



**IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
COMMERCIAL DIVISION**

Reportable
Civil Suit No. 0375 of 2009

In the matter between

1. SHUMUK SPRINGS DEVELOPMENT LTD	}	
2. SPRINGS INTERNATIONAL HOTEL LTD	} PLAINTIFFS
3. SHUMUK FINANCIAL SERVICES LTD	}	
4. MUKESH SHUKLA	}	

VERSUS

1. BONNEY MWEBESA KATATUMBA	}	
2. VIRANI BAHADUKALI MOHAMEDALLI	}	
3. JOSEPH SEMPEBWA	} DEFENDANTS
4. PETER LULE	}	
5. TECTON GROUP	}	
6. ARVIND PATEL	}	
7. REGISTRAR OF TITLES	}	

Heard: 20th October, 2023.

Delivered: 22nd December, 2025.

Condominium Property - section 3 (1) of The Condominium Property Act - once a building is divided into several units individually owned, the land on which it is established is collectively owned - upon the registration of a condominium plan, condominium titles are created and the original "parent" or "mother" land title is closed (or revoked) by the Registrar of Titles. It ceases to exist as an active, single title for the entire parcel of land in the same form as before. It is legally dissolved and replaced by the collective ownership structure defined by the condominium plan and the individual unit titles issued under it - It henceforth serves as a reference in the Registry but is no longer an active instrument for transferring the entire property as a single unit - A purchaser of a condominium unit acquires its ownership in fee, meaning they own the individual unit in fee simple but modified by restrictive covenants relating to the specific building - The property may revert to being held as a single parcel under a "reconstituted" parent title, often with the former unit owners as tenants in common, when the building is destroyed, or when the unit owners unanimously agree to terminate the

condominium status, often to facilitate a bulk sale to a single investor or developer, or when it becomes impractical or uneconomical to continue the condominium regime - For a contract related to a condominium property to be valid, it must refer to the current, valid Condominium Certificate of Title for a specific unit and its associated common interest - Save in the case of bona fide purchasers, if someone does not own land, they cannot sell it to give valid ownership - bona fide purchase - A person generally has “notice” of a particular fact if that person has knowledge of circumstances which, upon reasonable inquiry, would lead to that particular fact.

Law of contract - Res extincta - A contract must have a legal and valid object or subject matter. A contract dealing with an asset that is no longer a valid, independent legal entity lacks this essential element. Therefore, a contract whose subject is the original “parent” or “mother” land title, after it has been replaced by condominium titles, is void - Privity - An agreement cannot unilaterally create legal duties or liabilities for a non-consenting third party; it cannot impose direct obligations on a third party without their consent.

JUDGMENT

STEPHEN MUBIRU, J.

The counterclaimants' claim;

- [1] The late Bonney Mwebesa Katatumba was at all material time the registered proprietor of a commercial building comprised in LRV 3606 Folio 13 (previously LRV 131 Folio 1) Plot 2 Colville Street, Kampala, known as “Blacklines House,” being a 99-year lease with effect from 1st March, 1912 (therefore valid until 1st March, 2011). Later during the year 2006 under Condominium Plan No. 0045, the property was divided into ninety-two (92) condominium units in respect of which separate 99-year leasehold titles were created for each unit, with effect from 1st March, 1912 (therefore valid until 1st March, 2011).
- [2] By an agreement dated 21st June, 2005 a one Mr. Virani Bahadukali Mohamedalli purchased thirteen (13) of those condominium units, numbered 1, 63, 69, 71, 75, 77, 78, 79, 80, 98, 99, 100, and 101, from the late Bonney Mwebesa Katatumba and caused their transfer into his name. Subsequently, by an agreement dated 26th August, 2009 the 1st counterclaimant, Mr. Joseph Sempebwa purchased the

thirteen condominium units from Mr. Virani Bahadukali Mohamedalli at a cost of US \$ 725,000. He paid the price in full and received transfer deeds from Mr. Virani Bahadukali Mohamedalli. On the other hand, by an agreement dated 13th August, 2007 the 2nd counterclaimant, Mr. Peter Lule purchased eleven (11) condominium units (numbered 52 – 62) directly from the late Bonney Mwebesa Katatumba, for which he paid in full a sum of US \$375,000 as the agreed purchase price. He took possession of the units.

[3] Being heavily indebted at the time to multiple creditors who included M/s Crane Bank Limited, Ben Kavuya, Arvind Patel and others, the late Bonney Mwebesa Katatumba decided to dispose of some of his property. By an agreement dated 16th August, 2008 at a price of US \$ 5,000,000 he sold to the 1st plaintiff, M/s Shumuk Springs Development Ltd, the entire property comprised in LRV 3606 Folio 13 Plot 2 Colville Street inclusive of all “developments, furniture and fixtures and all condominium units comprised” therein.

[4] By that agreement, M/s Shumuk Springs Development Ltd was to pay an initial instalment of US \$ 101,000 and the balance of US \$ 4,899,000 within sixty days (lapsing on 15th October, 2008). It was agreed between them that part of the balance was to applied towards redeeming titles of the condominium units already sold to the counterclaimants, described as “creditors,” in that agreement. The 1st counterclaimant’s predecessor in title Mr. Virani Bahadukali Mohamedalli was to receive US \$ 750,000 while the 2nd counterclaimant was to receive US \$ 400,000. The late Bonney Mwebesa Katatumba on his part undertook to hand over the certificates of title and transfer forms in respect of all the condominium units, to the 1st plaintiff. However, M/s Shumuk Springs Development Ltd later repudiated this contract.

[5] Subsequently, by an agreement dated 10th November, 2008 at a price of US \$ 4,000,000 the 1st defendant, the late Bonney Mwebesa Katatumba, re-sold the same property to the 2nd plaintiff, M/s Springs International Hotel Ltd. By that

agreement, M/s Shumuk Springs Development Ltd was to pay an initial instalment of US \$ 361,000 and the balance of US \$ 3,639,000 within sixty days. It was agreed between them that part of the balance was to applied towards redeeming titles of the condominium units already sold to the counterclaimants, described as “creditors,” in that agreement, but with revised amounts. The 1st counterclaimants predecessor in title Mr. Virani Bahadukali Mohamedalli was to receive US \$ 675,000 (for thirteen condominium units) while the 2nd counterclaimant was to receive US \$ 450,000 (for nine condominium units). Still the late Bonney Mwebesa Katatumba on his part undertook to hand over the certificates of title and transfer forms in respect of all the condominium units, to the 2nd plaintiff.

[6] On 8th October, 2009 the four plaintiffs jointly filed a suit against the defendants jointly and severally, seeking a permanent injunction forbidding the defendants from transferring or dealing in any of the condominium units comprised in Plot 2 Colville Street, that would defeat the plaintiffs’ “contingent interest” in the property. The suit was dismissed on 20th April, 2012 on grounds that the four companies had no cause of action against the 1st, 2nd, 3rd, 4th, 5th, and 6th defendants regarding the suit property. Regarding the counterclaim by the 3rd and 4th defendants, the 4th defendant to the counterclaim too raised a successful preliminary objection against the counterclaim. The 1st counterclaimant Joseph Sempebwa now has a claim against the 1st plaintiff M/s Shumuk Springs Development Limited and the 3rd plaintiff M/s Shumuk Financial Services Limited. The 2nd counterclaimant Peter Lule has a claim against the 1st plaintiff M/s Shumuk Springs Development Limited, the 2nd plaintiff M/s Springs International Hotel Ltd., the 3rd plaintiff M/s Shumuk Financial Services Limited and the administrators of the estate of the 1st defendant, Mr. Bonney Mwebesa Katatumba.

[7] The 1st counterclaimant, Joseph Sempebwa’s case is that Mr. Virani Bahadukali Mohamedalli approached him claiming to own 13 condominium units at Plot 2 Colville Street namely; 1, 63, 69, 71, 75, 77, 78, 79, 80, 98, 99, 100, and 101. Subsequently a search was carried out on his behalf which indicated that the units

were in the names of Mr. Virani Bahadukali Mohamedalli. He also carried out a further inspection on the ground and was availed with communication to the effect that the two counter defendants, who had earlier expressed interest in purchasing the property from Mr. Virani Bahadukali Mohamedalli, had given up on the proposed purchase and by a letter dated 15th April, 2009 the defendants were calling on Mr. Virani Bahadukali Mohamedalli to manage his units personally. On 26th August, 2009 the 1st counterclaimant went ahead and purchased the thirteen units from Mr. Virani Bahadukali Mohamedalli at a cost of US \$ 725,000. He paid the price in full and subsequently received transfer deeds from Mr. Virani Bahadukali Mohamedalli. On presenting them to the Land Registry, he found caveat lodged by the counter defendants claiming as purchasers from Mr. Bonney Mwebesa Katatumba. The transfer in his favour was never registered and he has never taken possession of any of the units, to-date.

