THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

HCT-03-CV-CS-115-2017

1. **MUSIMANI JOHN PAUL**
2. **CAROLINE MUSIMAMI::PLAINTIFFS**

VERSUS

1. **MULAWA K. HASSY**
2. **MUGISHA KAHINIRA DAVID**
3. **KHAOLA RITAH**
4. **JINJA DISTRICT LAND BOARD::::::::::::::::::::::::::::::::::::::DEFENDANTS**

Land Case: *Recovery of land, Trespass, Illegality, Declaration that the transfer of the land to the Defendants was fraudulent and his title thereof be cancelled, Permanent Injunction and General Damages.*

Held: *The Plaintiffs have FAILED to prove their claims against all the Defendants in this case to the standard required by law and the suit is dismissed with costs to the 2nd, 3rd and 4th Defendants respectively.*

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

JUDGMENT

The Plaintiffs brought this suit against the Defendants jointly and severally seeking the following Orders:-

1. Recovery of land comprised in LRV 3837 Folio 21 Plot 6 land at Jinja Mpya Road;
2. Vacant possession directing the 1st, 2nd and 3rd Defendants to cease their continued trespass on the suit land;
3. An Order directing the Defendants to hand over vacant possession of the suit land to the plaintiffs;
4. A declaration that the issuance of a Leasehold Certificate to the 1st Defendant was illegal, fraudulent and void ab initio,
5. A declaration that the 1st, 2nd and 3rd Defendants trespassed unto the suit land, an order compelling the 4th Defendants to cause the issuance of a Freehold Certificate of Title to the Plaintiffs,
6. An Order that the leasehold certificate of title issued to the 1st Defendant be cancelled.

7. That all entries in favour of the subsequent transferees over the suit land be cancelled, a permanent injunction;
8. General damages and costs of the suit.

BRIEF FACTS

PLAINTIFFS' CASE

According to learned counsel for the Plaintiffs, the Plaintiffs' claim in their Amended Plaint filed on court record on the 4th day of May 2022 is that sometime in 2000, they occupied land comprised in **LRV 3837 Folio 21 Plot 6 situate at Jinja Mpya Road** *(herein before and after referred to as the "suit land").* That they applied and were granted a lease thereon by the 4th Defendant and that subject to the lease granted, it was a condition for them to construct a commercial building for which they submitted Architectural Plans, but the same were approved late.

That whereas they had laid a foundation for construction, they were forced to stop the work and applied for extension of the lease or a Freehold Tenure and in 2015, applied for renewal of a lease and conversion into freehold land title which was approved by the 4th Defendant. That the 4th Defendant further granted permission for survey to be conducted on the suit land in favour of the Plaintiffs which survey was carried out and deed prints issued. That they presented the deed prints to the 4th Defendant, but unfortunately the 4th Defendant was under suspension to the detriment of the Plaintiff which delayed the approval.

Further, that to the Plaintiffs' utter shock and dismay, the 1st Defendant had fraudulently obtained a leasehold Certificate of Title on the suit land, trespassed thereon and started construction work without consent of the Plaintiffs. They therefore contended that the Defendants' acquisition and /or dealings on the suit land were tainted with fraud and illegalities. The Plaintiffs alleged that their Application for Freehold was accepted by the 4th Defendant was done after the initial offer has expired and the 1st to 3rd Defendants were registered on the Title by fraud hence this suit.

2ND AND 3RD DEFENDANT'S CASE:

That in separate and distinct Written Statements of Defence filed by the 2nd and 3rd Defendants jointly on **05/10/2017**, and by the 4th Defendant on **19th May, 2022**, they each refuted all the claims by the Plaintiffs.

That the 2nd & 3rd Defendants pleaded that on the 21st day of February, 2008, the 1st Defendant Mulawa K. Hassy got registered as proprietor of the suit land until 2012 when after the same had been extended to full term of 99 years. That he sold the same to the 2nd Defendant Mugisha who held the said suit land for another 5 or so years before selling the same to the 3rd Defendant, who is the current registered proprietor.

4th DEFENDANT'S CASE

That on the other hand, the 4th Defendant contended that it is a Statutory Body whose functions are to manage land within Jinja District, which is not owned by anybody, and that it is a successor in title to Jinja Municipal Council, as a controlling authority.

Further, that Plot No.6 Jinja Mpya is within the original boundaries of Jinja Municipal Council and as such it was under the management/ control of Jinja Municipal Council. That on the 1st August 2000, it gave/ granted a lease offer to the Plaintiffs and the same was not absolute in the sense that it would expire within 5 years to the 1st day of August 2005 and subject to a building to cost not less than **UGX. 200,000,000/- (Two hundred million shillings only)** to be erected on the said land.

In addition, that by the time the lease offer expired, there was no development at all on the said land and that the Plaintiffs were duly notified about the breach of the covenant in the lease offer; and on the 17th day of July 2007, the 1st Defendant applied and was granted the lease offer by the 4th Defendant on 4th December, 2007.

That the 4th Defendant denied the Application for Renewal of the Lease by the Plaintiffs in 2013, but that rather on an undisclosed date, the Plaintiffs applied or purported to apply, for conversion from Customary Tenure to Freehold Tenure for another piece of land at Urbana Village, Rubaga Parish, Mpumudde-Kimaka Division, Jinja Municipality without disclosing that it was Plot No.6 Jinja Mpya (suit land).

That the said Application had been recommended by Members of the Area Land Committee, to the effect that the Plot is newly surveyed. That the 4th Defendant without knowing that the land being applied for was Plot N0.6 Jinja Mpya, on the falsehoods of the Applicants/ Plaintiffs erroneously approved the Application on 16th June 2015 as per **annexture 'B'** to the Amended Plaint.

That by the time the 4th Defendant processed and approved Mulawa K. Hassy's Application, its powers were spent and as such, it could no longer approve the Plaintiffs' Application, given that the suit land was no longer available allocation.

Further, that by the time it processed the 1st Defendant's Application in July 2007, the Plaintiffs offer had expired two (2) years earlier and that the caveat lodged by the Plaintiffs was after the 4th Defendants had processed the 1st Defendant's Application and that despite being served on two different occasions, the 1st Defendant did not enter appearance in defence of the Plaintiff's suit.

2ND AND 3RD DEFENDANTS CASE

On the other hand, the brief facts according to learned counsel for the 2nd and 3rd Defendants is that on the 21st day of February 2008, the first Defendant Mulawa K. Hassy got registered as proprietor of the suit land until July 2012 when after the same had been extended to a full term of 99 years, he sold the same to the 2nd Defendant Mugisha. The said Mugisha held the said suit land for another 5 or so years before selling the same to the 3rd Defendant, who is the registered proprietor.

That the Plaintiffs allege that their Application for Freehold was accepted by the 4th Defendant after the initial offer had expired and that the 1st to 3rd Defendants were registered on the title by fraud hence this suit.

4TH DEFENDANTS CASE

As far as the 4th Defendants, Learned counsel for the 4th Defendant conceded with the brief background as presented by learned for the Plaintiffs.

From my own analysis, I have found the exhaustive facts as presented by learned counsel for the Plaintiffs and the 2nd and 3rd Defendants tally with the pleadings of each side; and I will adopt the same as well.

REPRESENTATION

When this matter came before Court for hearing, the Plaintiff was represented by learned counsel Steven Muzuusa of M/S. Muzuusa & Co. Advocates, the 2nd and 3rd Defendants were represented by Counsel Martin Asingwire of M/S. Asingwire & Partners and the 4th Defendant was represented by Counsel Onesmus Tuyiringire of M/S. Tuyiringire & Co. Advocates.

ISSUES AGREED UPON DURING SCHEDULING

The following are the issues that were framed in this case during Scheduling:-

1. Whether the 1st Defendant's acquisition of the lease now comprised in LRV 3837 Folio 21 Plot 6 situate at Jinja Mpya Road, Mpumudde- Kimaka Division, Jinja Municipality measuring 0.045 hectares from the 4th Defendant was illegal and/or fraudulent?
2. Whether the transfer of the suit land from the 1st Defendant to the 3rd Defendant was fraudulent, and whether the Plaintiffs were deprived of any land?
3. Whether the 1st, 2nd and 3rd Defendants trespassed on the suit land?
4. Whether there was a successful survey by Commissioner where recommendations and approvals to the 4th Defendant were made?
5. What remedies are available to the parties?

THE LAW

Learned Counsel for the Plaintiffs submitted on the burden of proof that in all civil proceedings, the burden lies upon he who alleges **(section 101 and 103 of the Evidence Act)**. That it follows from the above that the burden in civil proceedings normally lies upon the Plaintiff (s) or Claimant (s).

That the standard of proof is on the balance of probabilities, the law however, goes further to classify between a legal burden and evidential burden. That when a Plaintiff has led evidence establishing his/her claim, he /she is said to have executed the legal burden. The evidential burden thus shifts to the Defendant to rebut the Plaintiff's claim as per ***Maruri Venkata Bhaskor Reddy and 2 others vs Bank of India (Uganda) Ltd HCCS NO. 804 of 2014 at page 2.***

I agree with the above and expound that the position of the law and the burden of proof in Civil Cases is well settled. **Section 101 of the Evidence Act** provides that:-

"(1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

Section 102 of the Evidence Act provides that:-

"The burden of proof in a suit or proceeding lies on that person who would fail if at all were given on either side."

Section 103 further provides that:-

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

The above was solidly reinforced in the case of ***Dr.Vincent Karuhanga t/a Friends Polyclinic vs. National Insurance Corporation & Uganda Revenue Authority, HCCS No.617 0f 2002 (2008)ULR 660 at 665,*** cited with approval by the Court of Appeal in ***Takiya Kaswahili & A'nor vs. Kajungu Denis, CACA No.85 of 2011,*** it was held, inter alia, that;

"…The general rule is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. When that party adduces evidence sufficient to raise a presumption that what he asserts is true, he is said to shift the burden of proof that is, his allegation is presumed to be true unless his opponent adduces evidence to rebut the presumption."

Turning to the burden of proof in Civil matters, it is discharged on the balance of probabilities is discharged/satisfied if there is greater than 50 per cent that the proposition is true and not 100 percent. Lord Denning, in ***Miller v Minister of Pension [1947] All E R 373*** described it simply as *"more probable than not".* For the above reason, errors omissions and irregularities that are too minor and do not go to the root of the matter and occasion a miscarriage of justice may be disregarded. See ***Dr. Vincent Karuhanga vs National Insurance Corporation & Anor H.C.C.S No. 617/2002 and Sebuliba v Co-Operative bank (1982) HCB 129***.

Further, in the proof of cases, unless it is required by law, no particular form of evidence (documentary or oral) is required and no particular number of witnesses is required to prove a fact or evidence as per **Section 58 Evidence Act** and **Section 133 Evidence Act**.

The Evidence Act defines a fact to means and includes:-

(1) Anything, state of thing, or relation of thing capable of being perceived by senses as per Section 2 1 (e) (i) Evidence Act.

Having stated the position of the law and rules of evidence, I will now turn to the substantive issues raised in this case as captured above and proceed to evaluate against the evidence on record.

RESOLUTION OF THE ISSUES

PRELIMINARY POINTS OF LAW

Learned counsel for the 4th Defendants in their Written Submissions raised Preliminary Objections and as is the practice in our courts, I will address them first before delving into the substantive issues.

The first Preliminary Point of law was to the effect that by the Plaintiffs' Counsel submitting that the Plaintiffs were denied a fair hearing, the Plaintiffs have departed from their pleadings which departure from pleadings, is forbidden by **Order 6 rule 7 of the Civil Procedure Rules.**

They submitted that in the Plaintiffs' Amended Plaint, the particulars of fraud against 4th Defendant, it is not their case, that they were denied a hearing. They reproduced the particulars of fraud that are pleaded in paragraph 6 (D) of the Plaint as follows:-

(i) 'Stealthily granting the lease over the suit land to the 1st Defendant well knowing and in disregard of the subsisting interest of the Plaintiffs.
(ii) Disregarding all the Plaintiffs' complaints about illegal transaction on the suit land.
(iii) Conniving and/conspiring with the 1st Defendant with the intention of depriving the Plaintiff of their interest in the suit land.
(iv) Deliberate failure to follow the well laid out procedure in conducting transaction over the suit land".

And submitted that as can be seen clearly it is nowhere pleaded, that the Plaintiffs were denied a hearing and because it was not pleaded, they could not comment on it, in their Written Statement of Defence; therefore being taken by surprise now, at the level of submissions.

Further, that the right to be hard, on the face of it, is a constitutional right. They submitted that if a party seeks to rely on it, in his/her case, then it should be specifically pleaded, which the Plaintiffs have not done. That if you read the particulars of fraud leveled against the 4th Defendant, the only thing that comes out as the main complaint is found in paragraph 6 D(iv) that is **deliberate failure to follow the laid out procedures in conducting transactions over the suit land.**

That the words *"failure to follow the laid out procedures in conducting transactions over the suit land"* are very wide; and they submitted that there is no way those words can be synonymous with the words *"that the plaintiffs were denied a fair*

hearing; therefore by taking this course of action", the Plaintiffs have departed from their pleadings thus offending **Order 6 rule 7 of the Civil Procedure Rules**.

That the Plaintiffs could only take this course of action, by seeking leave of court, to amend the Plaint and plead that they were denied a fair hearing, in which case, the 4th Defendant would have replied to that pleading in its Written Statement of Defence to the Amended Plaint, and that would have amounted to fair play. They cited the case of ***Interfreight Forwarders (U) Ltd East African Development Bank-Supreme Court CA No. 33 of 1992 {1990-94} EA;*** highlighting the relevant parts at page 125 that in that case, the argument was that the Defendant/ Appellant ***"acted as a common carrier"*** and counsel Jonathan Kateera (RIP) submitted that *"in so far as there was evidence to prove that the defendant was a common carrier, it was not necessary to plead that issue since it was a matter of evidence the facts of which only, in the knowledge of the Defendant, whom the burden of proving them lay".*

It was held by Justice Arthur Oder (RIP) that, it the Plaintiff did not plead that the Defendant was a common carrier, Court cannot allow him to depart from his pleadings, and claim that the Defendant was a common carrier without amending the pleadings.

Learned counsel for the 4th Defendants argued that the above is the position here.

In addition, that departing from one's pleadings comes or goes with repercussion or consequences; the courts have held; **that a party who departs from his/her pleadings, is deemed to be a lair;** and cited the following cases viz:

1. **(1)** ***Amisi Kadowe***
   (2) Nabirye Kayondo
   (3) Okumu Living vs Benefansi Isabirye. CA No.100 of 2011 High Court of Uganda at Jinja.

2. ***Sebuhingiriza Rwabiti Vs Attorney General – HCCs No 1251 of 1999- High Court of Uganda at Kampala***.
3. ***Kyamundu Aggrey Vs Nankwanga – Civil Appeal No.21 of 2010- High Court of Uganda at Jinja***.

They submitted that all these decisions are to the effect, **that a party who departs from his/her pleadings and gives evidence contrary thereto, would be deemed to be a liar and that a departure from one's pleadings is good**

ground for rejecting the evidence and such a litigant may be taken to be a liar; that in the case before this Court the Plaintiffs departed from their pleadings, at the level of submissions.

Having addressed court on the repercussions they argued that in the case of ***Prisma Ltd vs. 1. Nile Agro industries Ltd and Jinja District Land Board HCCS No. 196 of 2014 High Court of Uganda at Jinja*****,** the Plaintiff sought to introduce, in his submissions, that he had been denied a fair hearing, yet it had not pleaded it, in its Plaint, the nearest it (Plaintiff), had pleaded was, that Jinja District Land Board in revoking its (Plaintiff) lease offer**, had failed to follow due process of law.**

That they raised a similar Preliminary Objection and pointed out that failure to follow due process is too wide and vague, and there was no way it could be synonymous with failure to accord a fair hearing to the plaintiff; and Judge Eva Luswata as she was, agreed with their submission and held thus**;**

> *"That as stated for Nile Agro Ltd the term is relatively wide and would include a myriad of factors that ought to be respected when legal right rights are being considered enforced or curtailed".*

That the Judge upheld the Preliminary Objection and stated that she would not consider all the evidence and submissions centered on the facts that ***Prisma Ltd***, was denied a fair hearing before their lease was cancelled.

