

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO 416 OF 2016

KATUMBA DAVID MARK S. & ORS:..... PLAINTIFFS

VERSUS

AISHA INFOSYS LIMITED & ANOR :..... DEFENDANTS

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

Introduction:

The plaintiffs' claim against the defendants is for a declaration that they are the lawful *bibanja* owners and occupants of the various *bibanja* on the land comprised in ***Kyadondo Block 273, plot 491*** situate at Bunamwaya, purchased from the beneficiaries of the late Yosiya Kizito who was the former registered proprietor for land comprised in ***Kyadondo Block 273, plot 491***.

That a consent judgment in ***Civil Suit No.787 of 2015*** be set aside; a permanent injunction restraining the defendants, their agents or anybody claiming interest under them from evicting or trespassing on the suit *bibanja*; an order of cancellation of the defendants' title to issue on account of fraud; special damages of ***Ugx 17,610,000/=***; general damages, punitive damages; interest on special damages and costs of the suit.



Background to the case:

It is the plaintiffs' claim that they bought the suit *bibanja* from the beneficiaries of the estate of the late Yosia Kizito who was the registered proprietor of the land vide **LRV 1079 Folio 1**.

- 5 That they have occupied and developed the same uninterrupted until 2011 when the 1st defendant started flagging a special certificate of title for land comprised in **LRV 2420 Folio 8, plots 3479 and 3480**, at Nyanama Wakiso.

That a complaint was filed to Buganda Land Board (BLB) which wrote back on 22nd June, 2011 and later recognized the plaintiff as the rightful *bibanja* owners
10 on the suit land; levied *busuulu* on the plaintiffs who complied by paying the same through beneficiaries of the late Yosia Kizito

They were surprised later however when they were evicted by the 1st defendant after conniving with the 2nd defendant. The two entered into a consent judgment at the High Court Nakawa, vide **Civil Suit No. 787 of 2015** under which the 2nd
15 defendant who was not in possession of the suit land was to give the 1st defendant vacant possession.

It was also the plaintiffs' claim that during the eviction, their properties were destroyed and hence this suit.

The plaintiffs claimed therefore sought for a declaration that they have equitable
20 interests in the suit land and that the special certificate of title of the defendants had been issued in error by the Uganda Land Commission as the said land had been returned to the Buganda Kingdom.

Reply by the defendants:

The 1st defendant company on its part claimed that the suit land was purchased
25 from Muhindo Kalemire Jamal, the father of the 2nd defendant who had purchased the same interest from the jointly registered owners: Mubiru Juma and Nanziga Dorothy.



The defendants did not file a counterclaim. In their WSD however, their request to court was a declaration that the consent judgment and execution in **Civil Suit No 787 of 2015** was not obtained fraudulently; a declaration that the plaintiffs had no equitable interest in the land; that the 1st defendant was the rightful owner of the suit land; a declaration that the plaintiffs were trespassers on the suit land and accordingly prayed for an immediate eviction to issue against them.

Representation:

The plaintiffs were represented by **M/s LUHOM Advocates**, while the defendants by **M/s Lwere, Lwanyaga & Co. Advocates**.

Issues:

The following issues were agreed upon during the scheduling:

1. ***Whether the plaintiffs have equitable interests in the suit land formerly comprised Kyadondo Block 273 Plot 491 situate of Bunamwaya?***
2. ***Whether the defendants fraudulently connived and registered the suit land into its names as land comprised in FRV 2420 Folio 8, plots 3479 and 3480 at Nyanama, Wakiso?***
3. ***Whether the defendants connived and fraudulently obtained the consent judgment vide Civil Suit No. 787 of 2015.***
4. ***What remedies are available to the parties?***

Section 101(1), 102, 103 and 106 of the **Evidence Act, Cap 6** provide that whoever desires any court to give judgment as under different to any legal right or liability dependent on the existence of facts which he or she asserts, he she must prove that those facts exist.

In **Nsubuga vs Kavuma (1978) HCB 307**, it was held that in civil cases the burden of proof lies on the plaintiff to prove his case, on the balance of probabilities. (**Refer also Miller versus Minister of Pensioners [1947] 2 372**).



The defendants' defence was premised on allegations of trespass by the plaintiffs. In ***Sheik Muhammed Lubowa versus Kitara Enterprises Ltd C.A No.4 of 1987, the East African Court of Appeal*** noted that in order to prove the alleged trespass, it was incumbent on the party to prove that the disputed land belonged to him; that the party had entered upon that land; and that the entry was unlawful in that it was made without his permission; or that the defendant had no claim or right or interest in the land. (***Ref also: H.C.C.S No. 118 of 2012, Tayebwa Geoffrey and Anor Vs Kagimu Ngudde Mustafa; Justine E.M.N. Lutaaya Vs Sterling Civil Engineering Co, SCCA No. 11 of 2002***).

Issue No. 1: Whether the plaintiffs have equitable interests in the suit land comprised formerly comprised Kyadondo Block 273 Plot 291 situate at Bunamwaya?

Counsel for the defendants in this case refuted the plaintiffs' claim of equitable interest in the suit land. Citing *Black's Law Dictionary 9th Edition* at page 885 he defined it as interest held by virtue of an equitable title or claimed on equitable grounds such as the interest held by a beneficiary.

He further cited the case of ***Erina Lam Oto Ongom Vs Opoka Bosco and Anor (Civil Appeal No. 91 of 2019)*** that an equitable interest was valid against the entire world, except for the *bonafide* purchaser for value without actual, constructive or implied.

That it could not have been possible for the plaintiffs to have a *kibanja* interest on the suit land since this was leasehold land. Furthermore, that in ***Ponsiano Katamba Vs Cotilda Nakirija Civil Appeal No. 169 of 2017***, the definition of a *kibanja* was considered extensively to mean a special tenure recognized with another tenure which is mailo tenure and can only be transferred with the consent of a registered owner.

According to counsel therefore in the present circumstances, neither the late Yosiya Tabula whose lease had already expired nor his beneficiaries were *kibanja*

holders and had no right to sell the land comprised in **Kyadondo Block 273 Plot 491**.

Section 29 (2)(a) Land Act currently governs and guarantees the protection of *bona fide* unregistered interests on the land. However, in **Civil Suit No. 857 of 2000: Jonathan Masembe and 3 others vs. Makerere University & 2 others**, the court observed that there was need for caution in the application of the provision of that section.

The section provides that an occupant of land seeking a benefit from the provision of *bona fide* occupant has to prove that he had been in such possession for a minimum of 12 years without any challenge to such occupation before the coming into force of 1995 constitution.

It is apparent that the intention of the Constitution and the **Land Act** is to protect *bona fide* interests upon their adverse possession within the meaning of the Act.

