

UGANDA / JUDGMENT

Lagen v Okot Okumu (Civil Appeal No. 74 of 2016) [2019] UGHC 53 (26 September 2019)

[2019] UGHC 53

COURT

High Court of Uganda

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Civil Appeal No. 74 of 2016

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IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable Civil Appeal No. 074 of 2016

In the matter between

LAGEN MAJORIE APPELLANT**And****JAMES OKOT OKUMU RESPONDENT****Heard: 22 August, 2019. Delivered: 26 September, 2019.**

*Land Law — Visits to the locus in quo — Although visiting the locus in quo is desirable, it not mandatory in every case — Visiting the locus in quo is at the discretion of the trial court where the court determines that the visit is necessary to enable it understand the evidence better by harnessing the physical aspects of the evidence in conveying and enhancing the meaning of the oral testimony, having regard to the nature of the evidence and of the circumstances of the case before it. It is now well settled that the inspection of a locus in quo is strictly not necessary where the area of land in dispute is clear to the court and the parties, since in such a case the trial court must arrive at its judgment not on the impressions from the locus in quo but upon its impressions from the evidence led before the court - an offer of a lease on former public does not create an interest in the land so offered until actual registration of that lease — Expired Leases — Once the lease expires, the relation of landlord and tenant ceases and in that case the lease can only be renewed, not extended — A lessee who remains in occupation after a lease term has

JUDGMENT

- [1] The respondent sued the appellant for a declaration that he is the rightful owner of land comprised in LRV 3732 Folio 24 plot 9 Lancashire Avenue in Gulu Municipality, being 0.202 hectares of land situated at Vanguard village, Pece Division in Gulu Municipality, general and special damages for trespass to land, a permanent injunction restraining the appellant from further acts of trespass onto the land, and the costs of the suit.
- [2] The respondent's claim was that he applied for a lease on 12th October, 2005 and was given a ten year lease offer on 1st March, 2007. He was eventually registered as proprietor of the land on 11th May, 2007. Sometime during the year 2012, when he began mobilising construction material and depositing it on the land, the appellant forcefully removed it without any claim of right and stopped him from developing the plot. She destroyed two trips of sand, hard core construction stones, mark stones, cement and other material worth shs. 2,000,000/=. She also stopped him from opening the boundaries of the land on 19th January, 2013 claiming that the land belongs to her. The respondent as a result incurred expenses of shs. 385,000/= and loss of construction material worth shs. 420,000/= on that occasion.

- [3] In her written statement of defence, the appellant denied the respondent's claim. She averred that the land originally belonged to D. W.4 Oryem Phillips who inherited three acres of land from his father. D. W.4 sold one acre of that land to the appellant's mother Vento Aketo Ngeca during the year 1994. She applied for and was granted lease which was registered in her name on 11th December, 1997 as LRV 2597 Folio 16 plot 9. That lease expired on 11th December, 2002 and unknown to them the respondent applied for a lease over the same land on 12th October, 2005 and was given a ten year lease offer on 1st March, 2007. He was eventually registered as proprietor of the land on 11th May, 2007. She only discovered this fact following her application of 21st April, 2015 for extension of the lease. She therefore counterclaimed for cancelation of that title.

The respondent's evidence in the court below:

- [4] The respondent James Okot Okumu testified as P. W.1 and stated that he applied for an un-surveyed plot in 1993. There were huts located at one corner of the land that belonged to a one Onen Onek. The land was surveyed in 1994. His first lease offer expired in 1999 before he had occupied the land due to insurgency. He renewed the process on 15th June, 2006. The appellant erected a semi permanent house on the land in 2013. At the time he applied for a lease there was no grave on the land but noticed one at the time he applied for an extension of the lease.
- [5] P. W.2 Latim Andrew testified that at the time the respondent applied for the land, there was a garden of sorghum on the land but it was not established whose it was. No one was compensated for developments on the land before the respondents acquired it. In 2001 he noticed that some people had constructed grass thatched house son the land and there was a grave on it as well which he was told was of a deceased soldier. Applied for extension of the lease in 2016. He returned in 2013 to deliver construction material. It is during the re-opening of the boundaries that stiff resistance was met from the appellant who claimed the plot as hers. P. W.3 Odong Richard testified that there are two grass thatched houses, two graves, a pit latrine and a semi permanent building on the land. The land in occupied by the appellant's brother Gerald. An attempt was made to open the boundaries but was stopped with claims that the land belonged to the appellant's mother.