In order to resolve the above Preliminary Objections, I have carefully analyzed the Plaintiff's Amended Plaint, the record of this case and the provisions of **Order 6 rule 7 of the Civil Procedure Rules (as amended)** *vis a vis* the submissions of learned counsel for the 4th Defendant.

It is on record that on 19/05/2022 when this case came for hearing, both Plaintiffs and their counsel were absent from court and it came to the notice of court that an Amended Plaint had been filed on 14.05.2022 without leave of court although the suit had been filed way back in 2017. In the Amended Plaint, it is clear that the Plaintiffs did not only add the party, but changed the entire pleadings to reflect that Mugisha who is the 2nd Defendant of creating a title; they also substituted Mugisha for Mulawa and stated that it was Mulawa who created a title.

It is clear that this was served upon learned **Counsel Tuyiringire** for the 4th Defendants on 16th May 2022 and learned counsel for the 2nd and 3rd Defendants.

When I first took over the matter from my predecessor, it was also observed that there was nothing on record which shows that the 1st Defendant who was added was ever served since all the Summons signed on the 13th May 2022 although the Amended Plaint was received in court on 4th May 2022. In effect it was clear that the Application for the Amendment was made without any notice to the 1st and 2nd Defendants (now 2nd and 3rd Defendants) and was allowed when the case was already part heard because it was already proceeded by way of filing a Scheduling Memorandum and Witness Statements.

The Amended Plaint allowed to include now the 1st Defendant Mulawa Hassy who was disclosed 4 ½ years after the case was first filed in Court.

After hearing the arguments of all the parties to the suit on the above observations, this Court ruled that:-

"In the interest of substantive justice, the amendment will be allowed. However I agree with both counsel for Defendant in such a scenario. I agree with counsel of 2nd and 3rd Defendants that Plaintiffs shall bear costs of not only for today, but also costs caused by amendments, in fact this is a matter which was filed way back in 2017 and the amendments were made in May, 2022 when the matter had progressed in filing Joint Scheduling Memorandum, Witness Statements and Trial Bundles of both sides.

In that regard I award costs not only for today, but also caused by those amendments to the two Defendants who are in court now".

The case was adjourned to allow service of the Amended Pleadings to the 1st Defendants and the all the Defendants to file their Amended WSDs.

On 15/06/2022, the Plaintiffs were not in court and learned Oscar Boban appeared for them, learned Counsel Martin Asingwire for 2nd and 3rd Defendants and learned Counsel Tuyingirire Onesmus for the 4th Defendant.

When tasked to inform court if the 1st Defendant had been served as had been directed by court, learned counsel for the Plaintiffs responded that they served him by his known last address-Postal Address; and that the 1st Defendant has filed a Written Statement of Defence on Amended Plaint which he had already served it to learned counsel for the Plaintiffs and he asked for 3 weeks to 29/06/2022, to have the trial bundles and Witness Statements from both sides.

On 22/09/2022 when the matter came up for hearing again, learned counsel for the Plaintiffs was tasked again if he had served the 1st Defendant and he stated

that he was served an Affidavit of Service is on record; and that he was served by Post.

Court observed that the record of 19th May 2022 shows the 1st Defendant had not been properly served according to the law and Court went ahead and gave directives to conclude service upon the 1st Defendant. During that date there was no proof on record that the 1st Defendant was served.

Learned Counsel for the Plaintiffs instead addressed Court that there are two Affidavits of Service on record; the first one was for Hearing Notice for the 6th June, Amended Plaint and Summons to File a Defence and there is Affidavit of Service on record which was just received today, but it shows that he was served. That there is receipt, he attached proof that relevant time the 1st Defendant was aware of the court process according to the Postal Office receipt dated 6th June, 2022.

Court analyzed the Affidavit of Service relied upon by learned counsel for the Plaintiffs and noted that he states that he got the 1st Defendant's Postal address from a copy of the Certificate of Title. Court was not satisfied with this service.

The rest of defence counsel made submissions in respect of this alleged mode of service and court agreed that there is no proof of service on the 1st Defendant. Court directed that the 1st Defendant should be served with the Amended pleadings of the Plaintiffs and this should be completed within 15 days from that date; and the matter will come back for further directives on the 15/06/2022 at 11.00 am and these directives will be served to counsel for the Plaintiffs.

Despite the above explicit directives, the Plaintiffs failed and or refused to serve the 1st Defendant in this case and despite that failure, hearing commenced without the 1st Defendant being served. The case against the 1st Defendant was therefore dismissed under **Order 5 rule 1 (3) of the Civil Procedure Rules**; and no appeal was made against this decision and no fresh suit has ever been instituted.

The above clearly shows the efforts Court took to ensure that all the parties to this case were properly served with the Amended Plaint of the Plaintiffs which Court had allowed.

Secondly, I have carefully examined the Plaintiff's Amended Plaint and it is clear that they never pleaded anywhere that the Plaintiffs were denied a hearing. This meant that none of the Defendants had a chance to address a situation that was not pleaded, they could not in their respective Written Statements of Defence.

I therefore agree with learned counsel for the 4th Defendants and the case law relied upon and hasten to add that while this Court is very much alive to the Constitutional right to be heard and respects the same, however, long gone are the days when Courts would entertain trial by surprise; as such, any matters not pleaded cannot be entertained at the level of submissions.

Turning to the pleading in paragraph 6 D (IV) ***"deliberate failure to follow the laid out procedures in conducting transactions over the suit land",*** the Plaintiffs did not address the specific procedures that the 4th Defendant allegedly offended.

Court is not at a liberty to go on a fishing expedition to ascertain which specific procedures the Plaintiffs were alluding to, as such, I agree with learned counsel for the 4th Defendants that the Plaintiffs have departed from their pleadings thus offending **Order 6 rule 7 of the Civil Procedure Rules**.

My decision is that the decision in ***Prisma Ltd vs. 1. Nile Agro Industries Ltd and Jinja District Land Board (supra)*** relied upon by learned counsel for the 4th Defendants is very persuasive and applicable to the current case; as a consequence, I will not consider the evidence and submissions centered on matters that fall outside the pleadings of the Plaintiffs. This Court is not obliged to address the digressions imported at the point of submissions, but will restrict itself to addressing the case of each party as presented in their pleadings.

Secondly, bearing in mind the above events during the hearing, Court will only rely on the evidence of the witnesses who appeared in court and expunge any Witness Statements which had been filed but witnesses failed to appear during the hearing.

Having resolved the above stated Preliminary Objections as I have, I will now turn to the substantive issues in this case as agreed upon during Scheduling.

SUBSTANTIVE ISSUES

Issues No. 1: Whether the 1st Defendant's acquisition of the lease now comprised in LRV 3837 FOLIO 21 PLOT 6 situate at Jinja Mpya Road, Mpumudde- Kimaka Division, Jinja Municipality measuring 0.045 hectares from the 4th defendant was illegal and/or fraudulent?

It was submitted by learned counsel for the Plaintiffs that the Plaintiffs led evidence of only one witness **Caroline Mugoda Misimami (PW1)** and relied on documents to support their claim and the same were fully exhibited on court record as follows:-

a) Lease Offer dated 29/08/2000 with receipts of payment of legal fees, premium and ground rent marked **PEX1.**
b) Plan submission memorandum with its receipt marked **PEX2.**
c) Approved Architectural Plan marked **PEX3.**
d) Certificate of good structural plan marked **PEX4.**
e) Application to convert the suit land to Freehold marked **PEX5.**
f) Deed prints marked **PEX6.**
g) Leasehold Certificate of Title marked **PEX7.**
h) Copy of the Caveat marked **PEX8.**
i) National Identity Card marked **PEX9.**

That the Defendants led two witnesses to wit **Khaola Ritah (DW1)** and **Nume Edward (DW2)** and relied on the following documents:-

The 2nd and 3rd Defendants-

a) Leasehold Certificate of Title marked **DEX1.**
b) Receipts marked **DEX2 (A) and (B).**

The 4th Defendant relied on-

a) Statutory Notice of Lease Expiry marked **DEX3.**
b) Application from for lease by Mulawa K Hassy marked **DEX4.**
c) A Lease Offer by Jinja District Land Board to Mulawa K Hassy marked **DEX5.**

They submitted in respect of the 1st issue that **Black's Law Dictionary 9th Edn. at page 815** defines illegality to mean an act that is not authorized. That illegality is also when the decision making authority commits an error of law in the process of making its decision. A decision maker who incorrectly informs him/herself as to law or who acts contrary to the principle is guilty of an illegality.

That the illegality perpetrated by the 4th Defendant was failure to accord a fair hearing to the plaintiffs who were occupants of the suit land under a lease before the grant to the 1st Defendant.

That **Section 59 of the Land Act Cap 227 (as amended)** vests power with District Land Boards to accept and/or reject an application to allocate land and /or extend a lease on land not owned by anyone.

That it is pertinent to note that **Regulations 23 and 21 of the Land Regulations 2004** lay out a procedure to be followed by the 4th Defendant in allocating land to the 1st Defendant and noncompliance thereof qualifies for an illegality.

That **Regulation 23 (2) (a) and (b) of the Land Regulations 2004** provides that *"upon receipt of an Application for allocation whereof it may advertise the Application through a 21 days' notice in a newspaper of wide circulation within the District and also invite any person to comment or object to the Application, giving reasons for any comments or objection".*

They submitted that there is no proof that the 4th Defendant complied with the said legal provision; and that the facts of this case warranted the said procedure to be followed in observance of the principles of natural justice and fair hearing.

Further, that it is not disputed that the 2nd Plaintiff was granted a lease offer on the 01/08/2000 subject to the covenant of setting up a abuilding (s) to the cost not less than 200,000,000/=UGX (Two Hundred Million Only) and the same expired on 01/08/2005 after the 5 years.

That it was the testimony of **PW1** at paragraph 10 of her witness Statement that they submitted the architectural plans **(PEX2),** paid the plan submission fees **(PEX3**) and Construction Permit **(PEX4)** on 18th July 2005 for the building and the same was approved by the 4th Defendant on 29th September 2009 (way after the lease had expired) with its official stamp inscribed thereon.

That the 4th Defendant approved the 2nd Plaintiff's architectural Plans way later after the lease expired, it was only reasonable that before the allocation of the same land to the 1st Defendant, the 4th Defendant ought to have invited the 2nd Plaintiff to ascertain if she still had an interest in the suit land.

That the procedure for processing a grant of the suit land to the 1st Defendant in occupation of the Plaintiffs thereof had to take into action the interests of the 2nd Plaintiff who was in possession thereof; in other words, the occupants of statutory urban areas are entitled under the law and under **Article 42 of the Constitution**, to be heard prior to the lease over their land being granted to any Applicant if they are not such Applicants. That the rules of natural justice ought not to be violated by sidelining the person s directly affected by the administrative decision of the District Land Board. He relied on ***Venasio Babweyaka & 3 others vs KDLB & Another CS No. 2001 upheld by the Supreme Court in KDLB & Anor vs Venasio Babweyaka & 3 others SCCA No. 2 of 2007.***

That **Regulation 23 (8) of the Land Regulations 2004** provides for the Board to have regard to the provisions of **Regulation 21 thereof in performance of its functions and specifically 21 (1) (a)** encompassing compliance with the principles of natural justice that the Board shall:-

"a) conduct the hearing in public but with due regard to order, decorum and fairness to all parties and shall make clear to any representatives appearing for any party that the committee will concentrate on substance of the matter before it and administer substantive justice without undue regard to technicalities."

They submitted that it was evidence of **PW1** in paragraph 8 of the Witness Statement and indeed in cross examination that she applied for the extension of the lease though the same was not supported by any evidence of proof BUT be that as it may, the 4th Defendant was under obligation having approved her architectural plans to find out if the 2nd Plaintiff had wanted to extend the leasehold and this information could only be attained upon following the proper procedure laid down under the law.

That by the 4th Defendant allocating the suit land to the 1st Defendant without according the 2nd Plaintiff a fair hearing, they robbed the lease though process of legitimacy, fairness and equity in so far as it proceeded on the basis that the Plaintiff did not exist and they prayed that this Honourable Court finds the 1st Defendant illegally obtained the lease.

In Reply, it was submitted by learned counsel for the 2nd and 3rd Defendants that at the time of writing this submission, the Plaintiffs had not filed their submissions. They reiterated the issues agreed upon during Scheduling and in respect thereof, submitted that the 1st Defendant Mulawa K. Hassy was not given a right to be heard. That on the 22nd of September 2022, court ruled that the 1st Defendant had not been served despite the Plaintiff having been given the second chance to serve him, and the case against the 1st Defendant was dismissed under **Order 5 rule 1 (3) of the Civil Procedure Rules**.

That no appeal was made against this decision and no fresh suit has ever been instituted. Without being heard, court cannot make a finding that his acquisition of the lease was illegal or fraudulent, because the allegation of fraud or illegality against the 1st Defendant stands dismissed.

Further, that the suit against the 1st Defendant was also statute barred. The 1st Defendant entered into the lease with the 4th Defendant in **February 2008** which is when the acquisition claimed to be fraudulent happened. The suit against him

was brought by amendment (not by original Plaint) in **May 2022**-14 years after the cause of action 1st arose.

They relied on **Section 5 Limitation Act** which states that *"No Action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her…";*

They added that the only exception is in **Section 25(b)** where the right of action is concealed by the Defendant so much that it could not be discovered with reasonable diligence; and submitted that the 1st Defendant was registered on the Certificate of Title in **2008** as per **DEX 1**. That a search of this Public Record would have revealed this, and there is no explanation how the creation of a Public Record such as the Certificate was concealed. That the Supreme Court stated in ***Hwang Sung Ltd vs M & D Timber Merchants SCCA 2 of 2018***, that where the right of action is based on a Certificate of Title, time is to run against the claimant from the date the Defendant procured registration.

Further, that Justice Mubiru too hit the nail on top when he stated in ***Odyek Alex vs Gena Yokonani & others HCCA 9 of 2017*** that:-
"A litigant puts himself or herself within the limitation period by showing the grounds upon which he or she could claim exemption, failure of which the suit is time-barred, the court cannot grant the remedy or relief sought and must reject the claim (see Iga v. Makerere University [1972] EA 65). This disability must be pleaded as required by Order 18 rule 13 of The Civil Procedure Rules, which was not done in the instant case. It is trite law that a plaint that does not plead such disability where the cause of action is barred by limitation, is bad in law."

They argued that in this case, the Plaintiffs did not plead the grounds of disability-the reason they were unable to discover the lease of 2007 and its registration in 2008 and as such are not entitled to any limitation exemption. The court must therefore proceed under **Section 16** Limitation Period to find that the right of action was extinguished; and they asked for a finding that there is no case against the 1st Defendant at all.

In respect of the 4th Defendant, it was submitted that in order to prove their case on fraud and illegality, on the 4th Defendant, the Plaintiff have submitted that the 4th Defendant denied the Plaintiffs a fair hearing before granting the land to the 1st Defendant and that they were in possession.

That in the first place, the Plaintiffs lease offer expired on 1st August 2006; and relied on paragraph 13(a) of **DW2's** Witness Statement i.e. Edward Nume.

Secondly, that by the expiry of the offer, the Plaintiffs had not developed the suit land; they were therefore in breach of a development convenient.

