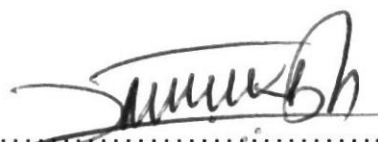
All in all, I find that the Plaintiffs are entitled to the orders sought against the Defendant.

I therefore enter judgment for the Plaintiffs against the Defendants in the following terms:-

- (a) A declaration is made that the Plaintiffs are the legal owners of the land comprised in Freehold Register Volume 1406 Folio 23 Plot 9 Bulemezi Block 769.
- (b) A consequential order is issued directing the Commissioner Land Registration to cancel the Defendant's/Counter-claimant's lease title comprised in LRV 736 Folio 5 from the Lease Register as it was irregularly extended because the Lease had already expired and of course it was extended by an Authority that had no power to do so.
- (c) A permanent injunction is issued against the Executors of the will and the beneficiaries of the Estate of the late Kulanima Kaaya from interfering with the Plaintiffs' use and enjoyment of their rights in the above land.
- (d) Costs of the suit are awarded to the Plaintiffs.

With regard to the Counterclaim, it collapses because it is based on an expired lease. The net effect is that the Certificates of Title of the 1st – 3rd Counter-Defendants remain unchallenged. It is dismissed with costs to the 2nd -3rd Counter-Defendants.

Dated at Kampala this 16th day of January, 2023.


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LAWRENCE TWEYANZE
JUDGE
16/01/2023

