THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: KIRYABWIRE, MUGENYI, JJA AND KASULE, AG. JA

CIVIL APPEAL NO. 110 OF 2017

BETWEEN

1. **ISMA HAKIRI**
2. **MILTON BEGUMISA**
3. **SADRESS TURYASHEMERERWA ..... APPELLANTS**

AND

THE ATTORNEY GENERAL
& 31 OTHERS ..... RESPONDENTS

(Appeal from the Judgment of the High Court of Uganda (Oyuko Ojok, J) in Civil Suit No. 43 of 2005)

JUDGMENT OF MONICA K. MUGENYI, JA

A. Introduction

1. This is a first Appeal by Isma Hakiri, Milton Begumisa and Sadress Turyashemererwa ('the Appellants') against the judgment and orders of the High Court sitting at Fort Portal in **Civil Suit No. 43 of 2005**. The Appellants instituted that suit as a representative action brought on their own behalf, as well as 523 other persons, claiming right of ownership over a piece of land lying between Rwimi Prison[1] and Kibale National Park at Kisanga LC1, Rwimi Parish, Rwimi Sub-county, Bunyangabu County, Kabarole District ('the suit land').

2. They claimed to have lived on the suit land, along with the persons they represent, since the 1960s but were in 2004 evicted from the land by prison warders from Rwimi prison and policemen from Kabarole Police Station. The land was subsequently taken over by the persons named herein as the Second to Thirty-First Respondents with the permission of the Government of Uganda, in respect of which, the office of the Attorney General (the First Respondent) has been sued. While the suit was pending determination in the trial court, the Uganda Land Commission (the Thirty-Second Respondent) was registered as the proprietor of the suit land, hence the amendment of the Plaint to add it a party to the suit.

3. The Respondents denied the Appellant's allegations, the First, Thirteenth and Thirty-Second Respondents maintaining that the suit land belonged to the Government of Uganda for the exclusive use of the Government Prisons Department, and the Appellants had been compensated for their previous developments on the land. On the other hand, the rest of the Respondents claimed to have initially been permitted by the Government to till the land, but had since ceased their activities thereon and had no interest in or any claim to it.

4. The trial court disallowed the Appellants' claims; declared the suit land to have been validly registered in the Thirty-Second Respondent's name, and awarded the Second to Thirty-First Respondents general damages in the sum of Ushs.

[1] That land was reserved to the prison under the Prisons (Declaration) No.2), Statutory Instrument No. 304-2.

20,000,000/= at 6% interest per annum from the date of judgment, as well as costs of the suit.

B. **The Appeal**

5. Dissatisfied with the Trial Court's judgment, the Appellants lodged the present Appeal before this Court, preferring the following grounds of appeal:

   I. **The learned trial judge erred in law and in fact when he held that the plaintiffs had no recognized interest in the suit land whereas they had.**

   II. **The learned trial judge erred in law and in fact when he held that the plaintiffs were unlawfully occupying the suit land.**

   III. **The learned trial judge erred in law and in fact when he held that at the time the plaintiffs were evicted the land belonged to Government whereas not.**

   IV. **The learned trial judge erred in law and in fact when he held that Government had the capacity to give the 2nd – 31st Defendants permission to occupy the suit land.**

   V. **The learned trial judge erred when he held that 21 of the plaintiffs were paid compensation in respect of the suit and when he failed to name them.**

   VI. **The learned trial judge erred in law and in fact when he held that the suit land had always had encroachers and that upon eviction the evictees instituted civil suits to have their claims settled and that some were compensated and others were still being compensated which was not true.**

   VII. **The learned trial judge erred in law and in fact when he held that the 2nd – 31st defendants were allowed by Government to occupy the suit land whereas not.**

   VIII. **The learned trial judge erred in law and in fact when he held that the certificate of title in respect of the suit land was not obtained fraudulently when it was.**

   IX. **The learned trial judge erred in law and in fact when he held that there was no need for a special law to be passed by Government to compulsorily acquire the suit land from the plaintiffs when there was.**

   X. **The learned trial judge erred in law and in fact when he awarded general damages to defendants No. 2 – 31 when they had not filed a counterclaim seeking general damages which occasioned a miscarriage of justice.**

XI. The learned trial judge erred in law and in fact when he held that the plaintiffs' suit was time barred whereas not.

XII. The learned trial judge erred in law and in fact when he dismissed the plaintiffs' suit through a judgment that is incompetent by reason of it having inconsistencies and contradictions and without properly evaluating the evidence on record which occasioned a serious miscarriage of justice.

