

UGANDA / JUDGMENT

Mugerwa & 85 Others v Kanaba & 2  
Others (Civil Suit 29 of 2024) [2024]  
UGHC 907 (6 September 2024)  
[2024] UGHC 907

COURT  
High Court of Uganda

BEFORE  
Karemani Jamson K, J

CASE / FILE NUMBER  
Civil Suit 29 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KIBOGA

LAND CASE NO.029 OF 2024

(Formerly Land Case No.017 of 2020 at Mubende)

MUGERWA ISSA & 85 ORS :PLAINTIFFS

VERSUS

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**BEFORE: HON. MR JUSTICE KAREMANI JAMSON. K**

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## **INTRODUCTION**

This is a case brought by 86 plaintiffs in their individual capacities against three defendants. The defendants include Kanaba Estates & Agencies Limited as the 1st defendant which is a private limited liability company. The 2nd defendant is Kyankwazi District Land Board „which is a public body with the mandate to hold and allocate land not owned by anyone in the district. It also facilitates the registration and transfer of interests in land. Lastly, the Commissioner Land Registration who is responsible for supervising and ensuring proper custody and updating of the national land register and certificates of titles.

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The case concerns land comprised in LRV /FRY 4001 Folio 19 Singo Block 746 Plot 40 land located at Akabaale Village, Bwaba parish, Banda Sub County, Butemba County in K yankwazi District.

The Land in dispute is said to be measuring approximately 604 hectares out of the 1011 hectares in the certificate of title held by the 1st defendant as the registered proprietor. The 1st defendant occupies part of the land, while some of the plaintiffs equally occupy part of the land for which they aver that they are bona fide/lawful occupants.

## **THE REMEDIES SOUGHT**

The plaintiffs in this matter seek the following orders:

- 1. A declaration that the grant of the lease and certificate of title over 604 hectares which form part and parcel of the suit land by the 2nd defendant to the 1st defendant was void ab initio as the land was not available for the 2nd defendant to grant to the 1st defendant.
- 2. An order for cancellation of the certificate of title in respect of Singo Block 746 of Plot 40 Land at Bwaba issued to the 1st defendant.
- 3. A declaration that the plaintiffs are bona fide/lawful occupants and thus owners of 604 hectares of land that form part of the suit land comprised in Singo Block 746 Plot 40 land at Bwaba measuring 1011 hectares.
- 4. A declaration that the 604 hectares of land forming part and parcel of the suit land comprised of Block 746 Plot 40 belong exclusively to the plaintiffs.
- 5. An order directing the 2nd defendant to give consideration to the plaintiffs' respective applications for the lease interests over 604 hectares that form part and parcel of the suit land including giving priority to granting the lease.

- 6. An order of eviction against the 1st defendant, their agents, servants and workmen from the 604 hectares that form part of the suit land comprised in LRV 4001 Folio 19 Singo block 746 Plot 40 land at Bwaba measuring approximately 1011 hectares.
- 7. A permanent injunction be issued against the 1st defendant restraining its agents, servants and workmen or any other person deriving title from the 1st defendant from entering, remaining or otherwise interfering with the suit land.
- 8. An order awarding general, punitive and aggravated damages, for the inconvenience suffered by the plaintiffs
- 9. Costs of this suit be awarded to the plaintiffs.

The 1st defendant in its defence raised a counterclaim and prayed that:

- 1. It be declared the lawful owner of the suit land.
- 2. A permanent injunction issues against the counter defendants/plaintiffs, their agents, tenants, employees and any other person claiming under them from further trespassing onto the land or doing anything that may interfere with the counter claimant's quiet possession and enjoyment.
- 3. An eviction order issues against the counter defendants/plaintiffs from the suit land.
- 4. A demolition order issues upon the developments on the suit land.
- 5. The counter claimant/1st defendant be awarded general and special damages.
- 6. That the counter claimant/ 1st defendant be awarded costs of this case.

The second defendant filed a defence and prayed that the suit be dismissed with costs.

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The 3rd defendant filed no defence at all.

## PLAINTIFFS' CASE.

The plaintiffs aver that each one of them owns a piece of land on the land in dispute. That in 2017 they came to know that the portions where they have interests and have been utilizing as bona fide occupants were being claimed by the 1st defendant having obtained a lease in respect of those pieces of land from the 2nd defendant. The 1st defendant fraudulently obtained the lease on the same portion of land that was not available for grant by the 2nd defendant at the time of leasing. The 2nd defendant unlawfully and without the due process granted the said lease to the 1st defendant.

### **1ST DEFENDANT'S CASE**

The 1st defendant contends that the plaintiffs have no cause of action and are mere trespassers on the suit land. That the plaintiffs' claim that they are in occupation of only 602 acres yet the suit land measures approximately 1011.0 hectares. That there was no fraud on its part as it obtained the legal interest in the suit land following a due process.

The 1st defendant further raised a counterclaim that the plaintiffs are trespassers on the suit land who have established temporary structures, are cultivating on the land, burning charcoal and selling the land.

### **2ND DEFENDANT'S CASE**

The 2nd defendant averred that in the 1970s the 1st defendant applied for a lease on land at Akabaale, Bwaba, Banda Sub-county Kiboga district which was granted. It denied any fraud in the process of the award of the lease.

### **THE ISSUES FOR RESOLUTION ARE:**

- 1. Whether the plaintiffs who did not testify proved their cases.
- 2. Whether the plaintiffs/ counter defendants are bona fide or lawful occupants on the suit land.
- 3. Whether the 1st defendant/ counter claimant obtained the certificate of title fraudulently or lawfully.
- 4. Whether the plaintiffs/ counter defendants or the 1st defendant/ counter claimant are trespassers on the suit land
- 5. What are the remedies available to the parties?

### **REPRESENTATION**

The plaintiffs were represented by Mr. Kitimbo Simon Peter and Komakech Job of M/S Kitimbo Associated Advocates. The 1st defendant was represented by Senior Counsel John Mary Mugisha being assisted by Mr. Didas Muhinda of M/S Mugisha & Co. Advocates. The 2nd defendant was represented by Mr. Ojiambo Bichachi from the Attorney General's Chambers

### **SUMMARY OF THE TESTIMONIES OF THE WITNESSES PRESENTED.**

The plaintiffs led evidence of four witnesses while the 1st defendant led evidence of seven witnesses. The 2nd defendant led evidence of only one witness while the 3rd defendant did not file any defence and adduced no evidence.

