

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISCELLANEOUS CAUSE NO. 71 of 2021**

**1. SEKAJJA EDWARD**

**2. NSUBUGA STANLEY**

**3. KATESIGWA GODFREY ::: APPLICANTS**

**VERSUS**

**1. ATTORNEY GENERAL**

**2. LUWEERO INDUSTRIES LTD**

**3. NATIONAL ENTERPRISE CORPORATION ::: RESPONDENTS**

**BEFORE: HON. JUSTICE BONIFACE WAMALA**

**RULING**

**Introduction**

[1] The Applicants brought this application by Notice of Motion under Article 45, 50(1) & (2) of the Constitution of the Republic of Uganda, Section 3(2) of the Human Rights Enforcement Act, 2019 and Rules 7 & 8 of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019 seeking for the following declarations and orders;

a) Declarations that;

- i. The Respondents abdicated their duties to respect, uphold and promote the rights of the former residents of Kasenyi Village, Kakoire Parish, Lwampanga Sub-Parish in Nakasongola District (hereinafter called the **“subject persons”** enshrined under Article 20(2) of the Constitution of the Republic of Uganda.
- ii. The acts and omissions of the Respondents ordering the subject persons to vacate their respective homes and bibanja or property without a court order and/or being accorded a right to be heard was illegal and a violation of their rights to be heard under Articles 28, 42 and 44(c) of the

Constitution and Sections 4(1), (5a), (5b), 32A (1), (3), 35(8) and 92(e) of the Land Act (as amended by Act No. 1 of 2010).

- iii. The acts and omissions of the Respondents ordering the subject persons to vacate their property without compensation violated their rights to property under Article 26(1) of the Constitution.
- iv. The acts and omissions of the Respondents ordering the subjects persons to vacate their property and gainful economic activities deprived them of their rights to equal protection before the law under Articles 21(1) and 237(8) and (9) of the Constitution.
- v. The acts and omissions of the Respondents ordering the subject persons to vacate their property and gainful economic activities without any alternative settlements and gainful economic activities violated their rights to life, human dignity and adequate standard of living or housing under Articles 22 and 45 of the Constitution of Uganda, Article 25 of the Universal Declaration of Human Rights, Article 11(1) of the International Covenant on Social, Economic and Cultural Rights and Articles 14, 16 and 18(1) of the African Charter on Human and People's Rights; violated their rights to family protection and privacy under Articles 27, 31 and Principle XIX of the National Objectives and Directive Principles of State Policy under the Constitution of Uganda and Article 18 of the African Charter on Human and People's Rights.
- vi. The acts and omissions of the Respondents ordering the subject persons to vacate their property without alternative homes and education facilities violated the rights of their children to education and general welfare under Articles 30 and 34 of the Constitution and Article 17 of the African Charter on Human and People's Rights.
- vii. The acts and omissions of the Respondents ordering the subject persons to vacate their property thereby denying them access to their burial grounds violated their cultural rights and the peace of their departed relatives under Article 37 of the Constitution of Uganda.

- viii. The acts and omissions of the Respondents ordering the subject persons to vacate their property with established social amenities like places of worship violated their rights to freedom of association and religion under Articles 29(1)(c) and (e) of the Constitution of Uganda.

b) Orders that:

- i. The Respondents jointly and severally pay monetary compensation to the subject persons in the form of special, general, exemplary and aggravated damages.
- ii. The Respondents acquire land free from any encumbrances to resettle every subject person that was rendered landless through the impugned acts and omissions.
- iii. The Respondents establish schools, mosque, churches and such other social amenities in suitable places of resettlement of the subject persons.
- iv. The Respondents set up a fund for purposes of providing economic stimuli as a form of affirmative action in favour of the subject persons.
- v. Interest at 25% per annum from the date of judgment until full payment is paid on the awarded sums.
- vi. The Respondents pay the costs of the application.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavits made in support of the application by **Auryen Paul, Taban Ssebi, Kabazungu Ruth, Katwesiga Godfrey, Mutundi Kassim, Nsubuga Stanley, Ssekajja Edward, Namazzi Robinah Nayitti, Yasin Musa Gerga and Nicholas K. Ssali** as they appear on record. Briefly the grounds are that the Applicants and other subject persons had fixed places of abode on the suit land enjoying uninterrupted occupation and utilization of different parcels of land for agriculture, shelter, schools, places of worship, trading centers and burial grounds since early 1970s. The subject persons remained in peaceful occupation of the land until the year 1999 when the Respondents first issued orders requiring the LCI Chairpersons to register all community members and put a ban on further

developments in violation of their rights to be heard, equal protection under the law, right to life and socio-economic development. The affected residents petitioned the President of Uganda and the ban was halted. Later in 2013, the Respondents openly expressed interest to take over the land at Kasenyi Village and summoned its leaders at the Ministry of Defence Headquarters in a meeting to discuss the proposed resettlement and compensation of the occupants. In 2014, the Respondents through their agents carried out a verification exercise under which they only recorded about 397 homesteads for purposes of resettlement and compensation in total disregard of the actual number of the residents. However, before valuation, compensation or resettlement of the residents, the Respondents illegally ordered the residents to vacate their homes with the aid of UPDF and the Resident District Commissioner.

[3] It was further stated by the Applicants that due to heavy deployment of soldiers in the village who blocked most of the access roads to the village, the affected residents were forced to flee for safety to neighboring villages leaving behind most of their properties. The subject persons have continued to suffer violation of the respective rights to property, life, education, culture, socio-economic, political and cultural rights. In 2019, the affected residents learnt of a presidential directive that condemned their eviction and directed the 1<sup>st</sup> Respondent to pay ex-gratia to the evictees but it was not adequate compensation envisaged under the law and the same has been neglected. The Applicants concluded that it is fair and in the interest of justice that the reliefs sought in the application be granted.

[4] The Respondents opposed the application through affidavits in reply deposed by **Lt. Gen. James Mugira**, the Managing Director of the 3<sup>rd</sup> Respondent (on behalf of the 1<sup>st</sup> Respondent) and another affidavit by **Daniel Mukombozi**, the Corporation Secretary of the 3<sup>rd</sup> Respondent. In his affidavit, Lt. Gen. James Mugira stated that the application is devoid of merit, bad in law, misconceived, discloses no cause of action and ought to be dismissed with costs. He stated that the land in issue is part of the land that was purchased by the Government of Uganda for the purpose of

establishing strategic security installations thereon. The land comprised in two certificates of titles is registered in the names of Uganda Land Commission and National Enterprise Corporation. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are, therefore, in lawful occupation of the suit land. The deponent stated that after purchase of the suit land, some people started encroaching and illegally settling thereon. The Applicants' claim for compensation is, therefore, not tenable as the Respondents have no legal obligation or liability to compensate illegal encroachers on the suit land. He also stated that a promise to pay ex-gratia was out of grace and extended no liability at all to Government. He concluded that the Applicants are not entitled to the reliefs claimed and it is just and equitable that the application is dismissed with costs.