6. The Appellants urged this Court to allow the Appeal; substitute the trial court's orders with the orders that they had sought before it, and grant them costs in this and the lower court, with a certificate for three advocates.

7. At the hearing of the Appeal, the Appellants were represented by Messrs. Boniface Ngaruye Ruhindi and Vincent Mugisha; while Mr. Mwebaze Ndibalema appeared for the First, Thirteenth and Thirty-second Respondents, and Mr. James Mukasa Sebugenyi represented the rest of the Respondents.

C. **Determination**

8. I propose to commence my consideration of this Appeal by addressing *Ground 11* thereof, which involves a point of law that if resolved in the affirmative would conclusively determine the Appeal.

Ground 11: *The learned trial Judge erred in law and in fact when he held that the Plaintiffs' suit was time-barred whereas not.*

9. It is the Appellants' contention that the cause of action before the trial court accrued in 2004 when they were evicted from their respective pieces of land, and the suit having been filed in 2005 was lodged well within time. It is further argued that the cause of action continued until 2012 when the suit land was finally alienated and a certificate of title to that effect was issued, hence the amendment of the Plaint in 2014. It is opined that the trial court's decision on time limitation was premised on the erroneous finding that the Appellants had been evicted in 1992, yet that eviction was in respect of a forest game reserve that had been turned into Kibale National Park and had nothing to do with the suit land.

10. Conversely, the First, Thirteenth and Thirty-second Respondents defended the trial court's decision, it being argued on their behalf that all the defence evidence indicates that the eviction from the suit land occurred in 1992 and the Appellants tried to return to the land in order to beat the limitation period, but were repulsed. In the same vein, it was argued for the rest of the Respondents[2] that the trial court rightly found that the suit was time-barred for the reasons advanced by it.

11. By way of rejoinder, learned Counsel for the Appellants maintained that his clients were evicted in 2004 and not 1992, the attempt to evict them in 1992 having failed. It is Mr. Ngaruye's contention that the land in dispute in **Civil Suit No. 1022 of 2001** fell under the Kibale Game Reserve/ Corridor, which was later turned into Kibale National Park in Kibale County, Kamwenge District, while the suit land is in Rwimi Sub-county of Bunyangabo District. He similarly argued that the land that was in issue in **Civil Suit No. 207 of 1993** was in Mpokya Sub-county in Kibale County – Kamwenge District, as opposed to the present suit land that is in Rwimi Sub-county, Bunyangabo County (now District). In any event, in what appeared to be an alternative position, learned Counsel argued that there was no law that prevented a person from owning different pieces of land in different areas. Therefore, if some of the Appellants owned land in Rwimi Sub-county and Mpokya Sub-county, any compensation paid in respect of the latter land would not negate their present claim.

12. The impugned decision of the trial court invoked section 5 of the *Limitation Act* and section 3 of the *Civil Procedure and Limitation (Miscellaneous Provisions) Act,* before concluding as follows:

> *Ordinarily limitation would not bar an action based on continued trespass, however, in the instant case as the evidence adduced I see no proof of trespass by the Government on the suit land. In regard to the suit being time-barred, it was the evidence of DW1, DW3, DW6, DW8, DW9, DW10, DW11, DW13 and DW14 that there was an eviction in 1992 whereof the evictees left the suit land. It was also stated that the said eviction was peaceful with notice and the land was left vacant. The eviction also covered Kisanga the land which the Plaintiffs claim to have been occupying. The eviction under which the Plaintiffs lay their claim is that of 2004. From the evidence of DW12, when*

[2] 2nd – 12th and 14th – 31st Respondents.

