THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL APPEAL NO. 005 OF 2005

1. **KIGAMBO EDWARD**
2. **BOGERE KANANI**
3. **ISIA PAUL**
4. **SANDE JOSEPH & 16 OTHERS ::::::::::::::::::::::::::::::APPELLANTS**

VERSUS

TILDA (UGANDA) LTD.:::RESPONDENT

[Appeal from the ruling of Bugiri District Land Tribunal sitting at Bugiri dated 14th January 2005, in Claim No. 010 of 2004.]

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

JUDGMENT

This is an appeal from the decision of the Bugiri District Land Tribunal sitting at Bugiri, in which it dismissed the claimant's suit with costs, on the ground that the Tribunal did not have the jurisdiction to entertain it.

The claimants were owners of land that the government of Uganda sold to the defendant company, as well as other pieces of land that were adjacent to it. They claimed that the Government of Uganda through the Privatisation Unit sold or purported to grant leaseholds to the defendant or its predecessor in title over parts of their land which was situated at Namukonge Parish, Kapyana Sub-County in Bugiri District. The appellants further claimed that this was done without giving them notice and before compensation was given to them both for the land and the developments thereon. Further that in 2003, the Privatisation Unit purported to compensate them for only part of the land.

It was also the claimants' case that on or around the 13th July 1999, the defendant, its employees or agents illegally or wrongfully entered onto the claimants' land which the defendant purported to have bought from the Government of Uganda and destroyed several crops, trees, and buildings thereon that belonged to the claimants.

The claimants further claimed that at around the same time, the defendant dug a wide and long canal purportedly to serve as a barrier/boundary between the claimants' lands and that of the defendant. Further that during the rainy seasons the waters in the canal swelled or rose above the canal, flowing into the land and gardens of the claimants thereby destroying their crops and other property. The claimants attached a list of the destroyed property to the statement of claim. The claimants further complained that in spite of complaints and warnings to the defendant, the defendant failed or refused to shut down or to regulate or prevent the water from flowing onto the claimants' land. They therefore claimed that the defendant was negligent and the particulars of negligence were laid out in the statement of claim. The claimants thus brought this suit seeking for compensation for damage to their property, interest thereon at 20% p.a., general damages for loss, inconvenience and suffering from lack of money and food, a permanent injunction to restrain the defendant from committing further trespass on their land and/or allowing water to flow onto it, and costs of the suit.

The defendant filed a written statement of defence in which she denied the allegations of the claimants and stated that the claimants had been adequately compensated by the Privatisation Unit but they continued to occupy the land. They also denied that all the claimants owned land in the area and as a result they had no claim against the defendant. They admitted the construction of the canal but denied the resultant damage to the claimants' land *in toto*. They further claimed that if the damage did happen, then it was a result of the claimants' tampering with the retention wall/bridge built by the defendant. The defendant also challenged the claims of loss of crops alleged by the claimants because most of the crops alleged to have been destroyed by the over-flow were not crops grown in swamps.

Although the defendant had submitted to the jurisdiction of the Land Tribunal in its pleadings, when the suit was called on for hearing Mr. Byrd Ssebuliba who represented the defendant raised a preliminary point of law. He submitted that a substantial part of the claim was premised on

negligence which falls under the law of torts. That as a result the matter was outside the jurisdiction of the Land Tribunal. He added that the jurisdiction of Land Tribunals under s.77 of the Land Act gives conditions under which a Tribunal can entertain claims and those conditions are reproduced in rule 31 of the Land Tribunal (Procedure) Rules. On the basis of those provisions he concluded that the Land Tribunal could only entertain disputes over proprietary interests in land.

It was also Mr. Ssebuliba's view that basing the present claim on s.77 (1) (e) of the Land Act so that the Tribunal could entertain it would be overstretching the interpretation of that provision and the intention of (the legislature) in enacting s.77 of the Act. He finally asserted that the matter of water flooding the claimants' gardens did not fall within the jurisdiction of the Tribunal and therefore should not be entertained. However, he conceded that paragraph 6 of the claim could be entertained. He then prayed that the claims for compensation be excluded from the claim.

In reply, Mr. Juma Munulo for the claimants submitted that the defendant's counsel had rendered a narrow interpretation of the law. He submitted that Land Tribunals have the jurisdiction to hear any disputes relating to land including claims in negligence and other torts. Further that s. 76 (2) of the Land Act gives general powers to the Tribunals to entertain any matter relating to land.

