

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 0080 OF 2008**

**1. DR. WILLIAM KABERUKA**  
**2. JULIUS MUHURUZI.....APPELLANTS**  
**VERSUS**

**1. N.K INVESTMENTS LTD**  
**2. KAMPALA DISTRICT LAND BAORD.....RESPONDENTS**

*[Appeal arising from the Judgment and decision of Hon. Justice Gideon Tinyinondi dated 9<sup>th</sup> May, 2008 at Kampala in HCCSNo. 124 of2005]*

**CORAM**

**HON. MR. JUSTICE REMMY KASULE, JA**

**HON. MR. JUSTICE KENNETH KAKURU, JA**

**HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA**

**JUDGMENT OF THE COURT**

This appeal arises from the judgment of Hon. Justice Gideon Tinyinondi J, in High Court Civil Suit No. 12 of 2005 at Kampala, Dated 9<sup>th</sup> May 2008.

In that suit the appellants then plaintiffs had sued the respondents seeking the following orders and declarations in their amended plaint dated 23 January 2006.

**a) A declaration that the land comprised in Plot 2-6 Walusimbi Close (LRV 2849 Folio 1) Nakawa -Kampala belongs exclusively to the Plaintiffs who are bona fide occupants/customary tenants in adverse possession having acquired their interest in 1996 and 1992 respectively from people who had occupied and utilized the said land since 1970.**

**b) A declaration that the suit land was not available for leasing to the 1<sup>st</sup> Defendant.**

**c)** *A declaration that the grant of lease to the 1<sup>st</sup> Defendant by 2<sup>nd</sup> Defendant was unlawful and fraudulent and should be nullified and cancelled accordingly.*

**d)** *An order directing the Registrar of Titles to cancel the certificate of title comprised in LRV 2849 Folio 1 known as Plot 2 - 6 Walusimbi Close Nakawa- Kampala in favour of the Plaintiffs.*

**e)** *An order directing 2<sup>nd</sup> Defendant to grant a lease over the suit land to the Plaintiffs.*

**f)** *A permanent injunction against the 1<sup>st</sup> Defendant restraining it, its agents, servants, workmen and or any other person or entity deriving title or authority from the 1<sup>st</sup> Defendant from entering, destroying the Plaintiffs' structures and crops or interfering with the Plaintiffs' occupation and use of the suit land in any way.*

**g)** *General damages*

**h)** *Exemplary damages*

**i)** *Interest*

**j)** *Costs of the suit*

The respondents, then defendants, in separate written statements of defence denied all the allegations set out in the plaint and contended that the 2<sup>nd</sup> defendant had lawfully issued a valid lease to the 1<sup>st</sup> defendant.

The trial Judge found that the appellants had failed to prove any of the allegations contained in the plaint including fraud. He dismissed the suit with costs. The appellants being dissatisfied with the judgment filed this appeal on the following grounds

**1.** *That the learned trial Judge erred in law and fact in holding that the Appellants or their predecessors in title were not bona fide occupants on the suit land.*

**2.** *The learned trial Judge erred in law and fact when he held that the plaintiffs were not customary owners of the suit land.*

**3.** *That the learned trial Judge erred in law and fact in holding that the plaintiffs were not in adverse possession of the suit land at the time it was granted to the 1<sup>st</sup>*

*Respondent.*

- 4.** *The learned trial Judge erred in law and fact by holding that the suit land was available for leasing to the 1<sup>st</sup> Respondent.*
  
- 5.** *That the learned trial Judge erred in law and fact when he held that the grant of lease to the 1<sup>st</sup> Respondent was lawful and not fraudulent.*
  
- 6.** *That the learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record and thereby reaching a wrong decision.*

When the appeal came up for hearing, learned counsel **Mr. Paul Muhimbura** appeared for the appellants, **Mr. Charles Semakula Muganwa** appeared for the 1<sup>st</sup> respondent while **Mr. Jehoash Sendege** appeared for the 2<sup>nd</sup> respondent.

Mr. Muhimbura sought and was granted leave of court to rely on his conferencing notes opting to make brief oral submissions.

In respect of ground one counsel for the appellants contended that the appellants had purchased the suit land from the people who had occupied the land for a period of more than 12 years before the coming into force of the 1995 Constitution of Uganda. That therefore they were **bonafide** occupants as stipulated under Section 29 of the Land Act, as amended.