The appellant's evidence in the court below:

- [6] In her defence as D. W.1 the appellant Lagen Judith Majorie testified that the land was originally occupied by a one Oryem Phillip whom her late mother compensated before acquisition of a lease following a lease offer she received on 2nd September, 1994. She constructed two grass thatched houses on the land which were occupied by the grandmother to the witness. She obtained a title deed to the land in 1997. The witness constructed the semi permanent building on the land in the year 2000 following the death of her mother. He mother was buried on that land during the year. The witness would live on the land occasionally and has been paying ground rent in respect of the land since 1994. The

witness applied for extension of the lease on 21st April, 2015 after the lease had expired in 2002. The application was not granted because a title to the same plot had been issued to the respondent on 11th May, 2007.

- [7] D. W.2 Punyira Tonny testified that he was the L. C. II Chairman at the material time. Oryem Phillip was the original occupant of the land. He sold his interests therein to the appellant's mother Vento Aketo Ngeca. He helped her construct a semi permanent house on the land in 1996. D. W.3 Ouma Conny the Municipal surveyor testified that the deed plan for plot 9 was issued on 14th July, 1997. Another for the same plot was issued on 15th June, 2006. D. W.4 Oryem Phillips testified that he inherited three acres of land from his father. He sold off one acre of that land to a one Vento Aketo Ngeca during 1994. She proceeded to construct house on the land. That was the close of her case following which the

court made multiple attempts to visit the *locus in quo* without success. The appellant and her counsel failed to turn up on each occasion.

Judgment of the court below:

- [8] In his judgment, the trial Magistrate found that the appellant's mother Vento Aketo Ngeca on was granted a five year lease over the plot which expired before she could develop the land. When the five year initial term that had been granted to the appellant's mother expired, the land reverted to the lessor and the appellant's mother ceased to have any legal or equitable proprietary interest in the land. Therefore when the respondent applied for and was granted a lease over the land on 1st March, 2007 whereupon he eventually became registered proprietor on 11th May, 2007 he acquired good title to the land despite the fact that the appellant had constructed a house on the land and was in occupation at the time. The appellant's continued occupation of the land following expiry of the lease constituted an act of trespass. Therefore judgment was entered in favour of the respondent. He was declared the rightful owner of the land in dispute. He was awarded shs. 5,000,000/= as general damages, the appellant was ordered to vacate the land within sixty days, a permanent injunction was issued against her and the respondent was awarded the costs of the suit.

The grounds of appeal:

- [9] The appellant was dissatisfied with that decision and appealed to this court on the following grounds, namely;
- 1. The learned trial Magistrate erred in law and fact when he did not properly evaluate the evidence on record hence reached a wrong decision.
- 2. The learned trial Magistrate erred in law and fact when he held that since the appellant's lease had expired, she did not have any interest in the land in dispute, whether legal or equitable, whereas not.

3. The learned trial Magistrate erred in law and fact when he failed to conduct proceedings at the *locus in quo* which occasioned a miscarriage of justice.

Arguments of Counsel for the appellant:

- [10] In their submissions counsel for the appellant argued that the appellant only came to know of the respondent's claim to her land in 2013 when he began delivering construction material to the land. She effectively prevented the respondent from surveying and occupying the land. The appellant's mother applied for a lease and it was granted on 2nd September, 1994. She obtained a five year initial term title deed on 11th November, 1997 which expired in the year 2002. The respondent applied for the same land in 2005 and was granted a ten year lease title during the year 2007. The appellant having remained in possession upon expiry of the initial term, had an equitable interest in the land and should have been granted first priority for renewal of the lease. The respondent was aware of her presence on the land, as well as the presence of her buildings the graves of her deceased relatives on the land, yet he went ahead to obtain title to the land. This was evidence of fraud since it was intended to defeat the appellant's equitable interest.