[5] In the second affidavit, Daniel Mukombozi (for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) stated that the 3<sup>rd</sup> Respondent is a statutory corporation and the commercial arm of the Uganda Peoples Defense Forces(UPDF) while the 2<sup>nd</sup> Respondent is a subsidiary of the 3<sup>rd</sup> Respondent. The deponent stated that the suit land is part of land that was purchased by Government in the 1990s for purposes of establishing strategic installations and subsequently registered in the name of Uganda Land Commission in 1999. He stated that before Government purchased the said land, the same was thoroughly inspected and had no squatters or occupants. He further stated that UPDF did not immediately utilize the whole of the land after purchase which led to encroachment. Subsequently, the UPDF leadership decided to put an end to the encroachment and had various engagements with the encroachers through physical meetings and radio programs upon which they voluntarily vacated the land. He also stated that on further engagements, the encroachers demanded for compensation which was rejected because they had illegally settled on the land. The matter was subsequently taken to the President by certain political leaders who directed the Minister of Finance, Planning and Economic Development to make an ex gratia payment to the affected persons. The Applicants then undertook valuation and submitted the report to the Ministry of Finance. However, in conducting the

valuation, the valuer did not physically inspect the alleged pieces of land, crops or developments and based on the assumption that the encroachers were customary tenants. The valuer also based on the erroneous assumption that the President had directed payment of compensation to the encroachers. The deponent concluded that there was no violation of the applicant's rights as alleged.

[6] The Applicants made and filed two affidavits in rejoinder whose contents I have also taken into consideration.

### **Representation and Hearing**

[7] At the hearing, the Applicants were represented by **Mr. Musana Simon** from M/s Tumwebaze, Kasirye & Co. Advocates, the 1<sup>st</sup> Respondent was represented by **Ms. Sarah Bingi** (State Attorney) from the Attorney General's Chambers, and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were represented by **Mr. Andrew Kabombo**. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both counsel. I have considered the submissions in the course of determination of the matter before Court.

### **Issues for Determination by the Court**

[8] Four issues are up for determination by the Court, namely;

- a) Whether the application is properly before court?**
- b) Whether the Applicants have a cause of action against the Respondents?**
- c) Whether the named rights of the Applicants were violated by the Respondents?**
- d) What remedies are available to the parties?**

### **Resolution of the Issues**

#### **Issue 1: Whether the application is properly before court?**

[9] Counsel for the Respondents submitted that the present application is not properly before the court for failure to comply with the provisions of Order 1 rule 8 of

the CPR which requires the intending applicant/applicants to make an application to the court for a representative order. Counsel argued that a perusal of the affidavits in support of the application shows that it is a representative suit brought on behalf of 397 affected former residents of Kasenyi Community. Counsel relied on the cases of *Paul Kanyima v R. Rugooru per pro Kicumbi Barista Kweterana Society* [1982] HCB 33 and *Abdu Ochaki & 98 Ors v British American Tobacco Uganda HCCS No. 39 of 2013* to the effect that a representative suit brought without leave of court is incompetent. Counsel prayed that the Court dismisses the application with costs for failure to comply with the mandatory requirement under Order 1 rule 8 CPR.

[10] In response, Counsel for the Applicants submitted that the application is properly before this Court because the requirement of a representative order under Order 1 rule 8 CPR is not applicable to actions brought in enforcement of human rights. Counsel cited the provisions of Article 50(2) of the Constitution, Section 3(2) of the Human Rights Enforcement Act, No. 18 of 2019 and Rule 6(1)(c) of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, S.I No. 31 of 2019.

[11] Article 50 (1) and (2) of the Constitution provides as follows;

*“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.*

*(2) Any person or organisation may bring an action against the violation of another person’s or group’s human rights”.*

[12] Section 3 of the Human Rights Enforcement Act, 2019 provides as follows;

*“(1) In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other*

*action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.*

*(2) Court proceedings under subsection (1) may be instituted by –*

*(a) a person acting on behalf of another person who cannot act in their own name;*

*(b) a person acting as a member of, or in the interest of a group or class of persons;*

*(c) a person acting in public interest; or*

*(d) an association acting in the interest of one or more of its members’.* [Emphasis added]

[13] Rule 6 of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019 is in the same terms as Section 3(2) of the Human Rights Enforcement Act above cited. It is clear, therefore, that in matters concerning enforcement of human rights, a party does not have to be appointed by the court as a representative in order to bring a suit on behalf of another or as a member of, or in the interest of a group or class of persons. As such, the provision under Order 1 rule 8 of the CPR does not apply to actions for enforcement of human rights. In any case, the Human Rights Enforcement Act provided another more encompassing provision regarding procedure in connection to human rights enforcement actions. Section 5(6) of the Act provides that; *“No suit instituted under this Act shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or on any technicality”*. As such, even in absence of provisions expressly excluding the application of Order 1 rule 8 CPR, it would not be possible to defeat the present action on basis of this argument by the Respondents’ Counsel. The application is, therefore, properly before the Court.

## **Issue 2: Whether the Applicants have a cause of action against the Respondents?**

[14] Counsel for the Respondents submitted that that the Applicants allege illegal evictions that happened in 2014 on land they have lived on since the early 1970s without proof of how they acquired the same land which is owned by the



Respondents and registered in the names of Uganda Land commission. Counsel argued that the Applicants were mere encroachers on the suit land and did not enjoy any right under the law hence no right was violated. Counsel cited the case of *Tororo Cement Ltd v Frokina International Ltd CA No. 21 of 2001* for the position of the law on the essential elements to constitute a cause of action which are that the plaintiff enjoyed a right, the right was violated and that the defendant is liable. Counsel prayed that the court finds that application discloses no cause of action against the Respondents and should be dismissed with costs.

[15] In reply, Counsel for the Applicants submitted that the Applicants' cause of action is for enforcement of human rights arising from the Respondents' failure to protect, respect, uphold and promote their rights against illegal eviction by the Respondents' agents. Counsel submitted that Respondents' agents, the UPDF, evicted the Applicants from the land on which they had lived for over 30 years without being given an opportunity to be heard and that the Applicants as former residents on the land have proved that they enjoyed a number of rights on the land that were violated by the UPDF.

[16] In law, for a suit to disclose a cause of action, it must show that the plaintiff enjoyed a right, the right was violated and it is the defendant who violated the right. See: *Auto Garage v Motokov No. 3 [1971] EA 51*. It is also the established position of the law that in order to determine whether a plaint or any pleading discloses a cause of action, court has to look at the plaint or the particular pleading and nowhere else. See: *Kapeeka Coffee Works Ltd vs NPART, CA Civil Appeal No. 03 of 2000*.

[17] In this case, the suit is for enforcement of human rights. It appears from the argument of the Respondents' Counsel that they perceived the present suit as one dealing with rights to ownership of the suit property. That is a totally wrong impression. It is also clear from the submissions of Counsel for the Respondents on this issue that they delved into the merits of the suit while arguing what was

supposed to be a pure point of law. That approach is, as well, misconceived. From the facts before me, it is clear that the Applicants sufficiently pleaded that they were in occupation of the land in issue on which they enjoyed various rights as enumerated by them, which rights were violated by the Respondents. As to whether there is sufficient evidence to prove those allegations is a question that goes to the merits of the case and is not a consideration at this stage. The Applicants have, therefore, established that they have a cause of action against the Respondents.