Having considered the above, the Land Tribunal found that the dispute was premised on negligence and not recovery of land. In their view, the complaint that water overflowed from the defendant's canal and destroyed the plaintiff's crops had nothing to do with deprivation of any part of the plaintiff's land, save that it was rendered uncultivable. It was also the opinion of the members of the Tribunal that interpretation of s.76 (e) of the Land Act to mean that the tribunals had general jurisdiction over land matters was a partial interpretation of the law. They thus rejected it, sustained the objection and dismissed the plaintiffs' suit with costs.

The plaintiffs appealed to this court and raised 5 grounds of appeal. I examined them and came to the conclusion that they offend the rules of pleadings, generally. For example, the second ground of appeal was framed as follows:

> *"The Land Tribunal erred in law, and fact when it held that it has no jurisdiction to entertain the claims grounded on the tort of negligence even where such negligence leads to serious and dangerous consequences, adversely affecting the possession, use and enjoyment of the land in question by its owners (as is the case in the instant matter), yet on the other hand the tribunal displayed double and confusing standards when, it continues to hear land disputes, grounded on the tort of trespass. It is thus* ***averred and contended*** *that any type of tort interfering with the enjoyment, possession, use, or occupation of any piece of land by its owner or authorised user/possessor, is actionable before the above Land Tribunal,* ***and it is thereby strongly contended*** *that, the Land Tribunal does not only have jurisdiction in land disputes intended to establish title or ownership over land or piece (sic) of land. The Land Tribunal can thus entertain disputes relating to possession, acts of nuisance disturbing enjoyment of adjacent lands/permanent premises, evictions of tenants unreasonably refusing to vacate land/houses, following their failure to pay rent or upon expiry of tenancy agreements to mention just a few."*
>
> {Emphasis added}

Order 6 rule 1 of the Civil Procedure Rules (CPR) provides that every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be. The pleadings shall, when necessary, be divided into paragraphs, numbered consecutively and dates, sums and numbers shall be expressed in figures. In addition and specifically relating to appeals, Order 43 rule 1 (2) provides that the memorandum of appeal shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.

There is no doubt that ground 2, reproduced above, as well as grounds 4 and 5 of the memorandum of appeal were repetitive, argumentative and framed in the manner of submissions, not grounds of appeal. In future, counsel for the appellant should follow the rules relating to pleadings and not submit on the appeal within his memoranda of appeal.

Having made those observations, it is also my opinion that the grounds raised by counsel for the appellants amounted to only two grounds as follows:

1 a) The Land Tribunal erred in law and fact when it held that it had no jurisdiction to entertain claims grounded on the tort of negligence.

b) The Land Tribunal erred in law and fact when it failed to come to the conclusion that it can entertain claims for compensation for damaged or destroyed crops.

2. The Land Tribunal erred when it dismissed the entire suit, notwithstanding that counsel for the defendant conceded that the claim in paragraph 6 of the statement of claim fell within the jurisdiction of the Land Tribunal.

When the parties appeared before me on 7/07/2009, I ordered that they file written arguments to dispose of the appeal. Mr. Munulo filed submissions on behalf of the appellant on 1/09/09, while Mr. Ssebuliba filed arguments for the respondent on 6/10/09. There was no rejoinder filed by the appellant.

In his submissions, Mr. Munulo addressed grounds 1, 2 and 3 together and grounds 4 and 5 of the appeal separately. What appeared as ground 6 was actually not a ground but a proposal to amend the memorandum of appeal on getting the record of proceedings.

While addressing grounds 1, 2 and 3 of the appeal, Mr. Munulo referred to s.76 (1) (e) of the Land Act and submitted that the provision gave Land Tribunals the mandate to hear any matter relating to land. He proposed that the actions of the defendant complained about by the plaintiffs amounted to trespass because the water that flooded the plaintiffs' land from the defendant's canal interfered with the plaintiffs' possessory or user rights over the land. He argued that the dispute that arose from the water flooding the plaintiffs' land was a dispute relating to or in connection with land. He concluded that the tribunal had the jurisdiction to entertain it as well as to award damages for the loss sustained. He further contended that though the Land Act did not name the specific disputes that Land Tribunals would entertain under the law of torts, i.e. whether in trespass, negligence or nuisance, it was implied by the provisions of the Land Act

relating to Land Tribunal that they could hear all matters in tort relating to land. He thus prayed that grounds 1, 2, and 3 be answered in the positive.

