

**THE REPUBLIC OF UGANDA**  
**IN THE HIGHCOURT OF UGANDA SITTING AT ARUA**  
**LAND REGISTRY**  
**CIVIL SUIT NO.0006 OF 2015**

**EYOOBIA DAVID & 114 OTHERS..... PLAINTIFFS**

**VERSUS**

- 1. UGANDA ELECTRICITY DISTRIBUTION COMPANY LIMITED**
- 2. WESTNILE RURAL ELECTRIFICATION COMPANY LIMITED**
- 3. ATTORNEY GENERAL..... DEFENDANTS**

**JUDGMENT:**

**BEFORE HON.JUSTICE OYUKO ANTHONY OJOK**

EYOOBIA DAVID & 114 OTHERS(*hereinafter referred to as the "plaintiffs"*) brought this suit against UGANDA ELECTRICITY DISTRIBUTION COMPANY LIMITED, WESTNILE RURAL ELECTRIFICATION COMPANY LIMITED and ATTORNEY GENERAL(*hereinafter referred to as the "defendants"*) seeking for the following orders; Compensation of Ugx 1,910,851,500 only for the suit land on which the Defendants trespassed and placed there on electricity poles without plaintiffs' notice, consent and compensation or in the alternative and without prejudice to the foregoing, a

declaration that the Defendants are trespassers on the suit land, eviction order and an order for vacant possession in the event of failure to compensate the Plaintiffs, a permanent injunction in the event that they fail to compensate the Plaintiffs for the suit land, general damages of Ugx 200,000,000/= only, interests and costs of the suit.

The Defendants filed their defense and denied every allegation of trespass onto the land of the Plaintiffs and prayed that the Plaintiff's suit be dismissed with costs.

### **Representation**

The plaintiffs were represented by Ondoma Samuel of M/s Alaka & Co. Advocates whereas the 1<sup>st</sup> Defendant was represented by Robert Opiya of Uganda Electricity Distribution Company Limited (Legal Department), the 2<sup>nd</sup> Defendant was represented by Anthony Bazira of M/s Byenkya, Kahika and Company Advocates and the 3<sup>rd</sup> Defendant was represented by Ojiambo Bichachi, State Attorney from Attorney General's chambers.

All Counsel made oral Submissions.

### **Background;**

The Plaintiff's claim that they are the lawful owners of the suit land measuring approximately 1,624,000 square meters and/or 20.4 km which they allege that the Defendant's trespassed on. The Defendants however, deny the allegation.

Both parties and their witnesses testified in open court and the parties raised the following issues for determination during scheduling;

- 1. *Whether the Defendants trespassed on the Plaintiffs' land?***
- 2. *What remedies are available to the parties, if any?***

**Summary of evidence:**

The Plaintiffs and their witnesses testified that they are the customary and/or lawful owners of the suit land located from Odianyadri Trading Centre up to Bondo Trading Centre in Arua District which forms the suit land measuring approximately 1,624,000 square meters and/or 20.4 km which they were using for cultivation, growing trees, grazing animals etc.

That in/around 2004, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants through their agents/servants trespassed on the suit land but when the Plaintiffs approached them for purposes of evicting them, these agents/servants informed the Plaintiffs that that the land would be compensated and that a Government valuer had already been contracted to adequately value the land for compensation but the compensation has never been done.

That after the 1<sup>st</sup> and 3<sup>rd</sup> Defendants unlawfully placed high voltage electricity supply line on the Plaintiffs' suit land, the 2<sup>nd</sup> Defendant

took possession of the electricity supply line and is currently using the same to supply power to customers.

The Plaintiffs brought three(3) witnesses to prove their case and all these witnesses, save for the valuer(PW3), testified that indeed the suit land belongs to the Plaintiff, the Defendants trespassed on it and that the Plaintiffs were never compensated.

**PW1**(Eyoobia David, 49 years and Catholic)

**In examination in chief** told Court that he represents the other 114 people who are also Plaintiffs in this case and have the same problem as him. That they are his neighbours and the problem they have is of encroachment to their land.

He also told court that he knows all the Defendants and that they, the Plaintiffs sued them for their land on which they planted electric poles. That the suit land stretches from Bondo to Odianyadri, land of about 20kms in length and 30 meters in Width. That the land is located in the hinterland, not along the highway.

He further told court that the Defendants planted the poles without their permission. He told court that when the Defendants started planting the poles and the Plaintiffs complained, they were told that they would compensate them without any prior negotiations and that this was in the year 2004-2005.

He also told Court that to date, the poles still exist whereupon were installed electricity lines.



He stated that it is their customary land, not the land of the Defendants.

He told Court that in the process of planting their poles, the Defendants destroyed many things that were on their land and that for him personally, on his 1.5 km long land, they destroyed 30 eucalyptus trees, 10 mango trees, 5 avocado trees, cassava garden and groundnuts. That these were all valued at Ugx 20,000,000.

That the Defendants have not taken heed of their complaints. That in spite of promising to compensate them, they have not done so to date.

That the Defendants move within thirty meter radius for maintenance and so the Plaintiffs cannot use their land anymore.

That they sat as a group and came up with a claim of Twenty Billion Shillings for all the 115 Claimants. That they need that payment as compensation in that sum. That they have also incurred costs in the process of negotiation and in this suit.

**On Cross-examination**, Pw1(Eyoobia David) told Court that the power lines were set from 2004-2005 and that they complained directly to the people who were on ground. That they also visited the Sub-County and complained to the Sub-County Chief.

That when they complained, they were told that it was a Government programme and that they should be patient, that they would be compensated. That when they were not being compensated, they

then decided to take legal action in 2013 and engaged a lawyer in 2014 where upon they wrote to the Office of the Attorney General through their Lawyer. That he has a copy of the letter.

That the actual size of the land he is not using is 30 by 80 and that that of the rest of the Plaintiffs is about 40 kms long. That he has not been using the land since 2005.

He further told Court that he knows all the Plaintiffs and his portion of the land is located in Arivu Sub-County. That he was forced to leave the land by WENRECO. That they were promised compensation

That the land affected is outside 15 meters away from the main road. That it is along the Kampala-Arua Highway.

That he learnt of WENRECO in 2005 when it started operating.

That he knows the customs governing land in his area and that his knowledge is that of an ordinary resident. That he also instructed his lawyer to undertake a valuation.

That he knows that a valuation was done in 2006-2007. That he was told that the person who did it is a valuer but he doesn't know his name.

He further told Court that before the power lines were installed, there were gardens owned by the Plaintiffs.

