THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

CIVIL SUIT NUMBER 26 OF 2010

TUSINGWIRE CHARLES AND 925 OTHERS ..... PLAINTIFFS

VERSUS

1. **THE ATTORNEY GENERAL**
2. **KIBAALE DISTRICT LOCAL GOVERNMENT ..... DEFENDANTS**

JUDGMENT BY JUSTICE GADENYA PAUL WOLIMBWA

1.0. Introduction

This is a representative action brought by 926 plaintiffs, who are herein represented by Tusingwire Charles.

The action seeks the following declarations:

a) A declaration that the plaintiffs are lawful occupants of Bibanja situate in Nkooko Sub County, Kibaale district;

b) An order that the plaintiffs be paid compensation by the defendants for the various properties destroyed, lives lost in the illegal eviction;

c) Permanent injunction be issued against the defendants and or their agents or servants from interfering with the plaintiff's occupation of their bibanja;

d) Exemplary damages;

e) General damages;

f) Costs;

g) Interest on (b) and (c) above at 18% from the date of filing the suit until payment in full;

h) Interest on (e), (f) and (g) hereinabove from the date of filing the suit till payment in full.

2.0. Background to the Suit

The brief facts of this case as can be gathered from the plaint are as follows:

The plaintiffs claim that they were unlawfully evicted from their Bibanja situate at Nkooko Sub County in 2009 by combined force of Uganda Peoples Defense Forces; Uganda Police Force; Kibaale District Local Government; and National Forest Authority under the false premise that they were evicting them from Guramwa Forest Reserve.

It is the plaintiffs case that at all material times they were in uninterrupted lawful occupation of Bibanja situated at Nkooko Sub County, Kibaale district and were owners of several residences, household properties, livestock, perennial cash crops plantations thereon and that the defendants' officials were at all material times aware of their ownership and occupation of the land.

That on the 21st day of August 2009, armed members of the Uganda Peoples Defense Forces, officers from the Uganda Police Force, officials from Kibaale District Local Government and officials from the Uganda National Forest Authority, without any justifiable cause forcefully evicted the plaintiffs from their Bibanjas situate in Kalangala, Nyamwegabira and Rutooma Parishes, Nkooko Sub county, KIbaale district.

That in the process of effecting the aforesaid illegal and or unlawful eviction, the agents and or/ servants of the defendants injured some of the plaintiffs, caused death of some of the occupants, grossly destroyed the plaintiffs' properties including household items, churches permanent houses, education institutions, banana plantations, livestock granaries, tree plantations and perennial cash crops plantations, which were the source of their livelihood.

The plaintiffs further alleged that the actions of the officials of the defendant were cruel, high handed, inhuman and unconstitutional and as a result, the plaintiffs have suffered untold suffering and as such, are entitled to exemplary damages.

The plaintiffs also alleged that the illegal evictions attracted the attention of Parliament and particularly, His Excellency the President, who directed that the evictees should go back to their

Bibanja. The plaintiffs further averred that as a result of the unlawful and illegal acts of the defendants, they have suffered mental anguish; humiliation and embarrassment; grave inconvenience; and financial loss, and as such, they are entitled to award of damages.

The Attorney General, who is the 1st defendant, in its written statement of defense denied the allegations of the plaintiffs. The Attorney General, contended that:

Kibaale district consists of 16 central forest reserves one of which is Guramwa Located in Nkooko Sub county;

The forest was first Gazetted in 1932 with an area of 0.97sq. miles, re Gazetted in 1965 with an area of 5.97 sq. miles and the boundaries opened in 1968.

In 2001 the 2nd defendant discovered that encroachers who included the plaintiffs had settled upon the forest reserve and in 2002 eviction notices were issued and criminal proceedings instituted against some encroachers;

In 2002 the encroacher's resisted boundary reopening but the forest reserve boundaries were eventually re opened in 2004. However, the encroachment did not cease so, in 2008, two community sensitization meetings were held during which the encroachers were advised to vacate the forest reserve. Despite all measures taken, the encroachers continued to occupy and enter upon the forest reserve.

On 21st August 2009, the defendant initiated an operation to evict the encroachers. The servants of the 1st defendant in accordance with their constitutional mandate participated in the eviction processes to ensure security and uphold law and order. In the course of the evictions servants of the defendants held several meetings with the encroachers to inform the community that they had to remove their property and vacate the forest. This was due to the resistance by some encroachers.