The plaintiffs in this case claimed that the beneficiaries under whom they derived their interests had customary ownership. Customary tenure is defined in **section 1(l) of the Land Act** (hereinafter referred to as the Act) as "*a system of land tenure regulated by the customary rules which are limited in their operation to a particular class of persons which are defined in section 3*".

As held by court in **Kampala District Land Board & George Mutale vs. Venansio Babweyala & Ors (SCCA 2/07)**, customary tenancy must be proved. Such proof would entail for example long occupation, recognition of the owner of the reversion or landlord (and vice versa); and payment of ground rent.

To prove their claim of equitable interests, the plaintiffs relied on the evidence of five witnesses. Ssetaba Fulugensio the 2nd plaintiff testified as **Pw1**. Sarah Nankya testified as **Pw2**. Nsamba Ramathan testified as **Pw3**; Njuba Frank as



Pw4 for and on behalf of the 4th plaintiff; and Bahimbisibwe Felix as **Pw5** for and on behalf of the 5th plaintiff.

That each of them derived the equitable interests from the beneficiaries of the estate of the late Yosiya Kizito Tabula who was the registered owner of the land
5 comprised in **LRV 1079 Folio 1**, formerly **plot 491, Kyadondo Block 273**.

According to them, the lease had expired on 1st June, 1980 and was extended for a period of 49 years. They relied on the certificate of title **PExh 12**. It was also the plaintiffs' further claim that the defendants had entered into a fraudulent consent decree: **HCCS No. 787 of 2015**, whose objective was to have them
10 evicted and defeat their respective equitable interest in the *bibanja*.

They accordingly sought cancellation of the certificate of title **PExh 13** for **LRV 2420 Folio 8, plots 3480 and 3481** which they alleged was fraudulently registered in the names of the 1st defendant for a lease term dating from 1st November, 1995, and extended to 49 years, for an area measuring approximately
15 2.024 hectares, out of the total 4.05 hectares which was in the original lease claimed under estate of the late Yosiya Tabula. (**PExh 12**).

Evidence by the plaintiffs:

It is important to point out at this stage that each of the plaintiffs had a separate claim, having purchased from different persons claiming as beneficiaries under
20 the estate of Yosiya Tabula.

Each plaintiff therefore had to prove their respective claim on how they acquired the equitable interest.

Claim by the 1st plaintiff:

The 1st plaintiff, Katumba David Mark Sendagire did not testify. What was
25 presented in court was **PExh 5A/B**, a sale agreement dated 4th December, 2008, between him and one Onezimu Samba Mbagu.

The *kibanja* sold to him was on **block 273 plot 396**, at a price of **Ugx 10,000,000/=**. It was stamped endorsed by the LC 1 stamp for Kisingiri-Nyanama.

5 However the LC, the parties to the agreement, and the three witnesses to the sale agreement did not attend court to confirm the execution of that transaction.

Without any such backing, the sale agreement, **PExh 5A/B** could not be regarded by this court as an authentic document/transaction.

Claim by the 2nd plaintiff:

10 Mr. Ssetaba Fulugensio, the 2nd plaintiff, testified as **Pw1**. He informed court that he heard from one Fred Katongole that Nassamba was desirous of selling her share which she got from her father in 2012.

15 In *paragraph 1* of his statement, he stated that he was told by Mary Nassamba that during the life of their father, the suit land was used for cultivation of sugar cane, yams, vegetables, maize, beans, cassava among others, until he passed on in 1996.

20 That after his death they applied to the Administrator General whereby Ssematimba Noah was appointed as administrator of the estate of their late father and thereafter the suit land was distributed among the 13 children, including the said Nassamba, with each of them obtaining a share of 63 decimals, out of the 4.05 hectares.

The land measuring 276ft by 98 ft was sold to him at a consideration of **Ugx 10,000,000/=**. **PExh 1A'/1B'**, was presented as a copy of the sale agreement dated 1st April, 2012.

25 It was also his evidence that he had made inquiries from neighbors, Administrator General and Buganda Land Board (BLB), where all confirmed that the land formerly belonged to the late Tabula and that Nassamba had the right to sell her share.



Following the transaction, Nassamba had relinquished all her rights and interests therein. He put up a piggery and temporary structures, a latrine and a kitchen and that he used the land without any interruption, until 2016 when through connivance, the defendants entered into a consent judgment and decree
5 vide **HCCS No. 787 of 2015**; obtained a warrant of vacant possession vide **HC No. EMA No. 21 of 2016**; and had them evicted. In the process he had lost property worth **Ugx 48,000,000/=**.

Fred Katongole and Mary Nassamba who sold the land to him however were not called in to testify. Such evidence could only therefore be treated as hearsay
10 evidence.

Among all the beneficiaries under the estate of Tabula only Sarah Nankya who testifying as **Pw2**, denied any knowledge of the defendants. Her evidence was that by time she grew up her elder sisters: Basilika, Namayanja, Nakibuuka Rhoda were using that land uninterrupted, and continued doing so even after
15 their father's demise.

Pw2 claimed to have lived on that land since her childhood. That she sold her share of the suit land which formerly belonged to their father's estate. Their shares were distributed by the Administrator General who was the Administrator of the estate. This however contradicted the claim by **Pw1** that Ssematimba
20 Noah had been appointed as the administrator of the estate. The land was not registered in his names as the administrator of the estate.

The general principle is that in order for a party to claim interest in the land, his title ought to be derived from someone who had a recognized right and title on land. (**Godfrey Ojwang vs. Wilson Bagonza CA No. 25 of 2002**).

25 **Pw2'** s evidence was intended to prove that the land was initially claimed by the beneficiaries as the rightful customary owners thereof, since it was acquired by their father from ULC in the 1980s and that therefore each of them had the right to sell off their respective shares to third parties.

5 **The Land Reform Decree, 1975**, which was the law in force in the 1980s, declared all land in Uganda to be public land, to be administered by the Uganda Land Commission in accordance with the Public **Lands Act 1969**, subject to such modifications as were necessary to bring that Act into conformity with the decree.

The system of occupying public land under customary tenure was to continue, but only at sufferance and any such land could be granted by the Commission to any person including the holder of the tenure in accordance with the decree.

10 **Section 5 of the decree** however specifically restricted occupation of land through customary tenure and under the **Land Reform Regulations 1976** any person wishing to obtain permission to occupy public land by customary tenure had to apply to the sub-county chief in charge of the area where the land was situate, and such application had to be approved by the sub-county Land Committee.

15 This position of the law was considered in the case of **Kampala District Land Board & George Mitala Vs Venansio Bamweyana & Others, S.C.C. Civ. Appeal No. 2 of 2007 & High Court Land Division Civil Appeal No. 52 of 2010 Musisi Gabriel Vs Edeo Limited and George Ragui Kamoi**.

20 In High Court Land Division **Appeal No. 52 of 2010 High Court: Musisi Gabriel Vs Edeo Ltd & George Ragui Kamoi** court held that since the restriction on acquisition of customary tenure, the **Public Land Act, 1969** seemed to have continued as the law governing all types of public land, including customary tenure subject to the provision of the decree.

