

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**(CORAM: OWINY -DOLLO, C.J; MWONDHA; TIBATEMWA; TUHAISE; AND CHIBITA JSC)**

**CIVIL APPEAL NO. 008 OF 2020**

**BETWEEN**

10 **MUGERWA EVARESTO KAFEERO..... APPELLANT**

**AND**

**NATIONAL FORESTRY AUTHORITY ..... RESPONDENT**

15 *(Arising from the judgment and decision of Court of Appeal Civil Appeal No. 0039 of 2015 at Kampala before, Kiryabwire, Muhanguzi, Madrama, JJA) dated the 16<sup>th</sup> day of January, 2020)*

**JUDGMENT OF MWONDHA, JSC.**

This is a second appeal, the appellant was dissatisfied with the judgment and decision of the Court of Appeal and appealed to this Court as per the grounds of appeal in the amended Memorandum of appeal as follows: -

- 20 **(1) The Justices of the Court of Appeal erred in law when they failed to adequately evaluate the evidence adduced as a whole in the lower Court with the view of coming to their own conclusion as the 1<sup>st</sup> appellate Court, thereby occasioning a miscarriage of Justice to the Appellant.**
- 25 **(2) The learned Justices of the Court of Appeal erred when they held that the suit land formed part of Mujuzi Forest Reserve whereas not thereby reaching a wrong decision.**

5 **(3) The learned Justices of the Court of Appeal erred in condemning the appellant to costs when he had lawfully applied and granted a Certificate of Title in respect of the suit land by a competent authority, the Uganda Land Commission.**

It was proposed that;

10 **(1) The Court allows the appeal.**

**(2) Costs of this Court and the Courts below be provided.**

**(3) Issues a declaration that the suit land comprised in LRV 1370 Folio 19 Buddu Block 783 Plot 11 measuring 98.71 Hectares at Byante, Kitunga Kyanamukaka - Masaka District does not form**  
15 **part of Mujuzi Forest Reserve.**

#### **Brief Background.**

On 22<sup>nd</sup> February 1985, the Appellant, upon application to Uganda Land Commission for a lease, was registered as the proprietor of land comprised in Buddu Block 783, Plot 11 at Byante, Kitunga, Kyanamukaaka, Masaka District, measuring approximately 98.71 hectares (herein after called the suit ~~land~~ <sup>land</sup>). Ever since the Appellant got registered on the title as the proprietor, he was having quiet possession of the land until 2006 when some officials of the Respondent started claiming that it was part of the Forest Reserve.

The Appellant sued the respondent vide **HCCS. No. 05 of 2008** for a  
25 declaration that the suit land comprised in Buddu Block 783, Plot 11 at Byante, Kitunga, Kyanamukaaka, Masaka District, measuring approximately 98.71 hectares was not a gazetted Forest Reserve at the time it was leased to him (Appellant). The Appellant also sought a permanent injunction restraining the Respondent from evicting him from the suit land, general damages for  
30 trespass, costs of the suit and, in the alternative, an order that the Appellant be offered an alternative piece of land in lieu of the suit land.



5 The Respondent filed a defence admitting that the Appellant was a registered proprietor of the suit land but alleged that by the time the Appellant obtained the title on the suit land, it was a Forest Reserve gazetted in 1932 vide Legal Notice No. 41 of 1948, and 1965. That the suit land was also re-gazetted Vide  
10 Legal Notice 186 and in 1998. The Respondent sought for the following declarations; that the suit land was part of Mujuzi Forest Reserve, the certificate of title of the suit land was issued in error therefore it was null and void, an eviction order, permanent injunction, punitive and general damages and an order dismissing the suit.