With regard to ground 4, it was Mr. Munulo's submission that the damage to the appellants' crops was a direct consequence of the defendant's interference with the appellants' land. Further, that because the crops were on the claimant's land, the Land Tribunal had the jurisdiction to address this loss and order that compensation be paid to them.

Turning to ground 5, Mr. Munulo submitted that paragraph 6 was about trespass on the appellants' land resulting from the respondent's servants entering onto the appellants' land and cutting down crops, trees as well as demolishing houses on the land while digging the canal. He argued that since this was separate from the claims under negligence, the Tribunal ought to have preserved it and heard the suit in that regard.

Mr. Munulo then proposed that this court should hold that the Land Tribunal had the jurisdiction to entertain the whole suit, or at least the claims in paragraph 6 of the statement of claim. That in the alternative, this court should rule that the suit be retained for disposal by the High Court or that it be referred to the Chief Magistrates Court for disposal and the costs of the appeal be borne by the respondent.

In reply, Mr. Ssebuliba addressed the grounds in the same manner as Mr. Munulo had done. With regard to ground 1, 2 and 3, he started off with the submission that the jurisdiction of Land Tribunals was provided for by Article 243 of the Constitution which limited the matters to be handled to disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals from the Uganda Land Commission or other authority with responsibility relating to land, and the determination of disputes relating to the amount of compensation to be paid for land acquired. Further that though s.76 (1) (e) of the Land Act provides that the jurisdiction of a Land Tribunal shall be to determine any other disputes other than those mentioned in s. 76 (1) (a) to (d) the provision should be interpreted using the literal rule because it is plain and clear.

Using the *ejusdem generis* rule he submitted that the tribunal's interpretation of the statute ought to be upheld. He argued that when a list of specific descriptors (as appeared in s. 76 (1) (a) to (d)

of the Land Act) is followed by more general descriptors (as is the case with s. 76 (1) (e)), the otherwise wide meaning of the general descriptor must be restricted to the same class. He thus argued that the interpretation to be given to s.76 (1) (e) must be limited to actions of the same genre as those listed in s. 76 (1) (a) to (d). He relied on the decisions in the case of **Celtel (U) Ltd. v. Uganda Revenue Authority, H.C.C.A. No. 1 of 2005** and argued that interpretation of s. 76 (1) (e) as analogous with s. 76 (1) (a) to (d) would lead to the conclusion that the jurisdiction of Land Tribunals was concerned with proprietary interests in land, i.e. rights of ownership, recovery and other matters incidental thereto, but not trespass which is outside the operations of the Land Act, or other actions arising there from which should be properly instituted in the civil courts.

Mr. Ssebuliba further argued that statutes are no longer interpreted according to the literal rule but according to their object and intent. He cited the decision in the case of **Engineering Industry Training Board v. Samuel Talbot Ltd. [1969] 1 All E.R. 840** in support his submission. He also went on to cite the decision in the case of **Lall v. Jeypee Investment Ltd. [1972] EA 521** for the submission that every statute must be interpreted on the basis of its own language since words derive their colour and content from the context; that the object of the statute is a paramount consideration. He concluded that even though s. 76 (1) (e) of the Land Act appeared to be ambiguous, the Constitution had provided the parameters for the jurisdiction of Land Tribunals. That in view of the provisions of Article 2 of the Constitution which makes it the supreme law of the land, this court should adopt the principle of constitutional avoidance and interpret the provision in such a manner as to avoid a clash with the Constitution. Mr. Ssebuliba did not submit on the rest of the grounds of the appeal because he thought resolution of grounds 1, 2 and 3 would be sufficient to dispose of the appeal.

I agree with the manner in which the first three grounds were taken together because when they are analysed, they come to what I have framed as the first question to be resolved in this appeal. Ground 4 which relates to compensation and which is the second ground framed above should also have been taken with the first three grounds, while Ground 5 was properly taken separately. I will therefore address Grounds 1, 2, 3 and 4 of the appeal together and Ground 5 separately.