[8] It is further the 1st counterclaimant's case that by the agreements dated 10th November, 2008 and the other 16th August, 2008 respectively, the late Bonney Mwebesa Katatumba and the counter defendants acknowledged that Mr. Virani Bahadukali Mohamedalli owns 13 condominium units out to Plot 2 Colville Street. He nevertheless failed to secure possession since he was prevented by the counter defendants. He therefore claims for vacant possession *mesne profits* and cancellation of any titles to the suit properties registered in favour of the counter defendants.

[9] The case for the 2nd counterclaimant is that he purchased eleven condominium units from the late Bonney Mwebesa Katatumba, being units 52 – 62. He paid US \$375,000 in full as the agreed purchase price. Ten title deeds were handed over to him without transfer forms. He nevertheless obtained possession of the eleven units and is still in possession. His claim is for the single title deed that was never handed over to him, for the transfer forms and general damages.

The 1st to 3rd plaintiffs' reply and defence to the counterclaim.

[10] The case for the three counter defendants in respect of the claim by the 1st counterclaimant, is that initially the late Bonney Mwebesa Katatumba had condominium units for sale and by an agreement dated 16th August, 2008 he sold them to the 1st counter defendant. Some payment was made but the agreement failed. A second agreement was made on 10th November, 2008 with the 2nd counter defendant. The second agreement superseded the 1st and the parties proceeded to implement the second agreement. The 2nd agreement named beneficiaries of the consideration among whom were the two counterclaimants. The 1st counterclaimant did not feature at the time, but rather Mr. Virani Bahadukali Mohamedalli was. He made efforts to contact the 2nd counterclaimant who asked the 2nd counter defendant to pay him money for his units.

[11] The sale to the 2nd counterclaimant was secret and was subsequent to that made to the 2nd counter defendant. The 2nd counter defendant did not know of that transaction. It was fraudulent. The 2nd counter defendant transferred many of the units into its name. The units with a dispute could not be transferred because the lease had expired in 2011. The 2nd counter defendant had to renew the leases to all units because they had all expired at the same time. The Kampala Land Board declined to renew the lease for all the disputed ones. These include the two sets claimed by the counterclaimants. They are not even in possession of the property claimed by the 1st counterclaimant. For the 2nd counterclaimant, the acts complained of had stopped since 2008. It is a moot issue now. There is no cause of action against the counter defendants. The contest is basically as to rights of possession.

The 1st defendant/ 4th counter-defendant's reply and defence to the counterclaim.

[12] The case for the 1st defendant is that he sold 11 condominium units to Mr. Peter Lule on 1st November, 2006 for US \$ 375,000 which was duly paid. It is also true

that he delivered vacant possession of all the 11 units. Of the 11 units, ten titles were duly delivered. The title for unit 61 was not delivered because at the time of the contract it initially could be traced and later it was found to have been mortgaged to East African Development Bank. By a debt swap it was moved to Crane Bank Limited. The titles were redeemed by the Shumuk Group of companies on basis of a sale. That one title is believed to have been redeemed by the group of companies. On 16th August, 2008 an agreement was made between him and the 1st counter defendant for sale of the mother title. The unit holders were referred to as creditors. The 4th counter defendant is ready to transfer the property to whoever it is finally decreed.

The questions for determination;

[13] At the scheduling conference conducted on 25th August, 2022, the following were agreed to be the matters in issue between the parties, namely;

1. Whether the two agreements for the sale of property comprised LRV 3606 Folio 13 Plot 2 Colville Street executed between Bonney Mwebesa Katatumba and the counter defendants affected the rights of Peter Lule and Joseph Sempebwa in relation to 24 condominium units.
2. Whether Peter Lule is the lawful owner of the 11 condominium units.
3. Whether Joseph Sempebwa the lawful owner of the 13 condominium units.
4. What remedies are available to the counterclaimants?

The final submissions of counsel for the 1st counterclaimant;

[14] Counsel for the 1st counterclaimant submitted that the 1st counterclaimant's predecessor in title, Mr. Virani Bahadukali Mohamedalli, was never a party to the Counter-Defendants' agreements dated 16th August, 2008 and 10th November, 2008 with the late Bonney Mwebesa Katatumba. The said agreements could not affect Mr. Bahadukali's interest in the thirteen (13) units and by extension the

Counterclaimant's rights. Mr. Katatumba could not transfer any better rights, interest or title to the units in question to the Counter-defendants than he himself held, and he indeed held none by 2008, having divested himself of those rights, interest and title in favour of Mr. Virani Bahadukali Mohamedalli in June 2005. Mr. Bonney Katatumba having sold his interest in the thirteen (13) condominium units to Mr. Virani Bahadukali Mohamedalli on 21st June 2005, he no longer had valid title to pass on to the Counter-Defendants by the impugned agreements of 16th August, 2008 and 10th November, 2008. Accordingly, Mr. Bahadukali's rights, interest and title to the units were never affected by the Counter-defendant's agreements and the Counterclaimant's title to all thirteen (13) units is accordingly valid and should be upheld.

[15] The 1st Counterclaimant lawfully purchased the suit condominium units from Mr. Virani Bahadukali Mohamedalli on 26th August, 2009. The title of Mr. Bahadukali was not impeached whether on the basis of fraud or otherwise and no impeachment action was pursued against the 1st Counterclaimant. The Counter-defendants did not purchase any valid title, rights or interest to the thirteen (13) condominium titles. Furthermore, they had knowledge of the fact that those rights, interest and title were properly vested in the Counterclaimant's predecessor in title, Mr. Virani Bahadukali Mohamedalli. The Counter-defendants clearly set out to defraud the 1st Counterclaimant when they caused the fraudulent renewal of the expired leases to unit numbers 100, 71, 99 and 98 in the 2nd Counter-defendant's name.

[16] The 2nd Counter-defendant has been in possession of the thirteen (13) condominium units and continues to be in possession therefore to-date since 2008. So far as the Counterclaimant is concerned, therefore, the 2nd Counter-defendant has been in wrongful possession of his properties since 29th August, 2009 when the Counterclaimant purchased the units from Mr. Bahadukali. The Counterclaimant is accordingly entitled to *mesne* profits from the 29th August, 2009 together with interest thereon at commercial rate from 29th August, 2009 until

payment in full. This is just and necessary to compensate him for the loss occasioned by the Counter-defendants' wrongful deprivation of possession and thus commercial usage of the properties. The average monthly rent which with ordinary diligence can be collected from each condominium unit is US \$ 1,500 making up a total monthly rental sum for all thirteen (13) units of US \$ 19,500.

The final submission of counsel for the 1st 2nd and 3rd plaintiffs/counter-defendants.

- [17] Counsel for the 1st 2nd and 3rd plaintiffs/counter-defendants submitted that the 1st counter-defendant made a written agreement with the 4th counter-defendant dated 16th August, 2008 to purchase land, developments, furniture and fixtures and all condominium units in leasehold Register Volume 3606 Folio 13 Plot No.2. Colville Street, Kampala. Later, on 10th November, 2008 the 4th counter-defendant made another written agreement of sale of the same property to the 2nd counter-defendant. The latter agreement replaced the former. Both agreements were composite in nature in that there was one indivisible value for all the Condominium units. The parties to the latter agreement moved to implement the same and settled some of the creditors listed on the annexure to the same agreement. It is only the counterclaimants, Virani and M/s Tecton whose claims were not settled.
- [18] Unknown to the 2nd counter-defendant, the 4th counter-defendant had sold to the counter-claimants some of the condominium units as listed against his name on the list of creditors to the agreement of the sale dated 10th November, 2008. The leases for the condominium units expired on or about 29th February, 2011 and have never been renewed. Mr. Peter Lule purported to purchase the units listed on the creditor's list attached to the Agreement between the late Bonney Mwebesa Katatumba and the 2nd counter-defendant. The 2nd Counter-defendant was not a party to such transaction. Mr. Peter Lule took possession of the condominium units purchased except for one unit which he alleges is still with the late Bonney Mwebesa Katatumba, yet to be delivered to him. No evidence was adduced to

show that Mr. Mukesh Shukla received the title deed for unit 61 from Crane Bank Ltd or any other person for that matter.

- [19] It is strange that the late Bonney Mwebesa Katatumba sold to Mr. Peter Lule the 11 Condominium units and later purported to sell the same units to the 2nd counter-defendant. It is equally strange that it is now the 2nd counter-defendant which is vilified. It was an act of dishonestly for the late Bonney Mwebesa Katatumba to purport to sell the units twice over. The 2nd counter-claimant has every reason to pursue the late Bonney Mwebesa Katatumba or his estate but has no reason whatsoever to claim anything from the 2nd counter-defendant. This goes for both the 1st and 3rd counter-defendants. As a matter of fact, no evidence of any wrong doing has been presented to court to demonstrate that the 1st and the 3rd counter defendants i.e. Shumuk Springs Developments Ltd and Shumuk Financial Services Ltd are liable to the counter-claimant Mr. Peter Lule. The 2nd counterclaimant is alleged to have purchased the condominium units on the 29th August, 2009 from Mr. Virani. On 29th February, 2011 the leases for the said condominium units expired.