In a nut shell, the 2nd Defendant contended that all the actions taken by its agents were lawful and were done with the aim of sustaining the environment and ensuring security.

Kibaale District Local Administration, hereinafter called the second defendant in its written defense denied ever evicting the plaintiffs from the alleged forest reserve either singularly or jointly with others.

The National Forest Authority, was dropped from the suit in favour of the 1st Defendant defending the action on behalf of the Government.

3.0. Representation

The plaintiff was represented by M/s Bashasha and Company Advocates and the defendants were represented by the Attorney Generals Chambers and Mr. Kamugisha.

4.0. The issues

During the scheduling conference, the following issues were framed and agreed upon:

1. Whether the plaintiffs have interests in the suit land and if so, what kind of interest?
2. Whether the eviction of the plaintiff was lawful and if so, who evicted them?
3. Whether the plaintiffs suffered loss to property, lives or injury?
4. What remedies are available to the parties if any.

5.0. Summary of the Evidence of the Parties:

The plaintiffs presented two witnesses, whose evidence is as follows:

Tusingwire Charles (PW1), in his sworn statement stated that he was born in Kabale and was invited by his uncle to come and stay in Rutooma in 1997. That he was introduced to Local Council Chairperson of the area, where he paid UGX 12,000 as registration fees. He was given land where he constructed a semi-permanent house and established a home with gardens comprised of coffee, bananas and other crops on a piece of land located in Nkooko Sub County. He testified that in this

area, they have Nkooko Primary School, Kalangala Local Council I offices, Local Council III offices of Nkooko Sub County, Nkooko Secondary School, Nkooko Health Centre III, Isunga Primary School, churches, roads and other government facilities. He testified that in 2001, he and 18 residents of this area were arrested and charged by the staff of the National Forest Authority (NFA) for unlawfully encroaching on a forest. That the Magistrate Grade II at Kakumiro Court, decided the case in their favour. A copy of the judgment was exhibited as P1.

PW1, further testified that on 11th August 2009, soldiers from the Local Defense Unit, Uganda Peoples Defense Force and Uganda Police Force led by the Chairman LCV, the District Police Commander and the Resident District Commissioner of Kibaale, forcefully and without any claim of right evicted him and others from the area, without any notice. PW1 lost 11 goats, 20 cattle, 7 sheep and that several neighbors also lost their property during the eviction. That they were beaten and forced to flee to Mwitazingye Primary School, where they took refuge. That it took the intervention of HE the President, who sent Mr. Moses Byaruhanga, the Senior Presidential Advisor, and Hon. Marble Bakeine, the then MP for Bugangaizi East Constituency, who directed that they return to their pieces of land and they were restored to their properties.

PW1, testified that he and the other plaintiffs suffered humiliation, injustice, loss of property and livelihood as a result of the defendants' actions for which they are seeking compensation.

With regard to the remedies, PW1 testified that he wants the court to declare that he and the other plaintiffs are lawfully on the suit land and should be protected from any future threats of evictions by the defendants. PW1 also wants the Government to compensate them for the injuries and losses they were subjected to just as the Government compensated people who were unlawfully evicted from Mpokya in Kibaale district in the cases of **Amos Bakeine and Others vs. the Attorney General, HCCS No. 1022 of 2001** and **Turyamureeba Benon and Others vs. The Attorney General, HCCS No. 2017 of 2001.** These cases were admitted in evidence as exhibits. In the Bakaine case, the Attorney General entered into a consent with 3549 plaintiffs where each of them was awarded UGX 6,000,000 (Uganda Shillings Six Million) in final settlement of the claim.

In cross examination, PW2 testified that he came to the suit area in 1997. He denied settling in the land of Guramwa Central Forest Reserve. He told court they were only evicted once from the suit land and that there was no sensitization prior to the eviction. He said that on the day of the eviction, they packed their properties and left homes that were demolished by officials of the defendants. I re-examination, PW1 said that he neither stays in the Guramwa Central Forest Reserve or near it. He insisted that there are government facilities in the area where they are staying. He also told court that the Church of Uganda has land in the area. He presented a certificate of title for the church land, which was admitted in evidence as exhibit PE5.