He contended that **bonafide** occupancy by its nature begins with illegal entry and therefore one is not required to prove that he or she had first obtained consent of the land owner. That although the suit land had first been a road reserve, it was later changed to a commercial plot by the controlling authority. He contended that the above change had no effect on the interest of the appellants as **bonafide** occupants.

He also submitted that although the Roads Act prohibits occupation of a road reserve, that in itself had no effect on the appellants' interest as **bonafide** occupants. He retaliated his first argument that **bonafide** occupancy originates from an illegal entry.

He submitted that the suit property having been occupied by the appellants at the time the road reserve was degazetted, they did not require any consent from the Controlling Authority to purchase the said land, as they had, at the time, already purchased it from the previous occupants.

On the second ground, learned counsel submitted that the learned Judge erred when he did not find, in the alternative, that the appellants were customary owners of the suit land. He contended that customary ownership is established by usage and that their predecessors in title had occupied

the said land since the 1980's as customary tenants. He cited as authority for the above proposition of the law the case ***Marko Matovu and others versus Seviri and Another [1979] HCB 174.***

On ground 3 counsel submitted that the appellants and their predecessors in title having occupied and utilized the suit land for over 12 years unchallenged by Kampala City Council (KCC) the latter's right to the claim of ownership of the suit land was ousted, which in effect amounted to adverse possession. Counsel faulted the learned trial Judge for having held that the appellants had failed to prove by evidence requisite '*animus possessendi*' against KCC.

Mr. Muhumbura then went on to argue grounds 4 and 5 together.

He submitted that the 2<sup>nd</sup> respondent was at all times aware that the suit land was being occupied and used by other people but ignored their presence and interest and went ahead to allocate the land to the 1<sup>st</sup> respondent.

That the local council authorities were not consulted by the 1<sup>st</sup> respondent before allocation of the said land to the 1<sup>st</sup> respondent; which is a statutory pre-requisite before allocation of land by any controlling authority.

***He cited the case of Kampala District Land Board and Another versus Vanansio Babweyake and 3 others SCCA No. 2 of 2007***

for the authority that obtaining a lease without consent of local council authorities amounted to fraud. Counsel submitted further that the appellants had proved fraud against the 1<sup>st</sup> respondent company when they showed that its application for lease of the suit land pre-dated its incorporation. That the 2<sup>nd</sup> respondent's approval of the lease application was based on an application letter written before the 1<sup>st</sup> respondent's incorporation.

Lastly counsel submitted that the trial Judge had failed to properly evaluate the evidence on

record and therefore had arrived at a wrong conclusion. He asked this court to uphold the appeal and to set aside the Judgment of the High Court.

Mr. Semakula who appeared for the 1<sup>st</sup> respondent in reply contended that consent by the controlling authority was a

mandatory requirement before any sale or purchase of customary land under the Land Reform Decree (Decree No.5 of 1975) which was the law applicable at the time the appellants purchased the suit land.

He further submitted that under the said Decree purchase of customary interest did not confer any title to the purchaser save as to the improvements and developments on the land. He cited the case of ***Godfrey Ojanga versus Wilson Bagonza, Civil Appeal No. 25 of 2005.***

Counsel asked this court to uphold the finding of the trial Judge that the appellants had failed to prove that they were customary tenants. That the only evidence available at the trial was that the appellants' predecessors in title cultivated the suit land. That the appellants had also failed to prove that they are *bonafide* occupants of the suit land, as it was brought under the Registration Titles Act on 23<sup>rd</sup> June 2000.

That the appellants could not have been customary tenants as they had failed to prove customary occupancy, and that Section 24 (1) (a) of the Public Lands Act 1969 excluded customary tenancy from gazetted urban arrears.

That since the suit land fell within the boundaries of Kampala, an urban area, the appellants could not have held it under customary tenure. Counsel further argued that no adverse possession could have accrued to the appellants as the suit land was at the material time a gazetted road reserve. He asked this court to uphold the learned trial Judge's finding in this regard.

Counsel rejected the appellants' contention that fraud had been proved against the 1<sup>st</sup> respondent because it had applied for lease of the suit land before it was incorporated. He submitted, in support of the trial Judge's finding, that the 1<sup>st</sup> respondent's application for lease had been received by the respondent on 16<sup>th</sup> October 2000 long after its incorporation which was on 2<sup>nd</sup> August 2000. That application was considered and granted on 31<sup>st</sup> October 2000 by the 2<sup>nd</sup>

respondent. By the time the 2<sup>nd</sup> respondent received and granted the application, the 1<sup>st</sup> respondent had already been incorporated.