The final submission of counsel for the 1st defendant/ 4th counter-defendant.

- [20] Counsel for the estate of the late Mr. Bonney Mwebesa Katatumba submitted that the 4th counter-defendant generally denied the claim, as against him. He admitted selling plot 2 Colville street to the 1st plaintiff/counter-defendant, but explained that the latter having breached the agreement, the matter ended up in court as HCCS No. 126 of 2009, whereupon the court made judgment declaring the rights of the respective parties. The court ordered that the suit condominium units, which are part of the 27 units the 4th counter-defendant had already sold to the counterclaimants and others before he sold plot 2 Colville street, were to revert to the 1st defendant/4th counter-defendant, unless and until the 1st plaintiff/counter-defendant paid for them. To this day, the 1st plaintiff /counter-defendant has never paid for the units.

[21] The 1st counterclaimant, Mr. Peter Lule purchased the 11 units the subject of this suit, and took possession of them and still has the possession. Before his death, the 1st defendant/4th counter-defendant handed over 10 of the 11 certificates of title for the units, save for unit No. 61, whose title is expected to be in the possession of the 1st counter-defendant, who apparently retrieved it from the bank. The 1st counterclaimant is entitled to receive it as well. While the family of the 1st defendant/4th counter-defendant is willing to do what it takes to vest title to the 11 units in the 1st counterclaimant, it is not clear how this can be done before the 1st counter-defendant's appeal arising from HCCS No. 126 of 2009 is concluded. The estate of Katatumba does not contest Lule's title to the properties and will willingly execute whatever instruments court directs to be executed to vest the properties in the 1st Counterclaimant.

[22] Considering that the 1st defendant/4th counter-defendant has not questioned the counterclaimant's, interest in the 11 units, has done everything in his power to enable the 1st counterclaimant realise his rights to the property, and has only been frustrated by the 1st and 4th counter-defendants, the 1st defendant/4th counter-defendant should not be condemned to damages or costs. Instead, these, if any, should be borne by the 1st and 4th counter-defendants, who have continued to hang on to properties they have never paid for, to the prejudice and detriment of all concerned.

The decision:

[23] In all civil litigation, the burden of proof requires the counterclaimant to prove each element of his or her claim, or cause of action, in order to recover. In other words, the persuasive burden of proof is on the counterclaimant to show the Court why the counter-defendant is liable for the relief claimed. In the instant suit, the counterclaimants must show: (i) existence of a legal or equitable interest in the condominium units in issue; (ii) a right to title and/or immediate possession; (iii)

unlawful dispossession or occupation by the counter defendants; and (iv) resultant damages.

First issue: whether the two agreements for the sale of property comprised in LRV 3606 Folio 13 Plot 2 Colville Street executed between Bonney Mwebesa Katatumba and the counter defendants affected the rights of Peter Lule and Joseph Sempebwa in relation to the 24 condominium units.

[24] Under a condominium arrangement, a building is divided into several units individually owned, though the land on which it is established is collectively owned. It is a system of separate ownership of individual units in a multiple-unit building, the individual units of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those units (see *Susskind v. 1136 Tenants Corp.*, 251 N.Y.S.2d 321, 327, 43 Misc.2d 588 (1964)). The land on which the building is established as well as the shared common areas (e.g., hallways, elevators, swimming pools, gyms, and parking lots) are jointly owned by all unit owners under a condominium association. The underlying land, support structures, and shared amenities are owned by all the unit owners as tenants in common in shares proportional to their “unit factor.”

[25] According to section 3 (1) of *The Condominium Property Act*, upon the registration of a condominium plan, condominium titles are created and the original “parent” or “mother” land title is closed (or revoked) by the Registrar of Titles. It ceases to exist as an active, single title for the entire parcel of land in the same form as before. It is legally dissolved and replaced by the collective ownership structure defined by the condominium plan and the individual unit titles issued under it. If the parent title was Freehold, the unit titles will be Freehold. Section 3 (2) of the Act requires the Registrar to preserve the closed part of the register relating to the parcel described in the condominium plan.

- [26] It henceforth serves as a reference in the Registry but is no longer an active instrument for transferring the entire property as a single unit. The property may revert to being held as a single parcel under a “reconstituted” parent title, often with the former unit owners as tenants in common, when the building is destroyed, or when the unit owners unanimously agree to terminate the condominium status, often to facilitate a bulk sale to a single investor or developer, or when it becomes impractical or uneconomical to continue the condominium regime. Therefore, the property does not “revert” to a previous owner upon death or sale in the traditional sense.
- [27] Until then, if the parent or mother title was a leasehold (e.g., a 99-year lease), the condominium unit titles issued from it will also be leasehold titles and are subject to the same expiration and renewal terms as the original lease. The individual unit title then has the same legal effect as any other land title under *The Registration of Titles Act* (see section 4 of *The Condominium Property Act*), and is thus fully transferable through sale, inheritance, or other dealings. Existing burdens on the parent or mother title though generally remain in effect for the new unit titles (see section 5 of the Act). The land on which the building is established henceforth in essence belongs to a condominium corporation, wherein the developer, as a unit owner, is in a co-ownership with other unit owners as members or shareholders of the condominium corporation, whose legal relationship is governed by *The Condominium Act*.
- [28] Until termination of the condominium arrangement, followed by a “reconstitution” of the parent or mother title, it is not possible to deal in the building or the land on which it is established, as a single parcel. Until the condominium status is terminated, each unit exists as a separate legal entity with its own certificate of title; the building as a whole does not exist as a single saleable legal interest. For the duration of the condominium arrangement, the building ceases to exist as a single, sellable parcel of real estate in the eyes of the law. A purchaser buying the building as a single unit requires a clean, unified title.

[29] A process of “reconstitution” or amalgamation of the titles is necessary to revert the property to a single, unified parcel that can then be sold as one piece of real estate. When at a meeting of unit owners duly called for such purpose, the unit owners unanimously agree to terminate the condominium status in order to facilitate a bulk sale to a single investor or developer, it thereupon becomes the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale. The developer cannot do so in their name or on their behalf.

[30] A purchaser of a condominium unit acquires its ownership in fee, meaning they own the individual unit in fee simple but modified by restrictive covenants relating to the specific building. The purchase confers full ownership to the specific unit, (floors, walls, ceilings, airspace within the building) outright, and shared ownership of, or undivided interest in the common areas (land, amenities) with other owners via a condominium corporation that manages them and collects fees for upkeep. Each unit, together with its common interest, for all intents and purposes, constitutes real property. The owner holds an absolute, unconditional legal and exclusive title to the airspace and physical boundaries of their specific unit defined by the unit’s boundaries. The fee simple ownership lasts indefinitely if freehold and for the duration of a fixed term, if it is a leasehold, and can be sold, leased, mortgaged or passed down to heirs.

a. The purchase by the 1st counterclaimant, Mr. Joseph Sempebwa.

[31] By an agreement dated 21st June, 2005 a one Mr. Virani Bahadukali Mohamedalli purchased thirteen (13) of those condominium units, numbered 1, 63, 69, 71, 75, 77, 78, 79, 80, 98, 99, 100, and 101, from the late Bonney Mwebesa Katatumba and transferred them into his name (copies of the title deeds are marked as “A1”- “A11” in the 1st counterclaimant’s trial bundle). All the eleven units were registered in Mr. Virani Bahadukali Mohamedalli’s name on 29th July, 2009. By virtue of section 59 of *The Registration of Titles Act*, every certificate of title issued under

the Act is required to be received in all Courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book. The title, unless impeached or declared defeasible, is conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.

[32] Therefore, Mr. Virani Bahadukali Mohamedalli as at 29th July, 2009 owned the absolute, unconditional legal and exclusive title to the airspace of the specific units, defined by the units' boundaries of the following thirteen (13) condominium title deeds; - LRV 3604 Folio 16 Unit No. 1; LRV 3605 Folio 13 Unit No. 63; LRV 3605 Folio 19 Unit No. 69; LRV 3605 Folio 21 Unit No. 71; LRV 3605 Folio 25 Unit No. 75; LRV 3606 Folio 2 Unit No. 77; LRV 3606 Folio 3 Unit No. 78; LRV 3606 Folio 4 Unit No. 79; LRV 3606 Folio 5 Unit No. 80; LRV 3606 Folio 23 Unit No. 98; LRV 3606 Folio 24 Unit No. 99; LRV 3606 Folio 25 Unit No. 100; and LRV 3607 Folio 1 Unit No. 101. Being the registered proprietor of the thirteen units, Mr. Virani Bahadukali Mohamedalli was by virtue of section 93 of *The Registration of Titles Act* empowered to transfer any or all the said units, and upon the registration of the transfer, his estate or interest in the unit(s) would vest in the transferee who would then become and be deemed the proprietor thereof.