The trial Court heard and determined the suit in favour of the respondent. It  
15 found that the suit land was part of Mujuzi Forest Reserve therefore the Appellant acquired the title illegally hence null and void. The Court further found that the registration of the appellant as the proprietor of the suit land was effected in error because the suit land was not available for leasing. The trial Court ordered the Appellant to be evicted from the suit land within 14  
20 days from the date of the judgment, an order requiring the appellant to hand over the owner's copy of the certificate of title held by him to the Commissioner, Land Registration for cancellation, issued an injunction order restraining the Appellant, his agents, employees or successors from using any part of the suit land as belonging to him, and restrained them from carrying on any activity  
25 prohibited by law and an order to pay costs of the suit to the respondent.

The Appellant was dissatisfied with the whole decision of the trial Court, and he appealed unsuccessfully to the Court of Appeal, hence this appeal.

When the Appeal was called for hearing on the 01/06/2022, learned Counsel who appeared for the Appellant, Mr. Kamba Hassan made an oral application  
30 to expunge the written submissions filed by the law firm, M/S Muhumuza & Co Advocates from the record of Court on grounds that the law firm was never instructed by the Appellant.

## 5 **Representation**

At the hearing of the appeal, the Appellant was represented by learned Counsel, Kamba Hassan. The Respondent was represented by learned Counsel Kwesiga Joseph.

## **Submissions**

- 10 Counsel for both parties filed written submissions which were adopted. Counsel for the appellant submitted on ground 3 first and ground 1 and 2 together.

## **Ground 3**

- 15 Counsel for the Appellant faulted the learned Justices of the Court of Appeal for failure to consider the appellant's residue grounds of Appeal which could have allowed them to grant alternative relief of Compensation or Alternative land to the Appellant thereby occasioning a miscarriage of justice. Counsel contended that grounds 2, 3, 4 and 5 and prayer (d) in the Memorandum of Appeal filed in Court of Appeal raised the question of whether the Appellant is  
20 entitled to an Alternative land.

Counsel argued that the failure by Court of Appeal to pronounce itself on the said grounds of Appeal violated the Appellant's right to fair hearing enshrined in Article 28 of the Constitution of Republic of Uganda.

- 25 Counsel further contended that by failing to consider other grounds of Appeal, the Learned Justices of the Court of Appeal abdicated their duty as the 1<sup>st</sup> Appellate Court as set out in Rule 30 and 33 of the Judicature (Court of Appeal) Rules and Directions. Counsel submitted that the Court ought to have reheard the matter and appraised the evidence on record thoroughly. Counsel further submitted that the Court of Appeal abrogated its duty to determine all  
30 the grounds raised in the Appeal thereby occasioning a miscarriage of justice. Counsel relied on the cases of **Santosh Hazari Vs Prushottam Appeal Case No.117 of 2001, Soulemezis Vs Dudley (1987)10NSWLR 247, M/s United**



5 **Engineers & Contractors Vs Secretary to Government A. P AIR 2013 SC 229, B Vs Nagesh & anor Vs Screenivasa Murthy (2010) AIR 2010 SCW 6184, Madina Begam Vs Shiv AIR 2016 SC 3554, APKM Lutaya Vs AG SCCA 10/2002.** Counsel prayed that this ground be allowed.

**Grounds 1 and 2.**

10 Counsel submitted that the learned Justices of the Court of Appeal erred in law in not re-hearing the matter. Counsel cited Rule 30 of the Judicature (Court of Appeal) Rules and Directions which mandates the Court of Appeal, on an Appeal from the decision of High Court to reappraise the evidence and draw its own inferences of fact. Counsel argued that failure to reappraise the evidence  
15 is an error of law.

Counsel submitted that had the Court of Appeal reviewed the evidence on record, it would have found that the Respondent, who had the burden to prove that the suit land formed part of Mujuzi Forest Reserve, had failed to prove so. Counsel also contended that the Appellant could not be deprived of the suit  
20 land without compensation under Article 26 of the Constitution of Republic of Uganda.