According to PW1 Mukwaya Wilson, he first came onto the land when he was young and grew up with his late aunt Namawejje. That in 1988 he was given 20 acres of land on the same piece of land. He has been occupying the same piece of land since his childhood till now and he had no idea of how the 1st defendant came to have interests on the land. That he owns 22 acres of land on the land in dispute. He had heard of one of the Directors of the 1st defendant called Dr. Turyahikayo

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in the 1990s when there was an outbreak of tsetse flies in the area when he led a team to trap and kill the tsetse flies. He later saw the same person in 2013 when Uganda National Roads Authority (UNRA) was compensating people affected by construction of the Nakaseke-Kyankwanzi road. The said doctor was one of those affected and he received compensation for the land he occupies. That by 2006, the time when the 1st defendant purported to apply for the lease he was already on the land.

In cross examination PW1 stated that he came onto the land in dispute in 1988. He was given 22 acres by "Omutaka" in charge of the area even though the land was not measured.

He denied himself and others ever instructing the director of the 1st defendant to represent them in a claim from UNRA for property destroyed during road construction. He however admitted that UNRA compensated them for crops destroyed and not land but maintained that by the time the 1st defendant applied for the land they were already there.

In re-examination he stated that the director of the 1st defendant volunteered to help them in compensation as someone who knew UNRA things.

PW2 Ssentongo Isaac testified that he is a resident of Akabaale in Bv.raba, Banda Kyankwanzi District. He is a son of Ssemudu Livingstone who was a son of Wanenga Katumba Samson. Wanenga Katumba settled in the area in 1920. The land owned by Wanenga was distributed among his children and his father got a vast portion of the land which was never measured. He inherited 24 acres of the land but he gave away some land and remained with 15 acres that he now occupies. Further, Akabaale village is on the land comprised in the certificate of title in issue. 42----v!JAw.,

In cross-examination PW2 stated that by 1973 he was not yet born and could not tell the boundaries of that land by then. He maintained that he had not heard of a company called Kanaba Estates and Agencies Ltd.

PW3 Mugerwa Samuel stated that he owns land that neighbours the land in dispute. That in 2007 he lodged an application for a lease on the land forming part of the one in dispute. As a neighbour he was never called upon during the inspection by the area land committee before granting the lease to the 1st defendant. He was never given feedback by Kiboga District Land Board about his application. He got to know that the 1st defendant had been granted the lease for the land he had applied for.

In cross examination, he stated that when he applied for the lease on the land, he did not know if someone else had applied for the same. He maintained that Kanaba Estates and Agencies Limited applied for the lease on the land unlawfully and the certificate of title was obtained fraudulently.

PW4 was Kyakuwa Kizito Flavia. She testified that she is the current Secretary of Kiboga District Land Board. From the records of the Board, the 1st defendant formerly with a business name of "Kanaba Estates & Agencies" allegedly applied for 10 square miles of land from Uganda Land Commission but only 1000 acres were allocated after approval. That Kiboga District Land Board neither has a record of an acceptance of the approved 1000 acres nor a lease offer signed between Uganda Land Commission and Kanaba Estates and Agencies. The District Land Board does not have a record of the registered certificate of title in the names of Kanaba Estate & Agencies in respect of 1000 acres of land. Upon being registered as a Company, the 1st defendant presented documents supporting its ownership of 1000 acres seeking lease interests for the same land.

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In cross examination she stated that she inherited documents in the office of the Board. At the time the 10 square miles were applied for there was no one in occupation of the land. The Chairman of the Board then had confirmed that the lease was granted through Exhibit D.22. The lease offer issued referred to the applications for the lease made on 3/1/1976 and 26/10/2006. She however stated that they did not have these applications on record and their Board had acted without applications made. This was an omission by their office of acting without applications.

DW1 was Dr. Turyahikayo Jersy Rwakeiru. He stated that he is the managing Director and majority shareholder of the 1st defendant. He knew some of the plaintiffs since 1973 when he started staying in Banda Sub-county. He acquired the land in dispute properly, legally and without any fraud. The land is about 1000 hectares.

He further testified that in 1976 he applied for a lease on the land from Mubende District Land Board then under the business name of Kanaba Estates and Agencies. The application was approved on 23rd February 1977 with only four square miles allocated, which land was being occupied at the time. The application for land measuring four square miles was accepted and the lease for the same was approved.

On 29th June 1978 he was given a lease for only 1000 acres instead of 1000 hectares that is equivalent to 4 square miles. He petitioned Uganda Land Commission over the said anomaly. The Chairman, Uganda Land Commission wrote a letter instructing for the survey of the land left out so that they could apply for it too. The survey was carried out but the process was never completed due to the civil wars of 1979 and 1981 to 1986.

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In 2006, Kanaba Estates and Agencies wrote to Kiboga District Land Board about the land that was remaining. In 2007, the 1st defendant was registered as a private Liability Company and in 2008 the District Land Board granted to the 1st defendant the 1000 hectares of the land requested for. A lease offer was issued to them and they accepted the offer and paid the required fees. In 2009 a certificate of title for lease was issued to them however, between 2018 and 2019 the land was encroached on by the plaintiff. That the same people are now cultivating the land.

In cross examination Dr. Turyahikayo stated that the company called Kanaba Estates Agencies was incorporated in 2007. The lease was applied for from Mubende Land Board under the name of Kanaba Estates & Agencies a business name under which the 4 square miles were approved. There was an error in approving 1000 acres instead of 1000 hectares. They later appealed for more land and the same was granted. In 2006 they applied to complete the process. In 2008, 404 hectares were granted instead of 1000 hectares and they wrote pointing out the error.

Further that in 1998 he wrote a letter and put MTN telephone numbers but didn't know if MTN had started operations in 1998 in Uganda.

In re-examination he stated that Kanaba Estate & Agencies started in 1973. In 1975 it became Kanaba Estates and Agencies. That it was later registered and it was Kanaba Estates & Agencies that applied for the land first. He maintained that there was an error because they had applied for 1000 hectares and they were offered 1000 acres instead.

DW2 was Ferdinand Basajja Iga. He stated that he is a retired civil servant who worked as a Principal Animal Husbandry Officer. Between the years 1985 to 1993 he was in charge of Singo Ranching scheme that was neighbouring the suit land.