He submitted that there was no legal requirement for the 1<sup>st</sup> respondent to seek recommendation from the local council before being granted a lease. He asked court to dismiss the appeal.

Mr. Sendege supported the submissions of Mr. Muganwa. He submitted that the respondents and their predecessors could not have acquired any interest in the suit land by occupation while it was still a gazzeted road reserve. That it is illegal to occupy and put any developments on a road reserve. That the second appellant had in his testimony stated that he had only sold his crops and not the land to the 1<sup>st</sup> appellant. He asked this court to dismiss the appeal.



In a brief rejoinder Mr. Muhimbura submitted that the suit land had always been under the Registration of Titles Act as part of the entire land under KCC within a 1999 statutory lease. He generally retaliated his earlier submissions and prayers.

## **DECISION**

We have carefully listened to the submissions of all counsel and we have also perused their respective conferencing notes which were adopted as part of the submissions. We have also read the court record and the authorities cited to us.

This being a first appellate court we are required by Rule 30(1) of the rules of this court to reevaluate the evidence and to make our own inferences on all issues of law and fact. That rule stipulates as follows

**“30(1). (a) Power to reappraise evidence and to take additional evidence.**

***(l)On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may-***

***(a) reappraise the evidence and draw inferences of fact.***

In the case of *Fr. Narcensio Begumisa & others vs Eric Tibebaaga (Supreme Court Civil Appeal No. 17 of 2002)*, Justice Joseph Mulenga JSC in his lead Judgment put this obligation of the first appellate court in the following words;

**“It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions. This principle has been consistently enforced, both before and after the slight change I have just alluded to. In Coghlan vs. Cumberland (1898) 1 Ch. 704, the Court of Appeal (of England) put the matter as follows -**

*"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong .... When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."*

**In Pandva vs. R (1957) EA 336, the Court of Appeal for Eastern Africa quoted this passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction."**

We shall therefore proceed to do so, by resolving the grounds of appeal as argued by counsel for the appellant.

The brief background to this appeal as far as we could ascertain from the court record is as follows.

That on 15<sup>th</sup> March 1996 the 1<sup>st</sup> appellant bought part of the land in dispute from the 2<sup>nd</sup> appellant. That he paid 2,000,000/- (Two million shillings only) for the land after having been showed a sale agreement between the 2<sup>nd</sup> appellant and Perepetua Naziwa and Maimuna Nagitta, dated 16<sup>th</sup> October 1992 the agreement was for sale of **Kibanja**, without a title.

After purchasing the land the 1<sup>st</sup> appellant fenced it, deposited there sand, building blocks and stone aggregate. He is also said to

have paid compensation to the people who were cultivating crops on the land.

Nothing seemed to have been done until 2005 when, apparently the 1<sup>st</sup> respondent occupied the land. It is not disputed that the land in issue was prior to 2000 a road reserve. In that year it was degazetted and the use changed to commercial. There after plot 2-6 Walusimbi Close was created and a lease was issued to the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent.

The appellants contended as shown in their plaint reproduced above that the 1<sup>st</sup> respondent's lease was obtained illegally and through fraud.

Ground one faults the learned trial Judge for having failed to find that the appellants were **bonafide** occupants of the suit land. A **bonafide** occupant is defined by **Section 29 (2) a** of the Land Act (Cap 227) as follows;-

**2) "Bona fide occupant" means a person who before the coming into force of the Constitution-**

**(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or**

**b) had been settled on land by the Government or an agent of the Government which may include a local authority.**

**(3) In the case of subsection (2)(b)-**

**(a) the Government shall compensate the registered owner whose land has been occupied by persons resettled by the Government or an agent of the Government under the resettlement scheme;**

**(b) persons resettled on registered land may be enabled to acquire registrable interest in the land on which they are settled; and**

**(c) the Government shall pay compensation to the registered owner within five years after the coming into force of this Act.**

**(4) For the avoidance of doubt, a person on land on the basis of a license from the registered owner shall not be taken to be a lawful or bona fide occupant under this section.**

***(5) 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 bona fide occupant for the purposes of this Act.***

It appears to us clearly that the above definition refers only to registered land, which in our view is land Registered under the Registration of Titles Act (RTA). Indeed Section 1(2) of the Land Act defines 'registered Owner' as follows

*1 (2) "Registered Owner" means the owner of registered land registered in accordance with the Registration of Titles Act"*

It follows therefore that for one to qualify as a *bonifide* occupant he or she must have been in occupation of land registered under the RTA.