Counsel further submitted that at all material times, the respondent was aware that the Appellant owned the suit land and had acquiesced to it. Counsel submitted that the Respondent was estopped by their pleadings from  
25 challenging the appellant's Title after conceding that the Appellant was the registered proprietor of the suit land. Counsel cited the case of **Amooti Godfrey Nyakana Vs National Environmental Management Authority & others SCCA No. 05 of 2011**

Counsel submitted that the assertion by the Respondent's witnesses that it is  
30 the Appellant who surveyed the suit land was not proved at all. Counsel further submitted that the survey report which placed the suit land inside Mujuzi Forest Reserve and relied on by the lower Courts was not credible. Counsel

5 contended that the whole boundary opening exercise was marred with irregularities and manipulations to favour of the Respondent.

Counsel argued that the Appellant was not invited by the survey team and the Survey Report was not signed by all the surveyors. Counsel further argued that there was no evidence of original cadastral map or survey reports produced  
10 before Court.

Counsel submitted that had the learned Justices of the Court of Appeal properly reappraised the above evidence, they would have found that there was no evidence adduced to show that the suit land was part of the Forest Reserve.

Counsel submitted that even if the suit land was in a Forest Reserve, no law  
15 prohibits a person from obtaining a certificate of title in wetland or Forest provided he uses the land conservedly.

Counsel faulted the finding of the Learned Justices of the Court of Appeal that the Respondent's Written Statement of Defence contained a Counter- claim whereas not. Counsel argued that the above finding of the learned Justices of  
20 the Court of Appeal was a misdirection on a point of law and evidence of failure to reappraise the evidence on record.

Counsel prayed that the Appeal be allowed with costs in this Court and in the Courts below.

### **Submissions for the Respondent.**

25 Counsel argued grounds 1 and 2 together and ground 3 separately.

#### **Grounds 1 and 2.**


Counsel submitted that the learned Justices of the Court of Appeal correctly discharged their duty as a 1<sup>st</sup> Appellate Court of re-evaluating the evidence on record. Counsel affirmed that the learned Justices found no reason to reverse  
30 the findings of the trial Court. Counsel cited Rule 30 of the Judicature (Court of Appeal) Rules and Directions and the authority of **Kifamunte Henry Vs**



5 **Uganda Supreme Court Criminal Appeal No. 10 of 1997** to summarize the duty of the first Appellate Court.

Counsel referred and relied to the lead Judgment of Hon. Justice Ezekiel Muhanguzi, JA at page 17 of the Record of Appeal to high light the fact that the learned Justices of the Court of Appeal were alive to their duty as a first  
10 appellate Court.

Counsel also referred and relied to the Judgment of Ezekiel Muhanguzi JA at page 18 of the Record of Appeal, to demonstrate that the Learned Justices of the Court of Appeal re-evaluated the evidence adduced before the trial Court and subjected it to fresh and exhaustive scrutiny.

15 Counsel further submitted that since the Court of Appeal established that the suit land formed part of Mujuzi Forest Reserve and the Certificate of title was illegally issued to the Appellant, it was not necessary to consider other grounds of Appeal as illegality overrides everything and they were related to the first  
ground. 

20 **Ground three.**

Counsel submitted that the Appellant's faulting of the learned Justices of Appeal for disposing off the Appeal on the 1<sup>st</sup> ground without resolving the Appellant's prayer for compensation and/or alternative piece of land is without merit. Counsel argued that it was established that the creation of the  
25 Certificate of title of the suit land in the Forest Reserve was an illegality. Further Counsel argued that if Court considered the above appellant's prayers it would amount to condoning an illegality. Counsel relied on the case of **Makula International Vs Cardinal Nsubuga Wamala & anor Court of Appeal Civil Appeal No.04 of 1981 and Sinba (K) Ltd & Others Vs Uganda Broadcasting Corporation SCCA No. 03 of 2014.**  
30

Counsel argued that the lease agreement was between the Appellant and Uganda Land Commission that granted the leasehold Certificate of Title and

5 therefore, Uganda Land Commission was the right party to sue to claim the alternative prayers and not the Respondent. Counsel argued that the appellant failed to add Uganda Land Commission as a party to the suit. Counsel submitted that the appellant could make any claim for alternative piece of land against the Respondent with whom he had no dealings.