That the Plaintiffs were to construct a building of a cost of not less than 200,000,000/=, to be completed within 5 years the period of the lease offer, which they failed to do.

Further, that the Plaintiffs were notified by a letter, exhibit D Ex 3, notifying them, that since they failed to develop the land, the plot would be reallocated. **PW1**, in her evidence in chief, did not comment on this important document; it is therefore conceded, that they were notified of the expiry of the lease offer; what she said she was not aware of, during cross examination by counsel Asingwire, was the fact that it (plot) had been allocated to another developer.

That the Plaintiffs' counsel states in his submission that the plaintiffs were in possession of the suit land, however this assertion is not supported by evidence on record.

That although in paragraph 6, of her Witness Statement she states that *"in 2000 herself & Musimami Paul identified and occupied plot No. 6 Jinja Mpya"*, when counsel for the 2nd and 3rd Defendants asked **PW1 during cross examination**, as to who had fenced the suit land, she said she did not know; it follows therefore, that the person who fenced the suit land was the person in possession. That **PW1** also in her evidence in chief does not mention, when they lost possession because as of now, per evidence at the *locus in quo*, it is the 3rd Defendant in possession, however, per **DEX1**, the 1st Defendant got possession of the suit land way back on 21st February 2008, when he got registered as the registered proprietor.

They therefore submitted that immediately the lease offer expired, the land reverted to the 4th Defendant and it was available for allocation to anybody including the 1st Defendant.

Secondly, that as long as the building covenant had not been complied with, the 4th Defendant as a controlling authority retained control over the land. They cited the case of ***Chris Akena Onapa vs. Mohamed Hussein Rashid Punjani-Supreme Court CA No. 5 of 1995*** specifically at pages 7 & 9 of the Judgment.

Thirdly, that it is the law that a lease for a fixed period terminates when the period agreed upon expires; and relied on ***A Sourcebook of Uganda's land Law by John Mugambwa at page 214***.

In addition, that the offer was for 5 years and 5 years expired without a development; so a lease terminated; in that case, the Plaintiffs were not even entitled to any notice, however, in this case a notice was served on the Plaintiffs.

That a sub issue arises here as to whether, given that the Plaintiffs interest in the suit land had ceased, whether they qualified to be heard, as of right, before the suit land was allocated to the defendant.

In order to do this, they relied on the following authorities:-

(1) In ***R vs Gunning Boarding exparte Benalini [1970]2 QB 417*** *at* ***page 430 B*** where on a point on principles of Natural Justice, Lord Denning M. R stated thus:
"It is not possible to lay down rigid rules, as to when the principles of Natural Justice are to apply, nor as to their scope and extent. Everything depends on the subject matter".
That* this** case was cited by Judge Eva Luswata in ***Prisma Ltd vs Nile Agro Industries Ltd and Jinja District Land Board at page 8 of the judgment.

***(2) Mpungu & Sons Transporter Ltd vs Attorney General & Another- Supreme Court – CA No. 17 of 2001*; the relevant part is highlighted at page 11 of the Judgment.**

That in that case, Justice Katureebe JSC, as he then was, held thus on a right to be heard, *"I agree that Audi Alteram Partem Rule is a cardinal rule in our administrative law and should be adhered to.*

Simply put the rule that one must hear the other side. It is derived from the principle of Natural Justice that no man should be condemned unheard (see Black's Law Dictionary 6th Edition). However one would have to prove that one had a right to be heard which had been breached, and that the decision arrived at by the Administrative authority had either deprived him of his rights or unfairly impinged on those rights, thereby causing damage to the individual concerned. Most cases involving the right to be heard have dealt with situations where a person was being deprived of his property or livelihood. But each case has no be looked at on its merits".

They argued that in the case before Court, Indeed the Plaintiffs who had land for 5 years and failed to develop it, and were notified that their lease had expired and they took no action, cannot be heard to say, that they had a right for a hearing and that their rights were violated.

And submitted that they forfeited their right to the suit land, when they failed to develop it and failed to apply for a lease extension, in which case they would give satisfactory reasons as to why they did not develop the suit land in the initial 5 years.

Further, that the 4th Defendant breached no rules of Natural Justice, when it allocated the suit land to the 1st Defendant without according a hearing to the Plaintiffs; they enjoyed no such a right.

In addition, that the other limb of the Plaintiffs' submission, is that the 4th Defendant failed to advertise the 1st Defendant's application through a 21 days' notice; the Plaintiff's Counsel has cited **Regulation 23 (2) of the land regulations, to back up his submission.**

They stated that there was no proof that the 1st Defendant's Application was advised in accordance with **Regulation 23 (2) of the Land Regulations.** That their answer to this submission, is again this is a departure from pleadings; apart from pleading that the 4th Defendant failed to follow the laid out procedures in conducting transaction over the suit land.

"It was not specifically pleaded, in the particulars of fraud or illegalities that the 4th Defendant failed to advertise the 1st Defendant's application in the press for 21 days.

That they therefore, could not address it in their Written Statement of Defence and even the Plaintiffs did not lead evidence in it that line; that the 1st Defendant's Application was not advertised in a Newspaper for 21 days, therefore they could not lead evidence on that point, which point had not been pleaded.

They concluded that on the ground that in this submission the Plaintiffs are departing from their pleadings and that this portion of submission which amounts to departure from pleadings, should be rejected.

Without prejudice, they addressed this point on merit and cited the case of ***Prisma Ltd vs Nile Agro Industries Ltd & Jinja District Land Board (Supra)*** where Judge Luswata interpreted **Regulation No 23 (2) of the Land Regulations** and held, ***"that those provisions were not mandatory";*** as per page 13 of the Judgment. That on the strength of that authority, they submitted

that it was not mandatory requirement for the 4th Defendant to advertise the 1st Defendants Application.

Further, that it has also been submitted, that the 4th Defendant approved the Plaintiff Architectural Drawings **PEX 2** and paid the submission fees **PEX 3** and Construction Permit **PEX4** on 18th July 005 and that the plans were approved by the 4th Defendant on 29th September 2005, after the expiry of the lease, that it was therefore reasonable, that before allocating he suit land to the 1st Defendant, the 4th Defendant ought to have invited the 2nd Plaintiff to ascertain if she still had interest in the land.

That their answer to those submissions are as follows:

(1) That the General Receipts part of **PEX 3 Serial No. 0021119** for plan submission fees for she 400,000/= and Construction Permit Fees for she 50,000/= was paid to Jinja Municipal Council; and it is Jinja Municipal Council, that issued the receipts not Jinja District Land Board; it follows that the plans were also submitted to Jinja Municipal Council.
(2) As for the **PEX 4** of 18th July 2005, it is a document of City of Kampala, a close look at the document reveals that the space for official use, it not filled, therefore is nothing to show that an authority acted on it.

They therefore, argued that all the submissions of the Plaintiffs' Counsel that because of those documents the 4th Defendant ought to have invited the 2nd Plaintiff before allocating the suit land to the 1st Defendant, are misplaced, because the 4th Defendant has no business with the said documents.

They also commented on **PW1**'s evidence in paragraph 8 of her Witness Statement where she state that the 4th Defendant permitted the Plaintiffs to survey the suit land and she relied on Deed Prints **PEX6**.

They submitted that **PEX 6** is not a permission from the 4th Defendant to the Plaintiffs to survey the land, it is not a survey instruction; they therefore disassociated with the said evidence and with **PEX 6**.

On the other hand, that they have **PW1's** evidence in cross examination; she admits that the suit land was surveyed in 2008.

For the reasons have given above, they submitted that the 1st Defendant's acquisition of the suit land was lawful.

In addition that they had also read the submissions of counsel for the 2nd and 3rd Defendants on the claim between the Plaintiff and the 1st Defendant; they associated themselves with the points raised in the said submission.

In order to resolve the first issue, I will first summarize the evidence led by both sides during the hearing.

As already stated during the Preliminary Points of Law (supra), it's on record that Court noted that the Plaintiffs failed to serve the 1st Defendant Mugisha Kunihira David with the Pleadings and Summons to file a Defence and after ascertaining the same, the case against the 1st Defendant was dismissed by a Court Ruling dated 22nd September 2022. Thereafter, the suit proceeded against the 2nd to 4th Defendants only.

The first Plaintiff's witness was **Caroline Musimami *alias* Mugoda Caroline Namogo, a female adult aged 48 years old' retired teacher/farmer *(hereinafter referred to as PW1).*** Her evidence in Chief is fully captured in her Witness Statement which is on the record and was admitted as her evidence in Chief; but briefly, she testified that at birth, her parents named her Mugoda Caroline Namogo, but upon getting married, to the 1st Plaintiff, in 1999, Mr. John Paul Musimani, she adopted her husband's name of Musimami and thus started using the names Caroline Musimami Mugoda.

That she came to learn about the 1st, 2nd and 3rd Defendants when they illegally purported to acquire interest in land comprised in Volume 3837 Folio Plot 6 at Jinja Mpya Road and asserted possession of the same. That she knows the 4th Defendant as the Statutory body charged under the law with managing of the land within the boundaries of Jinja District which is not owned by anybody and also successor of the Jinja Municipal Council.

That she and the 1st Plaintiff , brought this suit against the Defendants seeking an orders of vacant possession directing the 1st, 2nd and 3rd Defendants to cease their continued trespass on the suit land, an order directing the defendants to hand over vacant possession of the suit land to them, a declaration that the issuance of a Leasehold Certificate to the 1st Defendant over the suit land by the 4th Defendant was fraudulent and void ab initio, an order compelling the 4th Defendant to issue a Freehold Certificate of Title issued to the 1st Defendant over the suit land be cancelled, a permanent injunction restraining the 1st, 2nd and 3rd Defendants or others acting for them from interfering with their enjoyment of the suit land, general damages, mesne profits and costs of the suit.

Further, that sometime in 2000, her and the 1st Plaintiff identified and occupied the suit land now comprised in Volume 3837 Folio 21, Plot 6 at Jinja Mpya Road. That she applied for a lease that same year from the 4th Defendant which was granted; and she relied on a copy of the lease offer form dated 29/8/2000 together with receipts of payments of legal fees, premium and ground rent marked as **PE-1.**

That the 4th Defendant Office Land Officer advised her that it was impossible to extend the lease for a full term of 99 years. Accordingly, she made an application for extension of the lease before the initial term could lapse as they embark on construction. That she walked several times to the 4th Defendant's office for approval but it was not fruitful until he left and was succeeded by Nahabo Asha.

That in the meantime, because they were supposed to construct a commercial building as per the lease conditions, they simultaneously embarked on the securing an architectural plan so that they can construct a commercial building on the suit land. That they hired Turyamureebe Ben and an engineer a one Joab.

In addition, that on 18th July, 2005 the Plaintiff's submitted architectural plans, certificate of good structural practice paid the plan submission fees and construction permit and admitted in evidence as **PE-2, PE-3 & PE-4** respectively.

That they took materials on the suit land, started construction works and laid a foundation of the building on the suit land, during construction, she was astounded to find their site fenced off with barbed wire and guarded by army officers in the morning. That the barbed wire was installed at night because when she left her site that evening, the same was not there.

That immediately, she went to Jinja Municipal Council and established that the land still belonged to her since she was pursuing the full term but when she went to see the then District Land Officer Mr. Nahabo Asha, he refused to grant her audience.

That they couldn't continue construction for the aforesaid reasons and the initial term of the lease then expired. That the suit land remained as it was, fenced off with their foundation and construction materials thereon but the army officers eventually left the suit land.

That they later approached the 4th Defendant's office, explained the situation and their intention to enlarge the lease to the full term of ninety nine years and also secured freehold interest; and the 4th Defendant handed them the forms to fill and sign.

That in 2015, her husband, the 1st Plaintiff and herself applied for an extension of the lease in alternative for conversion to Freehold tenure as they were in possession of the suit land which Application was approved by the 4th Defendant under Minute No. JDL 3/366/2015 attached as **PE5.**

During cross examination, by Defence Counsel for the 2nd and 3rd Defendants, PW1 answered that **PE No 1** which is lease offer form dated 28th August, was given to her. That she change her names in 1999 and it was my name as actually still she had gone for further studies and was still using that, it was on her documents at that time when she went to apply. That in 1999, she continued using her original name and added her husband's name onto her names the name Musimami**.**

That the lease was offered in 2000. That it was not on the lease is dated 28th August 2002, paragraph 2(a) of your lease offer, but 1st August 2000 and this lease offer was for 5 years. She agreed that the lease was supposed to run up to 1st August, 2005

That she had no documents that the term of this lease were ever extended to longer period and she did not have any document; that the lease was not the lease extended.

That she did not read Condition No. 5 on the lease and could not recall if she accepted this offer in writing. That she did not have any proof/document accepting the lease offer.

Read to **PW1** "…*That she recalled the condition on the lease offer was to erect a building not less than 400 million to be erected and completed within 5 years from the date of commencement".*

She responded that she had never seen it.

PW1 confirmed that she did not erect any building on this land, but she had put materials there and foundation had been erected before end of the lease. That she had got the permission to build, but did not have any Certificate from Municipal Council.

PW1 was pointed to clause 2(b) and she responded that she had paid rent for those 5 years of the lease, but the receipts for the 5 years are not here. That the drawing where is the application, she had filed it with Jinja Municipal Council. That the meaning of **PE 4** is that she had a form which is titled City Council Kampala but had not the one for Jinja Municipal Council as it was submitted with a plan. She was not sure if that form received by any authority. That she

was seeing there is no stamp whether it was received by City Council Kampala or Jinja

That the document marked **PE6** it is on page 23 second page, page 27 on page 27 on the same bundle. It was on 22nd January **2005** and that as per 23 and 27 are the same, this plot was surveyed earlier than 2008.

That paragraph 3 of her statement, the 1st Defendant illegally acquired the land as far as she is concerned and was not given any notice by the Land Office that land was taken away from her; that she did not get any notice from them; and secondly, when she started the construction after being given permission to start the construction, the following day after they had worked for a whole day the following day and found.

That what did the 1st Defendant did that was illegal in that they found the army had surrounded the place, but she did not know if the 1st Defendant is a soldier. That the land was taken over forcibly and that they would have done due diligence to know the real owner actually both of them-2nd and 3rd Defendants before they would purchase.

That from the document which has been provided here document **P7**, the 1st Defendant took the land. That this is the evidence provided, but the land was taken away from me in 2005 when they came and surrounded the place. That she was stopped to get into the land in 2005 when the place was surrounded by the army. At that time she did not know who it was, but from the documents it is the 1st the Defendant.

PW1 was not sure who fenced the land, but that she went to land office to seek for audience from Land Officer at that time and also Municipal Council to cross check whether there is a Minute in the minute file whether they had given away the land. That when she checked, she was given the file by 4th Defendant.

That she went to both Municipal Council where minute files were and also went to Land office down, down. That she was given the offer by the Municipal Council. She did not understanding if it given by the Land Board, which ever Municipal Land board. That it's the Land board which gave him the offer.

That after she found her land was fenced, she went to Municipal Council because that is where the Land board was sitting. That is where the Land Board was. That her lease expired in 2005 and the land fenced in 2005. That she did not report to police, but reported to Municipal Council and Land office and to the

That she applied for extension for full term to Land office and did not remain with a copy.

That paragraph 10 of her witness statement, her plans for building were approved on 29th September 2005, but she also told court earlier that her lease expired on 1st august 2005, it is not correct to say that by the time her plan was approved the lease had already expired, but she had applied for extension already

That she identified this Land for occupation and before she applied for Lease on that land, she saw the advert the Municipal had put up some list and she had also got some information from those people who were in the Municipal Council. That she recalls there was a list of land that the municipal council advertised the land and they could apply for. That before it was advertised she did not have any interest on that land and did not own or have any entitlement on that land? That her Application for conversion, **PE5,** when she went to apply, she went to Land Office and this is the form they gave to her, she did not have any customary.