the Plaintiffs forcefully occupied the suit land they were evicted in a week's time because they were considered trespassers. The argument that the Plaintiffs had resisted eviction in 1992 only to be evicted in 2004 does not strike me as genuine because DW14 in his testimony categorically stated that these Plaintiffs forcefully entered the suit land whereof they were arrested and even charged and he was among the people that had re-entered the suit land in 2004 only to be arrested. DW1 also allude to the forceful return to the suit land by the Plaintiffs in 2004. DW13 and DW15 who are area local leaders also told Court that a number of the Plaintiffs are not known to them. I therefore find that indeed the suit is time barred as per the Sections cited earlier and the Plaintiffs that missed out on the previous compensations used the 2004 incident to sue so as to recover from Government which they should have done in the previous suits that were instituted in time.

13. The legal provisions invoked by the trial court are reproduced below.

Section 5 of the Limitation Act

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her, or if it first accrued to some person through whom he or she claims, to that person.

Section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act

(1) No action founded on tort shall be brought against—

(a) the Government;

(b) a local authority; or

(c) a scheduled corporation,

after the expiration of two years from the date on which the cause of action arose.

14. In so far as Prayer (a) of the Amended Plaint sought a declaration that the suit land belongs the Appellants and the 523 persons they represent, the suit before the trial court was indeed an action for the recovery of land within the precincts of section 5 of the Limitation Act. It should have been instituted within twelve years from the accrual of the cause of action. The question as to whether or not the Appellants were indeed evicted in 1992 so as to render their suit time-barred is a question of fact that must primarily be established to the required standard of proof by cogent evidence. The nexus between Kibale Game Reserve/ Corridor and the original

Rwimi Prisons/ Rwimi extension (or the lack of it) is a secondary matter but shall be addressed in so far as it sheds light on the Appellants' eviction.

15. The Appellants called six witnesses before the trial court. The First Appellant (PW1) testified that he was told that the land his parents had in Kisanga was allocated to them by the old kingdom rulers. However, under cross examination he attested to his parents having migrated from Kihihi, Rukungiri in 1960 under a Government program. PW2 simply testified that he had lived on the suit land since 1960 when his father '*came and got the land.*' PW4 testified that 'their' parents were brought to Tooro through the chiefs, claiming under cross examination that his father had been brought by 'Gorogotha', the king of Kabale. PW5 purported to further clarify the issue by suggesting that in 1960 the King of Tooro had given the King of Kabale land that the Bakiga could live on.

16. On his part, the Second Appellant (as PW6) testified that because Kigezi was over-populated, one Paul entered into an agreement with the King of Tooro to bring Bakiga to Tooro. This witness introduced the notion of 2 Kisangas – Kisanga A and Kisanga B, testifying that the 1992 evictions were in respect of Kisanga B and he too was evicted under that exercise. When reminded of the pleading in the Plaint that they had resisted eviction in 1992, he claimed that the eviction had ensued in November 2004. Asked about a letter he had co-authored on 29th September 2005 (to which I revert later in this judgment) indicating that they were evicted in 1992, the witness claimed that the eviction had happened in Kisanga B. It was his evidence in re-examination that an earlier claim made by him had been in respect of the eviction from Kisanga B, while the present claim is in respect of eviction from Kisanga A in 2004. I am constrained to observe here that the implication of PW6's evidence is that upon eviction from Kisanga B he relocated to Kisanga A where he resisted eviction until 2004, hence the present claim.

17. The suit land in this case is described in paragraph 5 of the Amended Plaint as Kisanga LCI, Rwimi Parish, Rwimi Sub-County, Bunyangabu County, Kabarole District. In paragraph 6 of the same pleading, that land is stated to share a common boundary with Rwimi Prison land, and borders River Rwimi, River Nsonge, River Ntabago and Kibale National Park. That description of the land is supported by the

evidence of the First Appellant, when in re-examination he clarified that the suit land lay between the parcels of land owned by Rwimi Prison and Kibale Game Reserve (later turned National Park) respectively.