10 Counsel submitted that the learned Justices of the Court of Appeal, contrary to the assertions of the Appellant, considered the other grounds of appeal and the alternative prayers. Counsel relied on the Judgment of Madrama J at page 31 of the Record of Appeal. The learned Justice of the Court of Appeal considered and rejected the alternative prayers of the Appellant. Counsel submitted that

15 the other grounds in the Appellant's Memorandum of Appeal in the Court of Appeal were exhaustively considered and rejected by the Justices of Appeal.

On the issue of the learned Justices of the Court of Appeal deciding the Appeal as if there was a counter claim in the trial Court, Counsel supported the holding of the learned Justices that the body of the Written Statement of

20 Defence contained a counter claim in substance and not form and under order 6 rule 17 of Civil Procedure Rules S I 71-1, no technical objection shall be made to any pleading on ground of any alleged want of form.

Counsel further submitted that contrary to the submissions of the Appellant to the effect that there was no law prohibiting a person from having a title in

25 forest, section 13 and 18 of the repealed Forest Act Cap 146 (which was the law in force at the time of the transaction) prohibited such acts. Counsel cited the case of **Duncan Turyatunga & others Vs Attorney General SCCA No.05 of 2017.**

The appellant's Counsel filed submissions in rejoinder which were considered.

30 Counsel reiterated the earlier submissions.



5 **Consideration of the Appeal.**

This is a second appeal and the duty of a second appellate Court was long settled in various decisions of this Court. In the case of **Tito Buhingiro Vs Uganda SCCA No. 8 of 2014**, it was stated, “**it is trite law that as a second appellate court, we are not expected to re-evaluate the evidence or**  
10 **question the concurrent findings of fact by the High Court and Court of Appeal. However, where it is shown that they did not evaluate or reevaluate the evidence or where they are proved to be manifestly wrong on findings of fact, the court is obliged to do so and to ensure that justice is properly and timely served.**” See also **Kifamunte Henry v Uganda SCCA**  
15 **No. 10 of 1997.**

Bearing the above principles in mind, I shall proceed to resolve grounds 1, 2 and 3 in that order.

**Ground 1**

1. The Honourable Justices of Court of Appeal erred in law when they failed to  
20 adequately evaluate the evidence adduced as whole in the lower Court with the view of coming to their own conclusion as a 1<sup>st</sup> appellate Court thereby occasioning a miscarriage of justice to the Appellant.

The complaint on this ground was failure by the learned Justices of the Court of Appeal to reappraise the evidence on record and thus making an erroneous  
25 finding that the suit land formed part of Mujuzi Forest Reserve.

I must point out from the onset that ground 1 of the Appeal as set out in the Amended Memorandum of Appeal offends the provisions of rule 82(1) of the rules of this Court. It provides: -


**82. Contents of Memorandum of Appeal.**

30 **(1) A Memorandum of Appeal shall set forth concisely and under distinct heads without argument or narrative, the grounds of objection to the**

5 **decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make.**

10 In the instant Appeal, ground one of the Appeal faults the learned Justices of Appeal for failing to evaluate the evidence on record but it fails to specify the ground of objection of the decision and failed to specify the points which are alleged to have been wrongly decided and the nature of the order which is proposed to the Court to make.

15 In other words, the ground did not set out what evidence the Justices of the Court of Appeal failed to re-evaluate, which resulted in the wrong decision.

It is apparent that the impugned ground contravenes the rules of this Court and is barred in law. Though order 6 rule 17 of the Civil Procedure Act provides that no technical objection shall be made to any pleading on ground of any alleged want of form. My view is that, the way the ground was made was fatal.   
20 The Court could not draft the ground as to make it not argumentative. In the premises, ground 1 of the appeal is hereby struck out and or dismissed.

## **Ground 2**

On this ground, counsel for the appellant faulted the learned Justices of the Court of Appeal for upholding the findings and holding of the trial judge that  
25 the suit land formed part of Mujuzi Forest Reserve.