25 In alignment with the above, it is not in dispute that the late Tabula's lease had expired by 1985. The beneficiaries of his state could not claim to have derived any rights over that land thereafter, by virtue of customary ownership.



In any case there was no backing from the LCs or neighbours over the usage of the land under customary ownership. The beneficiaries could not have passed onto the third parties interest which their father did not have.

5 The plaintiffs' further contention was based on the fact that the beneficiaries under the estate of the late Tabula were each entitled to 63 decimals of the suit land.

Pw2 confirmed that to have been the position, adding that her share was used for cultivation, but did not present any document to prove that her share had been sanctioned by the office of the Administrator General whom she claimed
10 was the Administrator of the estate.

She could not dispute the fact that the beneficiaries interest was based on an expired lease and a fake extension of that lease which findings were confirmed by the office of the Commissioner, Land Registration as per her letter dated 7th June, 2011. (**DExh 1**).

15 The claim therefore that upon seeking intervention from the offices of the Inspector General of Government (IGG) and Administrator General, which offices according to her confirmed that the land formerly belonged to their father, could not therefore have been truthful, following such confirmation from the office of the Commissioner, Land Registration as sole custodian of the land
20 registry/titles.

Nankya herself was not a witness to the sale agreement and neither Nassamba Mary nor Fred Katongole who were witnesses to the sale transaction or any of those mentioned in her evidence were called in to testify to support her claim or that of **Pw1**.

25 In any case, by the time the transaction took place the land had already been subdivided; exchanged hands from as early as 1995. Mubiru Francis and Dorothy Nazinga had been registered as joint owners on 11th November, 1995

and their possession/registration of that land which they acquired during the time when Tabula was still alive was never challenged.

This was ten or so years after the late Tabula's lease on that land had already expired. From **Pw2's** evidence, Mubiru who was the heir to their father's estate
5 passed away in 2016.

The subsequent lessees were the 2nd defendant's late father and thereafter, the 1st defendant who was in legal possession at the time the plaintiffs' sale transactions, were made, (with the exception of that of the 1st plaintiff).

The principles of consent between the two adverse owners are laid out clearly
10 under **sections 34 and 35 of the Land Act**. Under **section 35 (1)**, thereof a tenant by occupancy who wishes to assign his/her *kibanja* must give the first option to the holder of the legal interest. In a like manner, by virtue of **section 35(2)** the owner of the reversionary interest gives the first option of buying that land to the tenant by occupancy.

15 Muhindo Kalemire Jamal (2nd defendant's father) whose ownership of part of the suit land dates back on 6th July, 2009 was also never questioned or challenged in court by any of the beneficiaries or the purported administrator of the estate of Tabula.

The information concerning the status of the lease on this land would have been
20 availed to any interested third party since the letter from the Commissioner, Land Registration dated 7th June 2011 which disowned the lease extension had been addressed to Mr. David Muyanja, as LC 1, Busingiri/Nyanama Zone.

Claim by the 3rd plaintiff:

25 **Pw3**, Nsamba Ramathan, the 3rd defendant informed court that he learnt from Basilika Nakkazi one of the beneficiaries that during the lifetime of her father the land was used for cultivation and that one Sematimba was appointed administrator of the estate. She also confirmed to him that each of the 13 children got 63 decimals out of the total 4.05 hectares.

Pw3 and his wife on 31st July, 2011 entered into a sale agreement with Basilika Nakkazi (Yuddaya Ssali) to purchase her share at **Ugx 7,000,000/=**, after inquiries were made which according to the witness confirmed her ownership of that share.

- 5 The agreement dated 31st July, 2011 (**PExh 4 A/B**) was signed by Basilika Nakkazi (Yudaya Ssali) as seller and **Pw3** as the buyer. The transaction was however never endorsed by the Lcs.

Another person Wumalu Kajjumbi was desirous of selling his share which he had bought from Namayanja Dorothy out of the suit land. Upon inquiries he also
10 confirmed that both Namayanja and Kajjumbi had the right to sell.

The purchase between Kajjumbi and **Pw3** was made on 18th December, 2013 for the land measuring 137 ft by 100ft; at purchase price of **Ugx 6,500,000/=**. (Ref. **PExh 7A/B**).

- Pw3** planned to put up a workshop for mechanical engineering on the two
15 portions which stretched from the main road. But claimed that his plans were frustrated by the defendants' fraudulent dealings on the land. Neither the vendor/beneficiary nor those mentioned as witnesses in any of the transactions were however called in as witnesses for **Pw3**.

As already noted, by the time the said *bibanjas* were bought respectively in 2011
20 and 2013, the late Tabula had already lost interest in the suit land; the land had already been subdivided with changes in ownership as indeed acknowledged by the Commissioner in her correspondence **DExh 1**.

The disposal of the equitable interest by the beneficiary to a third party, even if that interest was to be considered to be held as valid, did not meet the
25 requirement of prior consent of the registered owner, who in this case was the BLB as the lessor and the the company which had bought the land.

By a letter dated 9th December, 2002 (**PExh 15**) the Administrator General had written to the Commissioner, for Land Registration disowning Mubiru Francis



and Dorothy Nazinga. But that was 7 years after the two became registered owners on that land.

In that letter, only three beneficiaries were recognized as beneficiaries under Tabula's estate, that is: Simon Mubiru Ssaava; Onesmus Ssamba and Leah
5 Namutebi who were entitled to receive the 63 decimals.

From 1995 no attempt was made to challenge the joint owners or their successors in title. The beneficiaries of the estate of Tabula chose not to sue the registered owners for the obvious reason that their father's interest had already
10 expired and the land had to revert back to the Controlling Authority which prior to 1993 was ULC; upon which the land became available for leasing.

In ***Suleiman Adrisi v Rashida Abul Karim Halani & Anor Civil Suit No. 008 of 2017*** court observed that land is available for leasing when it is:

- i) *vacant and there are no conflicting claims to it;*
- 15 ii) *occupied by the applicant and there are no adverse claims to that occupation;*
- iii) *where the applicant is not in occupation but has a superior equitable claim to that of the occupant; or*

where the applicant is not in occupation but the occupant has no objection to the application.

20 At the time Mubiru and Nazinga became registered owners; and took possession of the suit land, the deceased who was still alive at the time and his family's interests were only those of tenants at sufferance since there was no validation of their stay of that land.

Those beneficiaries who sold to the third parties did not show up in court to
25 explain how they had acquired the perceived equitable interest which they individually passed on to the plaintiffs.



The plaintiffs' as prospective buyers needed to do more and inquire from the offices of Administrator General and Commissioner Land Registration about the ownership of the suit land following the lease expiry.

