

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**  
**CIVIL SUIT NO. 360 OF 20131.**

- 10
1. **OWORI BONIFACE**
  2. **ATWINOMUJUNI ASAPH**
  3. **KANYONYI EVANS**
  4. **KABANANKYE LABAN**
  5. **MBAMBU LYDIA**
  6. **KYOLEKO KIM**
  7. **MAZIGA ERISA**
  8. **TUMWEBAZE JENIFER**
  9. **NABAZIWA DAYIZE**
  10. **LUYIGA GODFREY**
  11. **SANYA STEPHEN OUMAH**
  12. **SEKAJJA KIZITO**
  13. **NUWAMANYA VICENT:.....: PLAINTIFFS**

**VERSUS**

- 20
1. **OCHIENG ODODI JOSEPH**
  2. **MAYEKU MARTIN**
  3. **UGANDA LAND COMMISSION:.....:DEFENDANTS**

**BEFORE: HON. JUSTICE WILSON MASALU MUSENE**

**JUDGMENT**

30 The Plaintiffs, Owori Bonifance and 12 others filed this suit against Ochieng Ododi Joseph, Mayeku Martin and the Uganda Land commission. The suit was over proprietorship of land at Mutungo comprised in leasehold register volume No. 3879 Folio No. 12 Plot No 49 , Mutungo Hill road. The Plaintiffs were represented by M/s Ekirapa & Co. Advocates while the 1<sup>st</sup> and 2<sup>nd</sup>

Defendants were represented by M/s Egou-Engwawu Advocates and the third Defendant was represented by Attorney general's Chambers.

The brief background of the suit is that the Plaintiffs claim to have acquitted lawful and equitable interest in the suit land through purchase during the years between 2003 and 2011. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants applied to the 3<sup>rd</sup> Defendant and were granted a lease over the suit land comprised in LRV No. 3879 Folio No. 12, Mutungo hill for an initial period of 5 years from 3<sup>rd</sup> December, 2007. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants then proceeded to take possession of the suit land but met resistance from the Plaintiffs.

10 The Plaintiffs instituted this suit claiming that they are lawful and equitable owners of the suit land. The Plaintiffs are now seeking a declaration that they are lawful and equitable owners of the suit land and the Defendants wrongly, illegally and unlawfully evicted the Plaintiffs and destroyed their houses, buildings and other properties on the suit land. They f seek urther an order that the lease granted to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by the 3<sup>rd</sup> Defendant is illegal, null and void, and a declaration that the Certificate of title comprised in LRV No. 3879 Folio No. 12 Mutungo hill is null and void and should be cancelled. Another order sought was that the Plaintiff's may return to the suit land and in the alternative are entitled to compensation. The Plaintiffs also seek general, special , punitive and mesne profits plus interest thereon and costs of the suit. The Defendants case on the other hand was , that at the time of issuing the lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the suit land was free from encumbrances and all necessary and  
20 appropriate legal processes were followed, therefore the lease was issued and/or granted lawfully.

The following issues were agreed upon by the parties in their joint scheduling memorandum for determination by this court.

- 1 Whether the Plaintiffs are lawful and equitable owners of the suit land?
- 2 Whether the 3<sup>rd</sup> Defendant lawfully granted the lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant over the suit land?
- 3 Whether the Plaintiffs are entitled to compensation from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for their interest in the suit land?

4 Whether the parties are entitled to the remedies sought?

**Issue No. 1, Whether the Plaintiffs are lawful and equitable owners of the suit land.**

As far as this issue is concerned, counsel for the Plaintiffs made reference to the witness statements on record by PW1, Atwinomujuni Asaph, Kanyonyi Evans, PW3, Nabaziwa Dayize, PW4 Luyiga Godfrey, PW5, Mazige Erisa, PW6, Kyoleko Kim, PW7 Sanya Stephen, PW8 Mbambu Lydia and PW9, Owori Bonifance. He submitted that:

Through their pleadings and respective testimonies, the Plaintiffs testified that they were lawful and equitable owners of the suit land situate at Mutungo Zone 4, Nakawa division, Kampala  
10 having purchased various portions of the suit land between 2003 and 2011.