**Issue 3: Whether the named rights of the Applicants were violated by the Respondents?**

[18] Every person is entitled to enjoyment of fundamental rights and freedoms deriving not only from natural law but also as provided for under international and national legal instruments starting with the Universal Declaration of Human Rights of 1948, followed by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, among other instruments. The Constitution of the Republic of Uganda in Chapter Four thereof elaborately sets out the Bill of Rights. Under Article 20(1), the Constitution provides that “Fundamental rights and freedoms of the individual are inherent and not granted by the state”. Under Clause (2) thereof, it is provided that the “rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all agencies of government and all persons”.

[19] On the matter before me, while it was claimed by the Applicants that various named rights of the subject persons were violated as indicated in the pleadings, Counsel for the Respondents did not specifically submit on this issue but instead opted to raise an issue as to whether the Respondents are entitled to enforce their rights to ownership of the suit land and argued that the Applicants were mere encroachers who did not enjoy any rights under the law and, as such, no rights were violated. With all due respect to Counsel for the Respondents, this was not a suit seeking determination of rights to ownership of the suit land. Secondly, there was no

counter action by the Respondents as to call upon the court to determine violation of the Respondents' rights to ownership of the suit land as is proposed under issue three as raised by the Respondents' Counsel in their submissions. With that in mind, I will proceed to consider each of the allegations of human rights violation as set out by the Applicants basing on the evidence on record.

[20] Let me begin with the contention as to whether the Applicants and the other subject persons were in lawful occupation of the suit land at any point material to the present dispute. According to the Respondents, the subject persons were encroachers on the suit land and started entering the land after the land was purchased by the Government in 1999 for purpose of use by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The evidence by the Applicants, on the other hand, is that the subject persons, through their predecessors in interest, variously occupied the land from way back in the 1970's. The evidence is that they settled on the land, constructed houses, carried out agriculture, fishing and other economic activities, and enjoyed other amenities like schools, places of worship among others. In the affidavit in rejoinder deposed by Nsubuga Stanley (the 2<sup>nd</sup> Applicant) and filed on 16<sup>th</sup> April 2021, the deponent attaches three copies of Graduated Tax Tickets for the years 1988, 1989 and 1990 (Annexures P, Q and R). The documents describe the named person as a resident of Kasenyi Village, Lwampanga Sub-County, in the then Luwero District.

[21] I am able to take judicial notice of the fact that during the stated period, Graduated Tax Tickets were the major form of identification for any adult male Ugandan. It was the most reliable description of the person's place of residence. That being the case, the above evidence as contained in the stated annexures dispels the claim by the Respondents that none of the subject persons was in occupation of the suit land before 1999 or by the 1990's when the Government purchased the same for use by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. It was stated in the affidavits in reply to the application that upon purchase of the land, it was registered in the names of the

Uganda Land Commission. Looking at the two certificates of title, annexures R1 and R2 to the affidavit in reply by Daniel Mukombozi, the land was registered into the name of the Uganda Land Commission in 1999. There is no evidence by the Respondents to contradict that of the Applicants as to who was in occupation of the suit land before 1999. I am not prepared to believe that as at that time, the entire village of Kasenyi was unoccupied such that entry of encroachers started after 1999.

[22] It was stated by the 2<sup>nd</sup> Applicant in his affidavit in support of the application that he was the area Local Council Chairperson from the year 2000 until the time of the alleged eviction in 2014. This evidence is consistent with that in the number of other affidavits which describe settlement and use of the suit land by the subject persons ranging from the 1970s up to the time of the alleged eviction. This evidence has not been rebutted by the Respondents. I have found it credible and I find that the Applicants have proved the fact of having been in possession of the land in issue by the time it was acquired on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

[23] The next question is whether the Applicants and other subject persons were lawfully in occupation of the land in issue. As I have stated above, I have found as credible the Applicants' claims that they were in occupation of the suit land from way back as the 1970s through their predecessors in interest. Even in absence of any documentary evidence in proof of any interest in the said land, the period of time a person stays in occupation of the suit land is material. Under Section 29(2)(a) of the Land Act Cap 227, a "bona fide occupant" includes a person who before the coming into force of the Constitution had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more. Under Section 29(5) of the Land Act, any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act.

[24] From the above legal position and on the facts before me, it is believable that 12 years before 1995 (by the year 1983), the subject persons were in occupation of the land at Kasenyi Village as claimed by the Applicants. This makes them bona fide occupants on the suit land. The Applicants have, therefore, established on a balance of probabilities that they and the other subject persons were lawfully in occupation of the suit land as bona fide occupants. I will now consider each of the allegations of human rights violation as claimed by the Applicants.

### **The right to be heard and treated fairly**

[25] Article 42 of the Constitution of the Republic of Uganda, 1995 requires that any person appearing before any administrative official or body shall be treated fairly and justly and the person shall have a right to apply to a court of law in respect of any administrative decision taken. Counsel for the Applicants submitted that the Applicants were not accorded any hearing prior to their eviction. Counsel stated that the Respondents' agents deliberately refused to hold consultative meetings before using force to evict the Applicants whom they branded as encroachers. On the other hand, the Respondents in paragraphs 11-13 of the affidavit in reply deposed by Daniel Mukombozi stated that the UPDF leadership had various engagements, physical meetings and radio programs where the Applicants were asked to vacate the land and the reasons were explained to them. Indeed, it is stated by the deponents in both affidavits in reply that the affected residents vacated voluntarily.

[26] It is not in dispute that the Respondents are public bodies that were interested in the vacation of the subject persons from the suit land. The evidence on record shows that during the period between 1999 and 2014 when the alleged eviction was done, there were various engagements between the agents of the Respondents and the representatives of the subject persons. There is on record evidence of meetings, radio programs and physical verification of the occupants on the suit land before the alleged eviction took place. There is, however, no evidence of when the decision was taken that the occupants had to vacate the suit land. The minutes of the meeting

seen by the Court indicate that a committee had been set out to discuss the modalities of managing the exit of the occupants. There is no evidence as to whether the committee executed the task. There is no evidence of any notice to the occupants clearly directing them to leave and when. According to the Applicants, the only notice was verbally issued by the Resident District Commissioner over the Radio giving the occupants three days within which to vacate the land. This, definitely, was unreasonable notice in terms of form and time. In view of this evidence, I am unable to believe that the subject persons left the land voluntarily as alleged by the Respondents. I have believed that the subject persons were forced to vacate the land through an announcement over the Radio and a heavy deployment of soldiers on the land.