5 The correct information was well within the reach of any prudent prospective buyer who wished to find out from the LC 1, David Muyanja himself. His presence as a witness in court was therefore crucial. He was not however produced in court.

Court in **Jennifer Nsubuga vs Michael Mukundane and Anor CACA NO. 208 OF 2018** made it clear that though not in statute law, consultations with the
10 leadership of the area where the land is located is very key in establishing that due diligence was carried out. As such therefore LCs cannot be disregarded in land transactions.

Furthermore, in the case of **Jennifer Nsubuga versus Micheal Mukundane, Civil Appeal No. 208 of 2018**, it was held that:

15 ***"... due diligence investigation would seek to cross check or confirm the vendor's claim by inquiring, seeking to cross-check or confirming the vendor's claim to title by inquiring of independent persons knowledgeable about the land or that which could otherwise shed light on the bonafides of the intended land purchase.***

20 ***It ought to be directed at persons that are independent of the beneficiaries of the land transaction in question, with a view to ascertaining the authenticity of the title sought to be conveyed. Of necessity that would exempt routine, contractual inquiries made of the seller to establish his/her title to property".***

25 In the case of **Uganda Posts & Telecommunication vs Abraham Katumba (1997) IV KALR 103**, it was held that as the law now stands a person who purchases an estate which he knows to be in use of another other than the vendors without carrying out the due inquiries from the person in occupation and use commits fraud.



The above principles were equally applicable to the 3rd plaintiff in the present suit.

Claims by the 4th plaintiff:

Mr. Njuba Frank testifying as **Pw4** stated that he is one of the directors of M/s
5 *SUNSET Engineering Ltd.* The company acquired the land comprised in **plot 3964** situate at Nyanama from Leah Namutebi, as one of the beneficiaries who had informed him that each beneficiary was entitled to 63 decimals.

The said agreement between Namutebi and the 4th plaintiff was made on 23rd
December, 2013 on behalf of M/s *SUNSET Engineering Ltd.* (**PExh 2**). Following
10 the purchase, it was **Pw4's** further testimony that Namutebi had relinquished her share at a cost of **Ugx 24,000,000/=**. The actual size and title of the land as purchased were however not mentioned in the agreement.

He was introduced to BLB by Namutebi who however later passed on. A file
number was opened at Buganda Land Board (BLB), ref: **BLB/01/7998, Block**
15 **273, plot 3964**, upon which **Pw4** cleared the outstanding *busulu* payments and a penalty of **Ugx 4,004,680/=** imposed by BLB.

Pw4 later visited the area which Namutebi claimed to have obtained as a share
from her late father in 2013. But when he later checked at BLB offices as a
follow-up on the transfer, he was informed that there was a problem on the file,
20 which problem was not disclosed to him. He was later served with an eviction notice by the 2nd defendant whom he claimed he had never seen before.

PExh 15, is a letter addressed to the Commissioner of Lands and Namutebi was
named as one of the three children who had obtained 0.63 acres from the estate
comprised in **plot 491, Block 273**, at Bunamwaya. The other two were Simon
25 Mubiru Ssava and Onesmus Ssamba.

Leah Namutebi's relationship to the deceased and her key role in the
transactions with BLB may not have been in doubt. However, from the record

no certified copy of the transfer instrument for the 0.63 decimals was availed to court.

What was presented was a document dated 8th November, 2002 purportedly signed by the Administrator General. It was not completed as Namutebi as the transferee never signed it.

Court could not therefore rule out the possibility that the transfer of the land to **Pw4**, claimed to have been Namutebi's share was never made by Namutebi herself who did not and could not, as already stated, have been a customary owner.

But secondly and more importantly there was no valid extension of the original lease into Tabula's names. At the time when **Pw4** purchased the *kibanja* in 2013, the entire suit land had already been subdivided and had already changed legal ownership.

Thirdly, **Pw4** did not in any case make it clear to court as to whether what he bought was a *kibanja* or the entire **plot 3964**. Since no survey was carried out it is difficult to ascertain the exact area which he purchased.

Even worse for all plaintiffs who bought land during this period, as per **DExh 3**, a communication from Buganda Land Board, addressed to **M/s Lwere, Lwanyaga & Co. Advocates**, counsel for the defendants, which communication is dated 17th May, 2013, and titled: *Leasehold Register Volume 2828 Folio 17 and 2424 Folio 8*, an administrative moratorium had been removed from that land, upon which the 1st defendant became free to own it uninterrupted.

It had earlier been imposed on the disputed land to give time for the parties to sort out the issues on the land in a judicial forum and serve the BLB with resultant orders, which the plaintiffs never did.

This in effect ruled out any possibility that the plaintiffs had any interest in the land comprised in *Leasehold Register Volume 2828 Folio 17 and 2424 Folio 8*. The said letter **DExh 3** which was copied to the beneficiaries of the estate Tabula

Kizito and **M/s Aisha Infoys Ltd (1st defendant)** and **M/s Alysha Investment Ltd**, also went on to note that BLB had not been the issuing authority for the subsisting lease; and advised the defendants to seek proper redress from the appropriate authorities.

- 5 That same letter was written on 17th May, 2013. BLB's propositions were not questioned by Namutebi who instead went ahead to enter into a sale agreement with the 4th plaintiff on 23rd December, 2013, seven months later.

If the 4th plaintiff had taken the trouble to verify the information given to him by Namutebi concerning this land he would have been availed with the changed
10 status of the suit land from BLB. He would not have committed his funds to the purchase of the encumbered land.

For the above reasons, the 4th plaintiff as a prospective buyer failed to conduct due diligence. He did not therefore acquire valid equitable interest in the land.

Claim by the 5th plaintiff:

- 15 **Pw5**, Felix Bahimbisomwe a pastor of Glory to Glory Gospel Ministries and one of the directors in the 5th plaintiff's company on his part testified on behalf of the 5th plaintiff, *M/s TAVCON Enterprises*.

PExh 3(a/b) was the sale agreement endorsed by the LC Chairman on 16th April, 2011. This was between **Pw5** on behalf of *M/s TAVCON Enterprises* and
20 Muwanga James, whose relationship to the late Tabula was however not proved to court. The *kibanja* measuring 0.25 hectares was sold to him at **Ugx 2,500,000/=**.

Pw5 in his evidence claimed he got to know from Rose Namubiru, Jane Muwanga, Kulata Nicholas Kagimu and Noah Sematimba about the prior
25 ownership and use of the suit land for cultivation by their late father and the sharing of the 4.05 hectares between the 13 beneficiaries.



He too learnt from Fred Katongole and Kimbugwe that the children of Tabula were desirous of selling their shares which they got in 2012 and established, upon inquiries that that they each had a right to sell their shares.

5 He thereafter entered into a purchase agreement for land measuring approximately 4.4 acres at a consideration of **Ugx 16,000,000/=**. He presented to court an agreement dated 23rd March, 2011.