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At the suit land was being occupied and utilised by the 1st defendant. In 2005 to 2015 he was the Chairman Kiboga District Land Board and during that time the Land Board granted a lease for 404 hectares to the 1st defendant instead of 1006 hectares which it had applied for. The land board later corrected the offer to 1006 hectares. He stated that the land belongs to the 1st defendant.

In cross examination he stated that they did not receive an inspection report from the area land Committee because they were not in existence therefore the land board would inspect the land itself. He was not sure if a fresh application was made for the new offer of 1006 hectares.

DW3 Mpora Fred testified that he was the former Local Council three Chairperson of Kyankwazi Sub-county currently Banda Sub-county for 20 years. He knows the 1st defendant as the owner of the land in dispute and it has been utilizing the land since he came to know of it in 2001. The plaintiffs were not on the land until 2018 and 2019 when they invaded the land.

In cross examination he stated that he was a leader of the area before it was split into three villages in 2015. As a chairperson he saw the Land Board visit the area.

DW4 Kabadaye Nasani stated that he is a cattle keeper that borders with the land of the 1st defendant. He has been in the area since 1992. He found the 1st defendant already in the area. The plaintiffs invaded the land in 2018 and 2019.

In cross examination he stated that when he came to the area, there were about five people who used to sell local brew along the road. He didn't know how the 1st defendant got the land because he found it in occupation.

DW5 Rwahungu David testified that he was a neighbour of the land in issue. When he came to the area he found the 1st defendant there. In cross examination he stated that he came to the area in 1992. He only saw the authorities inspecting

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the land in 2006. In 1992 there were people staying in Omukabaale Trading centre but none of the plaintiffs was among. He did not know of the company but knew Dr. Turyahikayo.

DW6 Mugabi Godfrey stated that he is a cattle keeper and a neighbour of the land in issue. He has stayed there since 1998. The plaintiffs came to the area in 2018. In cross examination he stated that when he came to the area he found the 1st defendant with a farm thereon.

DW7 Richard Tugume Turyahikayo stated that he one of the directors of the 1st defendant and the land belongs to the 1st defendant. He came to the utilization of the land in 1996 when there were no other people on the land. The plaintiffs came on the land in 2018 and 2019. In cross examination he stated that he was born in 1976 when the first application for the lease had been made. That he did not sign the first application.

DW8 „vas Bashil Mutebi. He stated that he is currently the secretary Land Board of Kyankwazi District Land Board and he has been one since the year 2020. In 1976 M/S Kanaba Estate and Agencies Limited applied to Uganda Land Commission for a lease of 2590 hectares of land. An offer of 1000 acres was given. In 2008 a lease for 1011 hectares was offered for a period of five years. Upon filing of this case, Kyankwazi District Land Board asked their mother Land Board of Kiboga for the records on the matter and they confirmed that they did not have. It was the Land Board of Kiboga that allocated the land in issue.

In cross examination he stated that the predecessor of his office handed over to him. The documents handed over to him included the one for the land in dispute but some were not there. That Kyankwazi District was created out of Kiboga District. All public land previously held by Kiboga District Land Board was taken

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over by Kyankwazi District Land Board. That the suit land is now under Kyankwazi Land Board.

## RESOLUTION OF THE ISSUES BY COURT

### Issue 1

**"Whether the plaintiffs who did not testify proved their cases.**

Learned Senior counsel for the 1st defendant opened his submissions by pointing out the fact that apart from the 41<sup>st</sup> plaintiff Ssentongo Isaac and the 5th plaintiff Mukwaya Wilson, the rest of the plaintiffs did not support their claims by testifying in court. That their cases ought to be dismissed.

In his reply to this point, learned counsel for the plaintiffs stated that the case is based on documents rather than testimonies. That it was not necessary to present all witnesses.

### ANALYSIS BY COURT

The 86 plaintiffs in this case filed a plaint signed by their learned counsel in which they stated that they jointly and severally claim and seek several declarations against the defendants.

"Jointly" and "severally" is a legal term that refers to the shared responsibility or liability amongst multiple individuals or parties in a lawsuit. The most available precedents and jurisprudence concern the jointly and severally sued defendants. There are limited precedents about jointly and severally suing plaintiffs.

According to the United Kingdom (UK) case of **MORRIS -V- BARWICK** 1906 cited in the case of **KABUYE & ANOTHER-V- NATEMBO & ANOTHER** 2013 COURT OF APPEAL, it was established that when parties are jointly and severally liable, a creditor can sue any of them for the entire debt.

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In my view if a suit is brought jointly and severally it means that each plaintiff has a separate cause of action and is free to institute a suit as an individual or jointly with others but because of related causes of action, to avoid multiplicity of suits and to save resources, they may institute a joint suit. **See: Order 1 Rule 1 of the Civil Procedure Rules.**

However, being a jointly and severally instituted suit means that within that suit, each plaintiff has a separate claim that should be proved. It is therefore differs from a representative suit where a few are acting on behalf of others to prove several causes of action on behalf of others.

I would like therefore to disagree with the position of the learned counsel for the plaintiffs that the instant case required no evidence of all the plaintiffs. This is a case where each of the plaintiffs allege to be a bona fide /lawful occupant on the land in issue. The land is not said to be jointly owned. It is my finding that each one of the plaintiffs had a separate cause of action despite the suit being one. Being co-plaintiffs did not mean that they were bound to prove each other's case. Each one of them bore the burden to prove his or her own case since the pieces of land claimed are not jointly occupied.

In civil cases the standard of proof is on a balance of probabilities. The law of evidence is that he who alleges the existence of facts must prove so.

**Section 101 of the Evidence Act** states that he who alleges bears the burden to prove the allegation. In this case most of the plaintiffs stopped at alleging and adduced no evidence to support their claim.

In the case of **ETYANG ALEX -V- ETYANG AUGUSTINE, CIVIL APPEAL NO.102 OF 2013 AT MBALE (UNREPORTED);** it was held that it is well established that he who alleges bears the burden of proof of the allegation made.

**In JOHN BWIZA-V-PATRICK YOWASI KADAMA CIVIL APPEAL NO.35 OF 2011 (COURT OF APPEAL) (UNREPORTED);** it was held that under Sections 101, 102 and 103 of Evidence Act, the cardinal rules of proof are that whoever asserts a fact must prove it. That standard of proof in all civil cases is such on a balance of probabilities. The burden lies on the applicant to prove his or her case on a balance of probabilities.