Further, that when it was made, the Application as per 18 of her statement the Registrar of Titles processed a title for Mugisha Kunihira 2nd Defendant. That from the document, she was seeing here Mugisha Kunihira got it from the Registrar, but here the one was referred to was the Leasehold Certificate and she thought he got it from the 4th Defendant

PW1 did not know the 2nd Defendant Mugisha Kunihira and had not seen him. That the 3rd Defendant from the 2nd Defendant and they got from the 4th Defendant. That the 3rd got from the 2nd Defendant and in the process of acquiring from the 2nd Defendant, she did not do due diligence whether land belonged the 2nd Defendant or not.

PW1 confirmed that in 2017 when she registered was the title already in existence; and that if she checked this title who would she find to be registered proprietor as herself as the owner of the land in 2017 for the Freehold. That she found Kunihira David and maybe he is the person who sold to her**.**

That in 2017, she was not there and had been intimidated by the army, but she had applied, her husband had. That it's not true that both of you were on the land when Mugisha was registered proprietor; and that Mugisha went to check in the land office and on the title, he would have found that Hassan Mukula was the owner on the title on the title.

That it was in 2005 when her land was fenced and she sued in 2017 after 12 years, it took her so long because she had been intimidated by army and she went to land office to ask for a hearing but they did not give her audience.

That she applied to land inquiry with my husband to the commission of inquiry, the one of Bamugemereire, but did not remember when. That from 2005-2017 there was no one, the land was vacant that is why she decided to apply. There was no building, there was nothing and no sign of one in 2015 and that between 2015 to 2017 no one was occupying the land. That when she filed this case, she made an application that the 3rd Defendant should stopped from constructing, that is in 2017.

PW1 further answered that she found material for the 3rd Defendant in 2017, but in 2015 and 2016 there was nothing. That when she went to the Land Office to cross check again when she was filing, personally she did not know Mugisha Kunihira physically or the 3rd Defendant. That she did not remember see any notices warning her.

Further that looking at **PE8 page 28**, it shows **2017** and that in 2017, it is the 1st Plaintiff who filed who filed a caveat as collective statement, it's her husband, but she herself had never filed a caveat to warn the public that, it was filed by her husband.

That she is the one who got initial offer, but her husband did not smuggled himself in 2015 as an individual ever filed a caveat in the land. That Kunihira 2nd Defendant was supposed to know that someone was claiming the land because she lodge a complaint in Land office**.** That she did not lodge a complaint with Registrar of titles because this was already registered land at the time he bought, but she did not have a copy**.**

That Hassy Mulawa got a lease in 2007, he sold the land to Kunihira in 2012, 3rd Defendant owned the land in 2017, the 3rd Defendant know you that she was claiming any interest in the land although there she was nowhere no caveat, no notice in the newspaper and there is no report to police because that time she had applied for conversion in 2015.

During cross examination by Learned Counsel Tuyingirire for the 4th, PW1 answered that her lease expired in 2005**.** That after 2005 could the land be hers because she had applied for the extension. She did not know if after the lease had expired does the land remains hers by the fact that in 2015 when she applied, it was given to her and that it remained hers.

PW1 was referred to paragraph 15, **PE5** application for lease extension and she responded that it is application for conversion to freehold, but she had already applied for lease extension. That she had told court she still owned the land that is why she went for application**,** it was signed.

That at that application form particularly No. 3 she was applying for land whose location on that Form is at Rubaga**.** That she disclosed to the Land Board about land and where is found when she filled this form with their guidance**-**of the land people**.** That it is not disclose/ displayed here, but it what she applied for is plot No 6 Jinja Mpya road. That after the name Musimami is that space for date sealed, she did not see the space for date and was not seeing the space for date. That just below her name, it is blank the date is not filled**.**

That the actual date when she filled this form the date she did not know, but it is 2015 May. That she knew where Rubaga is in Jinja city, Kimaka, Masese Mpumudde and she thought it is at Kimaka. That she filled this form with their guidance at the office not to deliberately to confuse them.

That No 5 approximate area, she filled the approximate area, but she did not. That it was surveyed again under paragraph C say that in 2015 it was not newly surveyed, re-surveyed. That it had been surveyed before in 2008. That they sent a surveyor that time to re-survey**.** That she was seeing 24th July 2015, it is what is indicated here but it had been surveyed before.

That she sent this form to physical planner's office on 20th May 2015, but maybe there was change of date, but there was a survey before this. That these documents are stamped and dated for purpose, paragraph 23 reads those illegalities are further demonstrated by the fact that even though they had given then notice of the caveat nonetheless proceeded to enter and occupy the suit land-**PE-8**

That the date of the caveat is June 2017; this title is February, 2008 but she was still complaining against the board title and caveat that they gave away land. That she had wanted to know that person and, they had already signed for her in 2015.

Defence Counsel for the 4th put it to her that the Land Board gave her nothing in 2015.

In reexamination, PW1 answered that she was given the initial lease offer. That she applied for extension and she was told there is a possibility of extending to

99 years. They neither gave her a copy of the Application nor the approval at that time.

That she knew they have allowed to extend when she talked to the officer in that place she thought was called Mr. Musinguzi and he told her there is a possibility of extending and she applied for that extension. That she was given a go ahead; and about **PE4**, Certificate of Good Structure which was not received and states City Council of Kampala, it was filled by the architecture Turyamureba Ben who was acting for who and relates to the suit land. That she paid the rental payment, unfortunately she did not have the receipt, but she did and did not have the copies of those receipts**.**

As to whether she applied from customary tenure to freehold **PW1** responded that what she knows is that she went to the Land officer to request for that transfer to with land official with their guidance and this is the form she was given is what it was filled and she did not know whether it was supposed to be different. That they did guide and they gave her the form.

That when her lease expired she still owned the land because she was not given any notification by the Land Office that the land had been taken away from her, so she assumed she had ownership of the land. That she established that the land was still belonging to her, they had not given me notice that the land had been taken away from and when she applied for extension in 2015 for the change to a free hold, it was signed by 4th Defendant, so it indicated to her that she still owns the land. That by 2015 when she applied for Freehold, it was permitted, so she thought she still had ownership of the land.

Further, that *"There was a process after the payment I had to apply. Of Course I had to use the technical person to do the structural design and so on. It took some time after then it was been completed. When had been completed I had to apply for construction which also took sometime before the end of the tenure. I was permitted though verbally I was told to put materials there pending permission for the construction which I did. But it was a process going through the plan and all those. They took sometime proving approval by the Land Office to do the construction."*

That she put materials on the suit land in 2005 because before that she was working on the other things.

In questions by Court, PW1 responded that as per **P. Exhibit No. 1**, this initial lease offer was 5 years. She also agreed that it came with specific conditions written there, key amongst them was to put up a building worthy 200 million

and also subject to any renewal they must be completion of the building which she had erected.

That at her paragraph 2 (a), (c) those are the conditions which were very clear and by the close of 5 years, on the 1st August 2000 when you were given, she had gone through the process; the building constructed was not there, but there was a foundation not complete. That it was requirement under paragraph 5 that she acceptance in writing, but she did not have a copy of her acceptance but submitted a copy to municipal Council, it was put in the file but she did not have a copy

That in respect of **P. Exhibit No. 4,** the area for official use there is no proof at all that this document was ever received but that the copy was submitted, but she did not have a copy which was signed.

That to the best of her knowledge, Jinja Municipal Council is not based in City Council of Kampala. **PW1** agreed that the document she filled in respect of the land is headed City Council of Kampala

In respect of **PE 5 Application of Conversion from Customary Tenure to Freehold Tenure,** she responded that prior to that, she had not applied for customary tenancy to this land. That she had informed court in her responses that she filled this particular form because is what you gave her together with the person she found who gave the form but that it's not her habit to just fill in things and sign without knowing what you are signing or not. That she ended up filling a form which is talking about some different from what actually she was applying for because this is what was availed by the Land officers; and did not note of that bit. That it was not deliberately. This is form which was availed when she went there for registration**.** That she did ask and they informed her this was the form to fill and she went ahead to fill.

That she believed that after the expiration of the initial 5 years the Land Office was supposed to notify her. That she actually did apply before expiration and used Forms for the change of tenure. That she did not have any evidence but was sure she did apply but there is no the proof that you ever applied for renewal in court**.**

PW1 further answered that ***"****I do not have the evidence right now. But I am very sure I applied"****.***

She confirmed that she had never been registered on the land title.

It is on record that on 16/11/2022, when the matter came again for hearing, both Plaintiffs and their counsel were absent without any excuse despite being aware of the hearing date which was fixed in open court in their presence after leading the evidence of the 2nd Plaintiff only, but learned counsel Martin Asingwire for 2nd and 3rd Defendant and learned Senior counsel Tuyingirire for 4th Defendant were present.

Both Learned Counsel prayed that court proceeds under **Order 17 rule 4 CPR** which provides the clause when any party to a suit when time has been granted fails to produce his or her evidence or fails to cause attendance of their witnesses. In addition, that the evidence of Musimami and if you go through his statement paragraph by paragraph is the same as the evidence for **PW1** and is just repetition of evidence of **PW1**. They therefore prayed that the Plaintiff's case be closed due to lack of evidence and for costs of the day.

After hearing the above prayer and examining the record, and relying on the provisions of **Order 17 rule 4 of the CPR** relied upon by both counsels, **Court** ruled that it is clear that the Plaintiffs and their counsel were in court on the last hearing date and today's date was fixed in their presence. Neither the Plaintiffs nor their counsel are in court and there is no explanation as to why they have failed to appear for further hearing of this case; and therefore agreed with both defence counsel and find that the 2 plaintiffs have failed to take any further steps towards the progress of her case. It is hereby closed and the case is now fixed for defence and the cost award to both Defendants in any event.

The first defence witness was **Khaola Rita, a female adult aged 52 years old resident of Rubaga village, Mpumude –Souther Division in Jinja District and a business woman *(hereinafter referred to as DW1).*** She is the 3rd Defendant in this case and testified that in March 2017, she was approached by a one Adam Lukenge with whom they had had prior business transactions who informed her that there was property on sale in case she was interested.

That she went with him and saw the property and he then connected her to the seller called Mugisha Kunihira David who came to the land with them and confirmed to **DW1** that the building materials were his.

Further, that she was given a copy of the title and that they agreed to meet after **DW1** had carried out her own independent verification. That she went to Lands and requested to see an actual white page and it revealed that the lease was first applied for by Mulawa K. Hassy for a term of 5 years starting from December 2007. That the file also showed that this lease had been extended to a full term of 99 years, and the extension was recorded on the register. That she did not

find any encumbrance on the said file, but found documents of transfer into the names of Mugisa.

Further, that she spoke to Ochieng Patrick owner of Plot 2A and Betty Mukwana of Plot 16 who she had seen in the neighborhood, and they both knew Mulawa and Mugisa and informed her that they did not know any dispute against Mugisa's land on this very land.

That she checked in Jinja Municipal Council Records and found Mugisa in their system as their lessee, but with an unpaid invoice of UGX 1,075,000/= and she told Mugisa about it and he paid promptly and gave her a copy of the receipts which she attached as **DEX** on the trial bundle.

That she purchased the land with the materials thereon and started building upon getting approved plans, and was registered on the Certificate of Title which was admitted as **DEX 2** on the trial bundle.

She further testified that there were no approved plans for the said plot when she inquired and hers were the first to be approved for the building. That she has since constructed on the building to completion and have occupied the same since 2017.

That she wasn't aware of the Plaintiff and had never seen them before the court case started, and upon receipt of the Summons, she had contacted Mugisa who was by then in Hoima at the time and he stated that he had never heard of the Plaintiffs.

That the Plaintiff's never had a leasehold offer at all, and the alleged offer was given to someone else, and the same expired. That the expired lease was in the name of Mugoda Caroline Namogo of P.O BOX 757 Jinja an address strange to what the Plaintiffs used on the Application for Freehold.

In addition, that she had learnt from her lawyers that at the time of the Application for conversion by the Plaintiffs, there was a title on the land and that land was not customary land as it had been brought under the Registration of Titles Act. That the land was first surveyed in 2004 and neither Mugisa Kunihira nor she applied for and obtained a lease by fraud; that the lease was applied for by Mulawa and she never dealt with him at all. That the claim has not accused Mulawa of any wrong doing and it's not also shown how any such wrong doing in applying for the title is attributed to her.

That she was not given any Notice of Caveat as the same was allegedly filed in August 2007 when she was already registered as proprietor and was in full

occupation. That when the suit was filed, the Plaintiffs sought an order of vacant occupation of a four (4) storied building that was already roofed. That she remains a bona fide purchaser and was not aware of any adverse claims and none has been proved against her; and that neither the pleadings nor the witness statement have specifically stated what she did that was fraudulent.

The second defence witness was **Edward Nume, a male adult aged 41 years, Senior Assistant Town Clerk stationed at Bugembe Town Council and resident of Buwolero village, Buwenge Rural Sub County, Jinja District *(hereinafter referred to as DW2).*** He testified for the 4th Defendant who is stationed at Bugembe Town Council originally in Jinja District Local Government, which is currently within Jinja City Council and that between the years 2012 and 2017, he was the Secretary of Jinja District Land Board and the Chairman was Mr. Alex N.B Waibale (now deceased).

DW2 testified that his duty as Secretary District Land Board was that he used to conduct correspondences of the Board, keep records and take down Minutes, custodian of the seal of the Board.

That he had read the Amended Plaint in this case and had understood the claim; he testified that the 4th Defendant is a Statutory Body whose functions are to manage land within Jinja District as it then was, which land is/was not owned by anybody and it is a successor to the Jinja Municipal Council, as a controlling authority by operation of the law i.e. **the 1995 Constitution of Uganda** and the **Land Act of 1998.**

That at all material Times Jinja Municipal Council as it then was, had a statutory lease over lands within its bounds/boundaries and only itself by law, and could alienate lands within its bounds.

Further, that Plot No.6, Jinja Mpya, is within the original boundaries of Jinja Municipal Council, and as land formerly under the control of Jinja Municipal Council; and by reason of the matters stated above, even if the Plaintiffs may have occupied the suit land, which wasn't the case, Plaintiffs had no estate or interest in law in the said land.

That the Plaintiffs were then allocated the suit land by the 4th Defendants in its capacity as a controlling authority; and on the 4th day of August 2000, the 4th Defendant gave/granted a lease offer to one M/S. Mugoda Caroline Namogo of P.O Box 757 Jinja; and according to the amended Plaint), the Plaintiffs have instituted themselves as M/S. Mugoda Caroline Namogo (para 5(a) of the Amended Plaint.

That the said offer Annexure A of the Amended Plaint was not absolute but conditional in that:-

a) It was for a period of 5 years, from 1st August 2000 and was to expire on or about the 1st August 2005.
b) That a building to cost less than 200,000,000/= was to be erected by the offerees in the said land and to be completed for occupation, to the sales faction of the 4th Defendant within 5 years etc.

In addition, that by the time the lease offer expired, there was no development at all within the said land and the Plaintiffs were notified, that the said lease would be re-allocated since they were in breach of a covenant in this respect. He relied on **as Annexure A** to the 4th Defendant's Trial Bundle.