PExh 6E/F indicates that another portion was sold by Noah Ssematimba to Bahimbisomwe at **Ugx 6,000,000/=**. A sum of **Ugx 3,000,000/=** was paid and the balance was to be paid on 20th May, 2011.

10 **PExh 6A/B**, is an understanding for a *kibanja* which he made with the vendor Noah Ssematimba on 30th August, 2011 for the already subdivided **plot 491, block 273**. Needless to add, Yosiya Tabula Kizito had ceased to be the owner at that time.

15 From the contents of that arrangement it was clear that the land was already encumbered. It is presumably for that reason that the entire consideration was never paid by the purchaser.

The agreement referred to the original copy of the succession certificate which was handed over to the purchaser. The copy on record dated 7th July, 2009 was for 0.25 hectares out of **plot 491** which, as noted was already subdivided, new
20 titles created and ownership changed as early as 1995.

PExh 6(C/D) was another sale agreement dated 15th September, 2015 by which **Ugx 6,000,000/=** was paid by Bahimbisomwe Felix, on behalf of *Glory to Glory Primary School* to Rose Namubiru; Jane Muwonge, who did so on behalf of Nicolas Kagimu Muwonge.

25 The total area of the *bibanja* sold according to that agreement was one acre. However, none of the witnesses to that transaction was produced in court. No LC was brought to court as a witness.



This court besides also noted that no prior written authority to sale had been secured from Nicolas Kagimu to Jane Muwonge; and indeed information about their relationship to Tabula was lacking.

5 In **Kaggwa Vs Kizito Batuma and 8 Others Civil Suit 286 of 2017**, court held that a purchaser must undertake a full investigation of the title before completing purchase and is deemed to have had constructive notice of fact if he/she deliberately abstained from inquiry.

A *bona fide* purchaser is defined in **Black's Law Dictionary 8th Edition at page 1271** as:

10 **"One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has good faith paid valuable consideration without notice of prior adverse claims."**

15 Whether or not there was fraud and whether or not a party was a *bonafide* purchaser for value without notice, the question that a court would poise is whether the defendant honestly intended to purchase the suit property and did not intend to acquire it wrongfully. (**David Sejjaka Nalima vs Rebecca Musoke SCCA No. 12 of 1985**).

20 The above rules out any possibility that any of the plaintiffs had been a *bonafide* purchaser.

Authority to deal with the estate of the late Tabula:

25 Even if one were to assume therefore that Tabula had been the actual owner of the land in dispute, the underlying and unavoidable question would have been whether or not the requisite authority had been secured to deal with his estate.



Section 180 of the Succession Act, provides that an administrator of the estate of a deceased person is his or her legal representative for all purposes, and as such all the property of the deceased person vests in him or her.

Thus in **section 25** all property in an intestate devolves upon the personal
5 representative of the deceased, as trustee for all the persons entitled to the property.

The defendants in submission argued correctly so, that all the sellers of the said land believed and asserted that they gained an equitable interest in the land from their late father Yosiya Kizito as beneficiaries to the estate. However, that no
10 letters of administration were availed to court granting the authority to dispose of the suit land by sale, as per **section 191 and 192 of the Succession Act**.

That the agreements for the sale of this land to all the plaintiffs were made between 2011 and 2015 yet the said interest from which they each derived interest belonged to the late Yosiya Kizito whose interest had long expired in
15 1985; and was not renewed by him thereafter.

Noah Ssematimba who according to **Pw1 and Pw3** evidence in chief had been appointed by the family as administrator of the estate and who had sold part of the *kibanja* to the 5th plaintiff was however not called in as a witness.

Pw1 and Pw3's evidence contradicted that of **Pw2** who in her testimony clearly
20 stated that the estate was administered and distributed by the office of Administrator General. She did not present the letters of administration which were relied on to distribute the estate.

None of the sale agreements presented by the plaintiffs was signed by Ssematimba in his capacity as the administrator of the estate. Instead what was
25 tendered in by the plaintiffs was **PExh 14**, a petition for letters of administration (*with will attached*), by the office of Administrator General, vide: **AC No. 332 of 1997**. However, neither the grant to the office of Administrator General nor the will of the deceased were adduced in court.



The petition by the Administrator General which was dated 28th May, 1997 showed that the deceased left 16 children. It is not clear how many of them were still alive by the time he passed on in 1996 and why only 13 children out of the 16 were entitled to the share of 0.63 decimals as claimed by the plaintiffs; or why
5 only three ended up getting 0.63 decimals from the Administrator General.

As per document of transfer dated 8th November, 2002, it would appear that at some point the Administrator General had been the registered proprietor of the land comprised in the original **block 273, plot 491** out of which 0.63 decimals each had allegedly been transferred to Leah Namutebi, Simon Mubiru Ssava and
10 Onesmus Ssamba. No certificate was however presented as proof of such registration.

In a recent declaration by the Court of Appeal it was stated that a beneficiary can enter into a valid agreement of sale of land formerly owned by a deceased person, even when he/she does not have letters of administration; or even where
15 his/her name is not registered on the title, provided it is his/her share in the estate. (**Dr. Diana Kanzira vs Hebert Natukunda Rwanchwende and Anor CACA No. 81 of 2020.**)

The same Court of Appeal in its decision of **Joyce Nakayima & 3 others vs Nalumansi Kalule and 2 others CACA No. 111 of 2019**, also stated however
20 that an illegal sale conducted without proper authority cannot be executed against any of the parties, let alone be enforced against a third party who was not privy to the contract.

Furthermore, that a court ought not to allow itself to be made an instrument of enforcing obligations alleged to arise out of a contract or transaction which is
25 illegal if the illegality is duly brought to the attention of court. (**May vs Brown Doering MC NAB & Co. (1882) 2QB 728** cited with approval in **Kyagulanyi Coffee Ltd vs Francis Senabulya CACA No. 41 of 2006.**)

As the final blow to the plaintiffs' contentions, from the contents of the petition for letters of administration (**PExh14**) among the properties left by the deceased



was 1.214 hectares at Bunamwaya **plot 2988, block 265**; 5.69 Hectares at Nammengo Kyagwe **plot 435 Block 11**; 0.74 acres at West Mengo, Kyadondo **plot 435, block 11**; 4.05 hectares at East Buganda Nammengo, Kyaggwe **plot 54 block 65**; and 15 acres at Nakigoza, Bulemeezi **Vol. 76 Folio 14**.

- 5 That goes to prove the defence contention that the property in contention was not among the ones in the petition for the letters of administration listed for the estate of the late Tabula.

It was clearly within the knowledge of the office of the Administrator General that the suit land had not been listed among the assets of the deceased. Though a
10 trustee of the deceased estates by law, the office was misguided into thinking that it could deal with the estate of Tabula without appropriate authorization. Indeed no inventory was filed in court to show how the land/estate was distributed.