The Plaintiffs attached the sale agreements to their witness statements as annexures "A" respectively on each witness statement and the same showed that the Plaintiffs had purchased the suit land on the following dates from persons listed below:

- a) 1<sup>st</sup> Plaintiff purchased from Nalubega Catherine vide an agreement dated 8<sup>th</sup> July, 2011 and the said Nalubega Catharine had purchased the suit land from Muzungu Charles vide an agreement dated 1<sup>st</sup> September, 2007.
- b) 2<sup>nd</sup> plaintiff purchased from Mukasa Edward vide an agreement dated 10<sup>th</sup> October, 2007.
- c) 3<sup>rd</sup> Plaintiff purchased from Ssenyange Godfrey vide an agreement dated 7<sup>th</sup> March, 2007 and an additional portion from Habasa Ivan vide an agreement dated 27<sup>th</sup>  
20 November, 2008.
- d) 4<sup>th</sup> Plaintiff purchased from musisi Charles vide an agreement dated 13<sup>th</sup> June 2006.
- e) 5<sup>th</sup> Plaintiff purchased from Ssentongo Hussein vide an agreement dated 8<sup>th</sup> January, 2008.
- f) 6<sup>th</sup> Plaintiff purchased from Yebaza Joseph vide an agreement dated 10<sup>th</sup> November, 2010.
- g) 7<sup>th</sup> Plaintiff purchased from Kiirya Martin vide an agreement dated 16<sup>th</sup> March 2006.

- h) 8<sup>th</sup> Plaintiff purchased from Ssentongo Hussein vide an agreement dated 28<sup>th</sup> October, 2007.
- i) 9<sup>th</sup> Plaintiff purchased from Mujuni Charles vide an agreement dated 7<sup>th</sup> March, 2006.
- j) 10<sup>th</sup> Plaintiff purchased from namatovu Robinah vide an agreement dated 2<sup>nd</sup> February, 2007.
- k) 11<sup>th</sup> Plaintiff from Edward Mukasa vide an agreement dated 20<sup>th</sup> February 2004.
- l) 12<sup>th</sup> Plaintiff purchased from Ssentongo Hussein vide an agreement dated 21<sup>st</sup> August, 2004.
- m) 13<sup>th</sup> Plaintiff purchased from Nuwamanya Vincent vide an agreement dated 28<sup>th</sup> October, 2007.

The Plaintiffs all testified in their witness statements that their land sale agreements were signed and witnessed by the L.C I officials and in cross examination, PW1, Atwinomujuni Asaph, Kanyonyi Evans, PW3, Nabaziwa Dayize, PW4 Luyiga Godfrey, PW5 , Mazige Erisa, PW6, Kyoleko Kim, PW7 Sanya Stephen , PW8 Mbambu Lydia and PW9, Owori Bonifance all testified that prior to acquiring the various portions which they bought, they inquired from the local leaders and other residents on the suit land about the ownership of the land and they were informed that the land belonged to government and that it was public land and that they were many residents on the suit land who had acquired Kibanja interests in the suit land.

- 20 Counsel also made reference to a survey report from Jolanam land surveyors dated 21/3/2000, attached to the witness statement of Fred Kigozi, the former executive director of Butabika hospital who testified that DW5 showed that by the year 2000, 10% (equivalent to 13 acres) of the Butabika land from which the suit land was sub divided was occupied by squatters who had built temporary and permanent structures thereon. They added that the defendants did not adduce any evidence to prove that the area where the plaintiffs are currently settled was not part of the 13 acres where squatters were known to have settled as per the survey report.

Further reference was also made to the testimony of Paul Idude DW6 the principal legal officer of the 3<sup>rd</sup> Defendant to the effect that the suit land was being used for grazing and cultivation.

They therefore concluded that since the Plaintiffs built houses, cultivated various crops and reared animals on the suit land, then they acquired an equitable interest as occupants of the same prior to the grant of the lease to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are the registered proprietors of the property in dispute, Notably LRV 3879 Folio 12 Plot No. 49, Mutungo Hill road. He added that the suit land was public land which formally belonged to Butabika referral hospital, and at the time the lease was granted to the first and second defendants by the 3<sup>rd</sup> Defendant (Uganda land Commission), the same was free from  
10 encumbrances.

Counsel further submitted that after the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were granted lease, the suit land was encroached on by several persons, including the plaintiffs. He reiterated that the Plaintiffs were encroachers who erected illegal structures and purported to settle therein.

He further added that in support of their joint pleadings, all the plaintiffs could only manage to adduce evidence of the “sale agreements” for their respective “bibanja interests,” purportedly executed by persons they respectively claimed to have been in occupation of the suit land as far back as 1970’s and probably before.

However, emphasis was that from the onset, that no of these purported original “*bibanja*  
20 *holders*” were called in court as witnesses whether to collaborate or confirm these purported sales, and more importantly, to explain how and when and under what circumstances they could have acquired the said “*bibanja interest*” or any other interest for that matter, in public land belonging to a government entity.

It was further submitted that none of the Plaintiffs could provide this history of their alleged respective “*bibanja interest*” and during cross examination, they all could only allude to having relied on the information provided by neighbours as forming their reasoned respective beliefs and that the suit land comprised of several “*bibanja interests*”. Similarly, none of the persons who either drew the purported “*sale agreements*” or were witnesses thereto, were called

in to give evidence in support of the plaintiffs, if only to confirm that they drew or witnessed and/or executed the same.