Arguments of Counsel for the respondent:

- [11] In response, counsel for the respondent submitted that the respondent applied for the land in dispute in the year 1993. He was given an offer of a five year lease over un-surveyed land. During the year 1994 he caused the plot to be surveyed. When it expired, on 12th October, 2005 he applied for extension and the offer was on 9th March, 2007 extended to ten years. He subsequently obtained a title deed but when in the year 2013 he began preparations for construction of a building on the land, he was prevented by the appellant. The lease granted to the appellant, although the agreement was signed on ran from 18th November, 1997, it ran from 1st September, 1994 and when the period expired on 1st September, 1999 she had no further claim to the land. Her lease did not expire during the year 2002 as claimed. After the expiry of that lease, the land was available to the lessor do leasing to any other applicant. The appellant failed to comply with the development covenant stipulated in the lease agreement for the initial term. She only has temporary and semi-permanent structures don the land. She did not present evidence of payment of the annual ground rent. When the lease expired, her continued procession of the land constituted an act of trespass. Whereas her lease expired on 1st September, 1994 she submitted an application for its extension on 21st August, 2015 sixteen years after its expiry. She breached the user close when she used the land for burial of her deceased mother yet it was land meant for residential purposes. It is not true that D. W.3 had been a customary owner of the land. Having breached the lease agreement, she was not entitled to being given a first option. The appellant's mother built the huts on the land in 1996 after the respondent had caused a survey of the land in February, 1995. It is the appellant and her counsel who failed the court's intended visit to the locus in quo and she cannot be heard to complain. The appeal should therefore be dismissed with costs.

Duties of a first appellate court:

- [12] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see **Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17 of 2000**; **[2004] KALR 236**). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see **Lovinsa Nankya v. Nsibambi [1980] HCB 81**).
- [13] In exercise of its appellate jurisdiction, this court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular, this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

The first ground of appeal is struck out.

- [14] I find the first ground of appeal to be too general that it offends the provisions of Order 43 r (1) and (2) of **The Civil Procedure Rules** which require a memorandum of appeal to set forth concisely the grounds of the objection to the decision appealed against. Every memorandum of appeal is required to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds should be numbered consecutively. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, which the appellant believes occasioned a miscarriage of justice. Appellate courts frown upon the practice of advocates setting out general grounds of appeal that allow them to go on a general fishing expedition at the hearing of the appeal hoping to get something they themselves do not know. Such grounds have been struck out numerous times (see for example **Katumba Byaruhanga v. Edward Kyewalabye Musoke, C. A. Civil Appeal No. 2 of 1998; (1999) KALR 621**; **Attorney General v. Florence Baliraine, CA. Civil Appeal No. 79 of 2003**). The ground is accordingly struck out.

Visits to the locus in quo are discretionary*.*

- [15] The third ground of appeal faults the trial court for its failure to properly conduct proceedings during its visit to the **locus in quo**. The purpose of a visit to the **locus in quo**, as has been stated repeatedly, is not to recite the evidence already led but to clear doubts which might have arisen as a result of the conflicting evidence of both sides as to the existence or non-existence of a state of facts relating to the land, where such a conflict can be resolved by visualising the object, the **res**, the material thing, the scene of the incident or the property

in issue. Where there exists such conflicting evidence as aforesaid, it is expected that the trial Magistrate will apply the court's visual senses in aid of its sense of hearing by visiting the *locus in quo* to resolve the conflict.

- [16] Although visiting the *locus in quo* is desirable, it not mandatory in every case. According to Rule 3 of Practice Direction No.1 of 2007 (*Practice Direction on the Issue of Orders Relating to Registered Land Which Affect or Impact on the Tenants by Occupancy*), "during the hearing of land disputes the court should take interest in visiting the locus in quo...." (emphasis added). The expression used is directory rather than obligatory. Therefore visiting the *locus in quo* is at the discretion of the trial court where the court determines that the visit is necessary to enable it understand the evidence better by harnessing the physical aspects of the evidence in conveying and enhancing the meaning of the oral testimony, having regard to the nature of the evidence and of the circumstances of the case before it. It is now well settled that the inspection of a *locus in quo* is strictly not necessary where the area of land in dispute is clear to the court and the parties, since in such a case the trial court must arrive at its judgment not on the impressions from the locus in quo but upon its impressions from the evidence led before the court.
- [17] Consequently, an appellate court will not interfere with the exercise of discretion of a trial court, even if it might have exercised the discretion differently if the

discretion were that of this court, unless it has come to the conclusion that the exercise of such discretion was manifestly wrong, arbitrary, reckless, injudicious or contrary to justice. It has been said before that the purpose of an inspection of a *locus in quo* is not to substitute the oral testimony in court but rather to clear any ambiguity that may arise in the evidence or to resolve any conflict in the evidence as to physical facts. In other words, the purpose of an inspection of a *locus in quo* is primarily for the purpose of enabling the court to understand the questions that are being raised at the trial and to follow the evidence and apply such evidence.