Grounds 1, 2, 3 and 4

The main contention with regard to these four grounds was about the interpretation of s. 76 (1) (e) of the Land Act. It should be noted that the Land Tribunal rendered its decision in this matter on the 14/01/2005. By that date the Land Act had been amended by the Land (Amendment) Act of 2004, which came into force on 18/03/2004. By virtue of s. 31 of the Land (Amendment) Act, s.76 of the Act was amended by substituting subsection (1) (c) thereof with a clause to the effect that the Land Tribunals would determine disputes as the court of first instance in all land matters where the subject matter did not exceed two thousand five hundred currency points (i.e. shs 50m). Paragraph (d) of sub-section 1 was deleted. In subsection 2 of s.76, the details to do with the jurisdiction of the magistrate Grade I were also deleted. In addition, subsection three was substituted with a provision that limited the jurisdiction of Land Tribunals by prohibiting them from making orders for cancellation of entries in certificates of title as well as making vesting orders. The jurisdiction in such matters was reserved for the High Court to make the Act consistent with the Registration of Titles Act. The result was that s.76 of the Land Act is now very much different from the original section and for clarity of this discussion I shall re-construct it here:

76. Jurisdiction of district land tribunals.

1) The jurisdiction of a district land tribunal shall be to—

a) determine disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the commission or other authority with responsibility relating to land;

b) determine any dispute relating to the amount of compensation to be paid for land acquired under section 42;

c) *determine disputes as the court of first instance* ***in all land matters*** *where the subject matter does not exceed two thousand five hundred currency points; and*

d) determine any other dispute relating to land under this Act.

2) In the exercise of jurisdiction over land matters provided for by this section, a district land tribunal shall have the power to grant decrees of specific performance and issue injunctions and generally shall have the power to grant such relief, make such orders and give such decisions

against the operation of any action, notice, order, decree or declaration made by any official or any board or any committee or any association or the commission, as the circumstances of the case require, and without limiting the generality of that power, may—

a) cancel any action, notice, order, decree or declaration;
b) vary the operation of any action, notice, order, decree or declaration;
c) postpone the operation of any action, notice, order, decree or declaration;
d) substitute a different decision for the one determined by any official, board, committee, association or the commission;
e) confirm any action, notice, order, decree or declaration made, notwithstanding that some procedural errors took place during the making of that action, notice, order, decree or declaration if the district land tribunal is satisfied that –
    i) the person applying for relief was made fully aware of the substance of the action, notice, order, decree or declaration; and
    ii) no injustice will be done by confirming that action, notice, order, decree or declaration, and

may grant that relief and all other orders made and decisions given on such conditions if any, as to expenses, damages, compensation or any other relevant matter as the district land tribunal considers fit.

3) ***Notwithstanding subsection (1) of this section, a District Land Tribunal shall not make an order for cancellation of entries in a certificate of title and vesting title, but shall refer such cases to the High Court for the necessary consequential orders.***

{Emphasis supplied}

First of all, it is important to note that by the time the decision under appeal was made by the Land Tribunal, s.76 (1) (e) of the Land Act no longer existed. Deleting of paragraph (d) of subsection 1 by the Land (Amendment) Act meant that s. 76 (1) (e) became s. 76 (1) (d). I will therefore refer to paragraph (d) of s.76 (1), and not paragraph (e) as counsel for the parties in this appeal did.

That being the law that governed this issue at the time the decision was made, I first considered Mr. Ssebuliba's submission that the interpretation of s. 76 (1) (d) should bear in mind the doctrine of constitutional avoidance so that constitutional problems are avoided. He argued so because the basic provision for the jurisdiction of Land Tribunals is given in Article 243 of the Constitution.

The doctrine of *"constitutional avoidance"* or *"constitutional doubt"* requires courts to construe statutes, if possible, in such a manner as to avoid not only the conclusion that a statute is unconstitutional but also grave doubts about the Constitution. Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems, unless such construction is obviously contrary to the intent of Parliament. The elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality. This approach not only reflects the prudential concern that constitutional issues should not be confronted unless it is absolutely necessary, but also recognizes that Parliament, like the judges of this Court, is bound by and swears an oath to uphold the Constitution.

In this case, Article 243 of the Constitution provides as follows:

> **243. Land tribunals.**
>
> **1) Parliament shall by law provide for the establishment of land tribunals.**
>
> **2) The jurisdiction of a land tribunal shall include—**

a) **the determination of disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority with responsibility relating to land; and**

b) **the determination of any disputes relating to the amount of compensation to be paid for land acquired.**

Mr. Ssebuliba's proposition was therefore that reading s. 76 (1) (d) to include matters that are not provided for in Article 243 of the Constitution would be causing a constitutional problem because Article 243 seems to limit the jurisdiction of Land Tribunals to matters relating to possessory rights to land, only.