There is no evidence on record to prove that the suit land was prior to May 2000 registered under the RTA. This fact was not even pleaded by the appellants. Mr. Muhimbura contended that the suit land was carved out a 1999 year lease held by KCC. There was no proof of this said lease and so we think that this was only a statement from the bar.

Be that is it may, it is improbable that land gazzeted as road reserve could also at the same time be available for occupation.

The purpose of gazzetting the land as a road reserve is to set it apart for that exclusive purpose. Neither the appellants not their successors therefore could have been **bonafide** occupants of the land.

Even if the suit land had been available for occupation no sufficient evidence was provided by the appellants to prove that the persons from whom they purchased the land had been in its occupation for 12 or more years before the coming into force of the Constitution. They simply stated that their predecessors had occupied the suit land since 1970.

Neither in their pleadings nor in their testimony did the appellants prove when their predecessors first occupied that land. The date of occupation is a pre-requisite to proof of **bonafide** occupancy. Generalisation would in our view not suffice. None of the witnesses at the trial even alluded to the period the persons who had sold the land to the appellants had occupied it before the sale. The contention therefore that they had occupied it for 12 or more years prior to the 1995 Constitution had no basis as it is not supported by evidence.

The only evidence on record is that the appellant's predecessors used to grow crops on the road reserve. We do not think that growing of seasonal crops on a piece of land is sufficient proof of **bonafide** occupancy. **Section 29 (2) (a)** of the Land Act reproduced above defines a *bonafide occupant* as “a person” who had occupied and utilised or developed any land unchallenged by the registered owner....”

It appears to us clearly that for one to qualify to be a *bonafide* occupant that person must have occupied and utilized the land in issue, or must have developed it. Utilization or occupation alone would not suffice. They both must be present. In this case there was no proof of occupation by the predecessors to the appellants. The evidence points only to utilization. The appellants on their part neither occupied nor utilized the suit land from the time they acquired it in 1992. They did not develop it either.

It appears that the issue of *bonafide* occupancy was an afterthought as it had not been pleaded

separately or in the alternative. *Bonafide* occupancy and customary tenancy were pleaded and argued interchangeably at the trial as if they were one and the same.

In the case of *Isaaya Kalya Versus Moses Macekenyu Ikagobya Civil Appeal No. 82 Of 2012* this Court observed and held as follows at page 14 of the Judgment of the court.

*“It appears the learned trial Judge made a finding that the respondent was a customary tenant, that he was a lawful occupant and he was also at the same time a bonafide occupant without making any distinction as to what kind of interest the respondent held in the suit. The terms customary tenant, lawful occupant and bona fide occupant are used interchangeably through the judgment as if they mean one and the same thing.*

*Respectfully, we do not agree. A customary tenancy is a distinct tenure different from lawful occupancy and bona fide occupancy. ”*

We agree with the above statement of the law that customary tenancy and *bonafide* occupancy are different in fact and in law. We find that the appellants failed to prove that they were *bonafide* occupants of the suit land. We agree with the finding of the learned trial Judge in this regard.

We therefore find no merit in ground one and it fails.

On ground 2 it is contended that the learned Judge ought to have found that the appellants were customary tenants. This ground was not set out in the alternative in the memorandum of appeal. However, counsel for the appellants argued it in the alternative. We do not think that option was available to him. He ought to have set it out in the memorandum of appeal in the alternative.

Be that as it may, **Section 24(1) (a)** of the Public Land Act (Act 13 of 1969) abolished customary tenancy in urban areas. It is not in dispute that the suit land is located in Kampala a gazzetted urban area. The appellants and their predecessors could therefore not have been customary tenants on the suit land in 1992 as 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.