- [18] Notwithstanding the fact the decision to visit a *locus in quo* is essentially discretionary, such a visit will be imperative where there are conflicting pieces of evidence as to the physical facts in issue that could be easily resolved by viewing through a physical inspection of the land. In the instant case, no conflicting pieces of evidence as to the physical facts in issue regarding the land arose. It was not imperative to visit the locus in quo. This ground fails.

Ground two; validity of title.

- [19] The second ground of appeal faults the trial Magistrate for having found that the appellant had no interest in the land by reason of the expiry of the initial term lease that had been granted to her mother. It was the appellant's case that the land in dispute formed part of three acres of land which originally belonged to the father of D. W.4 Oryem Phillips. When D. W.4 inherited the land, he sold part of it to the appellant's mother Vento Aketo Ngeca during the year 1994. Vento Aketo Ngeca applied for and was granted a five year lease and

she became registered owner on 11th December, 1997 with a titled deed comprised in LRV 2597 Folio 16 plot 9, which expired on 11th December, 2002. The said Vento Aketo Ngeca was in constructive possession from 1994 until her death in the year 2000. The appellant took over constructive possession following the death of her mother. Evidence of this continuous possession was evinced by the presence of two

huts, a semi permanent building and graves on the land. The appellant and her mother before her were occasional residents on the land. The land had been in the physical possession of her brother and her grandmother before him.

- [20] On the other hand, the respondent claimed to have received an offer of a lease over the same land in 1994. The offer expired before he had occupied the land due to insurgency. He had noticed the presence of two huts at one end of the plot at that time. Hence by the time he renewed the process of acquisition of title, the appellant was in possession.
- [21] Under section 54 of *The Registration of Titles Act*, no instrument until registered in the manner provided for by the Act, is effectual to pass any estate or interest in any registered land. Therefore, an offer of a lease on former public does not create an interest in the land so offered until actual registration of that lease. The respondent had no interest in the land until his registration on 11th May, 2007. By the time the respondent secured that registration, the appellant's mother Vento Aketo Ngeca had thirteen years before, been the registered owner of the land for five years running from 1st September, 1994. When that lease expired on 1st September, 1999, she remained in constructive possession of the land until her death in the year 2000 and thereafter her daughter the appellant took over constructive possession through her brother who has maintained actual possession since then.
- [22] Upon the expiry of a lease, the land reverts to the lessor. A lessee who remains in occupation after a lease term has expired, but before the lessor demands the lessee to vacate the property, is a tenant at sufferance (see See *Remon v. City of London Real Property Co. Ltd., [1921] 1 KB 49 at 58* and *Halsburys Laws of England (4th Edition) Vol. 18 para. 16*). A tenancy at sufferance arises by implication of law not by contract and tenant at sufferance acquires no interest in the land he or she occupies. However when the tenant holds over after the expiration of the initial term, and continues to pay the original rental, which is accepted by the lessor, the lessee who holds over under such circumstances attains the status of a tenant at will.
- [23] A lessee holding over for at the end of a lease over former public land acquires an equitable interest in it on account of the principle of legitimate expectation. A legitimate expectation is said to arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority. Therefore it extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he or she expects to receive. It is the practice by lessors of former public land, for good cause, to grant extensions or renewals of leases whose initial term has

expired. A legitimate expectation arises when a public body by representation or by past practice arouses expectation which it would be within its powers to fulfil. Claims based on legitimate expectation do not necessarily require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

- [24] Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. It may be possible though for a decision-maker to justify frustrating an established legitimate expectation where there is an overriding public interest. Hence, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy (see **Regina v. North and East Devon Health Authority ex parte Coughlan and Secretary of State for Health Intervenor and Royal College of Nursing Intervenor*, [2001] 1 QB 213, [2000] 2 WLR 622, [1999] Lloyds LR 305*). As held by Lord Denning in **Schmidt v. Secretary of State for Home Affairs*, [1969] 1 All ER 904; [1969] 2 Ch 160*). Even in cases where there is no legal right, a person may still have "legitimate

expectation" of receiving the benefit or privilege. In such cases, the court may protect his "expectation" by invoking principle of "fair play in action." The court may not insist that a public authority to act judicially, but may still insist that it too acts fairly.