18. Meanwhile, the letter from the Second Appellant on behalf of 311 evictees from land at Kisanga that was referred to in his evidence as reproduced above was admitted on the court record as Exhibit D1A. It reflects both the Second and Third Appellants as signatories, and states that they were in fact evicted from their land in 1992. No mention whatsoever is made in the letter to Kisanga A and Kisanga B, which the Second Appellant purported to do in his evidence. In any event, that assertion was roundly dismissed by DW1, a former Councillor representing Rwimi Parish in Kisanga village, who attested to having known only one Kisanga as at the time she served between 2001 - 2006. Her evidence was corroborated by DW2, a retired former Principal Staff Surveyor, Kabarole, who also attested to one Kisanga. The foregoing defence evidence thus controverts that of PW6 and is in tandem with the contents of Exhibit D1A, authored by three of the Appellants, that only makes reference to one Kisanga. For avoidance of doubt, the letter is reproduced below:

Block A I Rugendabara
Kitswamba – Busongola,
Kasese.
29th Sept 2004

The Chairperson,
District Land Committee,
Kabarole District.

Dear Sir/ Madam,

OCCUPATION OF OUR KISANGA LAND IN KAKOGA RWIMI KABAROLE DISTRICT

We the 311 evictees of Kisanga Land herein inform you that we want to re-occupy our Kisanga Land. We were forced to leave our land in 1992, which is not appropriate due to the following reasons inter alia:

1. *We occupied the land as early as 1968 when Government was giving land to landless people/ people who had land problems.*

2. *We further received a communication from the office of the secretary general Toro District dated 22nd Jan 1971 informing us not to leave the land or receive compensation of our properties from Uganda Prisons if it wanted to take the land. This was not followed when forcing us to leave.*
3. *We were forced to leave the land but not shown anywhere to go.*
4. *We have found out that this land neither belonged to Uganda Prisons nor Kibaara National Park implying that, we were and are the rightful owners of the land as Uganda citizens.*

We basing on the above facts wish to inform you that we are going to re-open the boundary of prisons land and Kibaara National Park land before re-occupying our Kisanga land.

Yours faithfully,

Buhendo Charles
Begumisa Milton
Nkubito John
Kamuhangire Gadson
Erias Mbabazi
Byarugaba
Bibyaba Fred
Turtashemererwa Sadress
Tumwizeri Charles

19. Kisanga village, the area from which the authors of that letter were evicted, does correspond with the description of the suit land in the Amended Plaint as Kisanga LCI, Rwimi Parish, Rwimi Sub-County. Furthermore, a witness statement by Jackson Kamanzi (DW6), a retired Superintendent of Prisons that worked at Rwimi Prison between 1989 and 2002, attests to the eviction of encroachers on Rwimi Prison land in 1992, the same year the authors of Exhibit D1A were reportedly evicted. *See paragraph 13 of that witness statement.* The witness did not falter from this position, testifying under cross examination that the eviction had taken place in April 1992. DW1 also attests to 'everybody' having been evicted in 1992 but some people went back to Kisanga in 2004 before they were flushed out by the police. Her evidence in that regard was corroborated by DW3, whose parents had settled on the same land from Kanungu District in 1974. He attested to having been personally evicted therefrom in 1992, reiterating that Mpokya/ Kisanga, all of

them were evicted at that time. The eviction of everybody from Kisanga in 1992 was even more succinctly attested to by DW14, a resident of the area, who stated that '*by the time I went there in 1987 I found when the prison had chased people from one part and later we were all chased. It was in 1992.*'

20. As can be deduced from the foregoing discourse, the Appellants evidence was neither cogent nor credible. It was materially rebutted by the defence evidence thus raising doubts as to the credibility of the Appellants' claim. It will suffice to observe here that even if it were true that the First Appellant had indeed been evicted from one part of Kisanga as he claimed, having been compensated for that eviction his relocation to another part of the same village only to seek fresh compensation for his eviction therefrom smirks of bad faith. Similarly, DW3 also testified that at the time of the eviction, the Third Appellant '*had already sold land and moved to another place.*' His evidence was not impeached in cross examination. In fact, the assertion of the Third Appellant having left was not addressed at all. Why then would such a person claim compensation for an eviction exercise that happened after she had left the suit land?