It was further submitted that since both sides conceded that the land in question is public land, held by Uganda Land commission, (3<sup>rd</sup> Defendant), then the Plaintiffs could not acquire “*bibanja interests*” on public land in the 1970s . They quoted section 24 (1) of the Public land act which specifically abolished customary tenure in urban areas. Counsel also quoted section 29 (5) of the land Act, 1998 (as amended) which provides that;

10                   “.....any person who has purchased or otherwise acquired the interest of the person qualified to be a bonafide occupant under this section shall be taken to be a bonafide occupant for the purposes of this act.”

Reference was also made to the case of Godfrey **Ojwang vs Wilson Bgonza CA NO. 25 of 2002 where** , Byamugisha J stated that:

                  “*in order for the appellant to claim interest in the land, his title ought to be derived from someone who had a recognized right and title on the land.....*”

He added that the question of how to determine customary tenure on Public Land was also dealt with in the case of **Kampala District Land Board & ors vs Venansio Babweyaka & ors CA NO. 2 of 2007 (SC)**, where Odoki CJ (as he then was) stated as follows:

20                   “*the prohibition of customary tenure in urban areas is clear from 24 (1) (a) of the public lands act; the land reform decree 1975 declared all land in Uganda to be public land administered by the Uganda land commission in accordance with the act, 1969 the question is whether the respondents did acquire customary ownership following the enactment of the land reform decree. The answer to this question appears to be in the negative. Restrictions on acquisition of customary tenure under the public lands act seem to have continued as the law continued to govern all types of public land subject to the provisions of the land reform decree in order to acquire fresh customary tenure, one had to apply to prescribed authorities and receive approval....there was no evidence that such prescribed authorities existed, nor that the land reform decree. I would therefore hold that the Respondents could not have legally acquired customary*

*tenure in an urban area of Kampala City prior to the enactment of the land Act in 1998.....”*

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants therefore submitted that on the strength of Section 24 (1) of the Public lands Act that those from whom the plaintiffs claim to have derived ‘*bibanja interests*’ by virtue of occupancy of the suit land in the 1970s could not have lawfully or statutorily held customary tenures in an urban area. Consequently, any customary tenure system purported to have been acquired after the enactment of the public lands act was a nullity and an act in futility.

10 Counsel for the 3<sup>rd</sup> Defendant submitted that the suit land is located in Mutungo, Nakawa Division within Kampala District, an urban area. She referred to several legal regimes that have evolved over time touching on customary ownership on public land. They quoted Section 254 (1) 9a) of the Public land Act (Act 13 of 1969) which abolished customary tenures in urban areas. It was emphasized that the import of this provision is that the predecessors of the Plaintiffs could not have been customary tenants on the suit land, which is Public Land, in 1970 when the public land act was in force until 2<sup>nd</sup> July, 1998 when it was repealed by section 99 of the Land Act 16 of 1998. Reference was also made to the case of **(Dr. William Kaberuka & anor vs NK Investment ltd & anor CA NO. 0080 of 2008)**

20 Counsel for the 3<sup>rd</sup> Defendant like that of 1<sup>st</sup> and 2<sup>nd</sup> Defendants, submitted that there was no evidence in whatever form, led by the plaintiffs to prove customary ownership. That mere grazing and cultivation on land does not establish interest in the land. They added that the Plaintiffs were warned by the 3<sup>rd</sup> Defendant to vacate the suit land via a notice which was published in the new Vision newspapers of September , 2011 annexed as B to the witness statements of Paul Idude, but they ignored. And that the plaintiff’s claim of acquisition of Kibanja interest did not arise as the suit land was public land. Emphasis by Counsel for the 3<sup>rd</sup> Defendant was that since the Plaintiffs failed to prove the existence of landlord –tenant relationship between either of the predecessors or themselves and Government, then their claim be disregarded.

Counsel for the 3<sup>rd</sup> Defendant concluded that since the Plaintiffs were mere trespassers on the suit land, their claim of lawful and equitable owners be dismissed.

I have carefully considered the submissions by all sides in this case and also studied the pleadings on record, including the witness statements. In the first instance, all interest in land is distinctive and definite and clearly set out in the constitution of Uganda, 1995 and the land Act Cap 227, Laws of Uganda. Secondly, under Section 101 (1) of the Evidence Act, 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.

Then under **S. 101 (2) of the Evidence Act**, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In this case, the burden of proof of the plaintiff's interest in the land in dispute lies on the plaintiffs. Besides the sales agreement of the plaintiff's which range between the years 2004 up to 2010, they testified that the land sale agreements were signed and witnessed by L.C.I officials. During cross examination, PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8 and PW9 all testified that prior to acquiring the various portions which they bought, they inquired from local leaders and other residents and they were informed that the land was public and it belonged to Government.