[27] According to Section 32A (1) of the Land (Amendment) Act, No. 1 of 2010, a lawful or bona fide occupant shall not be evicted from registered land except upon an order of eviction issued by a court and only for non-payment of the nominal annual ground rent. Article 26(2) of the Constitution provides as follows;

*“No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied —*

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and*
- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for —*

- (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and*
- (ii) a right of access to a court of law by any person who has an interest or right over the property”.*

[28] Clearly, the law both under Article 26 of the Constitution and Section 32A (1) of the Land Act was breached in the present case. There was neither payment of prompt and adequate compensation to the subject persons nor existence of an order

of court directing the eviction. The Applicants and the other subject persons were therefore unlawfully removed from the land and their right to fair and just treatment was violated.

### **The right to property**

[29] Article 26(1) of the Constitution guarantees to every person the right to ownership of property either individually or in association with others. This right can only be affected in circumstances set out under Article 26(2) of the Constitution, as set out in the foregoing paragraph. As I have found above, due process was not afforded to the subject persons before they were forced to vacate the suit land. They were therefore unlawfully deprived of their interest in the land in issue. This amounted to a violation of their right to property under Article 26 of the Constitution.

### **The right to life and livelihood**

[30] The right to livelihood is not expressly provided for in the Constitution of the Republic of Uganda but is justiciable by virtue of the provisions under Articles 8A and 45 of the Constitution which recognize rights and freedoms not expressly provided for by the Constitution. The courts have held that the right to livelihood which derives from the broader right to life encompasses means of livelihood because there is an obligation on the state to secure persons' means of livelihood and their right to work. See: *Hon. Elijah Okupa v AG HC Misc. Cause No. 14/2005* and *Attorney General v Salvatori Abuki and Another SCCA No.1 of 1998*.

[31] In the instant case, it was stated by the Applicants that upon being forced to vacate their homes, bibanja and other properties, the Applicants were rendered landless, homeless and without access to any reasonable means of earning a living; which violated their right to livelihood. There is uncontroverted evidence that some of the subject persons and their families settled in bushes for considerable periods of time, some made temporary make shift shelters, they had no latrines and no means of surviving. Given the circumstances in which the subject persons were forced to

vacate the suit land, without any reasonable notice or any prior arrangement as to where they were destined to go, it would be naturally contemplated that they would suffer such conditions. I am therefore satisfied that the rights of the subject persons to life and livelihood were violated by the Respondents.

**The right to family protection, shelter or housing, adequate standard of living and human dignity**

[32] Article 31 of the Constitution guarantees the right to family while the right to housing is recognized under the broader right to an adequate standard of living under Article 25 of the Universal Declaration of Human Rights and Article 11.1 of the International Covenant on Economic, Social and Cultural Rights. It was stated by the Applicants that for some period of time, they were barred from repairing their collapsing houses and after forceful vacation, no alternative accommodation was provided which violated their rights to family protection, shelter, adequate standard of living and human dignity. This allegation is made out upon available evidence. There is evidence showing that when the subject persons were forced to vacate the suit land, there was no arrangement in place in terms of alternative accommodation or resettlement. The persons were therefore rendered homeless. This amounted to a violation of their right to housing and adequate standard of living.

**The right to culture and religion**

[33] Article 29(1)(c) of the Constitution of the Republic of Uganda provides that every person shall have the right to “freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution”. Article 37 of the Constitution, on the other hand, provides that “every person has a right as applicable to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others”.



[34] It was claimed that the eviction of the subject persons denied them access to their ancestral burial places and places of worship as their former places of worship like Yesu Afayo Church and Masjid Nuru Mosque were destroyed. Although I have not found any evidence proving destruction of the places of worship, what is made out is the fact that owing to displacement, the subject persons were unable to access their previous places of worship. Nevertheless, it was not shown to Court that there were no places of worship in the villages to which the subject persons were displaced. The reasonable inference would be that a person would not fail to worship simply because they were new in a village or homeless. I therefore do not find any nexus between the eviction from the suit land and the denial of the right to worship on the part of the subject persons.

[35] Regarding the allegation of denial of the right to access burial places of their relatives, it was claimed by the Applicants that many of the subject persons had buried their relatives on the suit land and were not given opportunity to relocate the graves and were thereafter barred from accessing the same. It was claimed that in culture, some of the subject persons needed to visit and dig around the graves of their deceased persons and denial of such opportunity constituted a violation of their rights to practice their culture. Given the period of time the subject persons had been in occupation of the suit land, it is credible that they had graves of their deceased relatives thereon. It is evident that the subject persons had neither an opportunity to relocate the burial sites nor to return to the land. I have therefore believed that the right of the subject persons to practice cultural rites of their choice was violated by the Respondents. In all, issue 3 is substantially answered in the affirmative.

#### **Issue 4: What remedies are available to the parties?**

[36] The Applicants prayed for a number of declarations as set out in paragraph 1 of this Ruling. In view of the findings in issue 3 above, the Applicants are entitled to certain declarations as will be summarized after my consideration of the other orders sought.

[37] The Applicants prayed for special damages for loss of property upon being forced to vacate the suit land. The law regarding special damages is that they must be specifically pleaded and strictly proved in evidence. See: *Uganda Telecom Ltd v Tanzanite Corporation* [2005] 2 EA 331 at P.341. It was shown by the Applicants that they had houses and gardens on the land, among other properties. These items were listed by the 2<sup>nd</sup> Applicant, who was the LC1 Chairperson, per each subject person. The lists were availed to a valuation surveyor who was instructed by the Applicants' lawyers to assess their values and make a valuation report. The valuation surveyor deposed an affidavit in support of the application to which he attached the valuation report as Annexure "I". The report assessed the property reportedly lost by up to 407 persons. The report indicates the total for each individual and the grand total to the tune of **UGX 4,757,551,930/=**.

[38] The Respondents contested the valuation report on three grounds, namely that; the valuer did not physically inspect the alleged pieces of land, crops or developments and the valuation was based entirely on what the valuer was told by the encroachers; the valuation report was based on an erroneous assumption that the encroachers were customary tenants yet they were illegally on the land; and that the President had only directed making of an ex gratia payment and not compensation yet the valuer based on an erroneous assumption that payment of compensation had been directed by the President.

[39] In the valuation report, the valuation surveyor explained as to why he could not physically visit the land and inspect the properties. This was because the place was out of access upon orders of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. As such, the absence of opportunity to visit the land and inspect the properties cannot be blamed on the Applicants. Secondly, the Applicants showed to Court the records of the properties compiled by the 2<sup>nd</sup> Applicant upon which the valuation surveyor relied. No weaknesses in that evidence were pointed out by the Respondents. The valuation report points out the objectives of the valuation exercise and the limiting factors. The

assumptions referred to by the Respondents to discount the report do not feature as some of the factors that influenced the report. In the circumstances, therefore, I have found the valuation report a relevant and reliable piece of evidence in the matter. I find that the sums stated therein do constitute sufficient evidence of loss actually suffered by the subject persons.