I have perused the Record of Appeal, and it was apparent that, Hon. Justice Ezekiel Muhanguzi JA (as he then was) who wrote the lead judgment in Court of Appeal reviewed the evidence at page 17 of the Record of Appeal as follows;

30 **“The question to be determined in this Appeal is a question of fact as to whether the land at Byante plot 11, Buddu Block 783, Plot 11 at Masaka is under Mujuzi central Forest Reserve. The appellant contends that he**



5 surveyed the land in 1984 and obtained the title from Uganda Land Commission in 1985. On the other hand, the respondent argues that it gazetted the land first in 1914, 1932 and later in 1948.

DW1, Opat Benard a surveyor working with the respondent testified that upon direction from his Director Etwogu to open boundaries, he worked  
10 together with Masaka District Surveyors and their findings were that the suit land was inside the Forest Reserve which had been surveyed since 1914.

The Appellant testified as PW1 at the trial and stated that at the time he obtained the title, he had no knowledge that the land was gazetted by the  
15 respondent as an indication that the Appellant did not carry out all the due diligence before he obtained title over the public land."

The learned Justice of Appeal (Muhanguzi JA as he then was) proceeded to examine the findings of the trial Judge on this particular point at page 18 of the Record of Appeal as follows;

20 "The last declaration of Mujuzi Forest Reserve, was in 1998 under the then law in force. The forest Act Cap 146 (now repealed) S.I 63 of 1998 or SI 146-1, The Forest (Forest Reserve Declaration) order was saved by section 95(2) of the National Forest and Tree Planting Act, 2003. The Forest (Forest Reserve Declaration) order, in its first schedule shows that  
25 Mujuzi Forest Reserve has maintained the original area of 6079 hectares as was in 1914. This means that no part of the Forest Reserve has ever been de-gazetted. The area of 98.71 hectares at Byante, Kitunga which the Plaintiff registered under his names in 22.02.1985, was part of Mujuzi Central Forest Reserve. It had not been de-gazetted.

30 Secondly, there is nothing on record to show that prior to the issue of the suit property to the plaintiff for leasing, an exclusion order of 98.71 hectares was made by the chief conservator for forests."

5 Justice Muhanguzi concluded basing on the above as follows;

10 **“I am therefore unable to fault the learned trial judge. I find that the land comprised in LRV 1370, Folio 19 Buddu Block 783, Plot 11 measuring 98.71 hectares at Byante, Kitunga, Kyanamukaaka, Masaka District was and still is part of Mujuzi Central Forest Reserve. Since this ground is resolved in the negative, it is not necessary to look at the merits of the remaining grounds.”**

15 The above concurrent findings of the lower courts were based on evidence on record regarding the suit land being part of Mujuzi Forest Reserve. In my considered opinion, the findings of the first appellate court, in as far as the suit land being part of Mujuzi Forest Reserve, are supported by the evidence from both sides, as deduced from the testimonies of DW1, DW2, DW3, which appears from page 138 to 150 of the Record of Appeal and exhibits **PEx2** (survey report dated 27<sup>th</sup> June 2012), **DEx 5** which is a joint boundary opening report. These were admitted as exhibit by both parties at the pre-conferencing. Strangely, 20 these documents were “left out” by counsel for the Appellant when compiling the Record of Appeal for reasons unknown to this Court. However, the same were exhibited before the trial court so they are part and parcel of Court Record. There is overwhelming evidence on record which shows that the suit land is inside Mujuzi Central Forest Reserve. To that extent, the first Appellate 25 Court re-evaluated the evidence and correctly based its findings on the adduced evidence on record.

On the question of whether the grant of lease over the suit land, which has been found to be part of Mujuzi Central Forest Reserve, was illegal. I have reviewed the legislation that existed at the time of the transaction.

30 Article 108 (3) of the 1967 Constitution provided;

**“(3) The Land Commission shall hold and manage any land vested in it by this Constitution or any other law or acquired in Uganda by the**



Government of Uganda and shall have such other powers and duties as may be prescribed by Parliament."