That on 17th July, 2007, one Mulawa. K. Hassy (now 1st Defendant) applied to be allocated the suit land and the 4th Defendant granted him a lease offer on 4th December, 2007, a copy of the Application was admitted as **Annexture B** on the 4th Defendants trial bundle and on the Witness Statement. That it is not correct as alleged in paragraph 5 of the Plaint that the Plaintiffs in 2013 applied for a renewal of a lease and conversion of the lease to a freehold, but that what rather happened, on an undisclosed date, the Plaintiffs applied or purported to apply for conversion from Customary Tenure to Freehold Tenure of a piece of land, located at Rubaga Village, Rubaga Parish, Mpumudde-Kimaka Division, Jinja Municipality without disclosing that it was Plot 6 Jinja Mpya (suit land). He referred to **Annexure B of the Plaint.**

That the said Application had been recommended by members of the Area Land Committee, to the effect that the plot was newly surveyed; and the 4th Defendants, without knowing that the land being applied for was Plot 6 Jinja Mpya, on the falsehoods of the Plaintiffs, erroneously, approved the Plaintiffs Application, on or about the 16th June, 2015, and signed in his capacity as Secretary of Jinja District Land Board **as per Annexture B**.

Court admitted the above documents as marked **PE-5.**

That by the time the 4th Defendant processed and approved Mulawa K. Hassy's Application, its powers were spent and such, and it could no longer approve the Plaintiffs Application given the fact that the suit land Plot 6 was no longer available for allocation. That by reason of the matters stated in paragraphs 18, 19, 20 & 21 (above, the allocation of the suit land by the 4th Defendant to the Plaintiff is null and void.

That by the above stated reasons, the 4th Defendant did not act fraudulently when it allocated the suit land to Mulawa K. Hassy; and that by the 4th Defendant processed Mulawa K. Hassy is Application in July 2007, the Plaintiffs lease offer had expired 2 years earlier.

In addition, that the caveat which is referred to in the Amended Plaint features in August 2017 as per **Annexure D** to the Amended Plaint, long after the 4th Defendant had processes the 1st Defendant's Application; and that the 4th Defendant allocated the suit land lawfully, clearly without any illegality and without any fraud.

DW2 denied that the Plaintiffs raised complaints to the 4th Defendant over the management of the suit land as alleged in paragraphs 6 (D) of the Amended Plaint ; and that by the time 4th Defendant allocated the suit land to the 1st Defendant, the Plaintiffs had no interest in the suit land. They denied conspiring with the 1st Defendant to deprive the Plaintiffs of "their" land and prayed that the suit against the 4th Defendant be dismissed with costs.

Court observed that the plaintiffs have decided to absent themselves. There is no to cross examine the witness on this statement and since the court had no questions for **DW2**, the defence was closed.

The Court visited the locus on the 23rd day of March 2023 at 02:30pm in the presence of the 2nd Plaintiff, the 3rd and Defendant, Counsels for the 2nd and 3rd Defendants and Counsel for the 4th Defendant.

In addition, it was submitted for **the 4th Defendant** that they had read the submission of the Plaintiff's counsel on this issue; however, they had not found any material concerning this issue.

Secondly, the issue does not affect the 4th Defendant, since it never participated in the transfer- the subject of this issue.

Thirdly, that they had read the submissions of the 2nd and 3rd Defendants counsel and associated themselves with the whole submission on this issue.

In order to resolve this issue, it is clear that the case against the 1st Defendant was dismissed under **Order 5 rule 1 (3) of the Civil Procedure Rules** for failure of the Plaintiffs to effectively serve him with their Amended Plaint and Hearing Notices.

I therefore agree with the submissions of learned counsel for the 2nd and 3rd Defendants that since the Plaintiffs never appealed against this decision and no

fresh suit has ever been instituted, it is clear that without being heard, court cannot make a finding that his acquisition of the lease was illegal or fraudulent, because the allegation of fraud or illegality against the 1st Defendant stands dismissed.

I have also analyzed the submissions of learned counsel for the 2nd and 3rd Defendants to the effect that the suit against the 1st Defendant was also statute barred. They argued that the 1st Defendant entered into the lease with the 4th Defendant in **February 2008** which is when the acquisition claimed to be fraudulent happened. The suit against him was brought by amendment (not by original plaint) in **May 2022**-14 years after the cause of action 1st arose. They relied on **Section 5 Limitation Act** and **Section 25(b)** (supra), and relied on **DEX 1** and submitted that a search of this public record would have revealed this, and there is no explanation how the creation of a public record such as the certificate was concealed. They relied on the Supreme Court stated in ***Hwang Sung Ltd vs M&D Timber Merchants SCCA 2 of 2018***, and ***Odyek Alex vs Gena Yokonani & others HCCA 9 of 2017*** (supra).

I have taken time to read the above decision and I agree with the submissions of learned counsel for the 2nd and 3rd Defendants that in this case, the Plaintiffs did not plead the grounds of disability or any other reason why they were unable to discover the lease of 2007 and its registration in 2008; and as such are not entitled to any limitation exemption.

The only conclusion is for the court must proceed under **Section 16 Limitation** Act to find that the right of action was extinguished. Given the record of this case, I have therefore arrived at a finding that there is no case against the 1st Defendant at all. It is accordingly dismissed with no order as to costs.

Turning to the case against the 2nd and 3rd Defendants, I have critically analyzed **PW1 Caroline Musimami *alias* Mugoda Caroline Namogo**'s evidence and the Exhibits she relied upon. She purported to have acquired a leasehold interest in respect of land comprised in Volume 3837 Folio Plot 6 at Jinja Mpya Road and asserted to have taken possession of the same. In paragraph 6, of her Witness Statement, **PW1** alleged that in 2000 she and her husband Musimami Paul identified and occupied plot No. 6 Jinja Mpya.

The fact that the Plaintiffs had been allocated this lease on the suit land (now comprised in Volume 3837 Folio 21Plot 6 at Jinja Mpya Road) by the 4th Defendant in 2000 is not disputed as per a copy of the Lease Offer Form dated

29/8/2000 together with receipts of payments of legal fees, premium and ground rent marked as **PE-1.**

As to whether the Plaintiffs took possession of and occupied plot No. 6 Jinja Mpya in the year 2000 after the lease was granted to them, as per **PW1's** paragraph 6 of her Witness Statement and as submitted by their counsel that the plaintiffs were in possession of the suit land, I have found that contrary to the allegations of **PW1** and the submissions of learned counsel for the Plaintiffs, this assertion is not supported by any evidence.

Indeed it is clear from her responses highlighted by learned counsel for the 4th Defendant and during cross-examination by learned counsel for the 2nd and 3rd Defendants that she had no idea of who had fenced the suit land. It is also clear that no evidence has been led as to who exactly installed the barbed wire on the suit land if at all as the alleged by **PW1** that she found army officers guarding the suit land when she went there.

The only conclusion I can draw from the evidence of **PW1** is that someone else not known to the Plaintiffs other than the current Defendants fenced the suit land and she had no idea who it was. It also leads me to conclude that by that time, it is that unknown person to the Plaintiffs who was the person in possession of the suit land. As such, this cannot be attributed to any of the Defendants in this case.

Secondly, the evidence before me also confirms that the lease that had been granted to the Plaintiffs came with certain conditions/ covenants which she admitted to failing to fulfil. Key among these conditions was that the Plaintiffs were to construct a building of a cost of not less than 200,000,000/=, to be completed within 5 years the period of the lease offer.

It was **PW1's** evidence that they had not complied with putting up the required building by the time the lease expired; what she claims is that they had put building materials and set up a foundation.

Again, **PW1** when asked about **2(b)** responded during cross examination that she had not presented to court any receipts for the 5 years she claims to have paid rent for the lease.

The above is proof that the building covenants had not been complied with by the Plaintiffs; and I agree with learned counsel for the 4th Defendants that as long as the building covenant had not been complied with, the 4th Defendant as a controlling authority retained control over the land. The case of ***Chris Akena***

Onapa vs. Mohamed Hussein Rashid Punjani- Supreme Court (supra) relied upon is instructive on this.

While **PW1** also stated is that they took materials on the suit land, started construction works and laid a foundation of the building on the suit land, but during construction, she was astounded to find their site fenced off with barbed wire and guarded by army officers in the morning.

My analysis of the evidence led by **PW1** confirms that that she did not erect any building on this land, and despite claiming that that they had got the permission to build, did not have any certificate from Municipal Council as she confirmed during cross examination.

Thirdly, that it is also not in dispute that the lease offered to the Plaintiffs was for a fixed period of 5 years only and as such, it terminated when the period agreed upon expired without fulfilling the development covenant being fulfilled. It is also clear to me that by the expiry of the offer, the Plaintiffs had not developed the suit land; they were therefore in breach of a development convenient.

Fourthly, **PW1** confirmed in paragraph 2(a) of her evidence in chief and during cross examination that the lease offer, by 1st August 2000 and this lease offer was for 5 years and was supposed to run up to 1st August, 2005.

The fact that the Plaintiffs' lease offer expired on 1st August 2005; was also corroborated by **DW2 Edward Nume** and reflected in his paragraph 13(a) of his Witness Statement admitted as evidence in chief.

It is not disputed that the Plaintiffs were aware of the expiry date of the lease afforded to them; and as rightly submitted by learned counsel for the 4th Defendants, it is clear that **PW1**, in her evidence in chief, did not comment on this important document.

The position of the law is clear that any evidence not specifically denied confirms that they conceded, that they were notified of the expiry of the lease offer. It is on record that the Plaintiffs interest in the suit land had ceased 1st August, 2005, however, as a prudent lessor and in fulfillment of the rules of natural justice, the evidence before me shows that the Plaintiffs were notified by a letter, '**annexure D'** admitted as **D. Exhibit 3,** notifying them, that since they failed to develop the land, the plot would be reallocated.

I have analyzed all the evidence before me and it is my finding and decision that the Plaintiff's despite receiving the said Notice from the 4th Defendants did not

take action that would have qualified them for a renewal of the lease. They therefore forfeited their right to the suit land, when they failed to develop it and failed to apply for a lease extension in time; and there no automatic right that accrued to them to be heard. I'm therefore convinced that in that case, the Plaintiffs were not even entitled to any notice.

It is also my finding that after the lease offer expired, the land reverted to the 4th Defendant and it was available for allocation to anybody including the 1st Defendant.

I have also examined **Regulation 23 (2) of the Land Regulations, and the submissions of learned counsel for the Plaintiffs that** there was no proof that the 1st Defendant's Application was advised in accordance with the above stated rules, however, I agree with the submissions of learned counsel for the 4th Defendant that this was not particularly pleaded as part of the particulars of fraud relied upon by the Plaintiffs and as such, it is a departure from pleadings and the Defendants could not address it in their Written Statement of Defence and even the plaintiffs did not lead evidence in it that line.

I'm also persuaded by the authorities relied upon by learned counsel for the 4th Defendant that it was not mandatory requirement for the 4th Defendant to advertise the 1st Defendants Application.

Again, the position of the law is clear that parties must succeed on their own pleadings and not extraneous matters.

Fifth, although **PW1** in her evidence alleged to have filed an Application for extension of the lease when the initial term lapsed, there was no concrete evidence of this. She testified that on 18th July, 2005, Certificate of Good Structural Practice paid the plan submission fees and Construction Permit admitted in evidence as **PE-2, PE-3 & PE-4** were not approved.

She also confirmed during cross examination that paragraph 10 of her statement, her plans for building were approved on 29th September 2005, it is clear that by then, the initial lease offer had expired on 1st August 2005, so it is not correct to say that by the time her plan was approved.

While it is not denied that the 4th Defendant approved the Plaintiff Architectural Drawings admitted as **PEX 2** and paid the submission fees admitted as **PEX 3,** I have taken time to analyze the General receipts part of **PEX 3 Serial No.0021119** for plan submission fees for UGX.400, 000/=.

I have also analyzed the Construction Permit Fees for UGX. 50,000/= paid to Jinja Municipal Council admitted as **PEX4** on 18th July 2005, **PW1** confirmed **during cross examination,** that **PEX 4** was titled City Council Kampala and was not for Jinja Municipal Council.

To make her case worse, **PW1** was not sure if that Form received by any authority. Since this is her case, one wonders who had a duty to ascertain that her Forms were received by the right authority?.

My answer is that certainly it was not any of theDefendants bearingin ind the law on burden of proof.

Further, since **PEX 4** is a document of City of Kampala, and a close look at the document reveals that the space for official use was not filled and Court also observed that there is no stamp whether it was received by City Council Kampala or Jinja; then there is no proof at all that this document was ever received and since Jinja Municipal Council is not based in City Council of Kampala, then this document has no evidential value in this case.

This means that much as **PW1** may have paid the above stated sums, there is nothing to show that any authority received and or acted on it. As such, it also remains redundant with no evidential value to prove any liability by any of the Defendants in this case.

As to whether the plans were approved by the 4th Defendant on 29th September 2005, it is clear that this was after the expiry of the lease and **PW1** confirmed **during cross examination** that she had no documents that the term of this lease ever extended to longer and conceded that the lease was not the lease extended; she also had no copy to prove that she applied for extension for full term to Land Office.

PW1 also confirmed **during cross examination** that she did not read Condition No. 5 on the lease and could not recall if she accepted this offer in writing and she did not have any proof/document accepting the lease offer.

Again, **PW1** asserted that she immediately, she went to Jinja Municipal Council and established that the land still belonged to her since she was pursuing the full term, but when she went to see the then District Land Officer Mr. Nahabo Asha, he refused to grant her audience; that they couldn't continue construction for the aforesaid reasons and the initial term of the lease then expired. She was also clear that the suit land remained as it was, fenced off with their foundation and construction materials thereon but the army officers eventually left the suit land, but she never brought any case during that time.

I have already pronounced myself as far as the case against the 1st Defendant Hassy Mulawa who got a lease in 2008, he sold the land to Kunihira in 2012, and the 3rd Defendant was registered on the suit land in 2017 when there was no caveat, notice in the newspaper or any report to police because that time she had applied for conversion in 2015.

PW1 the claimed to have later approached the 4th Defendant's office, explained the situation and their intention to enlarge the lease to the full term of ninety nine years and also secured freehold interest; and the 4th Defendant handed them the forms to fill and sign which Application was approved by the 4th Defendant under Minute No. JDL 3/366/2015 attached as **PE5**.

I cannot also ignore the fact that in the Application Form **PE5**, particularly No. 3, **PW1** was applying for land whose location on that form is at Rubaga, Kimaka, and Masese Mpumudde in Jinja City which is completely different from the suit land before this court.

PW1's claim that she filled this form with their guidance-of the Lands people exposes her as being untruthful since it does not disclose/ display that. The Form is also faulty in that after the name Musimami, the space for date sealed is blank the date is not filled.

Again, No 5 (approximate area), was not filled and she was clear in cross examination that she did not know the actual date when she filled this Form.

I believe this was deliberately done to confuse the Land Officers and I do not also believe that by presenting under paragraph 'C' in 2015 as newly surveyed or re-surveyed as **PW1 answered in cross examination**, this was an innocent mistake since the suit land had been surveyed way back in 2008. This approval took place in the year 2015, almost 10 years after the lease allocated to the Plaintiffs had expired. This means that even if the 4th Defendants signed and approved the lease as admitted by **DW2**, its net effect is that it confers no legal rights to the Plaintiffs since by that time, the 4th Defendants had no land to lease in respect of LRV 3837 Folio 21 Plot 6 land at Jinja Mpya.

It is therefore clear that those exhibits cannot be used against the 4th Defendant in this case, since it is clear that it is Jinja Municipal Council that issued the receipts and not the 4th Defendant in this case which is Jinja District Land Board.

Further, since the Plaintiff never found it necessary to bring a case against Jinja Municipal Council the issuing authority in respect of those exhibits, the court finds them of no evidential value against any of the defendants in this case.

In relation to the deed prints **PEX6**, I agree with learned counsel for the 4th Defendants submissions that this is not a permission from the 4th Defendant to the Plaintiffs to survey the land and it is not a survey instruction.