I, therefore concur with the submissions of the Senior learned counsel for the 1st defendant that apart from the 4th and 5th plaintiffs, the rest of the plaintiffs did not adduce any evidence to support their claims yet they bore the evidential burden to prove their case. They did not discharge the burden of proof bestowed on them as plaintiffs. Their case was not proved at all and is accordingly dismissed.

I will now continue to resolve the case for the 4th and 5th plaintiffs as well as resolving the counterclaim that is against all plaintiffs.

## Issue 2

### **Whether the plaintiffs are bona fide/lawful occupants on the suit land.**

Since bona fide occupants and lawful occupants are different, I will evaluate them differently.

#### **(a) Whether the plaintiffs are bona fide occupants**

Learned counsel for the plaintiffs submitted that PW1 stated that he came onto the land when he was aged 8 years having been brought to the land by his aunt. That his evidence was corroborated by that of PW2. P\N2 stated that his grandparents settled on the land in the 1920s and hence proof that he was a bona fide occupant.

In his submissions the Learned senior counsel for the 1st defendant stated that PW1 claimed to have been in occupation of the land from 1988. That this did not qualify

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him as a bona fide occupant as it was short 7 years from the threshold. That during the visit of the locus he did not show anything that qualifies him as such.

## ANALYSIS OF COURT

According to Section 29 (2) (a) of the Land Act cap 236 (As amended) a Bona fide occupant means a person who before the coming into force of the Constitution had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more.

According to **Subsection (5)** of the above section, any person who has purchased or otherwise acquired the interests of the person qualified to be a bona fide occupant under this section is taken to be a bona fide occupant. From the above definition, first and foremost the land in issue must be registered land.

The land in this case was registered in 2009 per the certificate of title exhibit D.31. As to whether the plaintiffs are bona fide occupants on the suit land, the qualification is having been in occupation of the land in issue twelve years before 1995 "when the Constitution was promulgated and having not been challenged by the registered owner during that time.

Some of the witnesses in this case like PW1 and PW2 stated that they inherited from their parents who had been on the land before 1995. The 1st defendant presented evidence of witnesses who stated that the plaintiffs came onto the land in 2018.

When I visited the locus I was able to observe the developments on the land which included structures in form of houses and gardens owned by the plaintiffs. The cultivation on the land comprised of only seasonal crops such as maize, beans and scattered banana plants. These confirmed that the plaintiffs could not have been on the land 12 years before the promulgation of the 1995 Constitution. The

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plaintiffs did not also show anything to signify occupation of the same land by other people before them. Apart from alleging that their fore parents had occupied the suit land, there was nothing to prove so.

It is my finding that the plaintiffs do not qualify to be bona fide occupants on the land in dispute.

### (b) Whether the plaintiffs are lawful occupants

According to Section 29(1) (a) of the Land Act a lawful occupant means-

- (a) a person occupying land by virtue of the repealed-
  - i) Busuulu and Envujjo Laws 1928;
  - ii) Tooro Landlord and Tenant Law of 1937;

- iii) Ankole Landlord and Tenant Law of 1937;
- (b) A person who entered the land with the consent of the registered owner and includes a purchaser; or
- (c) A person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

In this case there was no evidence adduced to show that the plaintiffs occupied the land in dispute by virtue of the Busuulu and Envujjo Laws of 1928 or occupied it under Tooro Landlord and Tenant Law of 1937 or Ankole Landlord and Tenant Law of 1937. There is equally no evidence adduced to show that the plaintiffs entered this land with the consent of the registered owner/1st defendant or that they were purchasers from those that occupied the same land as a customary

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tenants and their tenancy was not disclosed or compensated for by the registered owner/1st defendant at the time of acquiring the leasehold certificate of title.

Looking at the evidence adduced by the plaintiffs in this case it is clear that none of them qualifies to be a lawful occupant within the meaning of the Land Act.

### Issue 3

#### **"Whether the 1st defendant obtained the certificate of title fraudulently.**

The land in dispute is registered land and according to Section 59 of the Registration of Titles Act, a certificate of title is conclusive evidence of ownership. The 1st defendant is the registered proprietor of the land in this case. The plaintiffs' prayer is for cancellation of the certificate of title. If this suit is successful, this court has to order for the cancellation of the same certificate of title under S.161 of the **Registration of Title Act (RTA)**.

According to the case of **RE IV AN MUTAKA (1981) HCB 27 ATP AGE 28**; it was held that in order to rely on the provisions of S.185 (which is now S.161) of Registration of Titles Act and have the Register Book rectified by cancellation, an applicant who invokes it has to satisfy court that he has recovered the land, estate or any interest in question by any proceedings from the person already registered as proprietor thereof.

According to **Section 161 of Registration of Titles Act**, the High Court has power to order cancellation of a certificate of title on the ground of fraud among others.

According to the case of **FAM INTERNATIONAL LIMITED -V- MOHAMED HAMID EI-FATIH & ANOR SUPREME COURT CA NO.016 OF 1993 (UNREPORTED)**; it was held that it is well established that fraud must be

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specifically pleaded and that particulars of fraud alleged must be stated on the face of the pleadings.

The court in the case of **FREDRICK ZAABWE -V- ORIENT BANK & ORS SCCA NO.4 OF 2006** relying on the **BLACK'S LAW DICTIONARY 6TH ED PAGE 660**, defined fraud to mean the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations or concealment of that which is deceived and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

Further, in the case of **WAIMIHA SAW MILLING CO. LTD -V- WAIONE TIMBER CO. (1926) AC 101**; the Privy Council at page 106 provides a simpler definition of fraud as *"it implies some act of dishonesty."* Court shall in the instant case take fraud to mean "some act of dishonesty"

The matter at hand specifically alleges fraud in acquisition of the land in dispute and I would like to scale down the definition to land fraud. In my view land fraud means involving deceitful or dishonest practices related to buying, selling, or transfer of land or real estate. This can include various illegal activities such as falsifying documents, misrepresenting property values, misrepresenting description, misrepresentation of ownership or using coercion or bribery to gain ownership unlawfully.

I will now proceed to examine the acts of fraud alleged in paragraph 6 of the plaint in this matter and find out whether the defendants actually committed these acts or not or whether they were aware of their commission at the time the land in issue was acquired.