He told Court that he inherited the land from his parents and that he knows that it was WENRECO and UEDCL who planted the poles

thus the First and Second Defendants, although the physical activities on the land did not involve WENRECO, the Second Defendant.

That they complained to the Sub-County Chief and agents of UEDCL and that they were promised compensation but to date, they haven't been compensated yet. That he did not identify the individuals by name and does not know who made the promise for compensation. That they were not notified on when the exercise for compensation would be taken and that no valuation was done before the commencement of the work. That the valuation was done in 2004 but no payment was made. There was no official valuation.

That he has not had negotiations with the Defendants. That he has been mobilizing the Plaintiffs and coming to Court. That he never said that they incurred expenses during negotiations.

He further told Court that they have lost upto 10 Billion and that he has lost Ten Million as an individual. That he doesn't know who the biggest claimant and the least one is.

That he has not suffered any illness as a result of the poles.

On **Re-examination**, he told court that he doesn't know who is maintaining the power lines.

**Pw2** (Drayo Tito Adiamvi, 62 years old and Christian)

He testified that he knows the first Plaintiff and some of the other 114 Plaintiffs. That he also knows the Defendants.

That he and the other 114 Plaintiffs have sued the Defendants because from 2004 to 2005, there was a project of installing electric lines and some of the lines passed through their land. That when they asked the people who were digging the holes, they told them that it was WENRECO which had sent them to do the work. That when they later started planting the poles, they told them that they were from UEDCL.

He further told Court that when they sought compensation, they were told that it was a Government project and that is why they sued the Attorney General. That it is the People working on the line who told them that it was a Government project.

That the line was completed and operational now. That the lines are maintained by WENRECO. That he knows because they have their vehicles, their people have their uniforms and they also announce over the radio when there are broken poles.

He also told Court that the Power lines have affected them; their crops were destroyed, fruit trees cut down and they can no longer put the land along that route to economic use since they cannot plant or build under and near the power line. That these instructions were given by the technicians who worked on those lines.

That the size of the land affected is from Odianyadri Trading Center up to Bondo, a distance of about 20 kms. That he can not use his portion of the land because they were advised not to. That as an individual, he had over 20 eucalyptus trees along that line, they were immature but he was forced to harvest them prematurely. That he also had about 10 guava trees, and also seasonal crops such as groundnuts.

That he demands shillings 20,000,000/= although his land would go for about 25,000,000/= if he were to sell it, since it is along the road. That the aggregate claim for all of them is 20 Billion.

He also told Court that there was a time he heard that a valuation team had been sent but he was not around, that this was about a year ago.

That there are still some visible signs of trees in the area.

That the people were not formally notified of the project but they were told that it was a Government project and the promise for compensation has not materialized.

That he prays that Court orders compensation for the crops and the properties damaged and for the land which they can not put to economic use. That they also demand for costs incurred. That the case began in 2014 and to date, they are still incurring costs.

**On Cross-examination,** Pw2(Drayo Tito Adiamva) told Court that in 2004, he was working as a technician with Uganda Telecom in Kampala. That in 2011, he began farming to earn a living.

That he saw people installing the poles in 2004 and that he was present when the activity was being undertaken on his land. That he did not see their L.C Chairman with them. That most of them were in casuals, not in uniform. That he did not see what was written on the uniforms of the few who were in uniform.

That the workers had a lorry ferrying poles and that he did not see what was written on the vehicle. That the vehicle he saw was red in colour. That they had a supervisor and he was the one who told them to wait since they would be compensated. That the supervisor told him that he was working with UEDCL but he never identified himself to him(Drayo Tito Adiamva).

That he did not make further inquiries elsewhere but that the workers told them that it was WENRECO project. He stated that since then, it is WENRECO operating the line.

That he never inquired whether the people who told them that they would be compensated were from Government.

He told Court that between 2004 and 2014, they never approached UEDCL. That the technicians who instructed them not to build under or near the poles came from WENRECO.

That they want compensation for the value of the crops and land.

That before commencement of the suit, they didn't approach Government seeking compensation.

He further told Court that he came to learn of WENRECO when they took that project to provide power. That he cannot tell the people who were digging the holes but they dug the holes in 2004 and he assumed that they were technicians.

That there was no valuation report and that he has not submitted any evidence of what was destroyed.

That the technicians who told them not to cultivate under the lines travel on a vehicle written on WENRECO.

He further told court that he does not have a title deed to the land but he inherited it from his father. That he did not make a complaint until 2014 because they were told to wait. That there is no notification that they should be compensated.

That what he lost on his land is worth 5,000,000/= but that he had not submitted a valuation report yet. That none of the people he represents undertook a valuation of the crops.

That they were tortured psychologically because they can not use their land although they have no medical proof.

That there are no trees left on his land and that he did not see any writings on the lorry he saw ferrying poles.



That he doesn't know the person who promised compensation but they want the Defendants to compensate them for their land. They have not prayed for removal of the poles.

### **Re-examination**

Nil

Pw3 was previously Mr. Romeo Palwak, whose testimony was later struck out for being incompetent to carry out valuation, which was discovered during cross-examination by Counsel Anthony Bazira and he was accordingly replaced by Mr. Ayikobua Cephas.

**Pw3**(Ayikobua Cephas, 48 years old, Land Surveyor) and a civil servant of Arua District Local Government employed as District Land Valuer and also a Land Surveyor by trade.

That he has a Bachelor of Science in Land Economics of Kyambogo University and Diploma in Land Survey of Survey Training School, Entebbe. Currently he is an active Graduate member of Institution of surveyors of Uganda which is our professional body. He has a professional experience in Land Surveying and Land/property valuation from Ministry of Lands, Housing and Urban Development as an intern from 2011 and currently employed as Government Valuer from 2014.

That on 15<sup>th</sup> October 2017, he received verbal instructions from counsel for the plaintiffs in this suit that is M/s Alaka & Co. Advocates to value, inspect, go through documents and visit land

affected by 33KV Power line constructed from Odianyadri Trading Centre up to Bondo Trading Centre in Arua District.

That he independently went on ground since he know the place very well and found that the power line exists to date. He identified where the 33KV power line passed through from Odianyadri Trading Centre upto Bondo Trading Centre in Arua District.

That he was informed initially that the above power line affected people's property that is land, crops and trees. However, by the time he visited the land physically, he discovered that the trees and crops were long destroyed at the time when the construction line was built in around 2004-2005 thus they could not be identified and valued by him.

That he established on ground that the 33KV power line runs through customary land owned customarily by various people. It does not go through road reserve and or public utility lane. At around Enzeva hill down the slopes, the power line runs through Government Forest Reserve and he has not included the forest reserve in his analysis and valuation since it is a Government property.