The crucial question to be resolved there is whether the plaintiffs approached the owners, to wit the government through the 3<sup>rd</sup> Defendant, the Uganda Land Commission. When the Plaintiffs were cross examined by Counsel for the 3<sup>rd</sup> Defendant, they stated that they never approached the Government as owner and have never had any dealings with the 3<sup>rd</sup> Defendant who represents Government in such matters.

The relevant provisions of the law are Sections 29 (1) (b) and (c) of the Land Act, whereby a lawful occupant is defined as :

- a) A person occupying land by virtue of the repealed.
  - i) Busuulu and Envujjo Law of 1928.
  - ii) Toro Landlord and Tenant Law of 1937;
  - iii) Ankole Land Lord and Tenant Law of 1937.



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

In this regard therefore, the Plaintiffs did not enter the suit land with the consent or approval of the owner, which is the government. That was a grave error on their part for which the Plaintiff's themselves were to blame. They therefore don't fall under the second limb of lawful occupant and their claim that they are lawful owners is rejected.

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Under the 3<sup>rd</sup> limb of the quoted law, the same could apply to the Plaintiffs if their predecessors occupied the suit land as customary tenants and their interests were not disclosed or ignored before the grant of the lease. Whereas the Plaintiffs claim was that they purchased 'bibanja' on the suit land from people who settled there since 1970, that contention was not supported by evidence. The Plaintiffs did not call any of the purported settlers/ Sellers to give evidence to that effect in court. That was a hanging statement in the amended Plaint and counsel for the Plaintiff's submissions.

20 In any case, the above notwithstanding, it is not in dispute as submitted by the advocates for the Defendants that the suit land is located in Mutungo, Nakawa division in Kampala capital city council, an urban area in which customary tenancy had been abolished under Section 24 (1) (a) of the Public land Act as noted before. That was also the crux of the holding of Odoki C.J (as he then was) in SCCA No. 2 of 2007, **Kampala District Land Board & ors vs Venansio Babweyaka & 3 ors.**

That holding is already on record as quoted from submissions of Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Furthermore, under Section 46 of the Evidence Act Cap 6.

***“When a court has to form any opinion as to the existence of any custom or right, the opinions as to the existence of that custom or right of persons who would be likely to know its existence are relevant.”***

In the present case and as already noted, there was no evidence whatsoever, led by the Plaintiffs to prove customary ownership. The grazing of animals and cultivation on the land does not establish customary interest in land and moreover without the without the consent of the owner.

Counsel for the plaintiffs made reference to a survey report prepared by Jonalam surveyors dated 21.3.2000 to state that it showed that there were people on the suit land prior to the year 2000.

10 However, there was no evidence from the Plaintiffs to show that they were part of the 2 % squatters mentioned in that report, and even then, there is no evidence that they came onto the suit land with the consent of the registered owner so as to qualify as lawful occupants.

In my view, the plaintiffs have failed to prove that they acquired any equitable interest in the suit land from people who had legally settled on it. In their testimonies in court, PW1 Atwinomujuni Asaph testified that Mukasa Edward sold to him his “kibanja,” PW2 kanyonyi Evans testified that he bought the Kibanja from Senyange Geoffrey in 2007 and also Habasa Ivan in 2008, PW4 Luyiga Godfrey stated that he bought a ‘Kibanja’ in 2007 from Namatovu Robina who was the owner of the Kibanja. Further, that neighbours also confirmed to him that Namatovu was the owner of that Kibanja.

20 PW5 Mazige Erisa stated that he bought his Kibanja on 16.3.2006 from Kiirya martin junior. He insisted that what he bought was the Kibanja on government land and not the land itself. The same was the testimony for the rest of the Plaintiffs. They testified that it is on court record that what they are claiming is their bibanja and not the land itself. At the same time, all the plaintiffs admitted that they never dealt with Uganda Land commission despite the fact that they were all aware that this was public and government land. The Plaintiffs admitted during cross examination that they were not remitting any rent/busulu to the government through the 3<sup>rd</sup> Defendant.

In such circumstances, the issue of Kibanja holding does not arise as the land in dispute was Public land. Secondly and as correctly submitted by counsel for the 3<sup>rd</sup> Defendant, the Plaintiffs failed to prove the existence of a Land Lord/ tenant relationship between either their predecessors or themselves and government.

Counsel for the Plaintiff also quoted the case of **Jacob Mutabazi vs the Seventh Day Adventist Church and Dan Namasalula, HCCS No. 54 of 2009** to support his submissions.

However, that case is distinguishable in that the Plaintiff there was claiming kibanja interest on private Mailo land comprised in **Block 232, Plot 814** at Kireka. In the present case, the Plaintiffs  
10 are claiming Kibanja interest on public land which is untenable.