In addition in view of the uncontroverted evidence by **PW1** in cross examination when she admits that the suit land was surveyed in 2008, then it goes without saying that since the evidence clearly confirms that **PE6** was issued on 22nd January **2005** and that this plot was surveyed earlier than 2008 and had been granted to the 1st Defendant, who got possession of the suit land way back on 21st February 2008, when he got registered as the registered proprietor and this was clearly almost 2 and half years after the expiration of the Plaintiffs' lease, then **PEX6** has no evidential value and is null and void in respect of the suit land.

It is therefore clear from the evidence that I therefore see no rules of natural justice that the 4th Defendant breached when it allocated the suit land to the 1st Defendant without according a hearing to the Plaintiffs since they had clearly lost any rights they had enjoyed in respect of the suit land.

By the time of filing this suit in 2017, it is the 3rd Defendant in possession, per **DEX1**.

Having found no case against the 1st Defendant, the 1st Defendant's acquisition of the suit land cannot be faulted and is declared lawful. It's also clear from my first finding that there is no case against him can be sustained.

Turning to the 2nd and 3rd Defendants, as per **PE5, PW1** confirmed that she did not have any customary interest on the suit land prior to her Application for the initial lease which expired on 1st August 2005. It therefore follows that by the time **PW1** purportedly applied for extension, albeit on erroneous Application Forms, as per paragraph 18 of her evidence in chief, the Registrar of Titles had processed a title for Mugisha Kunihira 2nd Defendant whom she did not know and had never seen.

I have also analyzed **PE8 page 28**, the caveat filed in **2017** by the 1st Plaintiff and noted that this was put in place 12 years after the land changed hands and long after the expiration of her initial offer which ended on 1st August 2005.

It is also not denied that the 3rd Defendant acquired her interest from the 2nd Defendant after approval from the 4th Defendant. **PW1** was clear that from 2005-2017 there was no one on the suit land or any sign of occupancy, however, her filing an Application that the 3rd Defendant should be stopped from constructing was in 2017.

I cannot therefore also fault the 3rd Defendants acquisition of the suit land and I will address it in detail in the 2nd issue in this case.

Turning to the case against the 4th Defendant, PW1 was not sure who fenced the land, but testified that she went to Land Office to seek for audience from Land Officer at that time and also Municipal Council to cross check whether there is a Minute in the Minute File whether they had given away the land. That when she checked, she was given the file by 4th Defendant.

While she may have gone to both Municipal Council where Minute Files were and also went to Land Office and it is not denied that she was given the initial offer by the 4th Defendant, she was clear that she did not report to Police the presence of the alleged army officers she claims to have seen on the suit land. It is also not in dispute that by 2017 when the 3rd Defendant acquired title on the suit land, the title had already been in existence since 2008.

All the above evidence by **PW1** when she claimed that they were in possession until the year 2015, clearly exposes her untruthfulness.

Having analyzed the above evidence of **PW1** and that of **DW1** and **DW2** in this case, the only conclusions I can draw is that the Land Board gave her nothing in 2015, but wishful thinking on the part of the Plaintiffs for land whose conditions they failed to fulfil and lost.

I have also relied on **Section 64 RTA (Cap. 230)** reads that:-

> "(1) *Notwithstanding the existence in any other person of any estate or interest, whether derived by grant or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in the case of fraud, hold the land or estate or interest in land subject to such encumbrances as are notified on the folium of the Register Book constituted by the certificate of title, but absolutely free from all other encumbrances, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that by wrong description of parcels or boundaries is included in the certificate of title or instrument evidencing the*

title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser.

(2) Notwithstanding subsection (1), the land which is included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, covenants, conditions and powers, if any, contained in the grant of that land, and to any rights subsisting under any adverse possession of the land, and to any public rights of way and to any easements acquired by enjoyment or use or subsisting over or upon or affecting the land, and to any unpaid rates and other monies which without reference to registration under this Act are by or under the provisions of any written law declared to be a charge upon land in favour of any Government department or officer or any public authority, and to any leases, licenses or other authorities granted by the Governor or any Government department or officer or any public authority, and in respect of which no provision for registration is made and also, where the possession is not adverse, to the interest of any tenant of the land, notwithstanding the same respectively are not specially notified as encumbrances on the certificate or instrument."

The above section of the law not only provides for priority of titles that exist over same piece of land, but also provides for fraud as one of the exceptions to the general rule that holding of a title to land is paramount.

Relating the above to this particular case, in paragraph (6) of the Amended Plaint, the Plaintiffs give the particulars of fraud against the defendants as follows;

1. Causing the survey of the plaintiff's land and fraudulently obtaining and /or procuring certificate of Title on the suit land.
2. Fraudulently entering onto the plaintiffs' land and started construction.

After carefully evaluating all the evidence on the issue, I have found that the inescapable deduction from all the evidence is that the Plaintiffs were the first to be allocated the suit land comprised in LRV 3837 Folio 21 Plot 6 land at Jinja by the 4th Defendant.

The evidence of **PW1** is to the effect that while the Plaintiffs entered on the suit land briefly and expressed intentions of embarking on and entered the land by construction of a foundation and depositing thereon some construction materials, she was also clear that they failed to fulfill terms of the leasehold covenant by time the leasehold expired in the 5th year. She relied on P. **Exhibits PE-2, PE-3** to prove that the Plaintiffs were paying premiums for the suit land, however, and her allegations that they were threatened off the suit premises

when they found it fenced off and guarded by army officers, this could not be substantiated with concrete evidence.

Secondly, it is also not in dispute that the allocation to the Plaintiffs came with conditions that had to be fulfilled before the initial lease granted to them could be extended.

My findings at this point are that as the Plaintiffs were dilly dallying, the leasehold period expired with no commercial building built by them in sight. This was a clear failure on their part to honour the covenants that came with the lease and prompted the land to revert back to the lessee who was the issuing authority. It is also clear that the Certificate of Title issued to the 1st Defendant didn't show anywhere that the Plaintiff's once held a lease over the same suit land, and there is no proof that there was any fraud on the part of the 4th Defendant. This was admitted in the witness statement of **DW2 Edward Nume**, the representative of the 4th Defendant on Pg. 2, paragraph 11 of the Witness Statement that:-

"*The Plaintiffs were then allocated the suit land by the 4th Defendant, in its capacity, as a controlling authority*".

I have also critically analyzed the contents of **Exhibit PE-5**, **an Application for Conversion from Customary Tenure to Freehold Tenure** of the suit land by the Plaintiffs under Minute Number dated **JDLB /366/2015** dated 16.06.2015 by the Area Land Committee which suggests that the said conversion for Plot 6 Jinja Mpya (suit land) was different from what they allocated the 1st, 2nd and 3rd Defendants by the Jinja District Land Board (4th Defendants). This was confirmed by **DW2** in this case who was the then Town Clerk, Jinja.

Specifically in paragraph 15 of the Witness Statement of the 4th Defendants, **DW2 Edward Nume** states on page 3 that:-

"That on 17th of July, 2007, one Mulawa .K. Hassy, now the 1st Defendant in this suit, applied to be allocated the suit land and the 4th Defendant granted him/her a lease offer on 4th December 2007; in this respect, I rely on a copy of an application for leasehold land form N0.8 Annexure B to the 4th Defendant's trial bundle."

In paragraph 20 of the witness statement on pg.3-4 "That *we (4th Defendant), without knowing the land being applied for, was Plot No.6 Jinja Mpya, on the falsehoods of the applicants/Plaintiffs, erroneously approved the Plaintiffs application, on or about the 16th of June 2015, I signed it in my capacity, as the secretary of Jinja District Land Board..."* signed by the Edward Nume.

From the above, while it is not disputed that it was the same office of the Lands Committee that endorsed the allocation and offer to the Plaintiffs and authorized its survey as stated by **DW2**, and he admitted to that he signed on the Form, it is also clear after a critical analysis of that Exhibit that this was done in error, which error **DW2** does not deny because the Plaintiff's lease offer had long expired.

Another undisputed fact is that Mulawa K. Hassy applied for a lease over the suit land in 4th December, 2007 and obtained registration, after the Plaintiffs failed to comply with the conditions set in the initial lease grant.

Section 59 of the Land Act, Cap 227 (as Amended) provides for the functions of District Land Boards;-

(1)The functions of a board shall be to—

(a) *hold and allocate land in the district which is not owned by any person or authority;*
(b) facilitate the registration and transfer of interests in land;
(c) take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority;
(d) cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents;

From the above, it is clear that the 1st Defendant allocated the suit land which had by then reverted back to them after the failure of the Plaintiffs to fulfill the covenants/conditions that came with the lease covenant. As such, they had a right to reallocate the same to another interested party, who in this case was the 1st Defendant.

Issue 2: Whether the transfer of the suit land from the 1st, 2nd and 3rd Defendants was tainted with fraud and fraudulent and whether the plaintiffs were deprived of any land through fraud.

In respect of this issue, it was submitted by learned counsel for the Plaintiffs that in paragraph 6 of the Plaint, specifically pleaded fraud on all the Defendants. That Fraud has been defined to include dishonest dealing in land or sharp practice intended to deprive a person of an interest in land, including unregistered interests. He cited ***Uganda Post Telecommunications vs A.K.P.M Luytaaya SC Civil Appeal No. 36 of 1995*** that to procure registration of title in order an unregistered interest amounts to fraud and they relied on ***Katarikawe vs Katwiremu [1977]HCB 187*** where it was held that :-

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

That it was the testimony of **PW1** at paragraph 11 of her Witness Statement that they took construction materials to the suit land, started construction works and laid a foundation thereof only to find the construction site fenced off with barbed wire, that in cross examination, **PW1** stated that the suit land was surrounded off by the army and fenced off whereof she went to Jinja Municipal Council to complain. That they noted that while the 4th Defendant relies on **DEX3** being a Statutory Notice of Lease Expiry, the same was not served upon the 2nd Plaintiff as there is no such proof of receipt by the 2nd Plaintiff.

Secondly, that **DEX3** was issued in 2007 in the same year when the 1st Defendant applied for allocation on 17/09/2007 **(as per DEX4)** and the same was granted on 1/12/2007. That this manifest a dishonest dealing on the part of the 4th Defendant as to why the Statutory Notice of Expiry of the lease was not issued earlier on when the lease expired in 2005. That the Supreme Court in ***Fam International Ltd & Anor vs Mohamed Hamid El-Fith SCCA NO. 16 OF 1993*** noted that:-

"Fraud is such a grotesque monster that the courts should hound it wherever it rears its head and wherever it seeks to take cover behind any legislation. Indeed fraud unravels everything and vitiates all transactions".

Further, that the Supreme Court adopted the principle in ***Lazarus Estates Ltd vs Beasley (1956) 1QB 702 at 712,*** where Denning LDJ emphatically stated that:-
"No court in this land will allow a person to keep an advantage which he has obtained by fraud, no judgement of a court no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved, it vitiates judgements, contracts and all transactions whatsoever".

In the premises, they prayed that Court finds that the actions of the Defendants were illegal and fraudulent.

Learned counsel for the 2nd and 3rd Defendants in reply resolved this issue bearing in mind the conclusions in the first issue; and submitted that first and

foremost, fraud must be attributable to the transferee. They relied on page 50 of the case of ***Progressive v. Barclays CACA 349 of 2020.***

Further that as far as allegations of Fraud as against the 1st Defendant, it was pleaded that the 1st Defendant caused the Survey of the plaintiff's land and fraudulently obtained the certificate of title to the suit land and that he purported to acquire a lease on land possessed by the plaintiffs to deprive them of their land. (See Paragraph 6A of the plaint.)

That **during cross examination**, the 2nd Plaintiff stated that from 2005 to 2017, the land was vacant and had been fenced by soldiers and that because it was vacant, she was prompted to re-apply. The 2nd Plaintiff and only witness for the Plaintiffs did not state who deployed the people who fenced it and the solders. She stated that she had only put materials but had not constructed on the land. At locus, she did not know where the land was and stated she did not use the land for agriculture or any other purpose. She could not identify where it started or ended. She stated that the 1st Plaintiff her husband was not there either and acknowledged that her lease expired, it was not renewed and that she was never registered on the certificate of title. She did not erect anything anywhere. When asked if she had building plans, she said she had none.

That all the above shows that she and her husband were nowhere to be found in any documentation concerning the land or in possession. That in 2007, the 1st Defendant applied for and was granted a lease (not a purported lease-whatever that is) and was registered in 2008. He could not by any due diligence of any magnitude have discovered that the Plaintiffs had any prior interest and indeed they had none. An expired lease is not registrable anywhere as seen in the submissions hereunder.

Further, that nothing in the Amended Plaint or evidence shows that the 1st Defendant committed any act of fraud. No Fraud or illegality was proved. Coupled with the fact that the 1st Defendant was denied chance to defend himself and the case against him was statute barred; and prayed that court finds that no fraud was proved against him.

As far as Fraud as against the 2nd and 3rd Defendants, they submitted that these two were transferees. That it is trite law that fraud can be proved against transferees, if they were involved in or concealed in the fraud of the first registered proprietor. Once there is no fraud on the part of the first registered

proprietor, by whom the plaintiffs were deprived of land, then there cannot be fraud attributable to transferees.

That it is claimed in the first case that the 2nd and 3rd Defendants purported to make themselves bona fide purchasers for value without notice. That **DW1 Khaola Ritah** testified that he was informed by one Lukenge about the land. She explained how she did due diligence at lands, at Municipal council, at the land and with the neighbors. She further stated that there was no building plan for the plot until she submitted one. She then purchased and started construction with no disturbances. Indeed when court visited locus, she knew the neighbors well, the demarcations and she produced the title revealing no known encumbrances.

She further explained that the neighbors knew both Mulawa and Mugisha as the previous owners and that these too were in the records at lands office, and not the Plaintiffs. She went further to have Mugisha pay his arrears and produced receipts to prove the same. The only materials on the land, she stated further, were confirmed to belong to Mugisha, the one who sold to her the land.

That it should be noted that the evidence of **DW1** was not controverted by another testimony and she was not cross examined and was admitted unchallenged. **PW1**'s testimony did not challenge the purchase in anyway. Neither does it show that there was anything noticeable in the records on the land that should have indicated that the plaintiffs had a claim. '*What then, did the 3rd Defendant have notice of, to say she did not purchase bona fide?'*

Their answer was that it was NOTHING; therefore the allegation of failure to conduct due diligence and knowledge of adverse claim is only wishful thinking. That the issue of failure to inquire from the Area Land Committee is not an act of fraud; their function is only exercised before the land is brought under the **Registration of Titles Act** and it was not shown that the result of the inquiry would have been different – because at the time of the purchase by 2nd and 3rd Defendants, there was a registered proprietor.

That there was no caveat on the title. There was no complaint lodged to them by the Plaintiff and the Area Land Committee had no basis to advise against the purchase by either Defendants. They relied on the case of ***Progressive v. Barclays CACA 349 of 2020***, that fraud must be pleaded and proved to the required standard. That averments on their own without elaboration on what is dishonest or amounts to sharp practice about them, are not sufficient to

establish fraud to the required standard. They asked court to find that the Defendants were not guilty of Fraud, as there was none; that going by the definition of fraud stated on page 55 of the above authority of ***Progressive v. Barclays***, there is no evidence of fraud against the defendants.

On the last leg of this issue, **whether the plaintiffs were deprived of their land through fraud**, they submitted that the plaintiffs did not have any interest in the land. That the 1st Plaintiff seems to have only first appeared on the documentation in 2015 when the Plaintiffs applied for conversion of customary interest to Freehold. That as can be seen from **DEX 1,** in 2015, the land had already been transferred from Mulawa K Hassy to Mugisa; Land was not available for the grant of any other interest and the Land Board explained that it had been misled to grant the 2015 Application as there was no proper description of the land or date of the Application.