As observed by this court, nowhere on that title was the office of the
15 Administrator General (or Noah Ssematimba for that matter) reflected as the administrator of the estate of the late Tabula.

In **Bukenya vs Uganda [1972] EA 549** it was held that omission to produce a vital witness should weigh against the party omitting to bring him. It was in the interest of the plaintiffs in this case to present the Administrator General; Noah
20 Ssematimba or whoever was the rightful administrator of the estate as a witness in court to confirm that the distribution of the estate was lawfully concluded.

In conclusion of **issue No. 1**, the plaintiffs failed to prove who the actual children/beneficiaries of the late Tabula were or their valid existence as customary owners on the suit land. They relied on a fake extension of a lease
25 which was disowned by the Commissioner Land Registration.

They presented conflicting evidence about the existence of, (or otherwise) of the will; failed to present letters of administration which were relied during the distribution; failed to prove that Noah Ssematimba was the administrator of

Tabula's estate; and no evidence was provided to prove that the Administrator General had validly distributed the suit land to each of the beneficiaries.

In short, none of the plaintiffs in this suit was able to satisfy court that he had valid/equitable and protectable interest in the suit land.

5 **Issue No. 2:**

Whether the defendants fraudulently connived and registered the suit land into their names as land comprised in FRV 2420 Folio 8 Plots 3479 and 3480 at Nyanama, Wakiso?

And

10 **Issue No. 3:**

Whether the defendants connived and fraudulently obtained the consent judgment vide Civil Suit No. 787 of 2015.

The plaintiffs pleaded that fraud was committed by the defendants and therefore sought for the cancellation of the 1st defendant's title. That defendants fraudulently obtained a leasehold title **PExh 13** from Uganda Land Commission on 1st November 1995 yet ULC had no authority to issue that lease.

Secondly, that none of the former registered proprietor in the defendants' title before the alleged 2nd defendant's father got registered was brought to court to justify their claim, which cemented **Pw2's** evidence that she had been on the suit land since her childhood and she has never seen the persons named in the defendant's title as former registered proprietors.

It was also submitted by their counsel that the alleged consent obtained from Buganda Land Board was forged as it was in favour of *Alisha Investment Ltd* but not the 1st defendant.

25 Counsel referring to **PExh 20 and PExh 21** also pointed out the fact that the 2nd defendant was not the sole administrator of the estate of the late Muhindo Kalemire Jamal.



Discrepancies also appeared in the names he used when applying for letters of administration as the name appearing therein was Muhangya Isa but not Muhindo Issa, which names appeared in the purported consent decree vide **Civil Suit No. 787 of 2015** and also used in the present suit; yet the name appearing
5 in his national identity card was Muhangya Issa Muhindo which according to the plaintiffs' counsel, in absence of a deed poll made the 2nd defendant a mere imposter.

The plaintiffs' counsel further submitted that even though the 1st defendant asserted that they surveyed the suit land as per report, **DExh2**, during the *locus*
10 visit, **Dw1** did not even know the boundaries of the suit land, claims which the defendants however denied.

That during locus it was established that even, the relatives of **Pw2** or late Yosiya Tabula Kizito were still on part of the suit land and had permanent residences thereon.

15 Since **Dw1**/1st defendant's director admitted during cross-examination that the 1st defendant did not make any resolution for purchasing the suit land, the purchase agreement between the defendants was a nullity.

Indeed, at *locus*, there were settlements in the area covered in part of the swamp. Counsel also referred to the contradictions in the defendants' evidence which
20 created doubt as to whether the compensation alluded to was made to the occupants of that land, before or after the defendants' purchase of the suit land, or at all since none of those who were compensated were in court to confirm such payments.

Counsel referred to **Udur vs Ocaya & 3 Ors Civil Appeal No. 34 of 2018** where
25 it was held that grave inconsistencies and contradictions unless satisfactorily explained, will usually result in the evidence of a witness being rejected.

The defendants' main point in response however was that at the time when the 1st defendant bought land comprised in **LRV 1079 Folio 1 LRV 28 Folio 17**



and LRV 2410 Folio 8, the purported lease in respect of the late Yosiya Kizito Tabula had expired way back on the 31st May, 1985; and since then, no renewal was made.

The suit land formerly, **Block 273, Plot 491** was later subdivided into **plots**
5 **349, 3480 and 3481**. That the purchases by the plaintiffs did not confer any proprietary interest and/or title since the lease of the late Tabula Kizito had already expired.

In view of this, Mubiru Juma and Nanziga Dorothy obtained a fresh lease and proceeded to effect the sale of their interest to Muhindo Juma, father to the 2nd
10 defendant who later sold to the 1st defendant.

That in any case at the time the 1st defendant purchased the land from the late Muhindo Kalemire who was then the registered proprietor there was no person occupying and/or developing the land and that those who had claims had acknowledged receipts of the various sums of money as compensation.

15 In further denial of fraud, that prior to the transfer of the suit property in its names, the late Muhindo who was the registered proprietor had applied and obtained consent to transfer the property into the 1st defendant's names, which consent the plaintiffs however disputed.

Consideration of the issues by court:

20 *Fraud*" as defined in **FJ K Zaabwe vs. Orient Bank & 5 O'rs SCCA No. 4 of 2006 (at page 28)** is an intentional perversion of truth for purposes of inducing another to part with some valuable thing belonging to him/her, or to surrender a legal right.

It is also defined as a false representation of a matter of fact, whether by words
25 or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.



It is anything calculated to deceive, whether by a single act of combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture amounts to fraud.

- 5 Fraud unravels everything and vitiates all transactions. (***Fam International Ltd and Ahmad Farah vs Mohamed El Fith [1994]KARL 307***). It must therefore be specifically pleaded and proved.

The burden of proof lies with the plaintiff who holds the duty to furnish evidence, whose level of probity is such that a reasonable man, might hold more probable
10 the conclusion which the plaintiff contend, on a balance of probabilities. (***Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004.***)

In any allegation of fraud, the standard is heavier than on a mere balance of probabilities as generally applied in civil matters. (***Kampala Bottlers Ltd. Vs Damaniaco (U) Ltd (supra)***).

It is besides, also trite law that a certificate of title is conclusive evidence of ownership, save where there is fraud. (Ref: ***sections 59 and 176 of the RTA***).

Each of the plaintiffs' in this suit claimed that not only did the defendants connive to have the suit land registered into their names as land comprised in
20 ***FRV 2420, Folio 8 Plots 3479 and 3480***, but also went ahead to enter into a fraudulent consent decree, the sole objective and consequences of which were to deprive them of their *bibanja* which they had each lawfully acquired from the beneficiaries of the estate of Tabula, a claim which the defendants however refuted.

- 25 The defendants on their part relied on the evidence of the 1st defendant, ***Dw1*** and 2nd defendant, as ***Dw2***.