I further refer to the testimony of DW2, Ochieng Edward Sunday, an Assistant private Secretary to his Excellency the president of Uganda. He testified that his office was petitioned by the Plaintiffs seeking the intervention of Government in what they called land grabbing by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in collusion with the 3<sup>rd</sup> Defendant officials.

DW2 stated that he summoned both sides to bring documentary and/or other proof of ownership and/or interest in the suit land to which the Plaintiffs never responded and that they did not forward to him any witnesses to back up their claims.

20 I therefore agree with the submissions of counsel for 1<sup>st</sup> and 2<sup>nd</sup> Defendant that failure to produce proof on their part before DW2, working in the office of His Excellency the President meant that they were encroachers to the suit land. And similarly even in this court, the Plaintiffs did not call any witnesses to prove their alleged interest in the suit land. So whereas counsel for the plaintiff insisted in their submissions in rejoinder that the Plaintiffs and their predecessors in title had acquired the suit land prior to the allocation of the same to 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their case was not proved on the balance of probabilities as required under the

Law. I therefore find and hold the first issue in the negative, notably that the Plaintiffs are not Lawful and equitable owners of the suit land.

## **Issue No. 2**

### **Whether the 3<sup>rd</sup> Defendant lawfully granted the lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant over the suit land?**

The submissions of Counsel for the plaintiff under paragraph 5 of the amended Plaintiff was that the Defendants acted illegally and fraudulently in an irregular manner when the 3<sup>rd</sup> Defendant granted a lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. They listed particulars of fraud as :-

- 10 a) The 3<sup>rd</sup> Defendant stating that prior to the allocation of the land to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, there were no squatters and no developments on the land.
- b) The 3<sup>rd</sup> Defendant stating that prior to the allocation of the land to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant, the land was surveyed and boundaries opened;
- c) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants obtaining a title over which the Plaintiffs' have an equitable interest.
- d) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants illegally and unlawfully evicting the Plaintiffs' without a Court order.

Counsel added that the evidence adduced by the Plaintiffs by way of the land sale agreements confirm that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> had acquired interest in the suit land prior to the grant of a lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Plaintiffs purchased the interests of persons who had acquired equitable interests over the suit land prior to the grant of the lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

It was further submitted that the Plaintiffs in their witness statements all testify in their evidence in chief that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants lied in their application for a lease when they stated that there were no people occupying the suit land.

Reference was made to DW1 Ochieng Odoi Joseph and DW6 Idude Paul testified during cross examination that there was maize on the suit land and that the same was being used for

cultivation and grazing. This alone proves that the land was not bare as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants allege in their written statement of defence.

Counsel for the Plaintiffs also submitted that the Plaintiffs, in their witness statements all testified in evidence in Chief that from the time the Plaintiffs occupied their various portions of land they never saw any notice issued by the 3<sup>rd</sup> Defendant or any other government body inviting the public to purchase and develop the suit land. They added that since the Uganda Land Commission holds land in Trust for all Ugandans, they should have given the plaintiffs priority as the ones in possession and who had acquired an equitable interest. Reference was made to the evidence of DW5, Fred Kigozi who testified that he did not know if the general public was invited to acquire plots on the suit land.

They concluded that it was fraudulent for the 3<sup>rd</sup> Defendant to have leased out the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants without due diligence to confirm whether the land was occupied by the Plaintiffs and or other persons.

They quoted the case of **Kampala District Land Board and George Mutala vs Venansio Babweyaka & 3 others SCCA NO. 2 of 2007**, where it was held that the 1<sup>st</sup> Appellant should have recognized that the respondents were licensees with possessory interests in the suit land and who should have been given priority over any body else. Counsel also referred to the evidence of PW1 Atwinomujuni Asaph, PW2 Kanyonyi Evans, PW3 Nabaziwa Dayize, PW4 Luyiga Godfrey, PW5 Mazige Erisa, PW6 Kyoleko Kim, PW7 Sanya Stephen Oumah, PW8 Mbambu Lydia and PW9 Owori Bonifance all testified that they got to learn that the land had been leased to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the 30<sup>th</sup> day of December, 2011 when the 1<sup>st</sup> Defendant came on the suit land with many policemen and started demolishing their houses and property on the suit land.

He quoted the case of **General Medical Council vs Spack man [1943] 2 All E.R 337**, where it was held that a decision arrived at in the absence of essential principles of natural justice should be rejected. They concluded that the Certificate of title held by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is impeachable for fraud as the Plaintiffs were not informed of the lease application and were not give an option to apply.