[40] Since the Applicants did not bring this action as appointed representatives of the subject persons, it is not feasible to make the order for payment of the entire sum (grand total) to the Applicants. The feasible option, in my view, is to order payment of the sum stated against each subject person. For that reason, an order shall issue for the payment of the total sum of **UGX 4,757,551,930/=** but the mode of payment shall be as against each named person respectively as assessed and indicated in the list accompanying the valuation report (Annexure “I”). For completeness, I will set out the sums as per the table below;

NUMBER	NAME	AMOUNT
001	BMU OFFICE	25,057,500/=
002	ARUBO MOSES	8,385,000/=
003	LOTUKE PAUL	24,737,375/=
004	NANGOLO ANNA	20,008,300/=
005	LOCHUGE ROBERT	44,915,000/=
006	IKIYAYI MARIA	26,910,000/=
007	EKAL LODUP	29,575,000/=
008	KASULE RONALD	13,455,000/=
009	OYARU AISHA	14,820,000/=
010	NANYONJO EPHILANCE	1,592,500/=
011	LOKONG TATA	4,777,500/=
012	NAKE PETERO	8,547,500/=
013	OGALLI SIMON	1,300,000/=
014	NAMUGABI REBECCA	7,832,500/=
015	OKYEPA JAMES	1,332,500/=
016	NAGASAKI RAMANZAN	1,235,000/=
017	AMEI PETER	16,705,000/=
018	NAKIBULE JANE	2,860,000/=
019	AKWII PAUL	1,625,000/=
020	AKELLO GRACE	4,810,000/=
021	SEBIYUNGU DRAKES	2,860,000/=
022	DRANI MUZAMIRU	6,435,000/=
023	BALINA VINCENT	9,555,000/=

024	NALUJJA SCOVIA	1,332,500/=
025	ICHODO SIMON	8,385,000/=
026	ANYANGO CECILIA	3,575,000/=
027	GADAFI FRANCO	1,365,000/=
028	EKARU FRANCIS	2,600,000/=
029	KIVUMBI MUHAMOOD	42,818,750/=
030	AYOO VICKY	3,250,000/=
031	DAMBA STEPHEN	17,680,000/=
032	ILUKWAL PETER	17,062,500/=
033	LOKUBAL PETER	18,687,500/=
034	MUTABAZI ROBERT	13,520,000/=
035	SAMANYA ELLEN	2,762,500/=
036	AMODOI MICHEAL	17,413,500/=
037	OPIO JULIUS	1,495,000/=
038	DUDU TABAN	10,432,500/=
039	MBANGIRE YUSUF	1,592,500/=
040	AKELLO FLORENCE	5,427,500/=
041	SENWASI ASUMAN	14,852,500/=
042	NAKACHWA FLORENCE	3,250,000/=
043	NAKAGO MARCURET	1,852,500/=
044	LOTUKE MARIKO	26,650,000/=
045	APALU SAM	9,490,000/=
046	OWONA ANGELLO	2,860,000/=
047	NALONGO SALAMA	24,927,500/=
048	KAYE HENRY	55,900,000/=
049	OMURON GEORGE PATRICK	4,517,500/=
050	SERUYULU FRED	14,462,500/=
051	NAKATO JAMILA	6,028,750/=
052	LULE BRAHIM	8,450,000/=
053	MARRY SAUDA	1,495,000/=
054	ANGUYO RATIBU	22,002,500/=
055	SEMBATYA IBRAHIM	3,445,000/=
056	NANYANZI CONEY	1,592,500/=
057	KWAGALA SARAH	1,560,000/=
058	TEBASIIA GEOFFREY	20,670,000/=
059	NANSASI GETRUDE	3,250,000/=
060	KAMYA ROBERT	6,370,000/=
061	NAKAZI JANEFER	8,060,000/=
062	SANDE ZIMWANGUYIZA	6,565,000/=
063	EDYEDO FLORENCE	1,495,000/=
064	ATUKWAN ROSE	24,960,000/=
065	LOKOL SAMUEL	22,880,000/=
066	AKOLI PETER	12,252,500/=
067	NAYEBALE JOIS	1,235,000/=
068	BAGONZA PATRICK	1,397,500/=
069	EPAJA EUGENE	2,730,000/=
070	BUGUMIRWA CHARLES	21,515,000/=

071	NAZIWA PHIONA	2,990,000/=
072	KWESIGA STEPHEN	1,332,500/=
073	LONGOLI JOSEPH	26,195,000/=
074	AMIR LWONONA	1,365,000/=
075	KAZIMOTO JOSEPH	32,357,000/=
076	AKELLO MAKULANTA	28,470,000/=
077	LOGEL ALICE	34,840,000/=
078	DPES PETER	25,467,000/=
079	MUTEGUYA JOHN	17,582,500/=
080	NAKAJIRI JANE	13,568,750/=
081	KATUSABE FRED	17,582,500/=
082	LUJJA YOBU	1,885,000/=
083	WETAKA JULIUS	8,222,500/=
084	MUSISI JACKSON	1,462,500/=
085	LOKULA MAIKOLO	24,765,000/=
086	CHURCH OF UGANDA	4,810,000/=
087	LOUGA JOSEPH	25,389,000/=
088	LOKWEE JAMES	8,872,500/=
089	MASETTE AMUZA	6,565,000/=
090	APUNYO ROBERT	1,592,500/=
091	AKELLO KATTY	3,607,500/=
092	SEMAKULA LABAN	19,116,500/=
093	ACHAYO CHRISTINE	13,598,000/=
094	LUTAMAGUZI UMARU	3,120,000/=
095	SAMANYA FATUMA	1,592,500/=
096	KABOGER LUJJA	3,445,000/=
097	MUTUNDI KASIM	14,605,500/=
098	LUGONVU GODFREY	7,670,000/=
099	KIIZA KAMADA	5,070,000/=
100	BAMUTAZE ROBERT	9,132,500/=
101	MUBIRU JULIUS	15,502,500/=
102	NALUBOMBWE JANE	2,860,000/=
103	NALWOGA ALICE	7,832,500/=
104	OCHEN PATRICK	10,042,500/=
105	NAKONDA MARRY	8,677,500/=
106	OLLO JOHN	38,090,000/=
107	SEMWOGERERE PATRICK	3,770,000/=
108	NASINDE ROSE	1,592,500/=
109	MUBIRU FRED MUTEBI	12,545,000/=
110	LOROTO MICHAEL	16,705,000/=
111	MBABU JANET	1,235,000/=
113	NAKIYAGA SARAH	9,132,500/=
114	MUWANGUZI FARUK	21,125,000/=
115	LT.COL OMODING PETER	42,315,000/=
116	SURUNDU RATIBU	1,332,500/=
117	SAGALI ALICE	24,505,000/=
118	OTAI RASHID	4,420,000/=