[33] On 2nd December, 2008 the director of the 1st and 2nd counter defendants. Mr. Mukesh Shukla, offered to purchase the said thirteen units from Mr. Virani Bahadukali Mohamedalli at a price of US \$ 750,000 to be paid in full by 31st January, 2009 (the letter is marked as "D1" in the 1st counterclaimant's trial bundle). The director having failed to meet his commitment, Mr. Virani Bahadukali Mohamedalli granted him an initial extension up to 28th February, 2009 (the letter is marked as "D2" in the 1st counterclaimant's trial bundle) and later to 31st March, 2009 (the letter is marked as "D3" in the 1st counterclaimant's trial bundle). Mr. Virani Bahadukali Mohamedalli having declined to offer the 1st and 2nd counter defendants a further extension, Mr. Mukesh Shukla by a letter dated 15th April,

2009 (marked as “E” in the 1st counterclaimant’s trial bundle) suggested that management of the units revert to the owner.

[34] The implication is that by the time he made the offer to purchase, Mr. Mukesh Shukla had been managing the units on behalf of Mr. Virani Bahadukali Mohamedalli. At page 70 of the amended 1st counterclaimant’s trial bundle is a letter dated 15th April, 2009 addressed to the lawyers of Mr. Virani in relation to the thirteen (13) units. By that letter, D.W.2 Mr. Mukesh Shukhla offered to manage those units at a commission of 5% of the rent collected. The amended 1st counterclaimant’s trial bundle contains exhibit P. E.x.18 at page 78 which is a letter dated 15th April, 2009 wherein D.W.2 Mr. Mukesh Shukhla wrote indicating that the owners were to take over management of the units from 1st March, 2009. It was addressed to Mr. Virani Bahadukali Mohamedalli’s lawyer. By a subsequent letter dated 5th November, 2008 (marked as “A1” in the 2nd counterclaimant’s trial bundle) the late Bonney Mwebesa Katatumba thereafter expressly appointed Mr. Mukesh Shukla as his attorney “to manage sales of [the] Katatumba Suites,” on his behalf.

[35] Approximately three months prior to that appointment, and five months after Mr. Mukesh Shukla who despite the repeated extensions of time had failed to honour the offer to purchase the thirteen (13) units which he had made on behalf of the 1st and 2nd counter defendants, the 1st Counterclaimant by an agreement dated 26th August, 2009 (marked as “C” in his trial bundle) purchased the thirteen (13) condominium units from Mr. Virani Bahadukali Mohamedalli, who alongside the title deeds, handed over to him the duly signed transfer deeds (marked as C1- C13 in his trial bundle). Under the terms of the agreement, the 1st counterclaimant was entitled to take immediate possession of the thirteen (13) condominium units. He testified however that he was prevented by the counter defendants from taking possession. When he presented the transfer deeds for registration, transfer of property into his name was prevented by a caveat lodged by the counter defendants.

[36] It is trite that upon the execution of the agreement of sale of land and payment, the buyer acquires a right in equity, which means they are the “beneficial owner” of the property. This interest is personal between the buyer and the seller and provides the buyer with certain protections, such as the right to sue for specific performance of the contract. The seller retains the legal title as a trustee for the purchaser until registration is complete. The purchaser’s equitable interest only converts into a legal title once the transfer is officially registered in the buyer’s name at the Registry. Therefore, before registration of transfer deeds, the purchaser’s equitable title grants them the right to use and enjoy the property but does not yet constitute full legal ownership.

[37] The purchaser’s equitable interest is generally enforceable against the seller and others, except for a *bona fide* purchaser for value who acquires the legal title without notice of the prior equitable claim. Being an unregistered proprietor of the thirteen (13) condominium units the 1st counterclaimant, Mr. Joseph Sempebwa acquired a proprietary right in the property enforceable against Mr. Virani Bahadukali Mohamedalli and third parties, save for a *bona fide* purchaser for value who acquired the legal title without notice of this prior equitable claim.

b. The purchase by the 2nd counterclaimant, Mr. Peter Lule.

[38] By an agreement dated 13th August, 2007 (marked as “PA2” in his trial bundle), out of property comprised in LRV 131 Folio 2 Colville Street, Condominium Plan No. 057 known as “Katatumba Suites,” the 2nd Counterclaimant purchased eleven condominium units (numbers 52 – 62) from the late Bonney Mwebesa Katatumba at the price of US \$ 375,000 under a sixty-year lease. The 2nd counterclaimant made an initial payment of US \$ 300,000 with the balance of US \$ 75,000 being payable within a period of thirty months, in monthly instalments of US \$ 2,500 or more. He eventually paid in full and received all title deeds for ten units, save that for Unit 61. By a letter dated 17th September, 2008 (marked as A6 in his trial bundle), the late Bonney Mwebesa Katatumba acknowledged having received the

full price from the 2nd counterclaimant. Just like the case is with the 1st counterclaimant, as unregistered proprietor of the eleven (11) condominium units 2nd counterclaimant, Mr. Peter Lule acquired a proprietary right in the property enforceable against third parties, save for a *bona fide* purchaser for value who acquired the legal title without notice of this prior equitable claim.

[39] Sometime during the year, the 2nd counterclaimant received a number of expressions of interest by the late Bonney Mwebesa Katatumba to re-purchase the eleven units from him at a price of US \$ 400,000., in order to enable him honour the sale he had subsequently made of the same property, to the counter defendants. The 2nd counterclaimant insisted he would be willing to sell at a price not less than US \$ 800,000 but going up to US \$ 1,000,000 (as per the email dated 9th July, 2008 marked as “A3” and “A4” and a letter dated 22nd May, 2009 marked as “A1,” all in his trial bundle). P.W.3 Mr. John Kiganda corroborated this and stated that the late Bonney Mwebesa Katatumba made several phone calls to the 2nd counterclaimant, Mr. Peter Lule convincing him to sell him back the units. D.W.2, Mr. Mukesh Shukhla too admitted that he was aware of this effort. The late Bonney Mwebesa Katatumba eventually being unable to raise that sum demanded by the 2nd counterclaimant, the negotiations failed.

[40] Consequently, being an unregistered proprietor of the eleven (11) condominium units the 2nd counterclaimant, Mr. Peter Lule acquired a proprietary right in the property enforceable against the late Bonney Mwebesa Katatumba and third parties, save for a *bona fide* purchaser for value who acquired the legal title without notice of this prior equitable claim.

- c. The purchase by the 1st counter defendant, M/s Shumuk Springs Development Ltd.
- d. The purchase by the 2nd counter defendant, M/s Springs International Hotel Ltd.

- [41] Despite having sold and transferred thirteen (13) condominium units to Mr. Virani Bahadukali Mohamedalli on 21st June, 2005 and eleven (11) more to the 2nd Counterclaimant on 13th August, 2007, the late Bonney Mwebesa Katatumba on 16th August, 2008 at a price of US \$ 5,000,000, sold the entire property comprised in LRV 3606 Folio 13 Plot 2 Colville Street inclusive of all “developments, furniture and fixtures and all condominium units comprised” therein, to the 1st plaintiff, M/s Shumuk Springs Development Ltd. However, M/s Shumuk Springs Development Ltd later repudiated this contract by its failure to pay the price within the agreed period. By a letter dated 10th November 2008 the 1st counter defendant communicated that the counter defendant was withdrawing from the purchase.
- [42] Subsequently, by an agreement dated 10th November, 2008 at a price of US \$ 4,000,000 the 1st defendant, the late Bonney Mwebesa Katatumba, re-sold the same property to the 2nd plaintiff, M/s Springs International Hotel Ltd. By that agreement, M/s Shumuk Springs Development Ltd was to pay an initial instalment of US \$ 361,000 and the balance of US \$ 3,639,000 within sixty days. It was agreed between them that part of the balance was to applied towards redeeming titles of the condominium units already sold to the counterclaimants, described as “creditors,” in that agreement, but with revised amounts. The 1st counterclaimants predecessor in title Mr. Virani Bahadukali Mohamedalli was to receive US \$ 675,000 (for thirteen condominium units) while the 2nd counterclaimant was to receive US \$ 450,000 (for nine condominium units). Still the late Bonney Mwebesa Katatumba on his part undertook to hand over the certificates of title and transfer forms in respect of all the condominium units, to the 2nd plaintiff.
- [43] One of the co-administrators of the estate, D.W.1 Ms. Angela Katatumba testified that the counter defendant paid off the mortgage with M/s Crane Bank Ltd whereupon all the 92 condominium titles were handed to its Director Mr. Mukesh Shukla, out of which 58 had not been previously mortgaged. Testifying as D.W.2, Mr. Mukesh Shukhla stated that the counter defendants made partial payments to late Bonney Mwebesa Katatumba for 27 units. It was about US \$ 125,000.