Counsel for plaintiffs added that the 3<sup>rd</sup> Defendant unlawfully and fraudulently granted the lease to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

In reply, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly applied for and were issued with a lease offer in respect of the suit land vide ULC minute 13/2007 (A) (516); and Defendants thereafter procured a Certificate of title comprised in LRV 3879 Folio 12 Plot 49, Mutungo Hill road, which is the land in dispute.

10 Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants denied that there was any fraud, illegality or irregularity in the process of obtaining the lease offer and thereafter the Certificate of title. Counsel also quoted Section 59 of the Registration of titles Act which provides that a Certificate of title is conclusive evidence of ownership and shall not be impeached on grounds of informality or irregularity in the application process.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants further submitted that the four instances of alleged fraud by the Plaintiffs were not proved at all since in the first instance the Plaintiffs had no right to the suit land either as lawful or equitable owners thereof or even bona fide occupants.

20 Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Defendants agreed with the Definition of fraud in the case of **Kampala Bottlers LTD. Vs Domanico LTD CA NO. 2 of 1992 SC**, quoted by Advocates for plaintiff, but they added that fraud must be strictly proved. They emphasized that the burden of proof is heavier than on the balance of probabilities generally applied in civil cases, and that such fraud has to be attributed to the transferee.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants further submitted that all the four particulars of fraud as pleaded did not absolve the plaintiffs from the burden of proving them singly or severally. Emphasis was that the alleged illegal and unlawful eviction of the Plaintiffs from the suit land had no bearing with the process of obtaining the Certificate of title as the eviction occurred more than four years after obtaining the Certificate of title.

It was also submitted on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that the other particulars of fraud were not backed by facts and/or evidence. They added that the testimonies of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were not contradicted during cross examination and that they were backed by Notice issued by 3<sup>rd</sup> Defendant warning encroachers on the suit land including the Plaintiffs.

It was also submitted by Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that some Plaintiffs from their testimonies were aware of the process of re-opening boundaries while some were not aware of the survey in 2000 as they were not on the suit land.

Lastly, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants emphasized that by the time the 1<sup>st</sup> and 2<sup>nd</sup> Defendants applied for the allocation of the suit land from the 3<sup>rd</sup> Defendant, there were no  
10 encroachers on the same.

Counsel for the 3<sup>rd</sup> Defendant on the other hand submitted that the Plaintiffs have failed to prove any fraud on the part of the 3<sup>rd</sup> Defendant. They urged that the reason Advanced by the plaintiffs that the 3<sup>rd</sup> Defendant did not consider them before issuing the lease to 1<sup>st</sup> and 2<sup>nd</sup> Defendants does not hold water as the plaintiffs did not apply for the lease over the suit land. They added that since the plaintiffs did not acquire any legally recognized interest in the suit land, then issues of Natural justice raised by the Plaintiffs did not arise.

As far as the second issue is concerned, **Article 238 (1) and (2) of the constitution of Uganda, 1995 and Section 46 (1) & (2) of the land Act** establishes the Uganda Land Commission (3<sup>rd</sup> Defendant) .

20 The functions of the Commission are provided for under Article 239 of the constitution and Section 49 thus:

- a) To hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution.
- b) .....
- c) To procure Certificates of title for any land vested in or acquired by the government.
- d) To perform such other functions as may be prescribed by or under this Act or any other enactment.

**Under Section 53 of the Land Act**, the commission has powers, among others, to sell, lease or otherwise deal with the land held by it, cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents and do such other things as may be necessary for or incidental to the exercise of those powers and the performance of those functions.

On the allegations of fraud against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by the Plaintiffs, I agree with the submissions of the Advocates for the defendants that the evidence presented by the Plaintiffs is far below the standard required for proving fraud.

Fraud was expounded on at length by the **Supreme Court in Civil Appeal No. 04 of 2006**  
10 **Fredrick Zabwe vs Orient Bank & 5 ors.**

The learned Katureebe, JSC (as he then was) quoting the definition of Fraud in Black's Law Dictionary 6<sup>th</sup> edition, page 660 had this to say:

20 *"...an intentional perversion of truth for the purpose 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 any suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture.....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 suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. "Bad faith" and "fraud" are synonymous, and synonymous of dishonesty, infidelity, faithfulnesses, perfidy, unfairness, etc....."*

The Learned justice of the supreme court defined "fraudulent" according to **BLACK'S LAW DICTIONARY** as;



*‘To act with ‘intent to defraud’ means to act willfully, and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.’*

In another important case of *Kampala Bottlers LTD VS Damanico (U) LTD, SCCA No. 22 of 1992*, Wambuzi C.J. as he then was held;

*“Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil Matters.”*

Among the listed allegations of fraud by Plaintiffs was that the Defendants obtained title over the disputed land when they had reason to know that the Plaintiffs had an equitable interest therein. That would have constituted a serious allegation of fraud but as already noted, the plaintiffs failed to prove the same.