That he established that transactions in land deals/sales have risen up in urban growth centre and along up graded high way roads from Arua Municipality to Nebbi Municipality therefore the land values are comparatively high. On average and taking into account that most pieces of land in this area have no Land Certificate of Title, in his

considered opinion land value rate of Ug. Shs: 5,000,000/= (Five Million) per Acre is reasonable.

That he established from the available documents and technical measurement that the affected land by this 33KV power line constructed from Odianyadri Trading Centre upto Bondo Trading Centre in Arua District is approximately 134,489 hs (332,332 Acre) Am of the opinion that the fair open market value of the entire affected land is in the region of Ugshs. 1,661,610,000/= (One Billion Six hundred sixty one million six hundred and ten thousand) only.

That a 15% statutory disturbance allowance of the above value is added that is Ugshs: 249,241,500/= (Two hundred forty nine million two hundred forty one thousand five hundred shillings) only making a Grand total value of the entire affected land to be Ugshs: 1,910,851,500/= (One billion nine hundred and ten million, eight hundred and fifty one thousand five hundred shillings) only.

That most of the data pertaining this power line project he sought and were provided by Uganda Electricity Distribution Company Limited.

That identification of the affected persons and pieces of land they own individually was not his responsibility so he didn't do it.

That he prepared in writing and submitted to M/s Alaka & Co. Advocates his valuation report of land affected by 33KV power line

constructed from Odianyadri Trading Centre to Bondo Trading Centre in Arua District.

That his valuation should be considered advisory opinion and should his opinion be found unsatisfactory, this honourable court and the parties to this suit are free to seek another opinion elsewhere.

**On Cross- Examination**, he told court that he lives in Arua district and that he is a graduate of Kyambogo University in Survey, Valuation, land and quantitative survey.

He also told court that he belongs to a professional body, that he is a Government valuer doing private work. That the valuation report he has made in regard to the matter now before court is just his opinion.

He stated that he knows a gentleman called Palwak Romeo and that he was involved in making the said Remeo's report.

He stated that he did not go with Mr. Palwak to the field although he later visited the place, he state that he did not open the plot and that he doesn't know everyone on the suit land. While referred to paragraph 6 of his witness statement wherein he stated that he established on ground that the 33KV power line runs through customary land owned customarily by various people. He stated he did not know the individuals in person.

He stated that he indeed believes in his report.

That there is electricity on the suit land however there are no schools or industries thereon.

He also stated that there were no economic activities on the land.

He told court that he arrived at the 5million in paragraph 7 through information that he got from UEDCL but not a land surveyor. That there was no value attached.

He also told court that he would like to retract Disclaimer Notice No. 004. He stated that he went on ground in 2017 and that he did so as a Land Valuer. He said that he did the survey within 1 day and that the land is 32km long.

He further stated that he was the one who personally took the photographs. That while doing this survey he was guided by one of the complainants. That the land passes through four trading Centers to wit; Bondo, Arivu, Odianyadri and Ocoko. That there are no measures of the land shown.

He stated that he doesn't know whether the 33KV is a power line or high voltage.

That the document he stated in paragraph 8 of witness statement is a survey report by UEDCL. That he did not write to UEDCL asking for the document but that he got to know about the document from an agent of WENRECO.

He also told court that he did not see any farming activities on the suit land. That the land is 7meters wide and 32km long.

That he is not sure of the ownership of the power line but that he assumed it to belong to UEDCL.

**Re-Examination:**

I visited the suit land in October 2018.

The defendants on their side brought 2 witnesses and this includes Dw1 (a one Bamanya Lurn and Dw2 (a one Mr. Isaac Newton Mukwaya.

**Dw1 (Bamanya Lurn, Christian)**

He testified and told court that he is the Manager, projects with the 1<sup>st</sup> defendant, a position which he has held since 2008 and that he has read the court documents and the claims of the Plaintiffs.

That he is very conversant with the issues concerning the power line in issue running from Odianyadri Trading Center upto Bondo in Arua district.

That the power line in contention was constructed back in 1990's by the Uganda Electricity Board way before the 1<sup>st</sup> defendant came into existence. That the power line was transferred directly to the 2<sup>nd</sup> defendant company by the Uganda Electricity Board under an Asset Transferred Agreement to which the 1<sup>st</sup> defendant was not a party as

such the line is not an asset of the 1<sup>st</sup> defendant and is not on it's asset register.

He told court that he knows that since the power line was transferred directly to the 2<sup>nd</sup> defendant by UEB, UEDCL the 1<sup>st</sup> defendant is not and cannot be held liable over the power line since it was not a party to the agreement and does not own the power line.

He stated that he knows that according to the directive from Electricity Regulatory Authority, wayleaves for UEB related matters are the responsibility of the Government of Uganda and no money is provided for them in the tariff.

He also stated that according to information and network maps available and maintained by the 1<sup>st</sup> defendant, the lining issue falls outside those managed and owned by the 1<sup>st</sup> defendant.

He finally stated that the 1<sup>st</sup> defendant is not liable to pay any compensation for wayleaves to the Plaintiffs or to any other claimant for lines that does not belong to it.

**On Cross- Examination:**

He told that the parties to this case are UEB and WENRECO. He also told court that the land that was transferred by UEB to WENRCO is from Odianyadri trading center to Bondo trading center.

He stated that the 33KV from Odianyadri to Bondo is currently being used by WENRECO.



He stated that, it is not true that after the Asset Transfer Agreement from 2003 its UEDCL that took over the assets, management and control of the 33KV power line from Arua to Bondo.

The 33KV power line was constructed before 2001 but was constructed in the 1990's. It was constructed by UEB.

He told court that UEDCL has never serviced the 33KV power line upon the winding up of UEB (refer to page 14).

He further told court WENRECO is not responsible for any liability. There are some lines being operated by WENRECO and some of these lines include those after Arua town to Koboko, Yumbe and Oraba, line from Nyagak upto Vurra. And also from Nebbi to Pakwach. None of these lines is part of 33KV.

If there is anyone liable for compensation, it is UEB.

The representative who signed the Asset Transfer Agreement on behalf of UEB was Mrs. Fatma Nsereko.

On Re-Examination, when asked to explain the map further, he told court that Annexure 'B' highlights that UEDCL was in West Nile region and a section of Odianyndri to Bondo which is outside the line the 1<sup>st</sup> defendant constructed between 2013 and 2015.

He also stated that the Area in contention (line marked Red on the map) is being operated by the 2<sup>nd</sup> defendant (WENRECO) and the 1<sup>st</sup> defendant (UEDCL) has no ownership of the same.