Section 11(1) of the Public Land Act of 1969 vested all public land in Freehold in the Uganda Land Commission.

Significantly, the provisions of the Public Land Act 1969 were subject to the provisions of the Forest Act cap 246 and National Parks Act by virtue of section 13(1) of the Public Land Act.

Section 13 of the Forest Act cap 146 prohibited certain activities from being carried out in a forest. It provided as follows;

### **13 Prohibited acts**

**13(1) Subject to any exemptions granted under this Act, no person shall cut, take, work or remove forest produce in or from a Forest Reserve, or clear forest or open land unless he or she is licensed to do so under this Act.**

**13(2) Except as may be permitted by rules made under this Act, no person shall—**

**(a) use or occupy any land in a Forest Reserve for—**

**(i) mining;**

**(ii) camping;**

**(iii) fish farming;**

**(iv) the planting or cultivation of crops;**

**(v) the erection of buildings or enclosures; or**

**(vi) recreational, commercial, residential or industrial purposes; or**

**(vii) to construct or reopen any road, track or bridge in a Forest Reserve.**





- 5 **Government of Uganda and shall have such other powers and duties as may be prescribed by Parliament."**

Section 11(1) of the Public Land Act of 1969 vested all public land in Freehold in the Uganda Land Commission.

- 10 Significantly, the provisions of the Public Land Act 1969 were subject to the operations of the Forest Act cap 246 and National Parks Act by virtue of section 23(1) of the Public Land Act.

Section 13 of the Forest Act cap 146 prohibited certain activities from being carried out in a forest. It provided as follows;

**13. Prohibited acts**

- 15 ***(1) Subject to any exemptions granted under this Act, no person shall cut, take, work or remove forest produce in or from a Forest Reserve, village forest or open land unless he or she is licensed to do so under this Act.***

- 20 ***(2) Except as may be permitted by rules made under this Act, no person shall—***

- (a) clear, use or occupy any land in a Forest Reserve for—***

***(i) grazing;***

***(ii) camping;***

***(iii) fish farming;***

- 25 ***(iv) the planting or cultivation of crops;***

***(v) the erection of buildings or enclosures; or***

***(vi) recreational, commercial, residential or industrial purposes; or***

***(b) construct or reopen any road, track or bridge in a Forest Reserve.***

5 Furthermore, section 18 of the same Forest Act cap 146 made it an offence to carry out the said activities on a forest in the following terms;

**18. Contraventions**

10 ***“Any person who contravenes any of the provisions of this Act or any rules made under this Act or any of the terms or conditions of a licence or permit granted under this Act or who knowingly receives any forest produce which has been cut or removed in contravention of this Act or any rules made under this Act or of any of the terms or conditions of a licence granted under this Act commits an offence”***

15 The import of the Constitution of Uganda 1995 as amended is very instructive, Article 274 (1) and (2) provides for Existing Law as follows: -

(1) Subject to the provisions of this Article the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adoptions, qualifications and  
20 exceptions as may be necessary to bring it into conformity with this Constitution.

(2) For purposes of this Article, the expression “existing law”, means the written and unwritten Law of Uganda or any part of it as **existed** immediately before the coming into force of this Constitution, including  
25 any Act of Parliament or Statute or Statutory Instrument enacted or made before that date which is to come into force on or after that date.

In this regard considering Article 274 (1) of the current Constitution, it is clear to me that those provisions of the law applicable then as reproduced were not affected. They are construed with such modifications etc.

30 The above review of the applicable legislation clearly shows that all Public land was vested in the Uganda Land Commission before 1985, which the appellant got the title from, the authority given to the Commission was not unrestricted.



5 As seen above, section 23 of the Public Land Act provided for the powers of the  
Commission to grant lease over public land subject to the Forest Act. Section  
13 of the Forest Act prohibited expressly grant of lease in Forest Reserves for  
farming purposes. The suit land which the Uganda Land Commission granted  
10 lease to the appellant for purposes of farming formed part of Mujuzi Central  
Forest Reserve and the purpose of farming was prohibited.