- [25] A claim for violation of a legitimate expectation will arise where a public authority either (a) alters rights or obligations of a person which are enforceable by or against him in private law; or (b) deprives him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn (see **Council for Civil Service Unions v. Minister for the Civil Service* [1985] 1 AC 374, [1984] 3 All ER 935, [1984] 3 WLR 1174*).
- [26] In the instant case the fact that the appellant had held over for a period of eight years before the same land was offered to the respondent (from 1999 to 2007). There was created, by reason of that long period of holding over, an implied promise that the lease would be renewed in her favour. Acting on that representation, the appellant had remained in occupation. The doctrine of legitimate expectation applies the principles of fairness and reasonableness to a situation where a person has an expectation or interest in a public body retaining a long-standing practice or keeping a promise. Just like other equitable interests, which are either created or imposed on the basis of fairness.

- [27] Equitable interests are created according to justice and fairness, and may be expressly created, implied by the circumstances, or imposed by a court. Their existence does not conflict with legal ownership because they are recognised and enforceable in a separate jurisdiction. It is on that basis that in cases such as

Kampala Distributors Land Board and Chemical Distributors v. National Housing and Construction Corporation S. C. Civil Appeal No. 2 of 2004, the Supreme Court held that the sitting tenants should be given the first priority to lease land if it is being leased. In that case, the respondent had occupied the suit land since 1970 and had used the land as a play ground for children residing in its adjoining estate, among other uses. It had fenced the land and constructed a toilet on it. The 1st appellant granted a lease over the suit land to the 2nd appellant ignoring the objections of the respondent and local council officials of the area. The respondent sued the appellants claiming that the grant of the lease to the 2nd appellant was unlawful and fraudulent. The respondents' claim was upheld.

- [28] The court further held that since the respondent in that appeal was in possession of the suit land when it was offered by Kampala District Land Board to the second appellant, the respondent was a bona fide occupant and was entitled to the first option to be leased the land. In that case, equity was invoked to protect its rights of occupancy against persons who acquired title for the dominant or sole purpose of evicting it. This was an equitable interest imposed by court on the basis of fairness. Whether described as squatters, tenants of a tentative nature, licensees with possessory interest, or bona fide occupiers, persons with possessory interests of this nature are protected from administrative injustice (see *Kampala District Land Board and Another v. Venansio Babweyaka and others, S. C. Civil Appeal No.2 of 2007*).
- [29] The power by a land management agency such as a District Land Board to grant titles to land is restricted where a person with a valid possessory interest in the land also applies for title to the same land. In such a case the agency is required to observe and be guided by rules of natural justice. The occupant has the right to be heard if the land is to be alienated to another person or for public use (see *Matovu M., Mulindwa J. and Munyanga J. v. Sseviiri and Uganda Land Commission [1979] HCB 174*). In the instant case, there is no evidence to show that the appellant was heard before a lease was granted to the respondent in

respect of land under her possession at the material time. She on that account argues that the respondent fraudulently acquired title to that same land.

- [30] A title may be vitiated by fraud, error or illegality manifesting itself at any stage of the whole process leading to and including the final registration and issuance of title. Illegality in the transaction voids the title irrespective of the fact that the transferee may not be at fault. Fraud within the context of transactions in land has been defined to include dishonest dealings in land or sharp practices to get advantage over another by false suggestion or by suppression of truth and to include all surprise, trick, cunning, disempowering and any unfair way by which another is cheated or it is intended to deprive a person of an interest in land,

including an unregistered interest (see *Kampala Bottlers Limited v. Damanico Limited, S. C. Civil Appeal No. 22 of 1992; Sejjaaka Nalima v. Rebecca Musoke, S. C. Civil Appeal No. 2 of 1985; and Uganda Posts and Telecommunications v. A. K. P. M. Lutaaya S. C. Civil Appeal No. 36 of 1995*).

- [31] In seeking cancellation of title on account of fraud in the transaction, the alleged fraud must be attributable to the transferee. It must be brought home to the person whose registered title is impeached or to his or her agents (see *Fredrick J. K Zaabwe v. Orient Bank and 5 others, S. C. Civil Appeal No. 4 of 2006 and Kampala Bottlers Ltd v. Damanico (U) Ltd., S. C. Civil Appeal No. 22 of 1992)*. The burden of pleading and proving that fraud lies on the person alleging it and the standard of proof is beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases (see *Sebuliba v. Cooperative bank Limited [1987] HCB 130* and *M. Kibalya v. Kibalya [1994-95] HCB 80*). The respondent's alleged fraud was the basis of the appellant's counterclaim.
- [32] In the first place, the respondent claimed to have obtained the land by way renewal of the process on 15th June, 2006 after the initial lease offer expired in 1999 before he had occupied the land due to insurgency. He did this by way of