Since UEB wound up, the person incharge and who should be liable is the official receiver. We officially took over from UEB in 2001. UEB remained with the assets in West Nile for the purposes of selling and transferring to appropriate operators. The successor company was created in 1999. Until 2013 to 2015 UEDCL did not own any power line in West Nile.

**DW2** (Isaac Newton Mukwaya, Christian)

He told court in Examination in chief that he is the Human Resource Manager of WENERCO and that he has held that position since 2013.

He also told court that WENERCO got onto the disputed land in 2003 after it signed an Assets Transfer Agreement with UEB, an entity fully owned by the government of Uganda.

That prior to signing the Asset Transfer Agreement, Uganda Electricity Board had acquired wayleaves of the 30km of the 33KV power line from Arua to Bondo for the distribution of Electricity with 9 transformers. That this power line, before signing the Asset Transfer Agreement was operated by Uganda Electricity Board.

He further testified that as a result of the unbundling of UEB, UEDCL took over its assets and as such, the power line belonged to UEDCL, but was operated by WENRECO to date.

He also stated that the 30km of 33KV power line from Arua to Bondo was refurbished by SPENCON Services Limited, being a client contracted by UEDCL between 2004 to 2005 and recommissioned.

That the plaintiffs are entitled to any reliefs sought from the 2<sup>nd</sup> defendant.

### **Submissions**

Counsel for the Plaintiffs submitted that the Plaintiffs jointly and severally are the customary and lawful owners of various pieces of land located from Odianyadri Trading Center to Bondo Trading center, measuring approximately 1, 624, 000 square meters which they were in peaceful possession and using for cultivation, growing trees and grazing animals.

He submitted that in around 2004, the first and third Defendants through their agents, servants without Plaintiff's consent and notice entered their land, destroyed trees and crops thereupon the land and placed thereupon electric poles and high voltage electricity supply line. That after the above trespass, the Plaintiffs approached the 1<sup>st</sup> and 3<sup>rd</sup> Defendants' agents who were on ground with the aim of evicting the Defendants and the electricity line but the above agents/servants of the Defendants informed the Plaintiffs that they will be compensated for the suit land and that a Government valuer had already been contracted to value the land so that they will be paid adequately and fair compensation.

Counsel also submitted that the 2<sup>nd</sup> Defendant took possession of the high voltage electricity powerline established on the suit land and since then to date, she is using the electricity poles and high voltage power line to supply electricity to her customers in West Nile

at a cost, thus generating income from the suit land without compensating the Plaintiffs for their land, trees and crops that were destroyed.

On the first issue of whether the Defendants trespassed on Plaintiff's land and property, counsel first cited the case of **JUSTINE E.M.N LUTAAYA Vs STERLING CIVIL ENGINEERING COMPANY LTD SCCA No. 11/2002** where it was held that; "Trespass to land occurs when a person makes an unauthorized entry upon land and thereby interferes or portents with another person's lawful possession of land...."

Counsel stated **Section 67(1)(c) and (d)** of the Electricity Act, 1999 Cap 145 which provides that, A licensee authorized by the authority to enter generally or on a particular occasion may place and maintain electricity supply line in over or upon any land and for that purpose it shall be lawful upon written authorization by the authority or licensee or his/her representative to cut down trees or branches likely to injure, impede or interfere with the electricity necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing an electric supply line or for performing any other activity under this Act

Counsel also referred to **Sections 67(2), 67(3) and 67(4)** of the Electricity Act, 1999 Cap 145

He cited the case of **UEB Vs STEPHEN LUANDE SANYA CACA No. 1/2000** where UEB entered on land, destroyed trees, crops and

building materials and placed thereon survey marks and high voltage power line without consent of the land owners

**TWINOMUJUNI J. A** held that UEB cannot just enter on anybody's land without first acquiring it and paying compensation. This contravenes **Article 26(1)(2) and Article 237(1)** of the Constitution as amended. UEB must also notify the persons affected before taking the land, which was not done

He also cited the case of **PURAW CHANDMANY Vs COLLECTOR [1957] E.A 125** where it was held that the market value of land is the basic on which compensation must be assessed and the market value of land is the price a willing vendor might be expected to obtain from willing purchaser

Counsel stated that **Article 26 of the 1995 Constitution** which is the supreme law of our land provides for protection from deprivation of property.

That the proper procedure for compulsory acquisition of land for public purpose is provided under **Sections 2, 3, 4, and 5** of the Land Acquisition Act, Cap 226 which provides for among others that declaration is to be made to the Minister stating that the land is required by the Government for public purpose, the declaration is to be served on the proprietor and/or occupier of the land, the declaration shall specify the location of the land, its approximate area and plan

The Assessment officer is to cause the land to be marked out, measured and planned upon publication of the declaration by the Minister. The Assessment Officer shall then cause notice to be published in the Gazette to the effect that Government intends to take possession of the land and that claims to compensation for all interest in the land may be made to him or her among others

Counsel submitted that in the instant case the plaintiffs through the evidence of **PW1** (EYOOBIA DAVID), **PW2** (AYIKOBUA CEPHAS) plus exhibit PEX1 proved that the Plaintiffs are the owners of the suit land and that they were in peaceful possession of the suit land until around 2004 – 2005 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered their land without notification and their consent and placed thereupon electricity poles and electricity supply line over their land. He stated that the Plaintiffs proved that they immediately complained to the Agents/servants and assignees of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who entered the land but they told them that it was a Government project and that they will be compensated soon

He submitted that since around 2004 – 2005 when the defendants trespassed on their land, to date, the Defendants have not compensated them for their affected land. That to date, the electricity poles and power lines are on their land and due to their presence on their land without consent and notification, they cannot use the affected land for farming, tree planting, grazing animals, constructing buildings and business. That the crops and



trees of the Plaintiffs which were on the land were cut down by the Defendants without compensation to date

Counsel submitted that the Plaintiffs proved that it is the 2<sup>nd</sup> Defendant who is to date operating and maintaining the electricity supply line and poles and is making money out of it because she uses it to supply electricity to her customers in West Nile at a cost

Counsel for the plaintiff further submitted that the plaintiffs proved through PW3 and PEX1 that the approximate fair market value of the suit land is in the region of UGSH 1, 661, 610, 000 only plus 15% disturbance allowance on the above value, of UGSH 249, 241, 500 only making a grand total value of the entire affected land to be UGSH 1, 910, 851, 500 only