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In the instant case the particulars of fraud alleged in paragraph 6 of the plaint are as follows:

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- i) The 1st defendant presented an application for lease of 1006 hectares to the 2nd defendant well knowing that 602 hectares were already occupied and utilised by the plaintiffs.
- ii) The 1st defendant applied to the 2nd defendant for grant of a lease interest without first opening boundaries and surveying off the land in respect of the land sought.
- iii) The 1st defendant surveying 602 hectares of land forming part and parcel of the suit land comprised in LRV 4001 Folio 19, LRV 4001 Folio 19, Singo Block 746 plot 40 land Bwaba measuring approximately 1011 hectares without authority from the 2nd defendant.
- iv) The 1st defendant deceiving the 2nd defendant that at the time of applying for the lease interests in the suit property, it had earlier been granted lease offer in 1977 in its name and yet it was non-existent at the time.

- v) The 2nd defendant intentionally ignoring to establish facts of an alleged grant of a lease offer to the 1st defendant in its name in 1977.
- vi) That the 2nd defendant omitted through its area land committee to issue a notice for the public hearing to ascertain occupation of the plaintiffs' land and neigh hours.
- vii) The 2nd defendant failed to visit the land together with neighbours thereof and establish the demarcations of the suit land before grant of the lease interests to the 1st defendant.
- viii) The 2nd defendant disregarding the interests of the plaintiffs in respect of 602 hectares while granting the lease interests to the 1st defendant.

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- ix) The 2nd defendant disregarding the established procedures of granting lease interests on public land and wantonly granted a lease to the 1st defendant despite existence of the plaintiffs' interests.
- x) The 2nd defendant disregarding the fact that the 1st defendant had surveyed off 604 hectares of land without due authority and went ahead to approve the same in favour of the 1st defendant.
- xi) The 2nd defendant not carrying out due diligence of the existence of the 1st defendant on the 6th day of September 1977 by the Ministry of Lands Housing and Urban Development.
- xii) The 2nd defendant even after establishing that the information given by the 1st defendant at the time of applying for the lease on the suit land was insufficient, approved and signed the lease agreement with the 1st defendant.
- xiii) The 2nd defendant failing to implement resolutions to survey off the 602 hectares that had been unlawfully surveyed by the 1st defendant.
- xiv) The 3rd defendant without proper scrutiny to the blue print of the suit property and in concert with the 1st defendant created a certificate of title. "

The learned counsel for the plaintiffs submitted that the 1st defendant fraudulently obtained the certificate of title to the suit land. He stated that DW1 testified that in 1976 the 1st defendant under the business name of Kanaba Estates & Agencies officially applied to Mubende District Land Board for a lease of 10 square miles but 4 square miles were approved. 111at the offer was accepted and the same was approved. Learned counsel submitted that this testimony is tainted with illegalities, dishonesty and fraud. That the 1st defendant claimed that Kanaba Estates & Agencies a business name applied for the suit land in 1976 from

Mubende District Land Board. That a business name was not a body corporate to own and apply for leasehold interests.

The learned counsel doubted existence of Mubende District Land Board in 1976. He submitted that there was no quorum of the Board at the time. He faulted the process of granting the certificate of title to the 1st defendant and concluded that the certificate was granted illegally and that it ought to be cancelled.

The learned Senior counsel for the 1st defendant referred to Section 176 of Registration of Titles Act (now S.160 RT A) and stated that unless the circumstances cited under that section exist, a registered proprietor cannot be ejected from the land. That the evidence of 1st defendant proved that at the time it applied for the land it was not occupied.

He referred to Section 59 of Registration of Titles Act and concluded that a title issued in bringing land under the operation of the Act cannot be impeached because of irregularities or informalities. That the plaintiffs failed to prove fraud so as to defeat the 1st defendant's registered interests.

## ANALYSIS BY COURT

From the evidence adduced in this case, Kanaba Estates & Agencies had the business name registered on 23/11/1973 as per the certificate of registration exhibit D.21.

The initial application for the lease for the land in issue was lodged in 1976 vide exhibit D.2 \*v, which\* is the application for rural land dated 3/1/1976. The application is in the name of Kanaba Estates & Agencies. The inspection report is part of the same exhibit in the name of Kanaba Estates & Agencies Ltd and is dated 23/2/1977. Exhibit D.3 is a notice dated 6th September 1977 addressed to M/S Kanaba Estates & Agencies Ltd informing them of the award of 4 square miles.

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Exhibit D.4 is an acceptance letter from Kanaba Estates & Agencies Ltd dated 13/9/1977 accepting the offer of 4 square miles. In the same acceptance was a reminder that Kanaba Estates & Agencies had requested for 10 square miles. Under exhibit D.5 which is dated 19/9/1977, the Department of Lands and Surveys informed the Chief Land Officer that the applicant had been advised to accept the 4 square miles and the lease is processed. On 7/8/1978 a lease offer was issued for the 4 square miles for a period of 5 years in names of M/S Kanaba Estates & Agencies Ltd. On 15/08/1978 Dr. Turyhaikayo on behalf Kanaba Estates & Agencies wrote acknowledging the lease offer of the 1000 acres (404 hectares) but at the same time reminded the commission that there was an error because the earlier response from the Commissioner of Lands and Surveys informed them that they had been offered 4 square miles equivalent to 1000 hectares.

The process seems to stop at those correspondences until 2006 when Vide Exhibit D.13 Kanaba Estates and agencies rejuvenated their request for the land that they had earlier occupied under a lease and another piece of land allegedly occupied customarily. On the same letter a comment was made on 28/06/2007 by the Secretary Kiboga Land Board that since the board had honoured the grant of 404 hectares, the surplus land measuring 602 hectares would revert to the Board which is the controlling authority.

On 31/01/2007 Kanaba Estates Agencies Limited was registered as a private limited Liability Company vide exhibit D.14.

In a meeting held on 27th and 28th September 2007 as per the minutes vide exhibit D.18 of the District Land Board, it was communicated that the applicant had not turned up to accept the lease for 404 hectares. It was further stated that their file which had been missing was located at Kiboga. That a lease of 404 hectares be made for Kanaba Estates and Agencies and the excess of 602 hectares returned to

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the board. On 9/11/2007 Kanaba Estates and Agencies wrote a letter exhibit D.19 requesting for the revisit of board position.

In a meeting held on 6/12/2007 as per the minutes marked exhibit D.20, the Land Board revisited the issue and assigned the Chairman of the Board to investigate the matter and report back.