119	KULABAKO ROBINAH	4,485,000/=
120	ANGELLA PETER	32,630,000/=
121	ASISI CHRISTINE	19,045,000/=
122	LOLING SEBIANO	28,275,000/=
123	MUBIRU MUYINDI	28,535,000/=
124	SEMULONDO MOSES	75,790,000/=
125	ALEPERE ANNA	25,220,000/=
126	KEMU MARITA	17,680,000/=
127	ACHAYO FLORENCE	2,762,500/=
128	LONGELI PAUL	9,262,500/=
129	LOCHORO LINO	14,592,500/=
130	AGAN IRIIMA	22,555,000/=
131	LOKWII PHILIP	18,070,000/=
132	LOKIKE PAUL	8,027,500/=
133	ADAMU YASIN	16,217,500/=
134	LONGOLE FATUMA	6,305,000/=
135	KYAZZE DANIEL	8,417,500/=
136	MAYANJA PETER	8,970,000/=
137	KATALI DANIEL	24,050,000/=
138	SENKEBBE WILSON	2,957,500/=
139	OTIM SIMON	4,517,500/=
140	NAKAYIWA JUSTINE	9,678,500/=
141	LOYCE CAROLINE	1,592,500/=
142	NAKALEMA AISHA	21,515,000/=
143	NANYOMBI RUTH	16,120,000/=
144	LOTEE PETER	25,350,000/=
145	ERIMU JOHN MICHEAL	6,305,000/=
146	IKOLA DENIS	1,235,000/=
147	ANGELLA PAUL	8,758,750/=
148	KOKORU JOSEPH	4,777,500/=
149	BASIGARA LAWRENCE	33,475,000/=
150	LOMILO PHILIP	15,860,000/=
151	ANUNU JOHN	13,195,000/=
152	AKUMU AGNES	1,326,000/=
153	EWACHU THOMAS	1,235,000/=
154	OLWAL BRENDA	8,840,000/=
155	TABAN YASIN	1,885,000/=
156	ZAITUNI CHANDIRU	9,327,500/=
157	ACHOLOI JANET	4,760,000/=
158	ADIRU JALIYA	4,225,000/=
159	ABIRIGA SUSAN	23,822,500/=
160	ACHIDU RASULU	9,847,500/=
161	NALUGO KASIFA	1,495,000/=
162	EKOTU SAM	3,103,750/=
163	KODET PAUL	22,880,000/=
164	LAKERE LOUMO	14,901,250/=
165	ANIKO JANE	3,2178,500/=

166	NALUTAYA NIGHT	1,592,500/=
167	ADIPU MARGRET	5,557,500/=
168	MALINZI MOSES	23,270,000/=
169	KALILI ABASI	2,860,000/=
170	YESU AFAYO P/S	30,420,000/=
171	LUMU BRYN	4,485,000/=
172	AKELLO HELDA	3,152,500/=
173	NTEBU PATRICK	19,630,000/=
174	NALUGWA LUSI	18,915,000/=
175	LOKWAYEN WILSON	39,130,000/=
176	SAGALI PETER	28,990,000/=
177	NAMULONDO MARGRET	21,125,000/=
178	YASIN MUSA	23,335,000/=
179	NAKKU JOYCE	85,098,000/=
180	SEKAJJE ISA	8,417,500/=
181	MASGID NURU	2,795,000/=
182	MARADONA STEPHEN	15,502,500/=
183	NACAP ELIZABETH	12,252,500/=
184	SEMBUSI ABEL	1,300,000/=
185	SEKANDI MARGRET	12,496,250/=
186	ACHIA JOSEPH	25,675,000/=
187	ONGOM TONNY	1,462,500/=
188	SAGALI PETER	17,420,000/=
189	ADINGO PAULINA	2,762,500/=
190	LOCHOTO MARIKO	19,240,000/=
191	ANYANGO PERIPETA	27,177,150/=
192	ANGELLA LOMENA	8,872,500/=
193	ADEBUGA UMARU	1,332,500/=
194	BALIRAINA BONIFACE	1,228,500/=
195	BOGERE JUMA	1,397,500/=
196	DONI PETER	16,776,500/=
197	LOCHU PETER	23,595,000/=
198	MIREMBE CATHERINE	65,000/=
199	BAHIMBIRA JULIUS	5,030,000/=
200	BALA MATAYO	25,532,000/=
201	ANGOLERE RICHARD	51,077,000/=
202	NANKASI EDINANSI	9,847,500/=
203	NABUKEERA JOYCE	1,836,250/=
204	FRED TURYASINGURA	10,822,500/=
205	NAKINGI JUSTINE	5,961,800/=
206	MUWANGUZI KENSON	7,074,600/=
207	SENJOBE VICENT	16,445,000/=
208	AKULLO AGNESS	15,957,500/=
209	NALUGWA DEBORAH	3,090,880/=
210	NAMPIJJA SCOVIA	8,222,500/=
211	MUKISA ISMAIL	1,592,500/=
212	EYORAN RUTH	27,391,000/=

213	BWOZO KEZEKIA	19,435,000/=
214	NAMATOVU HALIMA	1,592,500/=
215	ZIWA JOHN	8,515,000/=
216	SEMONDO WILLIAM	3,445,000/=
217	NSEREKO JAMADAH	10,920,000/=
218	KIZITO GODFREY	19,181,500/=
219	MAJARA ALFRED	53,066,000/=
220	MAYITEKI SAMUEL SEKATE	3,802,500/=
221	RWAPASKA STIVIN	11,765,000/=
222	KASURA PHIBE	6,565,000/=
223	NAGAYI ALLEN	1,592,500/=
224	SEMWANGA FAZIR	8,125,000/=
225	BAKO SAMUSA	4,046,250/=
226	ACEN IRENE	1,235,000/=
227	AKELLO STELLA	1,332,500/=
228	BALIKITENDA PETER	1,397,500/=
229	AMUGE MARGRET	2,860,000/=
230	KODO LONGOLI	8,612,500/=
231	LOKUTU MARIKO	16,932,500/=
232	EKURUDO MAGADO	16,445,000/=
233	IBIILI STIVIN	1,397,500/=
234	KASOZI LIVINGSTONE	1,235,000/=
235	BAGUMA SWAIBU	17,793,750/=
236	ACHAYO PETRA	4,582,500/=
237	LOKAWA FRED	17,386,850/=
238	OTUKE PETER	16,071,250/=
239	LOPEYOK PETER	12,772,500/=
240	AKOT LUCIA	26,715,000/=
241	LOMACH DANIEL	15,272,400/=
242	MUNDO SARAH	18,001,750/=
243	LOPUTU BENSON	17,948,125/=
244	MUKULA JOB	9,993,750/=
245	LOSIKE JOHN	25,844,000/=
246	MUKILI RAHAMANI	1,300,000/=
247	YESU DIDAS MASIKO	5,811,000/=
248	SWAL TABAN	9,750,000/=
249	NASANGA CISSY	1,332,500/=
250	NAKIRU PERERIA	25,528,750/=
251	MWESIGE KALEBU	1,235,000/=
252	NAKAYE MILLY	6,435,000/=
253	KATUSIME JOSEPHINE ANUSU	6,240,000/=
254	LOKIRU ISAACK	41,457,000/=
255	LULE HASAN	6,565,000/=
256	LOBURO KOTOLI	39,195,000/=
257	KATESIGWA GODFREY	111,930,000/=
258	LOWANGOR MOSES	19,370,000/=
259	LUWEKE STEPHEN	1,950,000/=