Counsel stated that the Defendants both in their written statements of Defense and testimony of witnesses in court do not deny that the plaintiffs are the owners of the land, the electricity poles and electricity supply lines were placed on the suit land and to date, they are on the suit land being operated by the second Defendant but in their witness testimony and written statements of Defense the 1<sup>st</sup> and 3<sup>rd</sup> Defendants state that the supply, distribution and generation of electricity power on the suit land was from 12<sup>th</sup> March 2003 onwards were transferred directly by UEB to the 2<sup>nd</sup> Defendant (WENRECO) on their agreement thus the 1<sup>st</sup> and 3<sup>rd</sup> Defendant have never constructed a high voltage power line on the suit land and it is not their asset and do not own the 30km 33KW



Electricity supply line on the suit land and have never trespassed on the land

Counsel submitted that on the other hand, the second Defendant stated in its testimony in court through DW2 (ISAAC NEWTON MUKWAYA) and their written statement of Defense which is on court record that the construction of the power line was carried out by entities of Government that is, Uganda Electricity Board (UEB) and they got onto the disputed land in 2003 after signing the Asset Transfer Agreement with UEB which is an entity fully owned by the Government. That the Government and its entire entities are entirely responsible for the actions of entry onto the land affected and construction of the powerlines thereupon. That the agreement is to be added to the suit for purposes of indemnifying the 2<sup>nd</sup> Defendant against plaintiffs' claims

Counsel stated that DW2 in his written testimony in chief told court that as a result of unbundling of Uganda Electricity Board, Uganda Distribution Company Ltd (1<sup>st</sup> Defendant) took over its assets and as such, the power line belonged to UEDCL but it was operated by WENRECO from then to date. That he further stated that the said power line was refurbished by SPENCON services Ltd, being contracted by the 1<sup>st</sup> Defendant UEDCL between 2004 – 2005 and recommissioned

Counsel submitted that it is not disputed by the Defendants, DW2 and DW3 that the electric poles and 30km 33KW power line is on the suit land and that it was refurbished in 2004 – 2005 and

further that it is the 2<sup>nd</sup> Defendant WENRECO to whom the power line was transferred by UEB and since 2003 to date WENRECO is operating the power line

Counsel submitted that the Defendants are trespassers on the suit land since they failed to prove that they own the suit land. That the actions of the Defendants are contrary to **Article 26(1)(2) and Article 237(1)** of the Constitution of the Republic of Uganda as amended, **Section 67(1), (2), (3), (4) and Section 70** of the Electricity Act 1999 Cap 145 and **Sections 2, 3, 4, and 5** of the Land Acquisition Act Cap 226

Counsel therefore prayed that court finds the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants trespassed on the Plaintiffs' land

Counsel submitted on the second issue that court grants to the Plaintiffs the following remedies; compensation of UGSH 1, 910, 851, 500 only, a declaration that the Defendants are trespassers on the suit land, an eviction order and an order of vacant possession against the Defendants in the event that they do not compensate the Plaintiffs for the suit land, a permanent injunction issues against the Defendants in case they do not compensate the Plaintiffs for the suit land, general damages of UGSH 200, 000, 000 only, interests on both compensation for the land and general damages at the rate of 23% per annum and costs of the suit

It is the 1<sup>st</sup> Defendant's submission in reply on the issue of whether the Defendants trespassed on the Plaintiff's land that the 1<sup>st</sup> Defendant never trespassed on the Plaintiff's land

That counsel for the plaintiff's cited the case of **JUSTICE E.M.N LUTAAYA VS STERLING CIVIL ENGINEERING COMPANY LIMITED SCCA NO. 11 OF 2002** on the subject of trespass but did not attach the same, as the rules of practice would require

That it is trite law that before one brings an action for trespass, there must be proof of ownership. That the Plaintiffs have not proved that the land in question belongs to them. That mere verbal testimony without documentary evidence is insufficient to prove ownership

He submitted that counsel cited **Section 67** of the Electricity Act, Cap 145 and that court should take **Section 67** as the correct position of the law. That the import of the said Section is that once a licensee places electricity supply line over or upon any land such a licensee cannot be actionable for trespass. That the only remedy is for the owners of the land to sue for compensation for trees, crops and other items destroyed in the process of constructing the line

Counsel submitted that the testimony of DW1 (Mr. Bamanya Lurn) was sacrosanct. That he stated in his evidence that the power line where the disputed land is located is not among the assets owned by the 1<sup>st</sup> Defendant in West Nile. That he said that the line was constructed by UEB in the 1990s and transferred by UEB (in liquidation) to the 2<sup>nd</sup> Defendant by an Asset Transfer Agreement dated 12<sup>th</sup> March 2003 and the 1<sup>st</sup> Defendant is not anywhere in the Agreement as a party

That in the testimony of DW1, Mr. Bamanya stated that in that Agreement, Clause 10 was very clear on liabilities that it stated that UEB would ensure that it hands over the powerline to the 2<sup>nd</sup> Defendant free of any liability and would indemnify the second Defendant should any issue of liability arise after signing of the Agreement. That the Agreement was admitted as DEX1. That DW1 stated that from the Agreement the liability relating to the powerline in issue lies on UEB. That if any liability was not settled, it would not fall on the 1<sup>st</sup> Defendant but rather on the official receiver of UEB

That it is the testimony of DW1 (Bamanya Lurn) that until 2013 – 2015, the 1<sup>st</sup> Defendant had not owned any assets/powerline in West Nile except in Moyo and according to information and network maps available and maintained by the 1<sup>st</sup> Defendant, the line in issue falls outside those managed and owned by the 1<sup>st</sup> Defendant. A copy of the map was tendered in and marked DEX2. That the evidence of DW1 is clear that the 1<sup>st</sup> Defendant is not liable for the plaintiff's claim

Counsel submitted that he prays that court takes judicial notice of three matters which they believe will exonerate the 1<sup>st</sup> Defendant from any liability and these are that;

1. By General Notice NO. 108 of 2006 which appeared on the Uganda Gazette of 7<sup>th</sup> April, 2006 the official receiver was appointed the liquidator of UEB. It was stated in the Notice

that anyone having any claim whatsoever from UEB should submit such claims to the official receiver/liquidator

2. The handover report of the executive chairperson of the former UEB clearly states at page 2 that the West Nile off grid concession was successfully concluded with M/S WENRECO and an Asset Transfer Agreement was signed on March 2003. That this does not mention the 1<sup>st</sup> Plaintiff as a party to the concession Agreement
3. Under Statutory Instrument 28/2002, the Assets and liabilities that were vested by that instrument to the three successor companies are clearly enumerated therein. Assets and Liabilities vested on the 1<sup>st</sup> Defendant are stated in the third schedule. That there is no mention of any outstanding compensation to be paid by the 1<sup>st</sup> Defendant to the Plaintiffs relating to the impugned powerline.