On 15/02/2008 the chairman of the Board who testified as witness DW2 wrote a letter exhibit D.22 informing Kanaba Estates and Agencies Ltd that the Board had granted the lease for the land measuring 1006 hectares.

On 17/03/2008 a lease for the 1006 hectares was offered to Kanaba Estates and Agencies Ltd vide exhibit D.26. The acceptance of the same offer was made on 24/4/2008 and is marked exhibit D.27. Payments for the lease were made vide exhibits D.28 and D.29. A lease agreement was signed on 1/6/2009 vide exhibit D.30. A certificate of title for the land measuring 1011 hectares was issued on 31/07/2009 and is marked exhibit D.31.

A critical examination of the above evidence reveals that the first application made on 3rd January 1976 for the lease was made under the name Kanaba Estates & Agencies which was a business name. The registration of Kanaba Estates and Agencies Limited as a company was done on 31.01.2007. It follows that the initial applications and the offers made before 31.01.2007 were done by an entity which was non-existent. It was not a body corporate to own property in its own name.

According to the case of \*SALOMON -V- SALOMON [1897] AC\* 22 \*AT\* P.29; it was held that it is the act of incorporation that creates entities which are by law regarded as distinct from their individual members and as such having a right to \*estel' en. justice.\*

In the case of **SUPPORT ASSOCIATION FOR CHILDREN WITH DISABILITIES -V- OKELLO CHARLES & ORS CIVIL SUIT NO.024 OF 2011 AT MASINDI HIGH COURT (UNREPORTED)** the plaintiff association instituted a suit describing itself as a legal entity /person duly registered as a Community Based Organisation v,rith capacity to sue and be sued whereas it had not acquired the registration. The suit was dismissed.

In the case of **CHOMBE SIMEA & 2 ORS -V- KA YA PARISH GRAZING AREA & ANOR CIVIL APPEAL NO.0015 OF 2010 AT ARUA (UNREPORTED)** where a group of people came together under a name "Kaya Parish Community Grazing Land" and registered it with the District Community Development Officer of Zombo. Upon suing to recover land, it was held that;

"without incorporation the name means nothing more than a mere collection of individuals and consequently its members could not be sued in their collective name nor were they authorized to sue as a group in that name. That an unincorporated association is not a legal person and a large body of persons could only approach court by way of representative capacity. The registration at the District did not create an entity which can own property or employ servants in that name and neither do the officers nor other agents have the capacity to act in their names and on their behalf in litigation since a corporation can only act by its agents."

In the instant case, the registration of the business name of "Kanaba Estates & Agencies" in 1973 did not purport to incorporate the same entity or persons therein described nor did it purport to confer upon them a collective legal personality. The registration of a business name doesn't confer legal personality, it cannot confer

the right to buy, own, or sell property in its name. *W-~*

Any party suing or acting under a registered business name is supposed to sue or act in its individual name but could add that it is trading under that business name. See the case of **TWIGA CHEMICAL INDUSTRIES LTD -V- VIOLA BAMUSEDDE T/ A TRIPLE B ENTERPRISES; COURT OF APPEAL CA NO.009 OF 2002 (UNREPORTED)**

From the above reasoning, it is my finding that all the transactions carried out under the name "Kanaba Estates & Agencies" by the 1st defendant before the 31st of January 2007 when the same company was incorporated were of no legal consequence.

However, the lease and the certificate of title were granted and issued after the incorporation had taken place. The lease was therefore granted to a legal entity and the certificate of title was also issued to a legal entity called "Kanaba Estates and Agencies Limited".

I would therefore proceed to evaluate the evidence relating to the process of the award of the lease in 2009 to find out whether it was legally awarded.

Upon the registration in 2007, the 1st defendant made communications to remind the holding authority that is, the Land Board of their earlier requests for the entire land measuring 1006 hectares. The Board then held board meetings and agreed to grant the 1st defendant a lease upon which a certificate of title was issued based on the earlier and subsequent communications.

Section 59 of Registration of Titles Act provides that possession of a certificate of title by a registered person is conclusive evidence of ownership of land described therein. Section 160 (c) of same Act provides that a registered proprietor of land is protected against an action for ejectment except on grounds of fraud. See the case of **TRANSROAD UGANDA LTD -V- COMMISSIONER LAND**

**REGISTRATION; CIVIL SUIT NO.621 OF 2017 AT LAND DIVISION (UNREPORTED)**

In the instant case, I find that it was irregular for Kiboga District Land Board to have granted the lease to the 1st defendant partly based on the application lodged by a none existing entity in the names of "Kanaba Estates & Agencies".

However, given the fact that the same entity had gained legal capacity at the time of issuance of the certificate of title, the irregularity was cured and I find that it can not lead to the impeachment of the certificate of title.

The evidence of PW4 the Secretary Kiboga District Land Board which appeared to be against the position of the institution she represents was to me out of order. It was the institution that she represents that processed and issued the lease offer she was challenging. She did not distinguish the fact that Kyankwazi District Land Board inherited the assets and liabilities of Kiboga District Land Board including the resolutions taken such as the lease offer to the 1st defendant.

Therefore, despite the 2nd defendant being Kyankwazi District Land Board, the whole processing and issuance of the lease offer to the 1st defendant was done before the creation of the same Board. It was Kiboga District Land Board that did so. The two could not be separated for purposes of this case because the current 2nd defendant Board was answering for the acts of the former Board. It was therefore wrong for PW4 to appear and contradict the actions of the same institution she represents.

Notwithstanding the above position, the evidence adduced by the plaintiffs did not prove that there was any fraud committed by the 1st defendant and his certificate of title cannot be cancelled on account of fraud since it was not proved.

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A critical analysis of the process reveals that the applicant had no ill intention to inform fraud.

In conclusion, I do find that the registration of the land in dispute in the 1st defendant/ counter claimant's name was not fraudulently done.

**Issue 4**

Whether the plaintiffs/counter defendants or the 1st defendant/counter claimant are trespassers

According to the case of JUSTINE E. M. N LUTAYA -V- STERLING CIVIL ENGINEERING COMPANY LIMITED SCCA NO.11 OF 2002 it was held that;

"trespass to land occurs when another person makes unauthorised entry upon land and thereby interferes with or pretends to interfere with other person's lawful possession of land. That it is trite law that in the absence of any person having lawful possession, a person holding a certificate of title to the land has sufficient legal possession of the land to support an action of trespass against a trespasser wrongly on the land."