Secondly, this court has already under issue No. 1 held that the Plaintiffs were not lawful or equitable owners of the land, and they cannot be classified under categories of either lawful occupants and/or bonafide occupants within the context of section 29 of the Land Act, 1998. I therefore find and hold that the allegations of fraud listed by the Plaintiffs were mere sweeping statements falling short of the burden of proof required in cases of fraud as propounded by the supreme court in the cases I have referred to here in above.

Furthermore unlike in the case of **Kampala District Land Board & another vs Venansio Babweyaka & 3 others, and Kampala District Land Board & Chemical Distributors vs National Housing and Construction Corporation, Civil appeal no. 2 of 2004**, where the Respondents were found to be bonafide occupants who are protected under the constitution and the Land Act, in the present case, the Plaintiffs are not bonafide occupants and neither are they lawful occupants and so they are not entitled to the same protection under the law.

The conclusion of this court in the circumstances is that there was no illegality or irregularity or fraud proved in the process of the application for lease and the subsequent granting of

Certificate of title to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant by the 3<sup>rd</sup> Defendant. The second issue is therefore resolved in the positive.

### **Issue No. 3**

#### **Whether the Plaintiffs are entitled to compensation from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for their interest in the suit land.**

Under this issue, counsel for the Plaintiffs submitted that since the Plaintiffs proved they had developments on the suit land which were demolished by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, then they are entitled to compensation. They added that since DW1, Ochieng Odoi Joseph compensated Habasa Ivan who was a cultivator on the suit land, then the Plaintiffs who had similar interests  
10 should also be compensated.

In reply counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that since the Plaintiffs were encroachers, they are not entitled to any compensation for whatever structures they could have erected without the authority of 1<sup>st</sup> and 2<sup>nd</sup> Defendants. They also submitted that throughout the cross examination of the Plaintiffs, all of them attested to the fact that they did not obtain the permission and the approval of the Kampala Capital City authority (KCCA) before erecting structures in the suit land. That while some of the Plaintiffs in their testimonies feigned ignorance of the requirement of prior approval of building plans before commencing construction, others testified that they knew that construction within any urban area required approved plans, and that the absence of which rendered such construction illegal. It is these  
20 very same illegal structures erected in the suit land that the Plaintiffs have come to this Honourable Court to claim compensation, and this notwithstanding their respective failure to prove their respective interest in the suit land. They concluded that there is no compensation in such circumstances.

I have equally considered this issue of whether the Plaintiffs are entitled to compensation or not. I shall not dwell on it much because I have already held that the Plaintiffs did not have any legal or equitable interests on the disputed land.

Secondly, and as correctly submitted by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, **Section 6 of the Town and country Planning Act** prohibits the erection of any building or carrying out any developments in an urban area without the permission of the committee concerned.

The physical planning Act, 2010.

Is also very instructive in this case scenario 33 thereof provides as herein below to with:

“.....(33)

*(1) A person shall not carry out a development within a planning area without obtaining development permission from a physical committee....”*

10 *(3) Any dealings in connection with any development in respect of which an offence is committed under this Section shall be null and void and that development shall be discontinued.*

*(4) Notwithstanding subsection (3), a local Government Physical planning committee shall require a developer to restore the land on which a development is made without permission, as much as possible to its original condition....”*

As already held, since the suit land falls within the Nakawa division of Kampala Capital City Authority , (K.C.C.A), the alleged constructions by the Plaitniffs were illegal structures which were prohibited under the Town and country Planning Act, and the physical planning Act, 2010.

20 In the case of **Muluta Joseph vs Katama Sylvan Supreme Court Civil Appeal No. 11 of 1999**, Kayeihamba, JSC as he then was held:-

*“ Structures in the disputed land had been constructed without permission and they were therefore illegal structures, which KCCA had power to demolish without having to compensate the squatters.....”*

The holding in the above case applies with equal force to the present case. A court of law cannot order for compensation of illegal structures as to do so would amount to sanctioning an illegality.

The conclusion of this court is that the Plaintiffs are not entitled to any compensation. The 3<sup>rd</sup> issue is resolved in the negative.

#### **Issue No. 4**

#### **Whether the parties are entitled to the remedies sought.**

Counsel for the Plaintiff submitted that Court grants an order declaring that the suit land was not available for leasing to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and for orders of cancellation of Certificate of title acquired by 1<sup>st</sup> and 2<sup>nd</sup> Defendants. It was also submitted that the Plaintiffs are entitled to special damages following the demolition of their houses and eviction by Defendants.