- [44] The implication is that although as at 16th August, 2008 and 10th November, 2008 out of the ninety-two (92) condominium units constituted under Condominium Plan No. 0045, the late Bonney Mwebesa Katatumba had the legal capacity to sell only sixty-five (65) of them (having previously sold off a total of twenty-seven (27) units, inclusive of the twenty-four (24) he had sold to the two counterclaimants), he purported to sell off the entire building to the counter defendants. The understanding between them was that the 2nd counter defendant, as purchaser, would refund money previously paid by the previous purchasers of some of the twenty-seven (27) units, who included the counterclaimants in respect of 24 of the units.
- [45] However, D.W.2, Mr. Mukesh Shukhla testified that although under the agreement of 10th November, 2008 the 2nd counter defendant was under an obligation to pay Mr. Virani Bahadukali Mohamedalli a sum of US \$ 675,000, they never paid him because he had no lease. In 2008 the titles to the thirteen (13) condominium units registered in Mr. Virani Bahadukali Mohamedalli's name had two or three years left to run. They chose to wait for the owners to get extension of the 27 titles (those of the two counterclaimants included). They could not pay that much for only two or three years left.
- [46] This transaction is wrought with a number of fatal anomalies. Firstly, during the year 2006, upon conversion of the building on LRV 3606 Folio 13 (previously LRV 131 Folio 1) Plot 2 Colville Street into condominium units, upon registration of Condominium Plan No. 0045, and creation of independent titles for the ninety-two (92) units comprised therein, the original "parent" or "mother" land title was closed, nullified or revoked by the Registrar of Titles. It ceased to exist as an active, single title for the entire parcel of land in the same form as before. It was no longer possible, two years later during the year 2008 when the two agreements involving the 1st and 2nd counter defendants were signed, to reference the original "parent" or "mother" land title as the subject of the sale.

[47] When the late Bonney Mwebesa Katatumba contracted to sell to the counter defendants, property comprised in LRV 3606 Folio 13 Plot 2 Colville Street inclusive of all “developments, furniture and fixtures and all condominium units comprised” therein, the title referred to was non-existent. When Condominium Plan No. 0045 was registered, the “parent” or “mother title” became a descriptive term for the root of the new condominium titles’ legitimacy, but it had no independent legal force as an active land title. It was no longer representative of any parcel of land owned as a single unit.

[48] A contract is generally considered void if its subject matter is non-existent at the time the agreement is made, because the agreement is based on a fundamental mutual mistake of fact. The contract is void when the subject matter of the contract does not exist (*res extincta*). *Res extincta* will apply where both parties enter a contract with the belief that the subject matter exists when in fact it does not exist. A contract must have a legal and valid object or subject matter. A contract dealing with an asset that is no longer a valid, independent legal entity lacks this essential element. Therefore, a contract whose subject is the original “parent” or “mother” land title, after it has been replaced by condominium titles, is void. This is because the original title ceases to exist in its previous form once the new titles are issued, meaning the contract’s subject matter is legally non-existent at the time the agreement is made. For a contract related to a condominium property to be valid, it must refer to the current, valid Condominium Certificate of Title for a specific unit and its associated common interest. Neither the agreement of 16th August, 2008 nor that of 10th November, 2008 references any of the certificates of title to the ninety-two (92) condominium units.

[49] Secondly, in both agreements, the late Bonney Mwebesa Katatumba contracted to sell to the counter defendants, “all condominium units comprised in Leasehold Register Volume 3606 Folio 13, Plot 2 Colville Street, Kampala....,” while he was legally incapable of selling the thirteen (13) condominium units he had previously sold to Mr. Virani Bahadukali Mohamedalli on 21st June, 2005 who on 29th July,

2009 had secured their registration in his name, and the eleven (11) more he had previously sold to the 2nd Counterclaimant on 13th August, 2007. Both counterclaimants as purchasers paid the agreed price in full, and the 1st counterclaimant's predecessor in title had transferred the units into his names at the time of that transaction.

[50] The common law principle of *nemo dat quod non habet* has long held that a person cannot convey a superior title to the one already held (see *Kaheeru Joseph v. Kabazarwe Fridah, H.C. Civil Appeal No. 28 of 2022* and *Mwebesa and three others v. Shumuk Springs Development Limited and three others, H.C. Civil Suit No. 126 of 2009*). The late Bonney Mwebesa Katatumba had ceased to own the 24 units. It is only a registered owner (even if fraudulent) capable of passing a good title to an innocent buyer. Save in the case of *bona fide* purchasers, if someone does not own land, they cannot sell it to give valid ownership.

[51] Moreover, it is trite that a seller who retains the legal title as a trustee for the purchaser until the registration of the sale is complete, lacks the capacity to legally re-sell that land to another party. Once the initial sale contract is binding, the seller holds the bare legal title in trust for the purchaser, who acquires the beneficial (equitable) title. Any attempt to sell the property to a second purchaser would be a breach of the trust relationship with the first buyer. It is only when the contract is lawfully rescinded, that the trusteeship ends, and the seller is free to re-sell the property. If the contract is lawfully rescinded, the equitable interest of the purchaser is extinguished. The trusteeship ends, the parties are restored to their original positions (as far as possible), and the vendor regains full ownership rights, including the freedom to re-sell the property to a new buyer. There is no evidence in the instant case to show that before the purported re-sale of the 24 condominium units that are the subject of this suit, the late Bonney Mwebesa Katatumba had lawfully rescinded the prior sale to Mr. Virani Bahadukali Mohamedalli or to the 2nd counterclaimant, Mr. Peter Lule.

[52] Thirdly, neither the 1st nor the 2nd counter defendant is a *bona fide* purchaser of the twenty-four (24) condominium units. In the two agreements of 16th August, 2008 and 10th November, 2008 respectively, the two counterclaimants are erroneously described as “creditors” of the late Bonney Mwebesa Katatumba, yet they were purchasers of their respective units. A second buyer who knows (or should reasonably know) about the prior sale, generally cannot acquire good title and may be seen as participating in a fraud against the first buyer’s interest. Although mere knowledge of an unregistered interest cannot be imputed as fraud under the Act, where such knowledge is accompanied by a wrongful intention to defeat such existing interest, that would amount to fraud (see *John Katarikawe v. William Katwiremu (Deceased); Maria Nyamihanda - Administrator ad litem and another, [1977] H.C.B 211*). The first buyer has a strong claim in equity to enforce the original contract and prevent the second sale from proceeding.

[53] “Knowledge” means, (i) with respect to an individual, the actual knowledge of such individual and what such individual should have known after a reasonable investigation, serving in the capacity in which such individual serves following reasonable inquiry; and (ii) with respect to a Person other than an individual, the actual knowledge of any individual who is then serving as a member, manager, or officer (or similar executive) of such Person and what any such individual should have known serving in such position following reasonable inquiry. Through their director D.W.2, Mr. Mukesh Shukhla, the 1st and 2nd counter defendants as at 16th August, 2008 and 10th November, 2008 had actual or constructive knowledge that the thirteen (13) condominium units now claimed by the 1st counterclaimant had been purchased three years before on 21st June, 2005 by Mr. Virani Bahadukali Mohamedalli, and that the 2nd counterclaimant had a year before on 13th August, 2007 purchased the eleven (11) units he now claims. Clauses 3 and 4 common to both agreements obligated the 1st and 2nd counter defendants respectively to pay the agreed purchase price to “creditors as per attached list (Annexure-1)all other encumbrances party list (as per Annexure-1 to this agreement handed over by the seller to the purchaser)

[54] The elements of *bona fide* purchase are payment of value, in good faith, and without actual or constructive notice of another's rights. A person claiming *bona fides* has a duty to perform reasonable due diligence, which often includes making the necessary inquiries where incomplete information is availed or suspicion is aroused. In order to derive benefit from the doctrine, a purchaser must have made all the usual and proper inquiries, and still found nothing to indicate the interest of a third party (see *Harriet Rugigan v. National Social Security Fund, H.C. Civil Suit No. 2613 of 2015*). A purchaser who falls short of this standard cannot plead that he or she had no notice of third-party rights which proper due diligence would have discovered. Failure to conduct a reasonable investigation means the purchaser is still bound by the facts they "should have" known. It is an equally well-established principle of law that any purchaser of real property acquires the property subject to prior interests of which he or she has actual or constructive notice.

[55] A person generally has "notice" of a particular fact if that person has knowledge of circumstances which, upon reasonable inquiry, would lead to that particular fact. Reasonable diligence requires that individuals who do not know of any threats to their legal position, should nonetheless act on clues that point to that crucial information. In such circumstances the necessary inquiry becomes a duty. If the individual instead chooses to turn a blind eye, the doctrine of constructive notice will deem the individual insufficiently vigilant. A person who has notice of facts which would cause a reasonably prudent person to inquire as to further facts, is chargeable with notice of the further facts discoverable by proper inquiry.

[56] In this case, the 1st and 2nd counter defendant had knowledge of the fact that the two counterclaimants were "creditors" to the seller. Annexure-1 to the agreement dated 10th November, 2008 is titled "Condominium title holders" and shows that Virani held 13 unit titles. That information would sufficiently excite a reasonable buyer to attention by that clue to undertake the effort necessary to gain a complete picture of their position. Upon reasonable inquiry, and by the exercise of ordinary

diligence and understanding, he would have discovered that the counterclaimants were purchasers of the units in issue and not creditors.