In the case of ODYEK ALEX & ANOR-V- GENA YOKONANI & 4 ORS CIVIL APPEAL NO.009 OF 2017; it was held that trespass is an unlawful interference with possession of property. It is an invasion of the interest in the exclusive possession of land, as by entry upon it. That to maintain an action for trespass the plaintiff must be in physical possession.

According to the submissions of the Senior learned counsel for the 1st defendant the plaintiffs are neither lawful occupants nor bona fide occupants but mere trespassers.

In rejoinder the learned counsel for the plaintiffs submitted that the plaintiffs could not be trespassers of their own land.

The learned state attorney on behalf of the 2nd defendant submitted that the plaintiffs do not allege that they are in possession of the suit land as lawful and/ or bona fide occupants.

### ANALYSIS BY COURT.

From the evidence adduced by the plaintiffs and the defendants and from my own observation during the visit of locus in quo, the plaintiffs and a number of other people are residents and have establishments on part of the land in dispute. These include houses, a church and gardens. These establishments are along the Road from Bukwiri in Kyankwanzi up to the bridge on River Mayanja bordering with Nakaseke District. I also observed that there were some farming activities taking place on the land in a distance of about 200 metres from the settlements.

However, the facts of this case are quite peculiar. The 1st defendant started the process of application for a lease in the 1976. It first got part of the land that it was applying for amounting to 402 hectares. It continued pursuing the balance of 604 hectares until 2008 when the lease for the whole land measuring 1011 hectares was granted vide exhibit D.26.

From the evidence adduced by the plaintiffs which I do believe, by the time of granting the balance of 604 hectares to the 1st defendant it is evident that part of it had been settled on by other people including the plaintiffs and the 1st defendant does not dispute this. Its own witnesses acknowledged that there were some settlements on the land before the certificate of title was acquired. See the evidence of DW4 who stated that when they came to the area there were about five people who were selling local brew in 1992. That Akabaale was a crossing point for cattle

on route to the cattle market in Ngoma. That some of the plaintiffs used to stay there and help them to cross the river.

They only disagree on when the plaintiffs entered onto the land. V\Thereas the plaintiffs claim to have come there before the constitution was promulgated in 1995, their evidence did not sustain this allegation.

The plaintiffs adduced evidence show that they were on the land by the time the 1st defendant secured the lease in 2008 and the certificate of title in 2009.

This is confirmed by evidence in exhibit D.22 a letter dated 15th February 2008 written by the Chairman of Kiboga District Land Board (DW4) to Kanaba Estates and Agencies informing it of the grant of the lease over the entire 1006 hectares.

However, in the same letter the 1st defendant was advised to make provisions and reservations for water source for the public / community in the area, the cattle corridor, public amenities which included a school, trading centre and a health centre.

This confirmed the evidence of the plaintiffs that they were in occupation of part of the land at the time the lease was issued in 2008.

Basing on the above findings and the fact that this court has a wide discretion to make findings for the ends of justice to be met under Section 37 of the Judicature Act (**formerly Section 33**), and since it has been established that the plaintiffs had occupied part of this land before it was leased to the 1st defendant, they had \*equitable interests\* on the land they occupied. The 1st defendant acquired a lease of 49 years over the whole piece of land disregarding the interests of the plaintiffs.

A lease is an agreement between the lessor (landlord) and the lessee (tenant). It was important for the 2nd defendant to consider the interests of the plaintiffs who

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were on the land before granting the lease to the 1st defendant. It was also important for the 1st defendant to establish from the 2nd defendant the interests of the plaintiffs before it assumed tenancy on the land. The 1st defendant therefore assumed the liabilities posed by the plaintiffs' occupation of the land. Issuing a certificate of title for the whole land before settling the interests of the plaintiffs who were on the land already was an error on the part of the 3rd defendant and the 2nd defendant who issued the lease in the first place.

I therefore find that the plaintiffs' entry onto the land in dispute before the 1st defendant acquired it doesn't amount to trespass.

The above notwithstanding, there was evidence to show that some of the plaintiffs/ counter defendants were carrying out fresh activities on the land beyond the land earlier on occupied without the consent of the 1st defendant/ counterclaimant who is the registered owner at the moment. This amounts to trespass by the plaintiffs/ counter defendants.

## Issue 5

### What are the remedies available to the parties?

#### a) Cancellation of the certificate of title

The plaintiffs sought a declaration that the certificate of title was fraudulently acquired by the 1st defendant by including 602 hectares. The learned counsel for the plaintiffs submitted that since the certificate of title was obtained by fraud it ought to be cancelled.

In reply the Senior learned counsel for the 1st defendant submitted that under Section 59 of Registration of Titles Act, an irregularity in acquisition of a certificate

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of title does not vitiate such title in absence of fraud. That the certificate of title ought not to be cancelled.

### ANALYSIS BY COURT

I have already found that fraud was not proved against 1st defendant/ counterclaimant. That notwithstanding, the grant of the lease by the 2nd defendant over the land where the plaintiffs had interests was an error.

In the instant case, the process of application and grant of the lease by the 2nd defendant to the 1st defendant is tainted with a number of irregularities. Some of these included-

- 1. The application for a lease being made by \*'Kanaba Estates\* & \*Agencies'\* ,,which was a non-existent entity.
- 11. The grant of the lease by the 2nd defendant to \*'Kanab a Estates\* & \*Agencies'\* a non-existent entity.
- iii. The variance in the names of the applicant (1st defendant) throughout the process of applying and granting of the lease. In some instances, the applicant used the name \*'Kanaba Estates\* & \*Agencies'\* while in other instances, it used names' \*Kanaba Estates and Agencies',' Kanaba Estates and Agencies Ltd'\* or' \*Kanaba Estates and Agencies Associates'\*

Despite the above irregularities in the application process, the certificate of title in the name of \*'Kanaba Estates and Agencies Limited'\* (1st defendant) which the plaintiffs seek to cancel was issued on 31/7/2009 which was a legal entity by this time. c:O

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Section 59 of the Registration of Titles Act provides that a certificate of title cannot be impeached by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate.

Basing on the above position, it is my finding that the irregularities cited above in the process of applying and grant of the lease and the issuance of certificate of title in issue do not warrant cancellation of the same.

Despite the above finding, the plaintiffs have already been found to have an equitable interest on the land they occupy therefore this court cannot keep a blind eye on their status.