Customary tenure is defined in Section 1 (1) of the Land Act as follows;

*“Customary tenure is a system of land regulated by customary rules which are limited in*

*their operation to a particular description or class of persons of which are described in Section 3. ”*

**The Supreme Court in Kampala District Land Board and George Mutale Vs Venansio Babweyaka and others Supreme Court Civil Appeal No. 2 of 2007 held that customary tenancy must be proved.**

In that case *Odoki, CJ* who wrote the lead judgment held as follows;

*“I am in agreement with the learned justice of appeal that the respondents failed to establish that they were occupying the suit land under customary tenure. There was no evidence to show under what kind of custom or practice they occupied the land and whether that custom had been recognized and regulated by a particular group or class of persons in the area. ”*

In that case the Supreme Court held that the respondents therein were not customary tenants.

In this case there was no attempt by the appellants to prove by evidence that they were occupying the land under customary tenure and if so under what kind of custom or practice they occupied the suit land.

We do not accept the argument of Mr. Muhimbura that mere cultivation of crops on land constitutes proof of customary tenancy.

We therefore find that the appellants were not customary tenants on the suit land.

This ground also fails.



On ground 3 counsel argued that the learned trial Judge erred when he did not find that the appellants were in adverse possession of the suit land.

As already stated above the suit land was a road reserve prior to May 2000 when it was degazetted and leased to the 1<sup>st</sup> respondent.

The issue then is whether a person occupying a road reserve could be said to be in adverse possession.

We are inclined to find that upon the suit land being gazetted as a road reserve that land ceased to be available for occupation by any person as doing so would have contravene Section 4 of the Roads Act CAP 345 (1964 Revised Laws of Uganda) which stipulated as follows

**4. “Subject to any order which may be made under section 5 of this Act, no person shall, save with the written permission of the road authority, erect any building or plant any tree or permanent crops within a road reserve. ”**

A road reserve is not vacant land available for occupation as it is at all times either in use or available for use by the controlling authority.

Under Section 6 of the Roads Act (Supra) the Road Authority has power to remove anyone occupying a road reserve by first giving notice to such a person. If such a person refuses to vacate the road reserve he commits an offence and is liable to pay a fine. It appears clearly that the Act left no room for adverse possession.

In any event adverse possession is a common law doctrine that is subject to legislation.

We do not accept the argument of Mr. Muhimbura that a person who occupies land in contravention of law may subsequently acquire title to it by adverse possession. A distinction ought to be made between a person who occupies land as a trespasser under common law and

thus commits a civil wrong and one who enters occupied land in contravention express provisions of a statute. The latter cannot acquire title to that land by adverse possession. The law cannot permit a person to benefit from his own criminal acts.

Be that as it may, the appellants at trial failed to prove adverse possession. We agree with the learned trial Judge when at pages 67-68 in his judgment he observed and held as follows:-

***“I will, by and by, return to the circumstances of the Plaintiffs’ regarding their allegedly "compelling evidence" that they had the requisite animus possessendi. On account of Perepetua Naziwa selling all her crops, on account of the five women selling all their crops to the 1<sup>st</sup> and on account of the 2<sup>nd</sup> Plaintiff selling ½ acre of what he allegedly purchased from Perepetua Naziwa and Maimuna Nagitta - Perepetua Naziwa, the alleged five women and the 2<sup>nd</sup> Plaintiff (with regard to the ½ acre he sold to the plaintiff) did not adduce “compelling evidence” of animus possessendi against the 2<sup>nd</sup> Defendant to establish adverse possession. Contrariwise (Sic) their evidence totally erodes the notion of adverse possession.***

***With regard to the Plaintiffs, both testified that they deposited building materials at the sites. PW1 testified that the 1<sup>st</sup> Plaintiff fenced in addition to depositing building materials that the 2<sup>nd</sup> Defendant grew seasonal crops and collected building sand on his site. PW1's evidence contained lies and contradictions. He lied when he told court that he was present when the five women sold to the 1<sup>st</sup> plaintiff and that he was a signatory to the sale and purchase agreement. This agreement was not exhibited and no reason was advanced as to its absence. He also contradicted himself when he testified that the 2<sup>nd</sup> plaintiff owned the kibanja on which the five women owned crops yet he testified that these women sold only their crops to the 1<sup>st</sup> plaintiff.***

We agree with the learned trial Judge’s finding that the appellants failed to prove that they were in effective possession of the land for long enough period to be in adverse possession. Mere growing of crops, fencing and depositing building materials on a piece of land cannot constitute adverse possession. The alleged evidence of adverse possession was riddled with contradictions and lies hereby lacking any probative value on which court could rely.