That all the three stated points exonerates the first Defendant from any liability.

Counsel for the second Defendant in the preamble, addressed the issue of whether the plaintiffs are the customary and/or lawful owners of the suit land

Counsel submitted that establishing possession will be helpful in resolving the issue of ownership and eventually, trespass. That the key word is possession and he cited the case of **JUSTINE E.M.N LUTAAYA VS STERLING CIVIL ENGINEERING COMPANY LIMITED SCCA NO. 11/2002** where it was held that;

Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes or pretends to interfere with another person's lawful possession of that land. Needless to say the tort of trespass to land is committed not against the land but against the person who is in actual or constructive possession of the land....Where trespass is continuous, the person with the right to sue may subject to the law on limitation of actions, exercise the right immediately after the trespass commences or anytime during its continuance or after it has ended. Similarly, subject to the law of limitation of actions, a person who acquires a cause of action in respect of trespass to land may prosecute that cause of action after parting with possession of the land

After discussing the various laws in relation to trespass to land, counsel submitted that the plaintiffs had to prove that they customarily owned the land

Counsel submitted that PW1 led evidence that the Defendants encroached on their land that stretches from Bondo to Odianyadri of about 20km in length and 30km in width and that the land is a customary land. That PW2 stated that he inherited the land from his parents. That PW1 and PW2 did not guide court on what each of the individual plaintiffs own. That on cross-examination of....by the 2<sup>nd</sup> Defendant's counsel, PW1 stated that he knows the customs governing land in his area but the knowledge was that of an ordinary resident. That PW3 testified during cross-examination that he did not establish the rightful owners of the land



Counsel submitted that the Plaintiffs did not prove customary ownership during trial as per the evidence on record. That it is an established principle that where an African Customary Law is neither well-known nor documented, such reference to a book, document or judicial decision, it must be established for court's guidance by the party intending to rely on it. That it is also trite law that as a matter of practice and convenience in civil cases, relevant customary law, if it is incapable of being judicially noticed should be proved by evidence of expert opinion adduced by parties. That court has wide discretion on how this should be done but the onus to do so must be on the party who puts forward the customary Law as was held in the case of **KDLB & AWOR VS VENANSIO**

**BABWEYAKA & 3 OTHERS SCCA NO. 2 OF 2007**

That the plaintiff ought to have adduced evidence of custom through reference to a book, a document of reference or a judicial decision. That this was not done but even then, no expert witness was called to testify as to the customs of the said land. That with such, it is difficult to establish if all the Plaintiffs were owners of the said land and/or deprived of the same

On whether the second Defendant trespassed on the plaintiff's land, counsel submitted that the plaintiffs in their Amended Plaint state that they were deprived of their land by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. That they only fault the second Defendant for taking possession of the electricity supply line and using the land under Paragraph 5(e). That this was corroborated by Pw1 who told Court during cross-



examination that they were forced by the 1<sup>st</sup> and 3<sup>rd</sup> Defendant to leave the land. That Pw1 stated that the physical activities did not involve the 2<sup>nd</sup> Defendant. That moreover, Dw1 during cross-examination testified that there was no liability on the part of the 2<sup>nd</sup> Defendant as per the Asset Transfer Agreement. That Dw1 stated that compensation, if any, should have been done by UEB.

Counsel further submitted that the Plaintiffs did not prove or adduce evidence that the 2<sup>nd</sup> Defendant deprived them of their land. That its only an issue of taking possession of the land. That the 2<sup>nd</sup> Defendant did not participate in compulsory acquisition of the land or construction of the high voltage power line but it only assumed ownership and control of the powerline from the Government of Uganda. That the powerline was only transferred to the 2<sup>nd</sup> Defendant after construction.

Counsel also submitted that the Government of Uganda is legally entitled to acquire land for the purposes of providing public utilities like electricity transmission and distribution infrastructure and this can be evidenced in Article 26(2) and 273 of the Constitution of Uganda, 1992. That the Government transferred the powerline in issue to the 2<sup>nd</sup> Defendant with written assurances that the law had been duly complied with in all respects for purposes of constructing the said power line and further that, no third-party claims or liens encumber the same.

That it is therefore their submission that the 2<sup>nd</sup> Defendant has no liability to compensate the Plaintiffs for a compulsory acquisition

that was carried out by a government entity and bears no legal liability for actions of the 3<sup>rd</sup> Defendant.

On the issue of the remedies available to the parties, counsel submitted that the Plaintiffs are not entitled to any declarations sought in as far as the 2<sup>nd</sup> Defendant is concerned. They did not prove that they were deprived of the land by the 2<sup>nd</sup> Defendant neither did they adduce tangible evidence to suggest that the construction of the powerline was done by the 2<sup>nd</sup> Defendant

He stated that the suit be dismissed with costs to the 2<sup>nd</sup> Defendant but in the unfortunate event they pray that the 3<sup>rd</sup> Defendant indemnifies the 2<sup>nd</sup> Defendant.

It is the submission of counsel for the 3<sup>rd</sup> Defendant on the issue of whether the defendants trespassed on the Plaintiff's land and property that the alleged cause of action as per the plaint is based on the tort of trespass to land and property. That the 115 Plaintiffs claim that their customary land was encroached on by the Defendants in 2005 or thereabouts when they planted electricity poles on their land without permission and compensation.

He stated that the Civil Procedure and Limitation (Miscellaneous Provisions) Act cap 72 laws of Uganda provides in section 3 (1) that **“No action founded on tort shall be brought against the government after the expiration of two years from the date on which the cause of action arose.”**

That the Plaintiff's content that the tort of trespass to their land/property happened in 2004 and it is a continuous tort and thus not subject to limitations.

He sated that the Attorney General submits that the Plaintiffs if they had any claim in the tort of trespass against any government which is, however, not admitted, then they should have exercised their rights to sue government within the confines of section 3(1) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act

It is Counsel's submission that Pw1 testified in cross examination that the electricity poles were planted between the year 2004 – 2005 and they filed this suit in 2015 which is over ten years from the date when the cause of action arose. That the right to sue government in the tort of trespass does not exist for eternity, the same can be extinguished by acquiescence and looking at the period of time taken to file the suit. If there is no time limit on the claims of compensation on trespass on land against government then the government would be flooded with bogus claims stretching to even hundreds of years, citing continued tort of trespass

That it is there for his submission that the claim is inordinately brought and thus time-barred and untenable in the circumstances.