They relied on the memorandum of sale of land dated 6th December, 2010, between Muhindo Kalemire Jamal the 2nd defendant's late father and his

representatives, assignees and nominees on the one hand and **M/s ALISHA INVESTMENT Ltd** as purchasers (**PExh 19**).

As correctly noted by the defence, in the petition for the letters of administration filed by the 2nd defendant, (**PExh 20**), the suit property was not amongst those
5 listed as belonging to the estate of Muhindo Jamal Kalemire, the 2nd defendant's father, for by the time the petition was made, Muhindo had already disposed of the land.

It was the defendants' claim that the purchase agreements for all the plaintiffs were made after Buganda Land Board had received payment for the fresh lease
10 of the same land from the late Muhindo Kalemire.

That the sellers knew about this development and desired to make a quick sale to make unmerited profit. As stated in the witness statement of the 2nd plaintiff at *paragraph 11* thereof, he heard about the sale of the land in 2012 but that this was well after the Buganda Land Board had granted a lease to the late
15 Muhindo Kalemire.

The defence therefore maintained that the claims made by the beneficiaries as vendors to the plaintiffs were *malafide*.

I will deal with each of these issues as below:

a) Validity of the consent judgment and decree and and eviction :

20 It is not in dispute that **Civil Suit No. 787 of 2015**, had been filed by **M/s AISHA INFOYS Ltd** against the 2nd defendant as administrator of the estate, yet as duly pointed out, two persons had been appointed as administrators over that estate.

A consent judgment and decree was subsequently entered into between the two defendants on 19th November, 2015. (**PExh 16**). **PExh 17**, is the warrant to give
25 vacant possession against the 2nd defendant, who admitted that he had not been in actual physical possession of the land.



It is also not dispute that the plaintiffs who were evicted from the suit land had not been parties to the consent order.

Section 10(1) of the Contracts Acts 2010 defines a contract as:

5 ***'an agreement made with a free consent of parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound'.****(emphasis added).*

For a consent/contract to be valid and legally enforceable, there must be capacity to contract, intention to contract, *consensus ad idem*; valuable consideration; legality of purpose; and sufficient certainty of terms.

10 If in a given transaction any of these is missing it could as well be called something else. (***Ebbzworld Ltd & Anor vs Rutakirwa Civil Suit No. 398 of 2013***).

Furthermore, under **section 11(1) (supra)** a person has capacity to contract where that person is of eighteen years or above; of sound mind; and not
15 disqualified from contracting by any law to which he or she is subject.

Section 13 calls for free consent of parties to a contract such that where there is coercion; undue diligence, fraud, misrepresentation no free consent exists. Reciprocal rights and obligations can only be created in a valid contract made between consenting parties.

20 Thus when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms. (***See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000***).

PExh 16 was in the instant suit presented to court as the consent decree whose
25 validity the plaintiffs however sought to challenge.



On the issue of capacity, it is to be noted that the 2nd defendant was sued in his capacity as the administrator of the estate, having secured the grant vide **AC No. 682 of 2013** on 24th January, 2014 (**Ref. PExh 20**).

5 The grant was issued in the names of both the 2nd defendant and his sister, Kabira Aisha who was neither a party to this suit nor had she been party to consent settlement. She was not called in as a witness by the defendants.

10 Counsel for the plaintiffs also referred to the lead judgment in the case of **Silver Byaruhanga versus Fr. Emmanuel Ruvugwaho and another SCCA No. 09 of 2014 at page 41** where it was held that the Court of Appeal had erred when it held that the party, a one Edward Kalusi, had authority to dispose of the suit land without involving the co-executors/administrators.

The principle as cited above was equally applicable to this present case. The 2nd defendant had no authority to transact without consent/approval by his co-administrator.

15 **Dw1** on his part failed to guide court to understand how one company could have purchased land while another company purportedly acquired the title for the land and even entered into a consent decree in respect of the same land.

20 The consent could only have been validly secured between the two administrators of the estate of the late father to the 2nd defendant on the one hand and the company which purchased the land comprised in **plot 3479**, which ought to have been made party to this suit.

There was accordingly neither valid consent nor capacity between the parties to enter into the consent, which two key ingredients were missing to make a valid enforceable contract.

25 **Authenticity of the decree:**

It was also an observation by this court that the original consent decree was not presented to court. The copy tendered in court did not bear the seal of court. The

warrant of execution dated 16th March, 2016 was therefore based on a questionable consent decree.

This was made even worse by the fact that the 2nd defendant had, as pointed out by the plaintiffs' counsel admitted that he has never used the suit land nor did he have any garden there at the time they entered the consent order; but nevertheless had agreed in the consent settlement to give vacant possession of the suit land to the 1st defendant.

Furthermore, the 1st and 2nd defendants admitted during their cross-examination that before they went to court, it was the plaintiffs who were in possession of the suit land but they opted to leave them out of the suit.

It was eventually the plaintiffs who were evicted and their properties destroyed (as per **PEXh 16, PEXh 17 and PEXh 18.**). It was correct to conclude under those circumstances that the plaintiffs who were evicted from the land were condemned unheard; thus rendering the eviction a nullity since the warrant of eviction was issued against the party who was not in possession.

Inconsistencies in the names of the parties:

As duly submitted by plaintiffs' counsel several other inconsistencies were detected in the defence evidence:

In the sale agreement dated 6th December, 2010, the parties were **M/s ALISHA INVESTMENT Ltd.** In that agreement between **M/s ALISHA INVESTMENT Ltd** and the 2nd defendant's late father, the land which was sold at **Ugx 250,000,000/=** was comprised in **LRV 2880, Folio 17 Kyaddondo Block 273, plot 3479** land at Namasuba measuring approximately 2.026 hectares. The 1st defendant in this suit was however **M/s AISHA INFOMYS Ltd.**

PEXh 13 is the certificate of title for **LRV 2420 Folio 8 plots 3481 and 3480** which as noted by court was entered in the names of **M/s AISHA INFOMYS Ltd,** but not in the names of **M/s ALISHA INVESTMENT Ltd** which had actually purchased the land.

In **D Id 6**, a letter from BLB addressed to the 2nd defendant's late father, reference had been made to a consent to transfer the land comprised in **Kyadondo block 273 plot 3479, Vol. 2880 Folio 17** into the joint names of **M/s ALISHA INVESTMENT & ALISHA INFOYS**, from the names of Muhindo Kalemire. The
5 connection between these two companies was however never explained to court.

It is surprising therefore that the registration was eventually made into the names of only **AISHA INFOYS Ltd** and in respect of two different plots. There is no resolution from the company to clarify on the discrepancies as noted; and no endeavor to explain why the company which purchased the land was not the one
10 which ended up on that title; or why the company which had purchased the land was not the one which filed that earlier suit.