260	NALUMU ROSE	3,965,000/=
261	KIBERU JIMMY	9,295,000/=
263	OPIO NECKO JAMES	2,860,000/=
264	RAMANZAN SWAIBU	1,332,500/=
265	OKWA ASHIRAF SEBBI	2,323,750/=
266	AKURUT REBECCA	2,730,000/=
267	NAKEE EDITH	1,300,000/=
268	LOKUDA BOSCO	5,411,250/=
269	LOKIRU PETER	9,717,500/=
270	OGOO WILLIAM	13,520,000/=
271	NANTONGO SCOVIA	1,235,000/=
272	NAMAZI NIGHT	3,055,000/=
273	NSUBUGA STANLEY	46,800,000/=
274	CHANDIGA YAZID	3,867,500/=
275	NAIMA MUSA	25,041,250/=
276	SEBUKERA JULIUS	8,222,500/=
277	HABIBU OCHILE	2,860,000/=
278	BYAKATONDA JAMES	114,400,000/=
279	AJALU ROBERT	8,775,000/=
280	AURYEN POUL	35,555,000/=
281	MUWONGE ROBERT	715,000/=
282	BUGALALYO CHARLES	6,565,000/=
283	ALASO AGNES	6,175,000/=
284	ETEU SELSETINO	5,785,000/=
285	MUSHIZA GOD	16,250,000/=
286	AKURUT HELLEN	2,080,000/=
287	SEKAJJA EDWARD	21,612,500/=
288	KAWESA BENARD	9,750,000/=
289	NABOSA ROSE	24,856,000/=
290	SENOZI ROGERS	8,515,000/=
291	NUWAGIRA FRED	49,627,500/=
292	NAKYORO RUTH	15,145,000/=
293	LOKURE MAIKOLO	16,315,000/=
294	LOKIRU PETER	15,145,000/=
295	ILUKWAL PARERIA	21,983,000/=
296	AZIO JOHN	16,575,000/=
297	ALEPELE SANDE	15,242,500/=
298	SUNDAY EDWARD	33,150,000/=
299	LOOBU ANDEREA	16,932,500/=
300	ABWASI JESCA	4,793,750/=
301	AKUT TITO	26,390,000/=
302	LONGOLE PETER	17,387,500/=
303	KODET JOSEPH	1,235,000/=
304	KATANA SAMUEL	22,555,000/=
305	LOKIDI GEORGE	8,546,850/=
306	MUBIRU MONDAY	1,885,000/=
307	LOPUTU PAULO	8,271,250/=

308	TUMWESIGYE GODFREY	6,955,000/=
309	NAGAWA FLORENCE	18,655,000/=
310	NAKIWALA SAFINA	1,105,000/=
311	MATAYO LOUSE	17,745,000/=
312	MASANSO JIMMY	22,392,500/=
313	LWANGA JOHN	1,592,500/=
314	KATALIKawe JOHN	1,300,000/=
315	OGWAL JIMMY	3,523,000/=
316	NAWOKO AGNES	1,300,000/=
319	ERYAMA GEREMIA	17,517,500/=
320	MONDO ZAKARIA	24,732,500/=
321	OKIRIA SIMON	2,730,000/=
322	KALISUMU MANENO LEMUGA	2,730,000/=
323	EMINU FELIX	1,397,500/=
324	KITAKA MAYANJA	6,435,000/=
325	KAJURA HASSAN	14,332,500/=
326	TEBANDEKE LAWRENCE	7,995,000/=
327	NAKIBULE BETTY	3,445,000/=
328	AYUGE SCOVIA	2,860,000/=
329	KYAKUWA MEGA	7,832,500/=
330	NSIYANKWE TWAHA	6,565,000/=
331	MATENDE ERIFAZ	1,592,500/=
332	LOKE ALEX	18,037,500/=
333	KABAZUNGU RUTH	22,821,500/=
334	ABURA PHILIPS	35,100,000/=
335	KODET CECILIYA	8,385,000/=
336	ELUNGAI JULIUS	1,722,500/=
337	JERIWAN ELIA	8,872,500/=
338	KASIGAZI BENON	6,305,000/=
339	ILUKA PAUL	17,030,000/=
340	MWESIGE BOAZ	18,830,000/=
341	ANENA LILIAN	1,235,000/=
342	ACHAYO ELLEN	2,795,000/=
343	AMONYI CHRISTINE	1,235,000/=
344	BWIRE ROBERT	1,300,000/=
345	NAKIBUUKA MILLY	4,517,500/=
346	EDWETU SIMON PETER	2,860,000/=
347	SAKARI MARTIN	1,397,500/=
348	AKELLO MIDDY	5,785,000/=
349	MUSANA IBRAHIM	7,085,000/=
350	LOGELE GRACE	2,860,000/=
351	SENYONJO BRUNO	3,445,000/=
352	WERIKE BRUNO	1,592,500/=
353	LUMU JIMMY	2,860,000/=
354	AKOLI GRACE	18,492,500/=
355	SENKONDO CHARLES	1,332,500/=
356	ARIKO DAVID	9,555,000/=

357	NAKATE JOYCE	2,665,000/=
358	OPEDO RICHARD	1,300,000/=
359	SENTALO ALFRED	2,398,500/=
360	SAGALI PAULO	1,228,500/=
361	OTIM EMMA	3,250,000/=
362	SENTONGO KALALA SULA	6,565,000/=
363	OPIO JAMES	1,300,000/=
364	OPIO PETER	7,995,000/=
365	NANYOO NIGHT	1,300,000/=
366	OCOWUN SANTO	1,332,500/=
367	NAKAMYA NAMUSISI	1,462,500/=
368	TALEMWA HERBERT	455,000/=
369	ANGAIKA FAIMA	9,360,000/=
370	NAMULONDO SARAH	2,470,000/=
371	NANDAWULA FLORENCE	2,665,000/=
372	ABUSALA AMID	1,397,500/=
373	ALAYO AGNES	1,300,000/=
374	ZIRABA MATHIAS	2,860,000/=
375	TUSABE JANET	1,228,500/=
376	LOKUUN ANTHONY	9,782,500/=
377	KODET EMMANUEL	1,300,000/=
378	NALUGO MOSES	8,271,250/=
379	MUTEBI JAMES	1,332,500/=
380	NALUKWAGO FLOW	1,423,500/=
381	MORU MARIA	1,235,000/=
382	LOROT PAUL LOKECH	16,445,000/=
383	SENKONYI ROBERT	7,832,500/=
384	OTIM CHARLESE	1,397,500/=
385	SEJEMBA MOSES	1,235,000/=
386	NABBALE HARRIET	2,860,000/=
387	TABAN RAMANZAN	3,428,750/=
388	NAKIRIJA KETTY	1,332,500/=
389	NALUWAIRO RAMZAN	2,665,000/=
390	ERYAMA KATARINA	23,855,000/=
391	IKALI PAUL	16,575,000/=
392	LOILO JOHN	4,647,500/=
393	LOKE SIMON	1,170,000/=
394	ANYAITI MAGA	2,860,000/=
395	AYALU DANIEL	1,332,500/=
396	KUKOL PALERIA	26,975,000/=
397	LOCHORE MARIKO	17,030,000/=
398	ADONGO STELLA	1,235,000/=
399	OBWOLI FRANCIS	1,495,500/=
400	OCHOTO JAMES	4,257,500/=
401	OKELLO MOSES	1,300,000/=
402	NANGIRO ALICE	8,401,250/=
403	OBOYI JOHN	1,592,500/=