21. The unreliability of the Appellants' evidence would lend credence to the conclusion I do draw that the eviction of 311 persons from Kisanga village and the present suit land being in the same village are no coincidence; rather, Exhibit D1A and the supportive testimonies of DW1, DW3, DW6 and DW14 all point to the 1992 evictions from Kisanga village having been in relation to encroachers on Rwimi Prison's land and the persons so evicted are the present Appellants. Indeed, whereas Milton Begumisa and Sadress Turyashmererwa, both co-signatories Exhibit D1A, are the second and Third Appellants in this case; Gadson Kamuhangire and John Nkubito, other signatories thereto, are listed as Nos. 114 and 290 respectively on the list of Appellants in the Original Plaint.

22. Although learned Counsel for the Appellants sought to insulate his clients from the 1992 evictions, this argument is unpersuasive in so far as no credible evidence was adduced by the Appellants (as the peddlers of that position) to prove that indeed the 1992 evictions were restricted to encroachers on Kibale Game Reserve land. On the other hand, the defence evidence as expounded above speaks to the

contrary. Similarly, the alternative argument that the Appellants could have held separate pieces of land bordering both the game reserve and prison land is speculative and even more untenable in the absence of sufficient proof. In any event, the land to which the game reserve and prison facility laid claim were not necessarily exclusive of each other, as learned Counsel would have the Court believe. The nexus between the suit land and Kibale Forest Corridor Game Reserve is established in Exhibit D1B, where it is observed that '*the disputed land partly belongs to Uganda Prisons Department and partly to Kibale Forest Corridor Game Reserve.*' That documentary evidence is supported by no less than the Plaint itself, paragraph 6 of which depicts the suit land as bordering Kibale National Park (formerly Kibale Game Reserve), as well as the First Appellant's evidence that the suit land lay in between both parcels of land. It follows then that the suit land is adjacent to both Kibale Game Reserve/ Corridor and Rwimi Prisons, and the 1992 evictions were in respect of encroachers on both entities' land.

23. I would therefore disallow Mr. Ngaruye's proposition that the 1992 evictions in Kisanga were solely in respect of the forest game reserve but had nothing to do with the suit land. The evidence on record is that whereas the people that were evicted from the parcel of land attributed to the game reserve obliged and left, those that were on land claimed by Rwimi Prison initially resisted eviction but were in April 1992 evicted from the suit land. That is the import of the observation in Annexure A to DW6's witness statement that '*whereas those encroachers in the game corridor and forest reserve have moved away, those on prison land have continued with their illegal presence and activities unabated*', as well as the deadline in the same letter for them to leave peacefully by 20th April 1992 or face the repercussions. PW4 also alluded to the same position when he attested to not having been among the people that were evicted from their land by Kibale National Park. That position is also reinforced in Annexure G to DW6's witness statement given the admission by (among others) the Third Appellant that they had in 1992 been forced to leave their Kisanga land by Rwimi Prison Farm. I am satisfied, therefore, that the Appellants were evicted from the suit land in 1992.

24. Be that as it may, Annexure H to DW6's witness statement does also establish that on or about 7th November 2004 false announcements were aired on radio recalling all persons that had been evicted from the suit land to re-occupy it. The purported re-occupation of the suit land in November 2004 is confirmed in paragraph 5 of DW12's witness statement, which attests to those temporary occupants having been removed from the land by the police a few days later. DW1 also attests to some people having gone back to the suit land in 2004 before they were removed by the police. The question is, would such temporary occupation revive the Appellants' right of claim over the suit land so as to negate the time limitation in issue presently?

25. Under Article 237(3) of the Constitution, land in Uganda may only be owned as customary land, freehold, mailo and leasehold. This is re-echoed in section 2 of the Land Act (as amended) and a detailed definition of those land tenure systems is delineated in section 3 of the same Act. In the matter before the Court presently, the Appellants sought to lay claim to the suit land as customary tenants. Customary tenure is explained in section 3(1) of the Land Act as being:

    (a) Applicable to a specific area of land and a specific description or class of persons;
    (b) Subject to section 27, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;
    (c) Applicable to any persons acquiring land in that area in accordance with those rules;
    (d) Subject to section 27, characterised by local customary regulation;
    (e) Applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;
    (f) Providing for communal ownership and use of land;
    (g) In which parcels of land may be recognised as subdivisions belonging to a person, family or a traditional institution, and
    (h) Which is owned in perpetuity.