That this leaves the 2nd Plaintiff with only the expired offer; and the 2nd Plaintiff stated in evidence that she never wrote to accept the offer nor did she have the same renewed yet it expired in 2005 and it took her 15 years before attempting to apply for the land but by that time, it was too late.

They therefore submitted that she had no interest at all in the land; and relied on Justice Mubiru in ***Alex Agandiru vs Etoma Francis & Others CS 7 of 2011*** *(pg. 15)* that *"once a lease expires, the land reverts to the controlling authority".* He further stated that the controlling authority can lease it to "*an applicant when it is either i) vacant and there are no conflicting claims to it, ii) or is occupied by the applicant and there are no adverse claims to that occupation, iii) or where the applicant is not in occupation but has a superior equitable claim to that of the occupant, iv) or where the applicant is not in occupation but the occupant has no objection to the application.*"

They concluded that clearly the first 2 applied to the 1st Defendant whose title and Application were not challenged; and the Plaintiffs therefore have no claim.

In order to resolve the second Issue, I have carefully analyzed the evidence of all the parties to this suit. It is also not in dispute that land ownership in Uganda is spelt out in **Article 237 (3) of the Constitution of the Republic of Uganda. Article 237 (3) (d)** specifically mentions leasehold land ownership and a form of land tenure system in Uganda; reinforced in **section 4 of the Land Act 1998 (as amended).**

Section 101(1) of the Evidence Act (supra) places the onus to prove interest in the suit land on the Plaintiffs. A close scrutiny of the events that led to the acquisition of the Certificate of Title by the 1st Defendant reveals no anomalies in the process of acquisition of title by 1st the Defendant.

Of specific significance is the evidence of **DW2** who was involved in allocating the lease to **PW1** and later to the 1st Defendant from whom both the 2nd and 3rd Defendants derived title.

All the learned counsel in this matter cited a plethora of authorities on what constitutes fraud, the law relating to fraud states according the **Registration of Titles Act Cap 230, section 92 (b)** that:-

"*Upon registration of the transfer, the estate and interest of the proprietor as set forth shall pass there upon become the proprietor thereof".*

Be that as it is, whereas **S. 59 of the Registration of Titles Act Cap.230** provides that a certificate of title is conclusive evidence of ownership of title, however, **Section 77 of Registration of Titles Act** states that:-

"Any Certificate of Title, entry, removal of encumbrance, or cancellation, in the Register Book, procured or made by fraud, shall be void as against all parties or privies to the fraud."

Fraud was defined in the case of ***Edward Gatsinzi and Mukasanga Ritah vs Lwanga Steven Civil Suit Number 690 of 2004*** as:-

"*Intentional perversion of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination or by suppression of the truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture. A generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestion or suppression of truth and includes all surprise, trick, and cunning dissembling……"*

Further, under section **176 (c)** of the **Registration of Titles Act Cap.230**, *"no action of ejectment or other action for the recovery of any land shall lie or be*

sustained against the person registered as proprietor under this act, except in the case of a person deprived of any land by fraud as against a person deriving otherwise than as a transferee bonafide for value from or through a person registered through fraud".

From the above, the definition of Fraud is now settled law has been restated in numerous case. See ***Fredrick Zaabwe vs Orient Bank & 5 Others (2006-2007) ULSR 144 at pages 158 and 159; Edward Mpoza Katuluba & Another vs- John Lukoma & 2 others Civil Suit No.4 of 2016*** with approval referred to the case ***F.I.K Zaabwe vs. Orient Bank & Other S.C.C.A No.4 of 2006*** in which Justice Katureebe in the Supreme Court**,** relying on **Black's Law Dictionary 6th Ed. at 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 deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury".

The simpler **Osborn's Concise Dictionary 8th Edition Sweet & Maxwell, 1995 at page 152** also gives the same definition of fraud.

Further, in the case of ***Edward Mpoza Katuluba & Another vs John Lukoma & 2 Others (supra)*** court also referred to the case of ***Kampala Bottlers Ltd vs Damanico (U) Limited SCCA No. 22 of 1992,*** Justice Wambuzi clarified that:-

"Fraud must be attributed to the transferee. I must add that it must be attributed either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act".

Again, according to **Kerr on the Law of Fraud and Mistakes 5th Edition, part i page 1,** fraud is defined in contemplation of Civil Court of Justice to include:-

'All acts, omissions confidence, justly reposed and injurious to another or by which undue or unconscientiously advantage is taken of another. All surprise, trick, cunning, dissembling and unfair way that is used to cheat anyone. Fraud in all cases implies a willful act on the part of anyone whereby another is sought to be deprived by illegal or inequitable means of what he is entitled to'.

Also, the Court of Appeal in the case of ***Yakobo M, Ssenkungu & Others vs Cresensio Mukasa Civil Appeal No. 17 of 2014*** relied on the definition of fraud in the case of ***Husky International Electronics, Inc. vs Ritz No. 15-145 of***

2016 the Supreme Court of United States of America and expanded the meaning of actual fraud to include '*fraudulent conveyances, typically involve transfer to the close relative, a secret transfer of title without possession or for grossly inadequate consideration'.*

Further, forgery denotes the making of a document with intent to deceive and /or to defraud. **Osborn's Concise Dictionary (8th Edition) Sweet &Maxwell (supra)** defines "fraud" to involve the making of a false representation knowingly, or without belief in its truth or recklessly.

Given the above authoritative definitions, I have critically analyzed all the evidence and submissions of all the parties to this case. As far as the cause of action for the Plaintiffs, the law provides that fraud must be particularly pleaded and particulars of the fraud alleged must be stated on the face of the pleading as per **Order 6 rule 3 Civil Procedure Rules.**

The law also specifies that if the facts of alleged in the pleading are such as to create a fraud it is not necessary to allege fraudulent intent; what is important is that the acts alleged to be fraudulent must be set out, and it should be stated that those acts were done fraudulently. See ***B.E.A Timber Co. vs Inder Singh Gill [1959] 463 per Forbes, V.P at page 469.***

In the instant case, I have had occasion to examine the plaintiff's plaint; the Plaintiffs' interest is clearly articulated and the particulars constituting fraud are clearly spelt out in Paragraph 6 (D) of the Plaint as follows:-

(v) 'Stealthily granting the lease over the suit land to the 1st Defendant well knowing and in disregard of the subsisting interest of the Plaintiffs.

(vi) Disregarding all the Plaintiffs' complaints about illegal transaction on the suit land.

(vii) Conniving and/conspiring with the 1st Defendant with the intention of depriving the Plaintiff of their interest in the suit land.

(viii) Deliberate failure to follow the well laid out procedure in conducting transaction over the suit land".

The Plaintiffs relied on the evidence of **PW1 ONLY.**

Before I address each of the above grounds separately, it is important to go on record on the law governing the burden of proof in cases of fraud. Learned counsel for the plaintiffs submitted that proof of fraud requires a standard beyond the balance of probabilities. The case of ***Bugembe Kagwa Segujja vs Steven Eriaku & Alvin Ssetuba Kato*** with approval referred to the case of

Sebuliba vs Coop Bank Ltd (1987) HCB 130 where court stated that *'the standard of proof in fraud cases is beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases."*

This court is acutely aware that of that standard of proof in fraud cases which is heavier than on the balance of probabilities generally applied in civil matters. See ***Kampala Bottlers Ltd vs Damanico (U) Ltd CA No. 22/1992*** and ***Ntege Mayambala vs Christopher Mwanje CA No. 72/93 [1994] I KALR 67.***

(a) Stealthily granting the lease over the suit land to the 1st Defendant well knowing and in disregard of the subsisting interest of the Plaintiffs.

Bearing the above in mind, the law as cited above and after the evaluation of the evidence, a number of findings have clearly emerged which have profound bearing on the parties' respective claims.

In the first place, **DW1 Khaola Rita,** the 3rd defendant and current registered owner of the suit land was clear that she bought the same 3rd in March 2017, from its previous registered owner Mugisha Kunihira David. She was also clear that before she agreed to pay the purchase price and the 2nd Defendant who confirmed to her that it was his together with the building materials thereon.

I have examined the procedures she undertook before she paid the purchase price as narrated in her Witness Statement admitted as her Evidence in Chief as summarized in the 1st issue; and I cannot fault them, if anything, it is clear that she took due process to ascertain that the person who was selling to her was the person legally registered on that title and that there were no encumbrances registered on the title at the time.

Further, **DW1 Ritah Koala** in her defence, pleaded that she was a bonafide purchaser for value and clearly stated in paragraph 10 of her witness statement (evidence in chief) that:-

"*I purchased the land with the material thereon and started building upon getting approved plans…"*;

I cannot fault that **DW1** exercised due diligence and caution before she purchased the suit land; and her being a third buyer of this land after it had already been registered and owned by two previous owners, it cannot be used against her that she found building materials on the land she bought; it is also clear that she took measures to inquire and the seller confirmed to her that they

were his and he was selling them as part of the whole land. As far as evidence is concerned, there is no proof that any other person other than the person who sold the land to her had left these materials behind, since no one was laying any claim to them.

It is also clear from **PW1**'s evidence that the initial expired lease was in the name of Mugoda Caroline Namogo of P.O BOX 757 Jinja and that there was an attempt by the Plaintiffs long after their lease had expired and the land had reverted back to the issuing authority to have the land converted into Freehold title.

I have addressed the faulty processes they allegedly took in the first issue and I see no need to repeat it here. What is clear is that by the time of the Plaintiffs' alleged Application, there was already an existing title on the land and that land was not customary land as it had been brought under the **Registration of Titles Act**. There is proof that it was first surveyed in 2004 when the lease was applied for by Mulawa whom **DW1** confirmed that she had never dealt with at all.

DW1 was clear that the Plaintiffs have not accused Mulawa of any wrong doing in applying for the title, was not given any Notice of Caveat as the same was allegedly filed in August 2007 when she was already registered as proprietor and was in full occupation. She therefore denied any fraud attributed to her and that she remains a bona fide purchaser and was not aware of any adverse claims and none has been proved against her; and that neither the pleadings nor the witness statement have specifically stated what she did that was fraudulent.

I have already dealt with fraud in the first issue and found no fault against the 2nd and 3rd Defendants in this case. In order to further resolve the case against **DW1 Khaola Rita**, the starting point on this issue will be to define who a bonafide purchaser for value is. In the case of ***Hajji Abdu Nasser Katende vs Vithalidas Haridas & Co. Ltd Court of Appeal (Civil Appeal No. 84 of 2003),*** this Court while discussing the doctrine of a *bonafide* purchaser for value without notice stated the position of the law as follows at pages 21-22 of the lead Judgment of L.L M. Mukasa-Kikonyogo DCJ;-

"It suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchase to successfully rely on the bona fide doctrine as was held in case of HANNINGTON NJUKI VS WILLIAM NYANZI H.C.C.S NO. 434 / 1996 must prove that;

(1) he holds a certificate of title
(2) he purchased the property in good faith

(3) he had no knowledge of the fraud
(4) he purchased for valuable consideration
(5) the vendors had apparent title
(6) he purchased without notice of any fraud
(7) he was not party to the fraud.

*A bonafide purchaser of a legal estate for value without notice has absolute, unqualified and answerable defence against the claims of any prior equitable owner. The burden to establish or prove the plea lies on a person who sets it up. It is a single plea and is not sufficiently made out by proving purchase for value and leaving it to the opposite party to prove notice if he can." (*Emphasis added)

My analysis of the evidence led in this case as captured in the 1st issue in this case proves that the Plaintiffs miserably failed to comply with the covenants of the lease they had been granted i.e. to put up commercial building worth UGX 200 Million within the 5 years as per that lease offer; and as a result, the suit land reverted back to the issuing authority (4th Defendant) and there was nothing under the law that would have stopped them from offering the same land to another serious contender, who in this case happened to be the 1st Defendant in this case.

Since I have not found any convincing evidence which points at deliberate dishonesty on the part of the 1st Defendant or the subsequent buyer from him in the process of acquiring the title to the suit land, I can safely conclude that the acquisition of this Certificate of Title was not tainted with any irregularities; and there is no case against him anyway.

My conclusions are that the 1st Defendant was a bonafide purchaser for value who had acquired rights to the suit land thereafter his Certificate of Title with clean hands.

Following up on that, I cannot therefore fault the 1st Defendant for disposing of his interest in the suit land and passing title to the 2nd Defendant in this case; and for those reasons, I agree with the submissions of learned counsel for the 2nd and 3rd Defendants that the Plaintiffs no longer hand any subsisting interest in the suit land by the time the 1st Defendants acquired it.

It is also clear that the 2nd Defendant held the title to the suit land for about 5 years until he sold it off to the 3rd Defendant in this case. During all that time,

there is no proof that the 1st Defendant's title was never challenged before any lawful authority by the Plaintiffs or that it was ever caveated or any case reported to Police against him. Instead, the evidence before me confirms that the 1st Defendant did not in any way rush to sell off the suit property to a third party.

From the above, the only conclusions I can draw is that the 1st Defendant acquired an unimpeached title over the suit land that was vacant from the controlling authority (4th Defendant) at the time and it is this very title that after 5 years, they sold to the 2nd Defendant who also sold it to the 3rd Defendant.

Having evaluated the evidence on record for both the Plaintiffs and for the 2nd and 3rd Defendants, it is my finding and decision that I cannot find any evidence that would convince me or any other reasonable tribunal acting on the available facts and evidence to prove any fraud on the part of the 2nd or third defendants in this case.

The arguments by learned counsel for the Plaintiffs, places the blame on the 1st and 4th Defendants and they put up spirited arguments that the Plaintiffs were dispossessed of the suit property illegally.

I have already made a finding that during the *locus in quo* visit clearly showed that there was fully developed properties on the suit land by the 3rd Defendant and comprised of blocks of flats. **PW1** who was present was asked to point out exactly where the land she was claiming was located could not do so with certainty and instead, pointed to a neighboring plot of land directly opposite the existing market gate across the road.

She also had no idea where the land she alleged was allocated to them started or ended, despite claiming that she had been in occupation of the same before it was fenced off and she was frustrated by army officers guarding it.

As for the 2nd and 3rd Defendants, since I have not found any of their acquisition of the suit land to be tainted with untruthfulness, trickery and or fraud, my conclusions are that they both qualify to be a bonafide purchasers for value.

I have already elaborately addressed and the evidence of **DW2** who confirmed to court that the Plaintiff's interests in the process of extending the initial leasehold title that had been allocated to them was already expired by the time it was sold to **DW1**.

Again, the law provides that pendency of a suit doesn't affect transactions in the Land Office. The position of the law is that ***Doctrine of lis pendent*** does not apply in Uganda as there is no law which governs its operation as was elaborated upon in the case of ***J. W.R Kazoora vs Rukuba, Supreme Court Civil Appeal No. 13 of 1992.*** This means that in this case, there were nothing to stop the officials from the Land Office from making a title in favour of the 1st Defendant because there was no expression of any legal proceedings whatsoever against the 1st Defendant at all in all that period that would have barred them from doing so; and the Plaintiffs took no steps to protect what they claimed as their interest in the suit land by either lodging a caveat or obtaining an injunctive orders against the 1st Defendant.

My conclusions are that I agree with the submissions of learned counsel for the Defendants and for the 4th Defendant and I cannot fault the actions of the 4th Defendant; and I so hold.

I cannot therefore also fault the 4th Defendants in breach of statutory duty for allocating land that had reverted back to them to another serious contender after the expiration of the Plaintiff's initial lease offer and failure to fulfill the covenants attached to that offer.

For those reasons, this ground is resolved in favour of the 2nd, 3rd and 4 Defendants in this case.

Issue 3. Whether the 1st, 2nd and 3rd Defendants trespassed on the suit land?