The best and proper way to arrive at justice in this matter is to order that the lease and the certificate of title issued to the 1st defendant be corrected by surveying off the land occupied by the plaintiffs. In determining how much land is in occupation by the plaintiffs to be surveyed off, I will rely on the explanations given by the parties, the observations and findings made by this Court during the locus in quo visit.

From my observation, the land occupied by the plaintiffs is located in a trading centre along the road from Bukwiri - Kyankwanzi to Nakaseka district next to River Mayanja. It approximately measures 1 km long and about 500 feet wide on each side of the road.

I do order the 2nd defendant to correct the lease and thereafter the 3rd defendant to correct the certificate of title vide Plot number 40 Singo Block 746 Land at Bwaba Kinamwera in Kiboga District by removing or surveying off the above mentioned land from the lease and a corrected certificate of title to be issued to the 1st defendant.

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## **b) Eviction**

The plaintiffs prayed for an eviction order against the 1st defendant in respect of the land in dispute. The learned counsel for the plaintiffs submitted that an order of eviction be issued against the 1st defendant and its agents and servants.

Given my earlier findings in this judgment, I do not find it necessary to issue such an order of eviction since the plaintiffs are the ones in occupation of the part of the land where they were declared to have equitable interest.

## **c) General damages**

The plaintiffs prayed for general damages.

In his submissions the learned counsel for the plaintiffs submitted that the directors of the 1st defendant have tormented, initiated criminal charges on the plaintiffs. These acts have caused mental anguish and inconvenience to them and prayed for general damages.

In his submissions in reply, the Senior learned counsel for the 1st defendants stated that the plaintiffs are not entitled to any of the remedies sought like damages.

**ANALYSIS BY COURT.**

The purpose of awarding general damages is to provide compensation for the nonpecuniary losses suffered by a plaintiff due to the defendant's wrong actions. They are a direct natural or probable consequence of the act complained of. SEE: STORMS -V- HUTCHINSON [1905] AC 515.

The plaintiffs in this case did not adduce evidence to prove that they deserve general damages. The alleged arrests and intimidations of criminal charges were not pleaded or proved at all. There was no trespass on the land they occupy that was proved.

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I award no general damages.

**d) Punitive damages.**

The learned counsel for the plaintiffs submitted that the 2nd defendant ignored the procedure of acquiring the land and prayed that punitive and aggravated damages of shs.50.000.000= be awarded.

Both defendants' learned counsel did not address the issue of punitive damages but simply stated that they were not entitled to any damages.

**ANALYSIS BY COURT**

The rationale behind the award of punitive/ exemplary damages is that exemplary damages should not be used to enrich the plaintiff, but to punish the defendant and deter him from repeating his conduct. SEE: MUHEREZA YASON -V-J AND J TRADING COMPANY LIMITED HCCS NO. 382 OF 2018

In the instant case there was no evidence adduced to warrant the award of punitive damages. I decline to award the same.

**e) Aggravated damages.**

Aggravated damages are damages awarded in addition to general damages intended to compensate a plaintiff for exceptional harm or injury suffered due to the defendant's conduct. The defendant's actions are deemed to be malicious, reckless, high handed, oppressive and fraudulent. Aggravated damages are awarded by the court in form of an "extra compensation" to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. SEE: MARURI VENKATA BHASKAR REDDY AND 2 OTHERS -V- BANK OF INDIA (UGANDA) LTD HCCS NO. 804/2014

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The plaintiffs did not prove any of these actions. I decline to award these damages as well.

ii) The 1st defendant/counter claimant sought the following remedies:

**a) Declaration of trespass**

This court found some elements of trespass beyond the prescribed land by plaintiffs/ counter defendants. The plaintiffs/ counter defendants who are carrying out activities outside the prescribed land are hereby declared trespassers on the 1st defendant/counterclaimant's land.

**b) Permanent injunction**

The 1st defendant/ counter claimant prayed for a permanent injunction restraining the plaintiffs from further trespass. This court found some acts of trespass beyond the prescribed land by some of the plaintiffs. Therefore, a permanent injunction is issued against the plaintiffs/ counter defendants, their agents, servants, workers and any person deriving title from the plaintiffs from further trespass onto the land of the 1st defendant/ counter claimant beyond the one adjudged to them.

**c) Eviction order**

The 1st defendant /counter claimant prayed that an eviction and demolition order be issued against the plaintiffs/ counter defendants.

I have already made a finding that the plaintiffs/ counterclaimants have an equitable interest on part of the land they currently occupy whose description has already been made in this judgment. It has also been found that the plaintiffs/ counter defendants have been trespassing on the land prescribed and adjudged to belong to the 1st defendant/ counter claimant.

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In the circumstances, the plaintiffs / counter defendants are given a period of four (4) months to voluntarily vacate the land trespassed on in default of which an eviction order shall issue.

**d) Damages.**

The 1st defendant /counter claimant prayed for general damages but didn't prove the injury suffered or inconvenience experienced. I award no damages.

**iii) Costs.**

According to **Section 27 of the Civil Procedure Act** the court has the discretion to award costs. In the instant case I find that the plaintiffs have partly proved their case, while the defendants have equally proved part of their case. For the above reasons each party will bear its own cost.

In conclusion, this Court makes the following orders;

- 1. The suit for the plaintiffs/ counter defendants except the 4th and 5th plaintiffs/ counter defendants is dismissed against the defendants.
- 2. The plaintiffs/ counter defendants have equitable interests on part of the land in dispute.

- 3. The 1st defendant/ counter claimant's certificate of title was not obtained by fraud but with some irregularities.
- 4. The 2nd defendant is ordered to correct the 1st defendant/ counter claimant's lease by surveying off the land occupied by the plaintiffs/ counter defendants.

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- 5. The 3rd defendant is ordered to correct the 1st defendant/ counter claimant's certificate of title by excluding the land occupied by the plaintiffs/ counter defendants.
- 6. The 1st defendant is not a trespasser on the plaintiffs/counter defendant's land.
- 7. The plaintiffs/counter defendants are declared trespassers on part of the 1st defendant/ counter claimant's land.
- 8. The plaintiffs/ counter defendants are given four (4) months to vacate land trespassed on in default of which an eviction order shall issue.
- 9. No damages awarded to either party.
- 10. No costs awarded to either party.

I so order

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KAREMANI JAMSON. K JUDGE 6.09.2024

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Prepared on 14 October 2026 · Esheria