He also submitted that without prejudice to the above in the unlikely event that this court discards section 3(1) of the Civil Procedure (Miscellaneous Provisions) Act that they do submit that the Plaintiffs are still in occupation and possession of the suit land and thus trespass cannot arise against government

With the foregoing coupled with the other grounds as explained in the submissions he concluded on this issue that trespass to the Plaintiff's land and property cannot suffice.

On the issue of remedy, counsel submitted that all the Plaintiff's prayers as stated in the plaint be denied and dismissed with costs to the 3<sup>rd</sup> Defendant

Counsel for the Plaintiff submitted in rejoinder that they reiterate their earlier submissions and add that the Plaintiffs duly proved their customary ownership of the suit land on the balance of probability through the evidence of Pw1, Pw2, and Pw3 as required under sections 1, 3(1) and (3) of 1998 Land Act.

He submitted that all the Defendants to this suit both in their written statements of defense and through their witnesses testified in court that they do not claim ownership of the suit land but rather ownership of the 33KV electricity power supply line in which the Plaintiffs do not have interest or claim over it. That the Defendants miserably failed to defend their ownership of the suit land. He submitted that it is their prayer therefore that all the prayers stated in the plaint are granted

### **Resolution of Issues**

In Civil cases it is an established principle that the burden of proof lies on the plaintiff to prove his or her case on the balance of probabilities. It was held in the case of **NSUBUGA VS KAVUMA (1978) HCB 307** in line with **Section 101 of the Evidence Act** that

whoever desires any court to give judgement as to any legal rights or liabilities depend on the existence of facts which he or she asserts must prove that those facts exist. When a person is bound to prove the existence of any fact it said that the burden of proof lies on that person. **Section 102 of the Evidence Act** also provides on the burden of proof that it lies on the person who would fail if no evidence were given on either side. The above were also the position in the case of **MULUTA JOSEPH VS KATAMA SILVANO CIVIL APPEAL NO. 11/1999.**

It is the contention of the Plaintiffs that the Defendants trespassed on their customary land which they were in possession and utilizing for cultivation, growing trees and grazing animals.

That in 2004, the first and the 3<sup>rd</sup> Defendants through their agents, servants, without the Plaintiff's consent and notice entered their land, destroyed their trees, and crops, and placed thereon electric poles and high voltage electricity supply line.

That after the above trespass, the Plaintiffs approached the 1<sup>st</sup> and 3<sup>rd</sup> Defendants agents Plaintiffs who were on ground with aim of evicting the Defendants and the electricity lines but the said servants of the defendants informed the Plaintiffs that would be compensated for the suit land and that a government valuer had already been contracted to value the land.

It is also their contention that 2<sup>nd</sup> Defendant took possession of the high voltage electricity powerline established on the suit land and that since then to date, it is using it to supply electricity to its

customers in West Nile at a cost, thus, generating income from the suit land without compensating them (the plaintiffs).

The 1<sup>st</sup> Defendants on its part denies the allegation and further contends that neither did it nor its agents entered into the plaintiff's land at all and therefore it could not have destroyed any tree/or crops on the plaintiffs' land.

The second defendant also denies the allegation and further contends that it got onto the suit land in 2003 only after signing the asset transfer agreement with UEB, an entity fully owned by the Government of Uganda and represented by the Ministry of Energy and Mineral Development. That the construction of the powerline was carried out by the entity of the Government of Uganda and only transferred to the second defendant after construction.

The third defendant on its part contends that the said powerline does not make part of the government portfolio/assets in the region. That is not in any way whatsoever, be it vicariously or jointly or severally liable for the alleged cause of action, trespass and the alleged claim for compensation, cost of the suit and other remedies that the plaintiffs seek against the third defendants.

In a nut shell, the defendants deny the allegations of the plaintiffs and this therefore means that the plaintiffs have to prove its case to the required standard which is on a balance of probabilities.

The following issues were raised for determination at scheduling;



1. Whether the defendants trespassed non the plaintiffs' property?
2. What remedies are available to the parties?

I will now resolve the issue as agreed by the parties.

**Issue 1:** Whether the Defendants trespassed on the Plaintiffs' land?

In order to satisfactorily resolve this issue, it is very important to understand the tort about this issue in the case of **JUSTINE E.M.N LUTAAYA VS STERLING CIVIL ENGINEERING COMPANY LIMITED SCCA NO. 11 OF 2002** on trespass that "Trespass to land occurs to land when a person makes an unauthorized entry and therefore interferes or proceeds to interfere with another person's possession of that land. Needless to say, the tort of trespass to land is committed not against the land but, against the person who is in actual or constructive possession of the land....Where trespass is continuous, the person with the right to sue may, subject to the law on limitation of action, exercise the right immediately after the trespass commences, or anytime during its continuance or after it has ended. Similarly, subject to the law on limitation of action, a person who acquires a law of action in respect to land may pursue that cause of land after parting with the possession of that land"

**Section 67(1)(c) and (d)** of the Electricity Act, 1999 Cap 145 provides that a licensee authorized by the authority maintains that over, upon any land cut down any tree or branch which is likely to injure, impede or any electric supply line and to perform any activity of constructing, repairing, improving, examining, altering or



removing an electric powerline or performing any other activity under the act.

**Section 67 (2)** of the Electricity Act, 1999 Cap 145 provides that a licensee shall not exercise and (d) of the Act except with the consent of the owner of the land.

It is the contention of the plaintiffs that they are the various pieces of land from Bondo to Odianyandri measuring approximately 1, 624, 000 square meters and/or 20.4km which they were in peaceful possession of, before the interference by the Defendants.

Both **PW1** (EYOOBIA DAVID) and **PW2** (DRAYO TITO ADIAMVA) testified and told court that they are the customary owners of the suit land and were in peaceful possession of the suit land until the Defendants started interfering with their peaceful possession around 2004 – 2005. They told court that the first and the second Defendants entered the land without their notifications and consent and placed their electricity poles and supply lines. That they were never compensated for this land.

Indeed, according to **Article 26** of the constitution of the Republic of Uganda, 1995 as Amended provides amongst others that no person shall be compulsorily deprived of property or any interest or right or property of any description except where the taking of possession or property is necessary for public use or in the interest of defense and so on as listed under the Article and that in case of such necessity there has to be adequate compensation prior to the acquisition or taking of the possession.

Per the testimony of **PW1** (EYOOBIA DAVID) and **PW2** (DRAYO TITO ADIAMVA), their land was taken and without compensation. However, to determine trespass, it is necessary to establish ownership. Both PW1 and PW2 told Court that they are the customary owners of the land which is the subject matter of the suit, having inherited the same from their forefathers.

*This now makes it necessary to discuss what a customary land tenure system is.*

Customary tenure is defined under **Section 1(m)** as a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons, the incidents of which are described in section 3.