It was submitted by learned counsel for the Plaintiffs that the learned authors **Salmond and Heusteon on the Law of Tort, 19th Edn. (London: Sweet & Maxwell, 1987) 46** in examining the tort of writ that Trespass to land occurs when a person directly enters upon land in possession of another without permission and remains upon the land, places or projects any object upon the land. That it therefore follows that the above that trespass is a possessory action where if remedies are to be awarded, the Plaintiff must prove a possessory interest in the land and not necessarily proprietary interest.

They relied on Justice Stephen Mubiru *in* ***Odyeki Alex & Anor vs Gema Yokonani & Others CA No. 009 of 2017*** stated that:-
"An action for the tort of trespass to land is therefore for enforcement of possessory rights rather than proprietary rights. 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. It is an invasion affecting an interest in the exclusive possession of his property. The cause of action for trespass is designed to protect possessory, not necessarily ownership interest in land from unlawful interference. An action for trespass may technically be maintained only by one whose right to possession has been violated. The gist for trespass is violation of possession, not challenge title. To sustain an action for trespass, the plaintiff must be in actual physical possession.

He added that *"the fact of possession for purposes of an action in trespass to land is proved by evidence establishing physical control over the land by way of sufficient steps taken to deny others from accessing the land. Actual possession therefore is established by evidence showing sufficient control demonstrating both an intention to control and an intention to exclude others. In order to disclose a cause of action of the tort of trespass to land, the plaintiff had to plead facts to show that (a) he was in possession at the time of the entry complained of; (b) there was an unlawful or unauthorized entry by the respondents; and (c) the entry caused him damage. Whereas the tort of trespass to land is a continuing tort, such that the law of limitation does not apply to it strictly see Eryasafu vs Wilberforce Kluse (1994) 111 KALR 10 maintenance of that action is available to a person in possession. In Nakagiri Nakabega and 2 others v Masaka District Growers [1985] HCB 38, it was held that only a party in possession is entitled to sue for trespass.*

They submitted that a cause of action for trespass to land only accrues to a person in possession of the suit land at the time he or she was dispossessed of the same. That it was the testimony of **PW1** at paragraph 11 of her witness statement that they took materials on the suit land and started construction and laid a foundation of the building on the suit land unfortunately they found the site fenced off with barbed wire and guarded by army officers.

Further, that the acts of the 1st Defendant amounted to trespass on the suit since the Plaintiffs were in possession of the suit land and the said trespass was continued by the 2nd and 3rd Defendants.

In Reply, it was submitted by learned counsel for the 2nd and 3rd Defendants that Trespass is entry onto land without any claim of right. A registered proprietor cannot trespass on the land where he or she is registered. The Plaintiffs proved that they were not in possession from 2005 when the lease expired to 2017 when the suit was filed. Mulawa K Hassy, the 1st Defendant owned the land from 2007 when the lease was executed.

That the 2nd and 3rd Defendants cannot be trespassers as they had legal title / legal claim and did not need permission from the Plaintiffs. They therefore cannot be accused of adverse possession as they did not interrupt any possession of the Plaintiffs.

On the other hand, it was submitted for the 4th Defendant that the Plaintiffs can only succeed on trespass, if they can prove that they owned land and had possession of the land and further prove, that nay of the Defendants wrongfully entered the suit land. That they had submitted while discussing issue No.1 that the Plaintiffs' interest in the suit land ceased on the expiry of the lease on 1st August 2005; and that the 4th Defendant then approved the 1st defendant's application in 2007, resulting into the 1st Defendant obtaining a Certificate of Title **DEX1**, it was issued in February 2008.

That when the 4th Defendant approved the 1st Defendant's application, its powers were spent , it could no longer grant the same land to the Plaintiffs because it (land) was not available for allocation or for leasing. That the Plaintiffs misled the 4th Defendant, into processing their Application for conversion of a land from customary tenure to freehold, by filing **Land Form No 4**; Plaintiff **Exhibit PEX 5**; however, given that the land was not available, the purported approval of the said Application by the 4th Defendant under **Minute JDLB/366/2015** on 16th June 2015, was null and void and the Plaintiffs acquired no interest in the suit land; and referred to the evidence of Edward Nume.

In addition, that the authority for this proposition of the law, it the case of ***Livingstone Ssewanyana vs Martin Aliker Supreme Court CA No. 4 of 1999; [1992 V KALR 116-125;*** the relevant parts at pages 117-118 and pages 121 are highlighted**.** In that case, the appellant applied to Uganda Commission, to lease the suit land, and the Uganda Land commission purported to grant the Application, yet the Respondent's lease over the suit land was still running. It was held that *"the purported grant of the lease to the appellant was null and void, because at the time of the grant was made to the appellant, the land was not available for leasing".*

Again, that **section 4 of the Land Amendment Act 2010,** which amended **section 59 of the Land Act**, to the effect that **4(1) (a)** *"where a board enters into or undertakes or concludes any such transaction or allocates land in contravention of subsection of Section 591 (a) and therefore void".*

They therefore submitted that given that the purported allocation or approval of the Plaintiffs' application was void, they acquired no interest in the suit land, so they cannot sustain an action in trespass.

In order to resolve this issue, I have carefully analyzed the law governing Trespass to land. For emphasis, trespass to land is a civil tort which involves the *"unjustifiable interference with land which is in the immediate and exclusive possession of another"* [See **Catherine Elliot and Quinn Francis "Tort Law" Longman, 2007].**

The main aspect of the tort is interference with possession, which is premised around physical entry of the land as well as abuse of the right to entry. It is key to note however that for a litigant to claim trespass to land, he or she must be in possession of the land.

The law on trespass to land was well articulated; it was stated in the case of ***Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company Civil Appeal No. 11 of 2002 (SC)*** as follows:

*"Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed, not against the land, but against the person who is in actual or constructive possession of the land. At common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass***." (Emphasis mine).**

Citing with approval the case of ***Wuta-Ofei v Danquah (1961) 3 All E.R.596 at p.600***, his lordship held that for purposes of the rule cited in ***Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company*** (supra), possession did not mean physical occupation; rather, the slightest amount of possession would suffice. In ***Wuta-Ofei v Danquah*** (supra) the Privy Council put it thus:

"Their Lordships do not consider that, in order to establish possession, it is necessary for the claimant to take some active step in relation to the land such as enclosing the land or cultivating it."

Further in ***Justine E.M.N Lutaaya v Stirling Civil Engineering Company (supra)*** Hon. Mulenga JSC held that:-

"Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land".

Further, subject to the law of limitation, the person who acquires a cause of action in respect of trespass to land may prosecute that cause after parting with possession of the land. Also in ***Wutu- Ofel v Danguan (1961) 3 All ER 596 at page 600*** where it was held that for purposes of the rule cited *in* ***Justine E.M.N Lutaaya v Stirling Civil Engineering Company****,* possession did not mean physical occupation; rather the slightest amount of possession would suffice. He added that in ***Wutu- Ofel v Danguan*** *t*heir Lordships do not consider that in order to establish possession, it is necessary for the claimant to take some active steps in relation to the land such as enclosing the land or cultivating it. This is re enforced in **para 1205, Volume 38, Halsbury's Laws of England, 3rd Ed** where it is provided that:-

"Trespass to land is committed inter alia where a person wrongfully or unlawfully sets foot upon, or takes possession of, or takes materials from, land belonging to another person."

Trespass may be committed directly by a person through a servant, or even through a movable object such as cattle. In the case of ***Adrabo Stanley vs Madira Jimmy, C.S No.0024 of 2013,*** Justice Stephen Mubiru discussed the issue of trespass to land that***;***

"Trespass to land occurs when a person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land (see Salmond and Heuston on the Law of Torts, 19th edition (London: Sweet & Maxwell, (1987) 46). It is an action for enforcement of possessory rights where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. 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. It is an invasion affecting an interest in the exclusive possession of property. The cause of action for trespass is designed to protect possessory, not necessarily ownership, interests in land from unlawful interference. Therefore an action for trespass may technically be maintained only by one whose right to possession has been violated. The gist of a suit for trespass to land is violation of possession, not a challenge to title. Such possession should be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's land must be unauthorized in the sense that the defendant should not have had any right to enter onto plaintiff's land. In order to succeed, the plaintiff must prove that; he or she was in possession at the time of the defendant's entry; there was

an unlawful or unauthorized entry by the defendant; and the entry occasioned damage to the plaintiff".

Relating the above to the case before me, and after critically analyzing all the evidence in this case, I have found that whereas I agree with the law as cited by learned counsel for the Plaintiffs as to what constitutes trespass to land, I have already found that the facts in this case clearly show that the Plaintiffs were not in possession of the suit land by the time by the time it was allocated to the 1st Defendant from whom the 2nd and 3rd Defendants subsequently also derived their title.

The only iota of evidence they are trying to cling on is allegedly pouring materials on the suit land and putting up a foundation thereon, but I have already pronounce myself in the first issue that this could not stand given the fact that their lease offer had already expired and reverted to the lessee.

As to who exactly fenced off the suit land as the Plaintiffs were slumbering, **PW1** was clear in her evidence **during cross examination** that she found army officers guarding the suit premises and that she had no idea who that was. I have also not found any proof to show that it was the 1st Defendant or anybody acting under his instructions was responsible for those army officers if at all they were really there. No proof has been led to relate the said army officers to the 1st Defendant and it is clear that the Plaintiffs have not led any evidence linking them to the 1st Defendant.

Secondly, in view of the evidence that shows that he was allocated the suit land in the year 2008, three years after the lease of the Plaintiffs had expired.

Thirdly, as already ruled in the first issue, no cause of action can be maintained against the 1st Defendant in this case for the reasons already expounded upon in the first issue.

It is therefore my decision that on a balance of probabilities the Plaintiffs cannot maintain a cause of action in this case in trespass to land against the 2nd or 3rd Defendants in this case. It is also my finding that the Plaintiffs' continued claim on the suit land comprised in LRV 3837 Folio 21 Plot 6 land at Jinja is illegal and cannot be proved.

It therefore follows that the alleged invasion of the suit land at the time if at all it happened cannot be attributed the 2nd and 3rd Defendants. As such, the Plaintiffs cannot prove an action for trespass to land sine the law is clear that such an action can only be maintained on proof of actual possession which is

established by evidence showing sufficient control demonstrating both an intention to control and an intention to exclude others.

For all the reasons stated above, this issue is therefore resolved in favour of the 2nd, 3rd and 4th Defendants.

Issue No. 4: Whether there was a successful survey by the Commissioner, where recommendations and approvals to the 4th Defendant were made?

It was submitted by learned counsel for the Plaintiffs that the procedure of Conversion from Customary tenure to Freehold is provided for under **section 94 of the Land Act as amended in 2004** whereof the Board upon receipt of the Report and Recommendations from the Committee is required to cause the land in respect of which the Application is made to be surveyed before approving the Application.

That **PW1** led evidence in paragraph 15 of her witness statement that they applied for extension of the lease and in the alternative for Conversion to Freehold Tenure and that the Application was proved by the 4th Defendant under **Minute 3/366/205**.

In cross examination, that **PW1** stated that when she filled in the Application for Conversion with the guidance of the Land Office and that it is the form that was given to her. That it was the testimony of **DW2** at paragraph 19 and 20 of his witness statement that that the Application had been recommended by the Area Land Committee and that the 4th Defendant without knowing the land being applied for erroneously approved the Application.

Finally, that it is important to note that with concern that no such recommendation of members of the Area Land Committee was adduced in evidence; and neither was any such survey carried out by the 4th Defendant before approving the Application for Conversion and that this is a high degree of professional negligence which should be condemned by this Honourable Court; and prayed that the same should not be visited upon the Plaintiffs.

In reply, it was submitted by learned counsel for the 2nd and 3rd Respondents that there is no remedy available to the Plaintiffs. That this case was a clear waste of court's precious time, a Defendant was not served, 1st Plaintiff did not turn up for cross-examination, evidence of all Defendants was not unchallenged in cross examination and submissions were not filed and generally the trial was

badly handled by the plaintiffs because they knew they had no case. They prayed that the suit be dismissed with costs.

In further reply by learned counsel for the 4th Defendants, it was submitted that this issue is only in the imagination of counsel for the Plaintiffs**.** That the correct issues are the issues as framed and agreed upon per a Joint Scheduling Memorandum dated 29th July 2022 and filed in court on 22nd August 2022; the said Memo is signed by the Counsel who were then involved in the suit and this issue is not among them. They therefore submitted that the submissions by the Plaintiffs' Counsel on this issue, be rejected.

Specifically, for Issue No 4, that the Plaintiffs have failed to prove their claim; and the suit be dismissed with costs to the 4th Defendant.

I have carefully analyzed this issue *vis a vis* the evidence led in this case. While I agree with the procedure of conversion from Customary Tenure to Freehold as provided for under **section 94 of the Land Act Cap 227 (as amended) in 2004**, it is undisputed from the evidence and as confirmed by **PW1 during cross examination** that she has never been a Customary Owner of the suit land as such, her filling in and submitting a form for Conversion from Customary Tenure to Freehold which she has never held cannot be blamed on anyone but herself.

It is also clear that while she claims that she filled erroneous Forms in the year 2015, this was 10 years after her initial Lease allocation to them whose covenants they failed to fulfil had long expired; and by the time she did, there was no such land fitting the description of the suit land she the Plaintiffs are claiming that was available for conversion since the suit land was already registered land and allocated to other serious users.

The above means that whatever evidence **PW1** led in paragraph 15 of her Witness Statement that they applied for extension of the lease and in the alternative for conversion to Freehold Tenure and that the Application was proved by the 4th Defendant under **Minute 3/366/2015** was in respect of non-existing land.

As for **DW2** evidence that the Application had been recommended by the Area Land Committee and that the 4th Defendant without knowing the land being applied for erroneously approved the Application, this is not surprising in view of the fact that the Form exhibited was referring to land completely in another location in Rubaga and this is definitely not the suit land. I have already dealt at

length on this in the previous issues and I see no need to revisit it as my findings in respect of that is clear.

From the above, my findings and decision are that as far as the suit land is concerned, I have not found any issue or evidence led by all the parties to fault the Conversion from leasehold to Customary Tenure since this was never an issue in the Plaintiff's case. The Plaintiffs cannot therefore succeed on this point; and I agree with learned counsel for the 4th Defendant on this.

This issue is therefore resolved in favor of the Defendants.

Issue No. 3: What remedies are available to the parties?

It was submitted by learned counsel for the Plaintiffs that the Plaintiffs were entitled to all the remedies sought in this case.

In reply, it was submitted by learned counsel for the 2nd and 3rd Respondents that there is no remedy available to the Plaintiffs. This case was a clear waste of court's precious time. That a defendant was not served, 1st Plaintiff did not turn up for cross-examination, evidence of all Defendants was not unchallenged in cross examination and submissions were not filed and generally the trial was badly handled by the Plaintiffs because they knew they had no case. They prayed that the suit be dismissed with costs.

Having found that the evidence on record indicates that all the issues against the Defendants have not been proved to the standard required by law, I have found that the Plaintiffs are not entitled to any of the reliefs sought. It is therefore my decision that the Plaintiffs' case FAILS; Judgement is entered in favour of the 2nd, 3rd and 4th Defendants in this case.

Finally, **Section 27 (2) of the CPA** makes provision for interest on claims for monetary payment. Further, it is now well established law that costs generally follow the event. *See* ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989*** *(SC) and* ***Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35***. Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, I have not found any reasons to deny the 2nd, 3rd and 4th Defendants costs in this suit. They are therefore awarded full cost in this case. Two Certificates are granted to the Defendants as per the Defence Law Firms in this case.

I SO ORDER

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JUSTICE DR. WINIFRED N NABISINDE
JUDGE
09/12/2023

This Judgement shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to appeal against this Judgement to the Court of Appeal of Uganda.

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JUSTICE DR. WINIFRED N NABISINDE
JUDGE
09/12/2023