The lower Courts concurrently found so.

It is therefore clear that the grant of lease by Uganda Land Commission to the  
Appellant was illegal.

I find that there is no merit in the appellant's contention that the learned  
15 Justices of the Court of Appeal failed to re-evaluate the evidence on record. I  
also find that the learned Justices of the Court of Appeal did not err in fact  
when they upheld the findings of the trial Court that the suit land was part of  
Mujuzi Central Forest Reserve at the time the lease was granted to the  
Appellant. Similarly, the learned Justices of the Court of Appeal did not err  
20 when they upheld the trial Judge's holding that the grant of lease in a Forest  
Reserve by Uganda Land Commission was illegal. y8

Ground 2 would fail.

### **Ground 3**

Ground three of the Appeal was framed in the following words.

25 ***The Learned Justices of the Court of Appeal erred in condemning the  
Appellants to costs when he had lawfully applied and being granted s  
certificate of title in respect of the suit land by a competent authority,  
the Uganda Land Commission.***


In his submissions, learned Counsel for the appellant changed the substance  
30 of this and argued an entirely new ground purportedly under ground three.  
With due respect to both counsel, the ground submitted on relates to whether

5 the learned Justices of Appeal erred in law and fact when they declined to consider the other grounds of Appeal after arriving at a finding that the whole transaction between the Appellant and Uganda Land Commission was illegal.

Interestingly, in response, the Respondent's counsel argued the transposed ground of Appeal as if it had emanated from the Amended Memorandum of  
10 Appeal whereas not.

Rule 98(a) rules of this Court rules bars any party from arguing new grounds without leave of Court in the following terms;

***At the hearing of an appeal—***

***(a) no party shall, without the leave of the court, argue that the decision  
15 of the Court of Appeal should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the Court of Appeal on any ground not relied on by that court or specified in a notice given under rule 88 of these Rules;*** 

In line with the above rule, I hold that the original ground three of the Appeal  
20 as framed in the Amended Memorandum of Appeal, by conduct of the Appellant's counsel, is considered abandoned as it was not argued at all. The ground submitted on is strange to this appeal and baseless as it never sprung from the Memorandum of Appeal as per the record of Court. Accordingly, it violated rule 98(a) of the rules of this Court as set above.

25 I equally reject the arguments relating to Limitation and disability smuggled by Counsel for the Appellant in his submissions in rejoinder as the same were not born out of the Amended Memorandum of Appeal filed in this Court dated 29<sup>th</sup> March 2022.

The Appellant's submissions on ground three relates to the decision of Court of  
30 Appeal not to consider the other grounds of Appeal and the alternative prayer that he be compensated with alternative land.



5 The above submissions were not related at all to ground 3 as per the amended memorandum of Appeal. As I stated above this ground was abandoned.

Ground 3 would fail too.

In the result since all the three grounds have failed, the appeal has no merit and it is dismissed with costs of this Court and the Courts below and the lower trial court's decisions and orders are upheld. ss

10

Dated at Kampala this ..... 6<sup>th</sup> ..... day of ..... December ..... 2023.

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15

**MWONDHA,**  
**JUSTICE OF THE SUPREME COURT.**

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

CORAM: OWINY - DOLLO CJ; MWONDHA, TIBATEMWA-EKIRIKUBINZA, TUHAISE AND CHIBITA JJSC

**CIVIL APPEAL NO. 008 OF 2020**

**MUGERWA EVARESTO KAFEERO.....APPELLANT**  
**VERSUS**

**NATIONAL FORESTRY AUTHORITY.....RESPONDENT**

*(Arising from the decision of the Court of Appeal in Civil Appeal No. 0039 of 2015 before Kiryabwire, Muhanguzi and Madrama, JJA dated 16<sup>th</sup> January 2020)*

**JUDGMENT OF OWINY - DOLLO; CJ**

I have had the benefit of reading, in draft, the judgment of my learned sister Mwendha, JSC. I concur with the reasoning, conclusions, and orders proposed therein.