It is also settled law that a suit in the names of a wrong plaintiff or defendant cannot be cured by amendment. (**Trustees of Rubaga Miracle Centre versus Mulangira Simbwa M.A No. 576 of 2006**, cited with approval in the case of
15 **Wasswa vs Moulders (U) Ltd M.A 685 of 2017**).

Regarding the inconsistencies in the names of the 2nd defendant, this was explained through the presentation of the national identity card bearing names corresponding with those appearing in his witness statement as **Dw2**.

I could not agree more therefore that the omission of one name would not on its
20 own affect a rightfully acquired interest.

Unexplained inconsistencies in the plot numbering:

The two defendants had on 19th November, 2015 gone ahead to enter into the consent decree in **Civil Suit No. 787 of 2015** for two **plots 3479 and 3480, (PEXh 16)**, for a transaction which was in respect of only **plot 3479**. In the
25 official correspondences seen from BLB addressed to the 2nd defendant's father, indeed the reference was made to only **plot 3479**.

As per the surveyor's boundary opening report by **M/s WEMO CPS (DEXh 2)** dated 14th December, 2010, the exercise was conducted on three independent



plots 3479, 3480 and 3481. There was no one from the office of the Commissioner to explain how the divisions had been made and three titles created.

What is clear is that two plots: **3480 and 3481** were on the title claimed by the 1st defendant; and that **plot 3481** was taken up by the road as per the survey. The separate title for **plot 3479** (which had been purchased by the **M/s ALISHA INVESTMENT**) (as per the sale agreement **PExh 19**) was not produced in court. (None of these titles however was attached to the survey report presented in court).

The consent decree was in respect of **plots 3479 and 3480**. It is not clear how and when the defendants had acquired **plot 3480** and from whom; and the circumstances under which **plot 3479** was on 15th April, 2001 transferred to **LRV 2880 Folio 17**.

The warrant for vacant possession ought to have been issued only in respect of the occupants of **plot 3479**, and in favour of **M/s ALISHA INVESTMENTs Ltd** as the actual buyer.

It is also not established from the survey, which of these plots the plaintiffs had been evicted from or which particularly plot had the settlements as seen from the locus.

The inconsistencies in plotting and as detected in the title and as generally discovered in the evidence led by the defendants were irreconcilable and call for a full survey of the area.

The only inference that could be drawn by court from all the above would be that the 1st defendant irregularly acquired the land comprised in **plots 3480 and 3481** and that the evictions in respect to that land were made irregularly.

Court is also mindful of the fact that the initial lease was obtained by Tabula from ULC. As indicated in the letter dated 22nd June, 2011 from BLB, **PExh 8B**, the land reverted back to the Kabaka by operation of law, with effect from 30th

July, 1993 under the **Traditional Rulers' Restitution of Assets and Properties Act**.

The leases in dispute were extended and authored by ULC in 1995 which was not the Controlling Authority at that time. It is in light of the realization that the
5 BLB noted that the transactions on this parcel of land were tainted by fraud, leading to its decision as the Controlling Authority to place the moratorium on the files, until the matters were sorted out by court.

DExh 3 a correspondence from BLB indicates that the moratorium was lifted on 17th May, 2013 for the land comprised in **LRV 2828 Folio 17 and 2424 Folio**
10 **8**, after the plaintiffs had failed to take any legal action against the defendants.

It could only mean that all transactions which were made by the parties on **plot 3479** from the date of 22nd June, 2011 when the moratorium was placed by BLB on what originally constituted **Block 273, plot 429** and 17th May, 2013 when it was lifted were *malafide*.

15 The moratorium did not award the purchaser of that land anything beyond what he was entitled to under the sale agreement. It could only have been lifted on **plot 3479** (and subdivisions validly made thereunder, if any), which plot the company referred to as **M/s ALISHA INVESTMENT Ltd** (not **M/s AISHA INFOSYS Ltd**) had lawfully purchased.

20 All in all, as declared in **Makula International Ltd vs H.E Cardinal Nsubuga & Anor Civil Appeal No. 4 of 1981**, a court of law cannot sanction an illegality. Once brought to its attention, it overrides all manner of pleadings including any admissions made thereon.

As established by this court in its findings above, the plaintiffs did not come to
25 this court with clean hands. Nonetheless their *locus* to file this suit was premised on the fact that the defendants had connived and fraudulently entered into a consent decree to irregularly cause their evictions, based on a fraudulent consent



decree and in violation of their constitutional right to be heard. For that reason, the plaintiffs' suit succeeds only in part.

Issue No.4: Remedies:

Punitive or exemplary damages are awarded to punish or deter the oppressive, malicious conduct or high handness by a defendant. These focus on the defendant's misconduct and not the injury or loss. They may also be awarded to prevent unjust enrichment. (**Ahmed Termewy vs Hassan Awdi & others HCCS No. 95 of 2012**).

In light of the above, the 2nd plaintiff who had property on the suit land is entitled to punitive damages on account of the high handness, as exhibited by the defendants.

In the premises, the following orders are hereby made:

- 1) ***The land formerly comprised in plot 491 Kyadondo Block 273 measuring 4.05 hectares (suit land) did not constitute part of the estate of the late Yosiya Kizito Takuba.***
- 2) ***The plaintiffs did not acquire any valid/protectable interests in the suit land.***
- 3) ***The consent decree under Civil Suit No. 787 of 2015 dated 19th November, 2015 was fraudulently entered into by the defendants since the plaintiffs were never parties to the suit and were never accorded the right to a fair hearing as per the rules of natural justice, before their eviction from the land;***
- 4) ***M/s AISHA INFO ^SMYS Ltd (1st defendant), was fraudulently registered on the land comprised in LRV 2420, block 273, plots 3480 and 3481 which title is therefore cancelled; and reverts to the Buganda Land Board (BLB) for proper allocation/ validation of the lease, taking into***



account the interests of the persons currently in physical occupation of those two plots.

5) *All titles created on the land comprised in plot 491 Kyadondo Block 273 are to be subjected to a proper survey, to be caused by the BLB for joint corrective action to be taken by BLB and Commissioner, Land Registration.*

6) *The corrective action shall take into account the fact that M/s ALISHA INVESTMENT Ltd has lawful interest in the land comprised in plot 3479 created out of the former Block 273, plot 491 which it acquired on 6th December, 2010 from Muhindo Karemiri Jamal, late father to the 2nd defendant, even before the 2nd-5th plaintiffs purchased their respective portions of the bibanja on the suit land.*

7) *The corrective action shall also take into account the current developments on the land by the persons who are in physical occupation of that land but who were not made party to this suit.*

8) *Accordingly, the eviction of the defendants which was based on an irregular and improper order entitles the plaintiffs to a compound award of Ugx 50,000,000/=, as punitive damages against the defendants, to be divided equitably between to the 2nd -5th plaintiffs.*



Alexandra Nkonge Rugadya

Judge

19th February, 2024