I was unable to agree with that submission because Article 243 (2) employed the term "include." My understanding of the provision therefore is that in the formulation of a law to put Land Tribunals in place, Parliament was not to be limited to the categories of land issues stated in Article 243. On the contrary it was clothed with the mandate to increase the categories of disputes to be dealt with by the Tribunals in the later enactment. Indeed Parliament deemed it fit to increase those categories and in the Land (Amendment) Act of 2004, Parliament gave Land Tribunals the mandate to determine disputes as the court of first instance, ***in all land matters*** where the subject matter does not exceed shs 50m. I therefore saw no constitutional problem arising from the interpretation of Article 243 of the Constitution vis-à-vis s.76 (1) (d) of the Land Act.

I next considered Mr. Ssebuliba's argument that the *ejusdem generis* rule should be applied to the interpretation of s. 76 (1) (d) of the Act but I came to the conclusion that the rule could not apply to the situation at hand. The amendment to s. 76 of the Act changed the nature of the list that Mr. Ssebuliba proposed to apply the rule to. The introduction of a more general provision in s. 76 (1) (c) meant that s. 76 as a whole became clear and unambiguous. It is therefore my view that the decision in **Celtel (U) Ltd. v. Uganda Revenue Authority,** (supra) cited by Mr. Ssebuliba, wherein the Tax Appeals Tribunal had to find the meaning of the word "airtime," given the rest of the context of the Value Added Tax Act, can be distinguished from the matter at hand. After

the substitution of paragraph (c) of subsection 1 with a new provision that broadened the jurisdiction of Land Tribunals, the need to use the *ejusdem generis* rule was lost.

Finally, it is a cardinal rule of statutory interpretation that an Act must be construed as a whole, so that internal inconsistencies are avoided. We must therefore consider s. 76 in its entirety, as well as within the Act so as to deduce its meaning therefrom. Secondly, words that are reasonably capable of only one meaning must be given that meaning whatever the result (the *literal rule)*. The words of Lord Diplock in **Duport Steel v. Sirs [1980] 1 All E.R. 529 at 541** are most appropriate, and I quote:

> *"Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral."*

In addition, under the *golden rule* of interpretation, ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result. In **Grey v. Pearson (1857) HL Cas 61**, Lord Wensleydale stated that,

> *"The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther."*

Given the two rules above and the amendments to s.76 of the Land Act, I would not lay emphasis on s.76 (1) (d) but rather on s. 76 (1) (c) which provides that the jurisdiction of the Land Tribunals shall (among others) be to determine disputes as the court of first instance ***in all land matters*** where the subject matter does not exceed two thousand five hundred currency points. I am of the view that subsection (3) is also important in helping one to construe the limits of the jurisdiction of Land Tribunals. That provision when read together with paragraph (d) of subsection (1) would mean that Land Tribunals had the jurisdiction to entertain all manner of disputes relating to land which does not exceed shs 50m, excluding making an order for

cancellation of entries in a certificate of title and vesting title, which had to be referred to the High Court for the necessary consequential orders.

I therefore find that the Land Tribunal erred when it failed to consider the effect of the Land (Amendment) Act of 2004 on the provisions of s.76 of the Land Act and thus relied on the wrong law. As a result the Land Tribunal also erred when it held that it had no jurisdiction to entertain a suit wherein the cause of action was founded on the tort of negligence or trespass.

The determination of questions arising from the torts of trespass and negligence would necessarily lead to questions of compensation or damages. I therefore find that by necessary implication, the Land Tribunal erred when it failed to come to the conclusion that it could entertain a suit where compensation for loss of crops was claimed. Grounds 1, 2, 3 and 4 of the appeal therefore succeed.

Ground 5

This was a contention that having ruled that the Tribunal had no jurisdiction to entertain an action in tort – the flooding of the land from the canal, then the tribunal should have found that it had the jurisdiction to entertain the action for the claims relating to wrongful entry on land and the resultant damage. In order to facilitate a better appreciation of the claimants' pleas, I have found it necessary to reproduce paragraphs 6, 7 and 8 of the statement of claim which were as follows:

> "6. On the 13th July 1999 or thereabout, the defendant, its agents or employees illegally and wrongfully entered the claimants' pieces of land outside the land it purports to have bought from the Government of Uganda/Privatisation Unit, and destroyed several crops, trees and buildings etc. belonging to the claimants as per the claimants' lists of damaged properties annexed (sic) hereto and the same shall be relied upon at the trial.
>
> 7.On the same day viz 13th July 1999 the defendant dug a wide and long man made canal purportedly to serve as a barrier/ boundary between the claimants' lands and that of the defendant, but during the peak (heavy) rains of each of the