Furthermore, if the 1<sup>st</sup> appellant was in possession of the suit land as he alleges and had fenced it with a view to building, we wonder why he sat back and did regularise his occupation with the 2<sup>nd</sup> respondent. He was not vigilant at all.

We therefore find no merit in this ground which is also dismissed.

Ground 4 of the appeal has been determined by the resolution of the first 3 grounds. Following our reasoning in the determination of grounds 1, 2 and 3 above, we hold that the suit land was available for leasing to the 1<sup>st</sup> respondent. This ground also fails.

Ground 5 is in respect of fraud.

The appellants particularized fraud in paragraphs 6 and 7 of the plaint as follows

***“PARTICULARS OF FRAUD OF THE 1<sup>st</sup> DEFENDANT***

- (a) Applying for a lease over the suit land despite the overwhelming visible evidence that the same was in use by virtue of there being a fence, crops and building materials thereon.***
- (b) Failing to make proper inquiries from the relevant authorities despite the evidence of occupation.***
- (c) Applying for land stealthily without recommendations from the authorities.***
- (d) Obtaining a lease contrary to the land regulations.***
- (e) Applying for land in the names of a company that was none existent.***
- (f) Applying for land well knowing that it was owned by the Plaintiffs.***

***PARTICULARS OF FRAUD BY THE 2ND DEFENDANT***

***fa) Processing and granting a lease to the 1<sup>st</sup> Defendant without notifying the plaintiffs as required by law.***

- (b) Totally ignoring the plaintiffs’ interest in the land, well aware that the plaintiffs are entitled to the land as adverse possessor/occupant within***

*the provisions of the law.*

***The Plaintiffs shall aver that the fraudulent actions enumerated in paragraph 6 above, were done by the 1st Defendant in collusion with the 2nd Defendant to defeat the Plaintiffs' interest in the suit land which both the 1st and 2nd Defendant knew or ought to have known existed."***

The issues relating to fraud attributed to the 1<sup>st</sup> respondent have already been determined in the first four issues. Except 6 (e) that relates to the application for lease of the land in the names of a company that was none existent. The undisputed evidence in this regard was set out by the learned trial Judge at page 72 of his judgment as follows

***"With regard to (b) there was un contradicted evidence that:***

***(i). the 1<sup>st</sup> Defendant's application was dated 31/05/2000.***

***(ii) .this application was received by the KCC Urban Planning and Land Development on 10/10/2000.***

***(iii) .the same application was received by the Kampala District and Board on 16/10/2000. All this is contained in exhibit "01" (for the 1<sup>st</sup> Defendant).***

***(iv) the 1<sup>st</sup> Defendant was incorporated on 02/08/2000 (see exhibit "P2" (annex "P4" to the plaint).***

***(v) the application was granted on 31/10/2000 (exhibit "P3")."***

Clearly at the time the 1<sup>st</sup> respondent received the application for lease on 16<sup>th</sup> October 2000, the 1<sup>st</sup> respondent was already in existence as a legal entity having been incorporated on 2<sup>nd</sup> August 2000. No doubt it was in existence on 31<sup>st</sup> October 2000 when the application was granted.

We find no merit in the appellants' contention that because the application written before the company was incorporated, that in itself constituted fraud. What is important is that at the time

the application was submitted, considered and granted, the 1<sup>st</sup> respondent was already in existence. We agree with the holding of learned trial Judge on this issue.

The two issues attributing fraud to the 2<sup>nd</sup> appellant have both been resolved in the resolution of the first 4 issues. There was no requirement for the 2<sup>nd</sup> respondent to notify the appellants before granting a lease to the 1<sup>st</sup> respondent. The appellants had no legal or equitable interest in the suit property and were therefore not entitled to be notified of the 1<sup>st</sup> respondent's application for lease.

Ground 5 therefore fails.

In respect of ground 6 for the reasons already given above, we find that the learned trial Judge properly evaluated the evidence and arrived at the correct decision. This ground also fails.

We therefore find no merit whatsoever in this appeal, which we accordingly dismiss with costs in this court and in the court below.

Dated at Kampala this 20<sup>th</sup> day of May 2015

**HON. REMMY KASULE**  
**JUSTICE OF APPEAL**

**HON KENNETH KAKURU**  
**JUSTICE OF APPEAL**

**HON. GEOFFREY KIRYABWIRE**  
**JUSTICE OF APPEAL**