26. In *Mugambwa, John Tamukedde, 'Sourcebook of Uganda's Land Law', 2002, Fountain Publishers, p. 5*, a definition of customary tenure propounded in a *Report of the Sessional Committee on Lands, Water and Environment, Parliament of Uganda Parliamentary Debates (Hansard), 20th June 1998, pp. 4046 – 4047* was reproduced as follows:

> **A system of land holding governed and regulated by customary principles and in the majority of cases sanctioned by customary authorities Council of Elders, Village Chiefs, Village Headmen etc. Under this, the owner** (customary tenant) **has user rights. The owner may be an individual or a community, in the latter case, the land is then said to be held on communal basis**.

27. The notion of customary tenure as a form of land holding derived from and regulated by customary principles is reiterated in more recent literature by the same author in *Mugambwa, John Tamukedde, 'Sourcebook of Uganda's Land Law', 2002, Fountain Publishers, p. 5* as follows:

> **The main legal difference between customary land tenure and the other tenures is that customary law regulates customary land tenure. Section 4(1)(b) [now 3(1)(b)] of the Land Act provides that customary land tenure shall be governed by rules generally accepted as binding by the particular community. Any person acquiring land in that community shall equally be bound by those rules.**[3]

28. It becomes apparent that under section 3(1)(c) of the Act, any person acquiring land in any given community (save where such acquisition is by compulsory acquisition by the State), would acquire such land in accordance with the cultural norms and practices of that community. *See also* ***Kampala District Land Board & Another v Venansio Babweyaka & Others, Civil Appeal No. 2 of 2007*** *(Supreme Court), citing with approval* ***Ernest Kinyanjui Kimani v Muiru Gikanga (1965) EA 735***. This again would be a question of evidence. In the instant case, save for unsubstantiated claims by some of the Appellants' witnesses that their parents had been given the land under some sort of arrangement by two cultural leaders, no evidence whatsoever was adduced to prove that any such arrangement existed. On the contrary, quite tellingly, no less that the First Appellant testifying as PW1 did concede under cross examination that his parents had been relocated to the suit land under a Government program. The same concession is made in paragraph 1 of Exhibit D1A, which states: 'we *occupied the land as early as 1968 when Government was giving land to landless people/ people who had land problems.*'

[3] Reference made therein to section 4(1)(c) now section 3(1)(c) of the Land Act (as amended).

29. Therefore, as persons that were allowed onto the suit land by the Government, they cannot claim to have acquired that land in accordance with the customary principles and practices of the community where the land is situated so as to qualify as customary tenants. It seems to me that they were simply licensed by the Government to use the suit land and were subsequently evicted by the public entities that lay claim to it. Following their eviction in 1992, however, the Appellants purported to return to the suit land in 2004 and did in fact occupy it for a few days.

30. The Constitution does in Article 237(8) recognise lawful and bona fide occupancy of land otherwise held under mailo, freehold and leasehold tenure systems, and in clause (9) of the same Article makes provision for the enactment of a law that would regulate the relationship between such occupants and the registered proprietors of land, as well as the acquisition of a registerable interest in such land. Section 29(1) and (2) of the Land Act (as amended) then expound on who would amount to a lawful or bona fide occupant on land. For ease of reference, I reproduce them below.

> (1) "Lawful occupant" means –
>
> a. A person occupying land by virtue of the repealed –
>
> i. Busuulu and Envujjo Law of 1928;
>
> ii. Toro Landlord and Tenant Law of 1937;
>
> iii. Ankole Landlord and Tenant Law of 1937.
>
> b. A person who entered the land with the consent of the registered owner, and includes a purchaser; or
>
> c. A person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.
>
> (2) "Bonafide occupant" means a person who before the coming into force of the Constitution –
>
> a. Had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or
>
> b. Had been settled on the land by the Government or an agent of the Government, which may include a local authority.