[57] Instead, while under cross-examination D.W.2 Mr. Mukesh Shukhla testified that he only investigated the 2nd counterclaimant's interest after he had signed the agreement with the late Bonney Mwebesa Katatumba, by going to Washington to meet him to verify the amount outstanding and the agreed position between him and the late Bony Katatumba. The fundamental principle of diligence is that the investigation must occur before the purchase is completed. In addition, the 2nd counterclaimant was in possession. Physical possession serves as constructive notice to any subsequent potential purchasers that an equitable interest exists, potentially protecting the first buyer from a later claim. Therefore, none of the counter defendants is a *bona fide* purchaser for value who acquired the legal title without notice of the counterclaimants' prior equitable claim.

[58] Lastly, the contracting parties to the two agreements purported to bind each of the counterclaimants to their private arrangement, by way of the counter defendants' undertaking to pay them off. For lack of mutual agreement and consideration, a third party who never agreed to the contract, cannot on account of the doctrine of privity of contract, be bound by the contract. An agreement cannot unilaterally create legal duties or liabilities for a non-consenting third party; it cannot impose direct obligations on a third party without their consent. The only way a third party can be bound by a contractual obligation is if they provide their informed consent and become a party to the contract, often through assignment, novation, or by explicitly agreeing to assume the obligations. None of these occurred in the instant case.

[59] The late Bonney Mwebesa Katatumba had on the 18th November 2008, released to the counter defendants duly signed transfer forms for sixty-five (65) condominium units that were still in his name and under his control. The leases for those sixty-five (65) condominium properties were comprised in LRV 3604 Folios

1-3, 10-15, 22-24; LRV 3606 Folios 6, 7, 10-16, 18, 21-22; LRV 3514 Folios 21-25; LRV 3515 Folios 1-15, 17, 18-25; LRV 3516 Folios 1 and 2. All titles to the ninety-two units (92) having expired on 1st March, 2011 the 2nd counter defendant M/s Springs International Hotel Ltd applied for their renewal.

[60] By a letter dated 4th September, 2011 (marked as “F” in the 1st counterclaimant’s trial bundle) the Kampala District Land Board communicated that by its minute No. KDLB 14/2011 of 31st August, 2011 the application had been granted. They were granted a fresh lease of 99 years which was registered under LRV 4383 Folio 10 but limited only to the sixty-five (65) condominium units that were still in the name of the late Bonney Mwebesa Katatumba. Further processing of the renewal awaited valuation of the units for purposes of payment of the premium and annual rent, and the final determination of the then pending H. C. Misc. Application No. 568 of 2009 (for a temporary injunction) arising out of H. C. Civil Suit No. 375 of 2009. The application was dismissed on 30th November, 2010. It is the 1st counterclaimant’s case that the counter-defendants set out to defraud him when they caused the fraudulent renewal of the expired leases to unit numbers 100, 71, 99 and 98 in the 2nd Counter-defendant’s name.

[61] However, in *Boney Mwebesa Katatumba and three others v. Shumuk Springs Development Limited and three others*, H.C. Civil Suit No. 126 of 2009, in a judgment delivered on 3rd November, 2014 it was decided that the agreement of 10th November, 2008 “was void *ab initio* as the subject matter to which it relates to had already been sold to the 1st defendant [M/s Shumuk Springs Development Ltd] in an agreement which was still valid.” The Court consequently made the following orders;

In the premises, I do order the cancellation of any instruments by which the Certificates of Title relating to the property at plot 2 Colville Street in respect of any transfer into the names of the 2nd Defendant [M/s Springs International Hotel Ltd.] to be cancelled accordingly.

By this judgment, I order the Registrar of Titles; to cancel the all the various entries/instruments by which the Defendants caused to be registered on the certificate of title for plot 2 Colville Street (and the condominium units thereon) and this order to be in place till full payments by the 1st defendant is made to the 1st plaintiff's creditors and the 1st Plaintiff has signed and given all the documents signifying the transfer of the situ property to the 1st defendant.

- i. Specific performance be carried out done by the parties as regards the agreement of the 16th August, 2008 with the 1st Defendant [M/s Shumuk Springs Development Ltd] with a declaration that title to the property would remain vested in the 1st Plaintiff [the late Bonney Mwebesa Katatumba] with the 1st Defendant account for all the proceeds of his unlawful possession of the property from the time he breached the contract to date.
- ii. He is further ordered to revert possession of the 27 units which he wrongfully took possession of back to the 1st Plaintiff [the late Bonney Mwebesa Katatumba] till such a time when full payments for the same are made. Upon that being done then the 1st Defendant would be entitled to have the properties transferred into its names.

Overall, I find that the Plaintiffs have proved their case on a balance of probability and therefore judgment is entered in their favour upon the following terms;

- i. I order specific performance be carried out by the parties as regards the contract signed on the 16th of August 2008, in regards to Plot 2 Colville Street, Kampala.
- ii. I declare that title to Plot 2 Colville Street, Kampala to remain vested in the 1st Plaintiff till (i) above is performed.
- iii. I order the 1st Defendant to account for all the proceeds of his unlawful possession of Plot 2 Colville Street from the time it breached the

- contract to date, excepting lawful costs as regards the management of the property.
- iv. I order that possession of the 27 units which were wrongfully taken by the 1st Defendant to revert to the 1st Plaintiff till such a time when full payments for the same are made and then when only when the 1st Defendant would be entitled to have the properties transferred into its names.
 - v. I do order Registrar of Titles to cancel of any instruments by which the Certificates of Title relating to the property at plot 2 Colville Street in respect of any transfer into the names of the 2nd Defendant to be cancelled accordingly.
 - vi.
 - vii.
 - viii.
 - ix.
 - x. I award interest at the commercial rate of 24% per annum in regards to the balance unpaid for the agreement signed on the 16th August 2008, from the date of filing this suit till payment in full.

[62] In that suit the late Bonney Mwebesa Katatumba claimed that although M/s Shumuk Springs Development Ltd, the Shumuk group of companies took possession of the entire property and even transferred its mother title and the condominium titles for 65 units into the names of M/s Springs International Hotel Ltd and rebranded the property from “Black Lines House” to “Shumuk House,” collected rentals and drove out from the suit property the third party owners of the remaining 27 condominium units. The Court found as a fact in that suit that M/s Shumuk Springs Development Ltd had contracted to purchase LRV 131 folio 1 plot 2 Colville Street, Kampala also known as “Black Lines House” for the sum of US \$ 5,000,000. Upon the signing of the agreement on 16th August, 2008 a sum of US \$ 101,000 deposit was paid to the late Bonney Mwebesa Katatumba as a down payment, with the balance to be paid within 60 days, that is, from the 16th August, 2008 up to and including 15th October 2008. However, only US \$ 420,000 had been paid by 10th November, 2008.

[63] Under cross-examination during the trial of the instant suit, D.W.2 Mr. Mukesh Shukhla, testified that paragraph 5 of his witness statement refers to money he had to pay to Bonny Katatumba but that he never paid him since he had to pay the 2nd counterclaimant Mr. Peter Lule. It would thus appear that to-date, the counter defendants have never paid the contractual sum in full, for the sixty-five (65) condominium units that were still in the name of the late Bonney Mwebesa Katatumba. In any event, there is still a pending appeal from that decision. The status of the sixty-five (65) of the ninety-two (92) condominium units is thus yet to be finally determined.

[64] As regards the twenty-seven (27) of the ninety-two (92) condominium units that are the subject of this suit, I find that the two agreements for the sale of property comprised in LRV 3606 Folio 13 Plot 2 Colville Street executed between Bonney Mwebesa Katatumba and the counter defendants did not in any way affect the rights of the 1st counterclaimant Mr. Joseph Sempebwa in respect of the thirteen (13) units he purchased from Mr. Virani Bahadukali Mohamedalli, nor the eleven (11) units which the 2nd counterclaimant Mr. Peter Lule purchased from the late Bonney Mwebesa Katatumba.

Second issue: whether Peter Lule is the lawful owner of the 11 condominium units.

Third issue: whether Joseph Sempebwa the lawful owner of the 13 condominium units.

[65] A buyer who has paid the full purchase price and taken possession of the land before registration, holds an equitable interest in the land. The buyer has a beneficial claim to ownership and the right to use or enjoy the property. The seller effectively holds the legal title in trust for the benefit of the buyer, until the title is transferred into the buyer's name. Having found that the 2nd counterclaimant Mr. Peter Lule purchased eleven (11) condominium units from the late Bonney Mwebesa Katatumba, and there being no lawful third party claims in respect thereof, he is hereby declared the absolute, unconditional legal and exclusive

owner of all the airspace and physical boundaries of each of the specific eleven units as defined by the unit's boundaries in their respective title deeds.