> two seasons in the area, the waters in the canal swell/rise above the canal and flow into the lands/gardens of the claimants thereby destroying their crops and other property as per the claimants' lists annexed (sic) hereto which shall be relied upon at the trial.
>
> 8. Despite several complaints/warnings by the claimants, the defendant has failed or refused to shut down or to regulate/control water flows in the said canal to prevent the same from flowing into the claimants' gardens/lands, hence the claimants shall plead negligence on (the) part of the defendant."

The particulars of negligence then followed. The annexure to the claim were listed as "A" to "T" and in each of the them the claimants named their damaged properties on the land including crops that were cut down and/or flooded over, as well as houses and huts that were burnt down.

While raising his preliminary objection, Mr. Ssebuliba agreed that the claim in paragraph 6 of the claim could be entertained by the Tribunal. He thus prayed that the claims for compensation for destroyed crops, i.e. the result of the negligence adverted to in paragraphs 7 and 8 of the claim be excluded from the dispute before the Tribunal. In its ruling the Tribunal held as follows:

> *"We had the opportunity to look at the law quoted vis-à-vis the plaint and we have decided the following:*
>
> *Firstly, looking at the pleadings in the plaint even at a glance, the cause of action is premised on negligence not recovery of land or something similar to that.* ***Briefly the cause of action is that water overflowed from a canal dug by the defendant and flooded the gardens of the plaintiffs thereby causing destruction of their crops.*** *There is nothing in the plaint to indicate that the plaintiffs were deprived of any portion of their lands save for it being rendered uncultivable. …*
>
> *With the foregoing therefore, this claim is incompetent before this tribunal and it is accordingly dismissed with costs if any."*

{Emphasis added}

There is no doubt that the members of the Tribunal did not consider the important exception that Counsel for the defendant had made in his preliminary objection. They also failed to comprehend the difference in the claimant's pleadings in paragraph 6 of the statement of claim and lumped it together with the claims in paragraphs 7 and 8 thereof. There is no doubt that the claim made in paragraph 6 touched on the claimants proprietary rights or interests in the land. If the Tribunal had been right in their finding that the claims in negligence were wrongly before them (which they were not) then they ought to have considered the claim in paragraph 6 separately and entertained it. I therefore find that they erred in that regard and Ground 5 of the appeal also succeeds.

Before I conclude, I find it necessary to consider a cause of action that was raised by the claimants in this suit as was succinctly put in paragraphs 6, 7 and 8 of the statement of claim, as well as in the annexure to it. The members of the Tribunal rightly captured it in their ruling when they stated thus:

> *"Briefly the cause of action is that water overflowed from a canal dug by the defendant and flooded the gardens of the plaintiffs thereby causing destruction of their crops."*

The claimants emphasized that the flooding of their gardens was not perpetual but seasonal; it occurred only at the peak of the rainy season. Though one could argue that the defendant could have foreseen this happening and could be sued in negligence, nuisance or trespass, if the three torts were not proved against the defendant, I am of the view that the situation in the instant case epitomizes the principle of strict liability for dangerous things as stated in **Rylands v. Fletcher (1) (1868) L.R. 3 H.L. 330,** that

> *"Where the owner of land, without willfulness or negligence, uses his land in the ordinary manner of its use, though mischief should thereby be occasioned to his neighbour, he will not be liable in damages. But if he brings upon his land anything which would not naturally come upon it, and which is in itself dangerous, and may become mischievous if not kept under proper control, though*

in so doing he may act without personal willfulness or negligence, he will be liable in damages for any mischief thereby caused."

Counsel for both parties did not consider this as a cause of action; neither did the members of the Tribunal do so. I therefore find that the members of the Land Tribunal misdirected themselves on the relevant cause of action and thus erred. The concept of strict liability ought to have been considered as a cause of action and the next trial court should consider it.

In conclusion, this appeal succeeds on all grounds. But Land Tribunals no longer exist. As was proposed by counsel for the appellant, the suit shall be sent to the appropriate Chief Magistrates Court for trial. Costs for the preliminary objection and this appeal shall be borne by the respondent.

Irene Mulyagonja Kakooza
JUDGE
10/03/2010