404	NALUNKUMA JANE	8,612,500/=
405	NAMULONDO IRENE	1,690,000/=
406	OLIBA GEORGE	1,462,500/=
407	OKUTE RAMANZAN	1,397,500/=
<b>TOTAL</b>		<b>4,757,551,930/=</b>

[41] The next item of the Applicants' claim is for compensation of the subject persons for violation of their rights in respect of which the Applicants' Counsel proposed a sum of UGX 150,000,000/= per house hold. Counsel at the same time made a claim for general damages for which he proposed a sum of 20,000,000/= per house hold under a separate head. This is an erroneous approach. There is no head of damage known as compensation that is different from general damages. Compensatory damages are either nominal, special, general, or aggravated damages. A claim for compensation must fit in any of the above categories. In the present case, after considering the claim for special damages, the next consideration shall be in respect of general damages.

[42] The law is that the general damages are a direct natural or probable consequence of the act complained of and are awarded at the discretion of the court. The purpose of the damages is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale* (1894) 9 Exch 341; *Charles Acire v M. Engola*, HC Civil Suit No. 143 of 1993 and *Kibimba Rice Ltd v Umar Salim*, SC Civil Appeal No. 17 of 1992. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial Bank. Kigozi* [2002] 1 EA 305). Under the law, general damages are implied in every breach of contract and every infringement of a given right. In a personal injuries claim, general damages will

include anticipated future loss as well as damages for pain and suffering, inconvenience and loss of amenity.

[43] In assessing damages arising out of a human rights violation, it is apt to say that although infringement of a person's human right per se imputes damage, an applicant needs to prove some damage suffered beyond the mere fact of the violation of a given right. Mere breach, without more, may only entitle an applicant to nominal damages.

[44] On the facts of the present case, having found that various rights of the victims were violated through the forceful eviction from the suit land by the Respondent's agents and/or servants, it follows that the Applicants have established that the subject persons suffered some loss and damages respectively, thus entitling them to award of general damages in compensation. What remains is for the Court to determine the extent of harm occasioned to the victims and making an assessment of the appropriate quantum of damages to be awarded to each of the injured persons. The Applicants extensively showed to the Court in evidence that the subject persons suffered trauma, disrupted livelihood and lack of alternative accommodation upon their eviction from the suit land. I am cognizant of the fact that the subject persons were evicted from land that they had called home for a number of years. The subject persons are stated to be 407 in number. Taking all these circumstances into consideration, I will award each listed person as per the table above a sum of UGX 1,000,000/= (Uganda Shillings One Million only) as general damages for loss and suffering.

[45] The Applicants also made a claim for exemplary damages. Exemplary damages represent a sum of money of a penal nature in addition to the compensatory damages given for the loss or suffering occasioned to a plaintiff. The rationale behind the award of exemplary damages is to punish the defendant and deter him from repeating the wrongful act. They should not be used as means to enrich the plaintiff.

According to the dictum by Lord Mc Cardie J. in *Butterworth v Butterworth & Englefield* [1920] P 126, “Simply put, the expression exemplary damages means damages for example’s sake.”

[46] According to Lord Devlin in the land mark case of *Rookes v Barnard* [1946] ALLER 367 at 410, 411 there are only three categories of cases in which exemplary damages are awarded namely;

- a) Where there has been oppressive, arbitrary, or unconstitutional action by the servants of the government;
- b) Where the defendant’s conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff; or
- c) Where some law for the time being in force authorizes the award of exemplary damages.

[47] On the case before me, although it is clear that the Respondents’ agents acted unlawfully and without following due process, there is no evidence of oppressive or arbitrary conduct by the said agents of the Respondents. Evidence shows that although there were threats of use of force, no force was actually used. The unlawful conduct exhibited has been catered for by award of special and general damages. I believe the awards are sufficient to meet the ends of justice. I have, therefore, found no justification for award of exemplary damages.

[48] The Applicants further made a claim for aggravated damages owing to the conduct of the Respondents’ agents of insulting the residents as mere encroachers. Counsel for the Applicants proposed a sum of UGX 50,000,000/= per house hold in aggravated damages. In law, aggravated damages are awarded by the court in form of extra compensation to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. In *Obongo v Kisumu Municipal Council* [1971] EA 91, at page 96, **SPRY, V.P** made the following statement regarding aggravated damages;

*“It is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and the injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature.”* Also see: *Fredrick J.K. Zabwe V Orient Bank & Others, SCCA No.4 of 2006.*

[49] In the present case, I have not found circumstances necessitating award of an extra compensation to the Applicants beyond that given by way of special and general damages. I have, therefore, made no award in aggravated damages.

[50] The Applicants also prayed for resettlement in a place with sufficient social amenities. The compensation awarded to the subject persons in special and general damages is meant to replace what was lost and the inconvenience suffered by them. Upon grant of such compensation, the option of resettlement becomes unfeasible. It becomes reasonably expected that each person will use the proceeds of the compensation to resettle themselves as may be appropriate.

[51] The Applicants further claimed for interest on the awarded sums in damages and proposed a rate of 24% per annum. In accordance with Section 26 of the Civil Procedure Act, I award interest on the sums awarded in special damages at the rate of 18% per annum from the date of filing of the suit until full payment; and on general damages at the rate of 8% per annum from the date of judgement until payment in full. Regarding costs, in accordance with Section 27 of the CPA, the Applicants are awarded the costs of the suit.

[52] All in all, therefore, the application is allowed with the following declaration and orders;

- a) A declaration that the acts by the Respondents’ agents and/or servants in evicting the Applicants from the suit land violated their fundamental human

rights and freedoms, namely; the right to fair and just treatment; the right to property, the right to adequate standard of living; the right to life and livelihood and the rights to culture under the respective provisions of the Constitution of Uganda.

b) Orders that the Respondents, jointly and severally, shall pay;

(i) The total sum of UGX 4,757,551,930/= but payable by way of the sums respectively assessed in favour of each person as indicated in the table herein above as special damages.

(ii) The sum of UGX 1,000,000/= to each subject person as indicated in the table set out herein above.

(iii) Interest on the sums awarded in (i) above at the rate of 18% per annum from the date of filing the suit until payment in full; and in (ii) above at the rate of 8% per annum from the date of judgment until full payment.

(iv) The costs of the application to the Applicants.

It is so ordered.

***Dated, signed and delivered by email this 19<sup>th</sup> day of January, 2024.***



**Boniface Wamala**

**JUDGE**