[66] Similarly, having found that the 1st counterclaimant Mr. Joseph Sempebwa purchased thirteen (13) condominium units from Mr. Virani Bahadukali Mohamedalli, and there being no lawful third party claims in respect thereof, he is hereby declared the absolute, unconditional legal and exclusive owner of all the airspace and physical boundaries of each of the specific thirteen units as defined by the unit's boundaries in their respective title deeds.

Fourth issue: what remedies are available to the counterclaimants?

[67] When a case is proved to the required standard, the court exercises its discretion to provide a remedy that is just and appropriate for the specific circumstances of the case, tailored to the specific details and equities of the proven case. The relief granted is generally tied to what the claimant specifically requested in their pleadings. A court may grant further or other relief not expressly specified, but it will generally not grant a remedy that fundamentally changes the nature of the claim or relies on a completely different cause of action not presented or argued.

i. Recovery of the title deed to condominium unit 61.

[68] The 2nd counterclaim seeks to recover the title deed to condominium unit 61, being the only title that is yet to be delivered to him out of the eleven. Where a party to a contract, is in breach, the other party may obtain an order of court requiring the party in breach to specifically perform his or her promise under the contract (see section 64 (1) of *The Contracts Act*). An order of specific performance is a court command forcing a party to fulfil their exact contractual duties, used when money damages aren't enough, especially for unique items like land or rare goods, ensuring the non-breaching party gets what they bargained for.

- [69] On the other hand, orders of physical restitution in civil suits are equitable remedies that require a defendant to return specific, identifiable property or restore a status to the plaintiff. Restitutionary remedies are triggered by three different types of action: the reversal of the defendant's unjust enrichment, the commission of a wrong by the defendant, and the vindication of the claimant's property rights. It involves, in the instant case, an order for the direct return of tangible movable that was wrongfully taken or withheld.
- [70] P.W.3 Mr. John Kiganda testified that the 2nd counterclaimant gave him a power of attorney on 11th January, 2007 and he was instructed to sign any agreement between the 2nd counterclaimant, Mr. Peter Lule and the late Bonney Mwebesa Katatumba regarding units 52 – 62. He received ten of the eleven titles, with the late Eva Mulira was a witness. Whereas the estate of the estate of the late Bonney Mwebesa Katatumba bears the contractual obligation to hand over that title, one of the co-administrators of, D.W.1 Ms. Angela Katatumba, acknowledged the completion of that sale and stated that she believed the single title left was in the East African Development Bank (EADB) and later M/s Crane Bank limited and that when the 1st counter defendant took over the property, it is the 1st counter defendant who retrieved it. However, in the meantime, possession of all the 11 units was handed over to the 2nd counterclaimant.
- [71] A party is not entitled to specific performance of a contract where it is not possible for the person against whom the claim is made, to perform the contract (see section 64 (2) (a) of *The Contracts Act*). The rationale is that courts will not issue a futile order. If the obligated party genuinely cannot perform, ordering them to do so is pointless and unenforceable. Ordering the estate of the late Bonney Mwebesa Katatumba to hand over the title when it is neither in their custody nor that of a person obligated to give it to them, would be a futile exercise.
- [72] Instead, the available evidence shows that it is more probable than not that the title deed is with the 1st, 2nd and 3rd counter defendant, they having redeemed it from

M/s Crane Bank Limited when they paid off the loan owed by the late Bonney Mwebesa Katatumba. It is for that reason that restitutionary relief is triggered by the need to direct the return of the title by those three counter defendants as a tangible movable that they wrongfully took or continue to withhold. Therefore, the claim by the 1st counterclaimant against the 4th counter defendant is hereby dismissed with no order as to costs.

ii. Recovery of *mesne profits*.

[73] The basis for recovering *mesne profits* rests on wrongful possession of property, where an unauthorised occupant earns or could have earned income (like rent, crops, or use value) that rightfully belongs to the true owner, serving as compensation for the owner being deprived of their property, including interest on those profits, but excluding costs for improvements made by the trespasser (see *Kalule Paul v. Losira Nanozi [1974] HCB 202*). Key elements include unlawful occupation, the rightful owner's right to possess, and quantifying the profits actually gained or reasonably obtainable. *Mesne profits* act as reparation or damages for the period the owner was kept out of possession. In essence, *mesne profits* compensate the rightful owner for the economic benefit lost due to another's unauthorized control over their property.

[74] The fundamental requirement is that someone holds property without legal title, depriving the rightful owner. It is the 1st counterclaimants case that he has since 26th August, 2009 been denied physical possession and control of the thirteen (13) condominium units as a result of which he has been unable to collect revenue therefrom at the rate of US \$ 1,500 per unit per month, hence an aggregate of US \$ 19,500 per month. The measure of damages will be the ordinary letting value of the property at the date of the trespass (see *Inverugie Investments Ltd v. Hackett [1995] 1 WLR 713*). *McGregor on Damages*, 17th ed. (2003), p. 1152, under the heading "Occupation and User," states:

1. Normal measure.

34-041. The normal measure of damages is the market value of the property occupied or used for the period of wrongful occupation or user..... If the rental value varies due to market fluctuations during the period of wrongful occupation, these fluctuations should be taken into account.....

[75] Section 2 (m) of *The Civil Procedure Act* defines “*mesne profits*” of property as those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but does not include profits due to improvements made by the person in wrongful possession. An award of *mesne profits* is thus assessed on basis of earnings made by the wrongful possessor or what they could have made with ordinary diligence. The calculation may be made on the basis of rent payable taking into account the rate of rent that was applicable on such property or other property of a similar nature located in the same area.

[76] The counter defendants never led evidence to show how the 1st counterclaimant could have mitigated this loss and the Court has not conceived of any. In the same vein, the Court was not furnished with evidence of any appropriate expenses incurred by the counter defendants during that period, on basis of which deductions could be made. The total number of months from 26th August, 2009 to-date (a period of over sixteen years) being 196 months, the amount recoverable by the 2nd counterclaimant from the 1st, 2nd and 3rd counter defendants as *mesne profits* is therefore US \$ 3,822,000.

iii. Order for vacant possession.

[77] Vacant possession refers to the property being unoccupied at the specified time, free from physical items that prevent full undisturbed access and enjoyment of the property being given to the owner. A court order for vacant possession is typically based on a legal right to immediate and exclusive possession of a property,

combined with the current occupier having no legal right to remain. An owner of property has the right to possession against trespassers who have no legal right to occupy the property. The requirement to give vacant possession requires the trespasser to ensure that nothing substantially prevents or interferes with the right of possession.

[78] It is the 1st counterclaimant's case that he has since 26th August, 2009 been denied physical possession and control of the thirteen (13) condominium units. On his part, D.W.2 Mr. Mukesh Shukhla testified that the counter defendants never took possession of the units since they did not have a management contract. He had no idea who is in possession. However, under cross-examination he admitted that by the letter dated 5th October, 2009 from MMAKS Advocates a demand for keys for the premises was made of M/s Springs International Ltd. But he did not remember whether they responded or handed over the keys. This is a tacit admission that he and his corporations had physical control of the premises as at that date. There being no evidence of the counter defendants having handed over the premises to the 1st counterclaimant or his counsel thereafter, I find that the counter defendants have since then been in possession of the thirteen (13) condominium units belonging to the 1st counterclaimant.

[79] The obligation to give vacant possession is generally understood to refer to the legal commitment to ensure that at the relevant date, a given property is in a state fit to be occupied (both physically and legally) and enjoyed by ensuring there is no adverse claimant or occupier or any impediment which prevents the owner from obtaining the quality of possession that guarantees quiet and undisturbed enjoyment. According to Rule 7 of *The Constitution (Land Evictions) (Practice) Directions, 2021* the Court is required, when issuing an order of vacant possession, to specify the particulars of the person or persons to be evicted ad the date of the eviction, being not less than ninety days and not more than one hundred and twenty days after the date of the Order, by which the person to be evicted should have vacated the land. On that account, the 1st 2nd and 3rd counter defendants are

hereby ordered to give vacant possession of the 13 condominium units to the 1st counterclaimant on 23rd March, 2026.

iv. Recovery of general damages.

[80] Both counterclaimants have a claim for general damages. Damages are said to be “at large,” that is to say the Court, taking all the relevant circumstances into account, will reach an intuitive assessment of the loss which it considers the plaintiff has sustained. The award of general damages is in the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant’s act or omission (see *James Fredrick Nsubuga v. Attorney General, H.C. Civil Suit No. 13 of 1993* and *Erukana Kuwe v. Isaac Patrick Matovu and another, H.C. Civil Suit No. 177 of 2003*). A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong (See *Hadley v. Baxendale (1894) 9 Exch 341*; *Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993* and *Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992*).