Since Tibatemwa-Ekirikubinza, Tuhaise, Chibita, JJSC, also agree, orders are hereby issued in the terms proposed by Mwendha JSC in her judgment.

Dated, and signed at Kampala this <sup>6<sup>th</sup></sup> day of <sup>December</sup> 2023



Alfonse C. Owiny - Dollo

**Chief Justice**



**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KAMPALA**  
**[CORAM: OWINY -DOLLO CJ; MWONDHA, TIBATEMWA-EKIRIKUBINZA,**  
**TUHAISE & CHIBITA, JJSC]**

**CIVIL APPEAL NO. 008 OF 2020**

**BETWEEN**

**MUGERWA EVARESTO KAFEERO ::::::::::: APPELLANT**

**AND**

**NATIONAL FORESTRY AUTHORITY ::::::::::: RESPONDENT**

*[Appeal arising from the judgment and decision of the Court of Appeal at Kampala before Hon. Justices: (Kiryabwire, Muhanguzi and Madrama, JJA) in Civil Appeal No. 130 of 2015, dated 16<sup>th</sup> January 2020.]*

**JUDGMENT OF TIBATEMWA-EKIRIKUBINZA, JSC.**

I have had the benefit of reading the judgment of my learned sister, Hon. Justice Mwondha, JSC.

I agree with her analysis and conclusion that the appeal fails and should be dismissed.

I also agree with the order she has proposed as to costs.

Dated at Kampala this <sup>6<sup>th</sup></sup>..... day of December..... 2023.

Tibatemwa  
.....  
**HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**  
**JUSTICE OF THE SUPREME COURT.**

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KAMPALA**  
(CORAM: OWINY-DOLLO, CJ; MWONDHA; TIBATEMWA-EKIRIKUBINZA;  
TUHAISE; CHIBITA; JJSC)

**CIVIL APPEAL NO. 08 OF 2020**

**MUGERWA EVARESTO KAFEERO.....APPELLANT**

**VERSUS**

**NATIONAL FORESTRY AUTHORITY .....RESPONDENT**

*[Appeal arising from the judgment and decision of the Court of Appeal at Kampala before  
Kiryabwire, Muhanguzi, Madrama, JJA, in Civil Appeal No. 39 of 2015 dated 16<sup>th</sup> January,  
2020]*

**JUDGMENT OF TUHAISE, JSC.**

I have had the benefit of reading in draft the Judgment prepared by my learned sister, Hon. Justice Faith Mwondha, JSC.

I agree with her decision, and the orders therein.

Date at Kampala, this .....6<sup>th</sup>..... day of.....December.....2023.

  
Percy Night Tuhaise

**JUSTICE OF THE SUPREME COURT**



**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
**AT KAMPALA**

(CORAM: OWINY-DOLLO, CJ; MWONDHA; TIBATEMWA-EKIRIKUBINZA;  
TUHAISE; CHIBITA; JJ.S.C.)

**CIVIL APPEAL NO: 008 OF 2020**

**BETWEEN**

**MUGERWA EVARESTO KAFEERO ::::::::::: APPELLANT**

**AND**

**NATIONAL FORESTRY AUTHORITY ::::::::::: RESPONDENT**

*[Arising from the judgment and decision of the Court of Appeal Civil Appeal No. 0039 of 2015 at Kampala (Hon. Kiryabwire, Muhanguzi and Madrama, JJA) dated 16<sup>th</sup> January, 2020]*

**JUDGMENT OF CHIBITA, JSC.**

I have had the advantage of reading in draft the judgment prepared by my learned sister, Justice Faith Mwondha, JSC. I agree with her decision. I also agree with the orders she has proposed.

Dated at Kampala this .....<sup>6<sup>th</sup></sup>.....day of.....*December*.....2023

  
Justice Mike J. Chibita

**JUSTICE OF THE SUPREME COURT**