Counsel also prayed for special damages in respect of the value of their interest in the suit land, value of buildings, house hold items and crops as follows:

Plaintiff 1	Owori Boniface claims	Ushs 61,210,000/=
Plaintiff 2	Atwinomujuni Asaph Claims	Ushs 44,980,000/=
Plaintiff 3	Kanyonyi Evans Claims for	Ushs 57,820,600/=
Plaintiff 4	Kabanankye Laban claims	Ushs 14,480,000
Plaintiff 5	Mbambu Lydia Claims	Ushs33,300,000/=
Plaintiff 6	Kyoleko Kim claims	Ushs 25,800,000/=
Plaintiff 7	Maziga Erisa claims	Ushs 41,800,000/=
Plaintiff 8	Tumwebaze Jennifer claims for	Ushs 32,640,000/=
Plaintiff 9	Nabaziwa Dayize. Claims for	Ushs 15,680,000/=
Plaintiff 10	Luyiga Godfrey Claims for	U shs 35,055,250/=
Plaintiff 11	Sanya Stephen Oumah claims for	U shs 22,813,700/=
Plaintiff 12	Sekajja Kizito claims for	Ushs 27,800,000/=
Plaintiff 13	Nuwamanya Vincent Claims	Ushs 29,680,000/=

Counsel for the Plaintiffs also prayed for general damages of UGX 25,000,000/=, punitive damages of UGX 20,000,000/=, interest at the rate of 25 % and costs.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the other hand submitted that if the Plaintiffs had exercised due diligence, they would not have indulged in bogus transactions over the suit land. They added that the Plaintiffs cannot be awarded general damages in respect of illegal structures and that in any case there was no evidence to support the alleged general or special damages. Counsel further submitted that there were no documents relating to the illegal structures and no receipt to prove expenditure on the said structures. They concluded that the Plaintiffs were not entitled to special and /or general damages in the circumstances.

- 10 Counsel for the 3<sup>rd</sup> Defendant associated themselves with the submissions of counsel for 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

They added that the 3<sup>rd</sup> Defendant was not involved in the alleged demolition of Plaintiffs' houses and other properties. Needless to emphasize, this court has by and large pronounced itself already on issues No. **1, 2 and 3** which have an impact on the remedies claimed.

- Having resolved and decided that the Plaintiffs acquired no lawful or legally recognized interest in the suit land, it follows therefore that they are not entitled to any form of damages. The Plaintiffs had no one but themselves to blame, having illegally settled on the suit land well knowing that it belonged to the government, and without following the established law and procedures on acquiring Public Land. And having failed to prove their entitlements to
- 20 damages, special, general, punitive or otherwise, then they cannot claim any interest on the failed damages.

I find and hold that the Plaintiffs are not entitled to the remedies claimed. I accordingly do hereby dismiss the plaintiffs' suit with costs.

**Wilson Masalu Musene**

**Judge**

**4.9.2017**

**Mr. Charles Egou Engwau** for 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Assisted by **Arthur Kirumira**

**M/s Jeneviv Kampire** for 3<sup>rd</sup> Defendant.

Counsel for plaintiffs absent.

1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Plaintiffs present.

Olivia Nansuna

Court clerk present.

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**Court:** Judgment read out in open court.

.....

**W. Masalu Musene**

**Judge**

04/09/2017

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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**

**CIVIL SUIT NO. 360 OF 20131.**

1. **OWORI BONIFACE**
2. **ATWINOMUJUNI ASAPH**
3. **KANYONYI EVANS**
4. **KABANANKYE LABAN**
5. **MBAMBU LYDIA**
6. **KYOLEKO KIM**
7. **MAZIGA ERISA**
8. **TUMWEBAZE JENIFER**
- 10 9. **NABAZIWA DAYIZE**
10. **LUYIGA GODFREY**
14. **SANYA STEPHEN OUMAH**
15. **SEKAJJA KIZITO**
16. **NUWAMANYA VICENT:..... PLAINTIFFS**

**VERSUS**

1. **OCHIENG ODODI JOSEPH**
2. **MAYEKU MARTIN**
3. **UGANDA LAND COMMISSION:.....DEFENDANTS**

**DECREE**

20 **THIS** suit coming up for final disposal this **04<sup>th</sup>** day of **September** , **Mr. Charles Egou Engwau** for 1<sup>st</sup> and 2<sup>nd</sup> Defendants, Assisted by **Arthur Kirumira, M/s Jeneviv Kampire** for 3<sup>rd</sup> Defendant in the absence Counsel for plaintiffs and in the presence of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Plaintiffs .

**IT IS HEREBY ORDERED THAT:**

- 1) The Plaintiffs , are not entitled to the remedies claimed and accordingly the suit against land comprised in Mutungo in Leasehold Register Volume No. 3879 Folio No. 12 Plot No. 49, Mutungo Hill Road be dismissed with costs.

30 **Given under my hand and the Seal of this Honourable court this.....day of.....2017.**

.....  
**JUDGE**