"extension." In the absence of a specific time designation in the lease, an option to extend remains effective only during the term of the lease. When a lease stipulates that an option to extend must be exercised "at the end of" or "at the termination of" the lease, the lessee must exercise the option on or before the day the original lease expires (see *Max Norton and Long Outdoor Advertising v. John McCaskill, dba City Sign Co., 12 S. W.3d 789, 793-94 (Tenn.2000)*). Once the lease expires, the relation of landlord and tenant ceases and in that case the lease can only be renewed. The characteristics of a lease extension are; (i) the application may only be made before expiry of the lease; (ii) once approved, such extension takes effect on the last day of the unexpired term and does not extinguish the unexpired term.

- [33] It is generally against public policy for a public agency to extend an expired contract. If an agency were to assume that an expired contract could lead to amendments or extensions, then the agency would never be required to conduct competitive solicitation or invite public participation. Rather, they could just amend contracts that have previously expired. In case there are exceptional reasons, then the agency needs to put in writing the reasons why this was necessary in the specific case. Whatever the case may be, the longer it has been since a contract expired, the more difficult it would be for a public agency to justify its resurrection by way of extension after its expiry. It is trite that an illegality once brought to the attention of Court, supersedes all matters of pleadings, including any admission made thereon, and can be raised any time (see *Makula International v. His Eminence Cardinal Nsubuga [1982] HCB.11* and *M/s Fang Min v. Balex Tours and Travel Ltd, S. C. Civil Appeal Nos. 6 of 2013 and 1 of 2014*).

- [34] Unlike fraud as a factor vitiating title that must be attributable to the transferee by being brought home to the person whose registered title is impeached, or to his or her agents, illegality in the transaction voids the title irrespective of the fact that the transferee may not be at fault. In any case, where both parties know that

though **ex-facie** legal a contract can only be performed by illegality, or is intended to be performed illegally, the law will not help the parties in any way that is a direct or indirect enforcement of rights under the contract. No valid title can arise from an illegal extension of a title that expired years before. Consequently the extension of the offer that had been given to the respondent in 1994 is null and void. The title resulting there from is vitiated for illegality of the purported extension.

- [35] On the other hand, P. W.2 Latim Andrew who acted as agent of the respondent, testified that during the year 2001 he noticed that some people had constructed grass thatched houses on the land and there was a grave on it as well which he was told was of a deceased soldier. He nevertheless on 12th October, 2005 applied for a renewal of the lease offer in respect of that land, without questioning the occupancy. The respondent himself testified that he visited the land in 1993 and saw huts in one corner. He visited it again in 2005 and found a cassava garden belonging to one Onek Onen. He was told that some people had built huts on the land but he did not know the owners. At the time he applied for extension of the lease offer there were graves on the land which did not exist thereon in 1993. He never made inquiries about these developments. An applicant for land who does not undertake an investigation of title, is bound by equities relating to that land of which he or she had actual or constructive notice.
- [36] Constructive notice is the knowledge which the courts impute to a person upon presumption so strong of the existence of the knowledge that it cannot be allowed to be rebutted, either from his knowing something which ought to have put him or her on further enquiry or from wilfully abstaining from inquiry to avoid notice (see **Hunt v. Luck (1901) 1 Ch 45**). Both the respondents and P. W.2 Latim Andrew wilfully abstained from making the necessary inquiry to avoid notice. A person who acquires title to land occupied by another for the dominant or sole purpose of defeating the occupant's equitable interest in that land acquires title fraudulently (see **Matovu M., Mulindwa J. and Munyanga J. v. Sseviiri and**

Uganda Land Commission [1979] HCB 174). Accordingly the trial Magistrate misdirected himself when he found that the appellant was a trespasser on the land and that the respondent had acquired good title to the land. Had he properly directed himself, he would have dismissed the suit and instead entered judgment in favour of the appellant, on the counterclaim.

Order:

- [37] In the final result therefore, the appeal is allowed. The judgment of the court below is set aside. Instead the suit is dismissed and judgment is entered for the appellant against the respondent on the counterclaim in the following terms;

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For the respondent : M/s Omara Atubo and Co. Advocates.

Prepared on 14 October 2026 · Esheria