31. I have discounted the Appellants supposed customary tenure on the suit land therefore they would not be lawful occupants within the precincts of section 29(1)(c)

of the Land Act. I do not find proof of their having re-occupied the land by virtue of the laws delineated under section 29(1)(a) either. With regard to subsection (b) of the same legal provision, the evidence on record is that the Appellants forcefully re-occupied the suit land in 2004 following their eviction therefrom in 1992. Such re-occupation cannot by any shade of imagination be considered consensual occupation with the permission of the registered owner of the land, hence their re-eviction. It follows then that the Appellants were not lawful occupants of the suit land.

32. On the other hand, section 29(2) outlines what a bona fide occupancy would entail. A person laying claim to this occupancy should have occupied and utilised any land unchallenged for a minimum of twelve years before the promulgation of the 1995 Constitution, or had been settled on the land by the Government or an agent by then. In my considered view, section 29 is couched in such a manner as to raise the inference of an implied condition that such occupation would have been continuous and uninterrupted by the time the Constitution was promulgated. In the instant case where the Appellants had in 1992 been evicted from the suit land, a claim in bona fide occupancy would be unsustainable. More importantly, at the time of their re-occupation of the suit land in 2004 they had been off the suit premises for twelve years. They do not therefore correspond to bona fide occupants thereof. At any rate, their forceful re-occupation of the land in 2004 cannot be deemed to have been either bona fide or in good faith.

33. In the result, the Appellants' suit having been lodged in the High Court in 2005 – thirteen years after the cause of action by eviction accrued, I am satisfied that the suit before the trial court was time barred and the Appellants purported re-entry onto the suit land in 2004 did not confer upon them any legal interest in that land as would revive the suit. I would therefore resolve *Ground 11* in the affirmative.

D. **Conclusion**

34. My determination of *Ground 11* above would dispose of the entire Appeal. However, for completion this being a first appellate court, I will briefly address the residual grounds of this Appeal.

35. It will suffice to observe forthwith that my finding that the Appellants were neither customary tenants nor lawful or bona fide occupants on the suit land would essentially resolve *Grounds 1* and *2* in the negative. Similarly, having found that the Appellants were neither customary tenants on the suit land as pleaded nor lawful or bona fide occupants, it follows that there was no need for the compulsory acquisition of the suit land from them. I would therefore resolve *Ground 9* in the negative. Furthermore, the evidence on record as reviewed earlier in this judgment is that the Appellants and/ or their parents were indeed allowed onto the suit land pursuant to a Government program. Consequently, *Ground 7* of the Appeal would fail.

36. In their Memorandum of Appeal, the Appellants sought to have the Appeal allowed and the trial court's decision substituted with the prayers sought in the said lower court. Meanwhile, the Amended Plaint dated 25th March 2014 substantially sought a declaration that the suit land belonged to the Appellants and another declaration that the Government was not entitled to deprive them of their property without adequate compensation therefor. Accordingly, the gravamen of the dispute between the parties is a claim of ownership over the suit land by the Appellants. The Appellant's claim to the suit land having been disallowed in my determination of Ground 11, I find no reason to delve into the compensatory issues raised in *Grounds 5* and *6* on their merits. The same finding in *Ground 11* would obviate the Appellants' locus standi to challenge the State's ownership of the suit land as posited under *Grounds 3* and *8* of the Appeal, and render redundant the determination of *Ground 8* thereof. Having so held, I cannot fault the trial court's judgment and would resolve *Ground 12* in the negative.

37. In the result, I would disallow this Appeal fails in its entirety. It is trite law that costs would follow the event unless a court for good reason decides otherwise. *See section 27(2) of the CPA*. In the instant Appeal, finding no reason to depart from that general rule, the costs hereof are awarded to the Respondents.

38. The upshot of this judgment is that the Appeal is hereby dismissed with costs in this and the lower court to the Respondents.

It is so ordered.

Dated at Kampala this ..16th.... day of ..Dec....., 2021.