It was held among others in the case of **KDLB & ANOTHER VS VENANSIO BABWEYAKO & 3 OTHERS SCCA NO.2 OF 2007** that it is a well-established principle that where African customary law is neither well-known nor documented such reference to a book, document of reference or judicial decision, it must be established for court guidance by the party tending to rely on it. It is also trite law that as a matter of practice and convenience in civil cases, relevant customary law, if it is incapable of being judicially noticed, should be proved by evidence of expert opinion, adduced by parties. Court has discretion on how this should be done but the owners to do so must be on the party who puts forward the customary law.

The plaintiffs through the testimony of **PW1** (Eyoobia David) told Court that they are the customary owner of the suit land having

inherited the same from their various forefathers. The same position was reiterated by **PW2** (Drayo Tito Adiamva).

Counsel for the 2<sup>nd</sup> Defendant submitted that a party that alleges a custom must prove that that custom exists. This is a pertinent principle in law. Whenever a party intends to prove a custom, he or she may do so by bringing a witness to give expert opinion. Accord to **Section 46** of the Evidence Act Cap, 6, when Court has to form an opinion as to the existence of any general custom or right, the opinion as to the existence of that custom or right, of persons who will be likely to know if it existed, are relevant.

Both **PW1** (Eyoobia David) and **PW2** (Drayo Tito Adiamva) told Court that they are the customary owners. They did not bring any witness to prove how they inherited the land and the manner in which they inherited it is a practice or custom in their community. In any case, all the 115 plaintiffs who were presented do not come from the same community, it is very unlikely that they do not have the same custom. Be it as it may, it is not enough to throw to court that you are the customary owner of the land. There is either need for expert opinion or documentary evidence to prove the same and none was produced before court.

Counsel for the Plaintiffs submitted in rejoinder that the Plaintiffs duly proved their ownership of the suit land on a balance of probability through the testimony of PW1, PW2, and PW3. That the Defendants to this suit in their written Statements of Defense do not claim ownership of the suit land.

It is true that the Defendants do not claim ownership of the suit land but however, it is their contention that the suit land do not belong to the Plaintiffs either. I tend to agree with the submission of Counsel for the 2<sup>nd</sup> Defendant that the Plaintiffs failed to prove that they are the customary owners of the suit land. The Defendants ought to have brought a witness to give expert opinion or any documentary evidence to prove their ownership of the suit land as was also held in the case of **KLDB & ANOTHER VS VENANSIO & 3 OTHERS (ibid)**, which they failed to do. It is the Plaintiffs who have to prove this case on a balance of probabilities, they cannot again throw it to the Defendants to bring another person to prove that the person is the owner of the land.

The plaintiffs alleged customary ownership, which I hold, have failed to prove. In the circumstances, it cannot be safely held that the Plaintiffs are the customary owners of the land.

**DW1** (Bamanya Lurn) testified that the powerline where the disputed land is located is not among the assets owned by the 1<sup>st</sup> Defendant in West Nile. He told court that that the powerline was constructed by UEB in the 1990s and transferred by UEB to the 2<sup>nd</sup> Defendant by an Asset Transfer Agreement, which agreement, the first defendant is not a party to. He further testified that on liabilities, Clause 10 provides that UEB shall ensure that it hands over the powerline to the second defendant free of any liabilities

True, an Asset Transfer Agreement was made dated 12<sup>th</sup> March, 2003 and the parties to this agreement are UEB and WENRECO,

the 2<sup>nd</sup> Defendant; it is therefore safe to say and lean on the position that UEDCL (the 1<sup>st</sup> Defendant) is in no way liable for an action of trespass and for the remedies sought against it in the instant case as it has never owned the said powerline on the suit land, even if it was proved and found that the Plaintiffs are the customary owners of the land

One can only bring an action for trespass to land only when they have ownership of the land. Since the plaintiffs failed to prove customary ownership of the suit land, it is therefore safe to hold that there was no trespass

**Issue 2: what are the remedies available to the parties?**

The plaintiffs seek for the following remedies:

- a) **Compensation for the land and crops destroyed during the construction of the powerline.** Since the plaintiffs failed to prove the first issue, they are not entitled to receive the remedies prayed for. Be it as it may, the plaintiffs relied on the valuation report of PW3 who told court that in cross-examination that he visited the land in question for a single day. This now creates a question and doubt in court's mind as to the authenticity of this valuation report. The land in question stretches from Odia Trading center to Bondo Trading center, a land of about 1, 624, 000 square meters and/or 20.4km. it is therefore not possible that the visitation of locus of such a big land for purposes of coming up with an authentic report could be done in only one day. Moreover, he

visited the locus in 2018, years after the alleged crops on the suit land were destroyed. If at all they existed, it would therefore have been a grave injustice to rely on the report, if at all the first issue had succeeded

- b) **General damages.** It is an established principle in law that general are such damages as the law presumes to be the direct and natural or probable consequence of the act complained of. In the case of *Sentongo Jimmy Vs Kabugo Ltd and 2 others* Civil suit No. 342 of 2014, Justice Flavia Senoga Anglin stated at Page 5 that where the plaintiffs claims general damages, while he does not have to prove the specific amount lost, never the less, if he does not lead evidence which would assist the court, he has no one to blame but himself if the amount actually awarded by the court is not sufficient to compensate him for the loss which he actually suffered. In the instant case, the plaintiffs have failed to prove trespass and therefore are not entitled to this remedy as prayed for and the interest thereon
- c) **Costs of the suit.** Costs are provided for under Section 27(1) of the Civil Procedure Act and they are awarded to a successful party at the direction of the judicial officer where he/she deems fit and this discretion should be exercised judicially.

In the case of ***BUTAGIRA VS DEBORAH NAMUKASA (1992 – 1993) H.C.B 98 AT 101*** it was held that costs shall follow the event and a successful party should not be deprived of the same except for good



cause. This means that a successful party is entitled to costs unless he is guilty of misconduct or if there is some other good cause for not awarding costs to him.

The plaintiffs are not entitled to costs having failed to prove their case to the required standard. This suit is therefore dismissed and each party bears its own costs, in the spirit of the case of **BUTAGIRA VS DEBORAH NAMUKASA(ibid)**, because, the Plaintiffs are peasants who might just have been misguided hence not knowing what they were doing.

Right of Appeal explained

I so order



.....  
OYUKO ANTHONY OJOK

JUDGE

20/02/2020

Delivered in the presence of;

1. Samuel Ondoma, Counsel for the Plaintiffs.
2. Robert Opiya, Counsel for the 1<sup>st</sup> Defendant.