[81] General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss (see *Storms v. Hutchinson [1905] AC 515*; *Kabona Brothers Agencies v. Uganda Metal Products & Enamelling Co Ltd [1981-1982] HCB 74* and *Kiwanuka Godfrey T/a Tasumi Auto Spares and Class mart v. Arua District Local Government H. C. Civil Suit No. 186 of 2006*). As a general rule, a person who has suffered loss as a result of another’s breach of contract is entitled to be restored to the position that the person would have occupied had the breach not occurred. In special circumstances where the loss did not arise from the ordinary course of things, general damages are awarded only for such losses of which the defendant had actual knowledge (see *Hungerfords v. Walker (1989) 171 CLR 125*).

[82] Generally, a purchaser of property is entitled to possession of the documents of title once the purchase price is fully paid. If the property is mortgaged, the original title deeds are often held by the mortgagee until the debt is fully satisfied. The 1st 2nd and 3rd counter defendants having redeemed the title to condominium unit No. 61 under an arrangement they had with the late Bonney Mwebesa Katatumba, they assumed his responsibility to hand over that title to the 2nd counterclaimant. Their refusal to do so constitutes a breach of their duty and can cause the 2nd counterclaimant mental and physical suffering, inconvenience, and potential financial losses. The continued holding of the title deed deprives him of his property, even if only in a technical sense, and interferes with his rights as the legal owner. The right to general damages in this context stems from the fact that the 1st 2nd and 3rd counter defendants' unreasonable retention of this title is a wrongful act.

[83] The general damages awarded cover non-pecuniary losses that are the natural and probable result of the 1st 2nd and 3rd counter defendants' wrongful actions. The fact that the counterclaimant had to make numerous follow-up visits and phone calls seeking recovery of the title deed is a manifestation of the fact that the 1st 2nd and 3rd counter defendants' wrongful act caused him inconvenience, mental distress, worry, anxiety, and frustration due to the inability to secure his property documents for a period spanning over sixteen years. While he was unable to adduce evidence showing that the 1st 2nd and 3rd counter defendants' wrongful conduct hindered his ability to sell, lease, or use the property as security for any other specific transaction, the general loss of a secure position and opportunity may be covered by an award of general damages.

[84] The court has discretion in determining the amount of general damages to award, taking into account the specific circumstances of the case, such as the duration of the holdover and the level of inconvenience caused. In *Wills International Engineers & Contractors Ltd and another v. DFCU Bank Ltd*, H.C. Civil Suit No. 802 of 2015 the Court awarded shs. 20,000,000/= in general damages for the

wrongful retention of a title deed as mortgagee for a period of nearly a year and a half, from 31st March, 2016 to 28th August, 2017. Having considered the facts of the case and guided by authority. I am of the view that an award of shs. 50,000,000/= suffices as general damages for the 1st 2nd and 3rd counter defendants' wrongful retention of the 2nd counterclaimant's title.

[85] As regards the 1st counterclaimant, it is an established principle concerning the assessment of damages that a person who has wrongfully used another's property without causing the latter any pecuniary loss may still be liable to that other for more than nominal damages. In general, he is liable to pay, as damages, a reasonable sum for the wrongful use he has made of the other's property (see *Stoke-on-Trent Council v. W & J Wass Ltd [1988] 1 WLR 1406 at 1416*). The 1st 2nd and 3rd counter defendants have violated the 1st counterclaimant's property rights for over sixteen years. The core goal of an award of damages is to compensate him as owner for his loss of use of the property, as damages for use and occupation. This is largely achieved by an award of *mesne profits*, primarily based on the fair market rental value of the property over that period, which has already been achieved. Any additional consequential damages flowing from the injury required proof, yet none has been furnished to the Court. The 1st counterclaimant has not been awarded any damages for mental distress, anxiety and psychological and emotional stress because he proved no loss under this head of damages.

v. Recovery of interest.

[86] Under section 26 (1) of *The Civil Procedure Act* where interest was not agreed upon by the parties, Court should award interest that is just and reasonable. In determining a just and reasonable rate, courts take into account "the ever rising inflation and drastic depreciation of the currency. A Plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic

vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due (see *Mohanlal Kakubhai Radia v. Warid Telecom Ltd*, H. C. Civil Suit No. 234 of 2011 and *Kinyera v. The Management Committee of Laroo Boarding Primary School*, H. C. Civil Suit No. 099 of 2013). Consequently, the amount awarded in damages is to carry interest at the rate of 6% per annum on the award in US dollars, and at the rate of 15% per annum for the award in shillings, both to run from the date of filing the suit, i.e. 8th October, 2009 until payment in full.

vi. Recovery of costs.

[87] According to section 27 (2) of *The Civil Procedure Act*, costs of any action, cause or matter follow the event unless Court for good cause orders otherwise. This provision establishes a presumption that the unsuccessful party shall bear the costs. This means the winning party is awarded costs. I have not found any special reasons that justify a departure from the rule. Being the successful litigants, the counterclaimants are hereby awarded the cost of the suit and of the counterclaim.

Final Orders;

[88] In conclusion, judgment is hereby entered for the counterclaimants against the 1st, 2nd and 3rd counter defendants jointly and severally, in the following terms;

- a) The 2nd counterclaimant, Mr. Peter Lule is declared the absolute, unconditional, legal and exclusive owner of the title and the airspace of the specific units, defined by the units' boundaries of the respective eleven (11) condominium titles comprising unit numbers 52 to 62 of Condominium Plan No. 0045.
- b) The 1st, 2nd and 3rd counter defendants jointly and severally are to hand over forthwith to the 2nd counterclaimant, Mr. Peter Lule, the title deed to unit No. 61 comprised in Condominium Plan No. 0045.

- c) The Kampala District Land Board is hereby granted leave to renew forthwith in the 2nd counterclaimant, Mr. Peter Lule's name, all leaseholds in respect of the said eleven (11) condominium units.
- d) The 2nd counterclaimant is awarded general damages of shs. 50,000,000/=
- e) The 1st counterclaimant, Mr. Joseph Sempebwa is declared the absolute, unconditional, legal and exclusive owner of the title and the airspace of the specific units, defined by the units' boundaries of the following thirteen (13) condominium title deeds; - LRV 3604 Folio 16 Unit No. 1; LRV 3605 Folio 13 Unit No. 63; LRV 3605 Folio 19 Unit No. 69; LRV 3605 Folio 21 Unit No. 71; LRV 3605 Folio 25 Unit No. 75; LRV 3606 Folio 2 Unit No. 77; LRV 3606 Folio 3 Unit No. 78; LRV 3606 Folio 4 Unit No. 79; LRV 3606 Folio 5 Unit No. 80; LRV 3606 Folio 23 Unit No. 98; LRV 3606 Folio 24 Unit No. 99; LRV 3606 Folio 25 Unit No. 100; and LRV 3607 Folio 1 Unit No. 101 all comprised in Condominium Plan No. 0045.
- f) The Kampala District Land Board is hereby granted leave to renew forthwith in the 1st counterclaimant, Mr. Joseph Sempebwa's name, all leaseholds in respect of the said thirteen (13) condominium units.
- g) The Commissioner Land registration is hereby directed to issue forthwith in the 1st counterclaimant, Mr. Joseph Sempebwa' name, title deeds to all leaseholds in respect of the said condominium units, once renewed by the Kampala District Land Board.
- h) the 1st 2nd and 3rd counter defendants are hereby ordered to deliver to the 1st counterclaimant Mr. Joseph Sempebwa, or as he directs, exclusive possession and control of all the property comprised in the 13 condominium units specified in (e) above on 23rd March, 2026, failure of which they are to be forcefully evicted therefrom.
- i) The 1st counterclaimant Mr. Joseph Sempebwa is awarded *mesne profits* of US \$ 3,822,000.
- j) Additional *mesne profits* at the rate of US \$ 1,500 per unit per month, hence an aggregate of US \$ 19,500 per month (totalling US \$ 58,500 for three months) from the date of this judgment until 23rd March, 2026, being the due-date for handing over vacant possession.

- k) Interest on the sum in (d) above at the rate of 15% per annum and at the rate of 6% per annum on the sum in (i) above, both from the date of filing the suit, i.e. 8th October, 2009 until payment in full; and at the rate of 6% per annum on the sum in (j) above, from the date the amount falls due until payment in full.
- l) The claim by the 2nd counterclaimant, Mr. Peter Lule, against the 4th counter defendant is hereby dismissed with no order as to costs.
- m) The costs of the suit, and of the counterclaim.

Delivered electronically this 22nd day of December, 2025.

...*Stephen Mubiru*
Stephen Mubiru
Judge,
22nd December, 2025

Appearances:

- | | |
|--|--|
| For the 1 st Counterclaimant | : M/s MMAKS Advocates. |
| For the 2 nd Counterclaimant | : M/s Kalenge Bwanika Kisubi &
Co Advocates. |
| For the 1 st , 2 nd and 3 rd Counter defendants | : M/s Kibuka Musoke & Co. Advocates &
Solicitors. |
| For the 4 th Counter defendant | : M/s Tusasirwe & Co, Advocates. |