Hon. Lady Justice Monica K. Mugenyi
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 110 OF 2017

1. **ISMA HAKIRI**
2. **MILTON BEGUMISA** ========== **APPELLANTS**
3. **SADRESS TURYASHEMERERWA**

VERSUS

THE ATTORNEY GENERAL
& 31 OTHERS ========== **RESPONDENTS**

(An Appeal from the decision of the High Court of Uganda before Oyuko Ojok, J. in Civil Suit No. 43 of 2005)

CORAM: **HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.**

HON. LADY JUSTICE MONICA MUGENYI, J.A.

HON. MR. JUSTICE REMMY KASULE, Ag. J.A.

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the draft Judgment of the Hon. Lady Justice Monica Mugenyi, J.A.

I agree with her Judgment and I have nothing to add. Since the Hon. Mr. Justice Remmy Kasule, Ag. J.A. also agrees, we hereby order that:-

1. The Appeal is dismissed.
2. Costs in this Court and in the lower Court are awarded to the Respondents.

It is so ordered.

Dated at Kampala this 16th day of Dec 2021.

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Kiryabwire, Mugenyi, JJA and Kasule, Ag,JA)

CIVIL APPEAL NO. 110 OF 2017

(Appeal from the judgment of the High Court of Uganda at Fort-Portal (Oyuko Ojok,J) in Civil Suit No. 43 of 2005)

BETWEEN

1. **ISMA HAKIRI**
2. **MILTON BEGUMISA** ::::::::: **APPELLANTS**
3. **SADRESS TURYASHEMERERWA**

AND

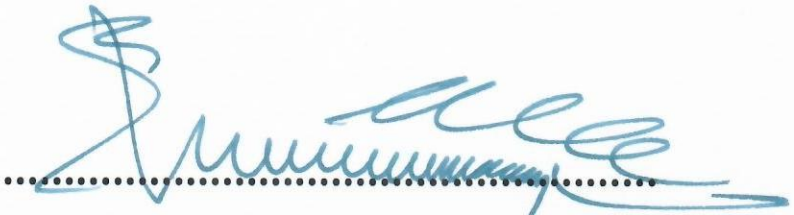
1. **THE ATTORNEY GENERAL OF UGANDA**
2. **NGOMAYONDI ABEL**
3. **TWEYONGYERE SILVER**
4. **KARINDUGU SILAGI**
5. **GRACE MUBONE**
6. **KARAVERI TIBAHURIRA**
7. **BUHENDO CHARLES**
8. **NDYABAKIRA LEO**
9. **NDYANABO JACKSON**
10. **BYARUHANGA BEN**
11. **BARUGAHARE ISAAC**
12. **NDABWINE JACKSON**
13. **TURYASHA AMOS**
14. **SUNDAY BARIYANGA**
15. **RUSIGA JOLLY**
16. **KABARI JULIUS** **RESPONDENTS**
17. **BARIGYE BANADA**
18. **MUBIRU TOMOSI**
19. **KAMUKUYEGYE MUHWEZI**
20. **KARWEMERA ABAS**
21. **KAHUZO MUGISHA**
22. **KAMATWINE**
23. **TWIJUKYE JACK**
24. **NDABWINE JACKSON**
25. **BIRYOMUMISHO JACK**
26. **BAKYIGA MUGISHA**
27. **BATARINGAYA JAMES**
28. **BAGAMUHUNDA NGABIRANO**
29. **AKWISHASI JORIRINA**
30. **BYARUHANGA RAJABU**
31. **SUNDAY BUTAAMA**
32. **UGANDA LAND COMMISSION.**

JUDGMENT OF REMMY KASULE, Ag JA

I have had the benefit of reading in draft the Judgment of Hon. Lady Justice Monica .K. Mugenyi, JA, and I agree with her decision that this appeal ought to be dismissed for the reasons well setout therein

I also agree with the order that the respondents be awarded the costs of the dismissed appeal as well as those in the Court below.

Dated at Kampala this.....day of.....2021



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Hon. Justice Remmy Kasule,

Ag. Justice of Appeal

20/07/2021