In answer to questions paused by the court, PW1 replied that NFA earlier on wanted to evict them but stopped the eviction when the church protested and showed it their land title to the land. He told the court that the church has never opened its boundaries. He also said that his land is on the area owned by the church. Lastly, PW1 told court that he paid money to the LC because they were the authorities at that time before settling on the land.

Pastor Tumusiime Federiko, PW2, testified that in 1996, he came to settle in Rutooma. That he paid UGX 12,000, to Sekiranda the LCII Chairperson. He was allocated 12 acres of land, where he set up a semi-permanent house and established a small farm, where he grew maize, bananas, coffee, fruit trees and various food crops.

That to his surprise, in 2009, he saw a team of army men, from the Local Defense Unit, the Uganda Police Force and the Uganda Defense Forces who beat him up and broke the leg of his daughter called Enid Kyarisima. They also destroyed his house, machines and other property. He lost two heads of cattle and 30 goats. He, like, PW1 and other residents was forced to flee to Mwitanzigye Primary School for refugee. He testified that the evictions were done unlawfully, without notice and justification. He also testified that the areas where they were staying is not a forest reserve because it has government facilities like schools, health centres, local council offices and polling stations. He testified that he wants the court to declare him and the other plaintiffs as being lawfully on the land. Like PW1, PW2, testified that it took the intervention of H. E the President, who ordered him and others to be reinstated on the land.

In cross examination, PW2 told court that he was not aware that the land where they were staying was a forest reserve. He maintained that he paid UGX12,000 to the authorities who allowed him to stay on the land. He also maintained that there was no sensitization before the eviction. Like PW1, he said the area which they were occupying is not for NFA but the church. In cross examination by the court, PW2 testified that he had cultivated one acre of maize in the forest reserve which had been allocated to him.

The defense presented two witnesses in the persons of Mr. Ouna Jimmy (DW1), a forester with the National Forest Authority and Sande Kyomya Christopher (DW2) the Chief Administrative Officer of Kibaale District Local Government.

Mr. Ouna Jimmy, DW1, testified that in 2001, the Forest Department discovered that the plaintiffs had encroached on Guramwa Central forest reserve and settled therein. He said that the Forest Department then issued them with eviction notices. A copy of the eviction notice was attached to his witness statement as annexure A. Annexure "A," shows that the eviction notice was issued to the Chairperson of Kalangala Local Council I. The eviction notice was admitted in evidence as Exhibit DE 1.

That after issuing eviction notices to the encroachers some left but those who remained were arrested and criminal proceedings instituted against them. DW1, presented a revision ruling by the High Court, which revised the decision of the Magistrate Grade I, Kibaale, which had cleared the plaintiffs of the charge of committing trespass in Guramwa Central Forest Reserve. The ruling of the High Court was admitted in evidence as Exhibit DE2.

DW1, further testified that despite evicting the encroachers, some of them moved back into the forest reserve. He testified that the encroachers resisted opening boundaries of the forest in 2002 but in 2004, the boundaries were opened.

That in 2008, he was transferred to the Law Enforcement Unit at the NFA Headquarters.
That in 2008, he was informed about the removal of encroachers from Guramwa Central Forest Reserve and that together with district leaders of Kibaale district, security agencies, NGOs, and a

taskforce of well-wishers they held consultative meetings at the district, sub county and community level about evicting encroachers from Guramwa Central Forest Reserve. He testified that the taskforce met the encroachers and advised them to remove their property from the forest. The encroachers were given the deadline of 21st August 2009 of vacating the forest. That on 21st August 2009, the Task Force went to the forest to evict the encroachers from the CFR. He testified that before embarking on the eviction of the encroachers, the evicting team was given eviction guidelines to provide for the orderly eviction of the encroachers.

He testified that he was part of the taskforce that evicted the encroachers from the forest. He said that the encroachers left the forest voluntarily. He referred to a copy of the .... report, which was attached to his statement as annexure C and was admitted in evidence as exhibit DE3. He denied that the plaintiffs properties were destroyed and that none of them was harassed, beaten or tortured. He said that after the encroachers had left Guramwa Central Forest Reserve (CFR), their houses were demolished to stop them from returning to the forest. He testified that despite the eviction being orderly and peaceful, Hon. Marble Bakeine, complained to Mr. Moses Byaruhanga, the Senior Presidential Advisor, who verbally instructed the encroachers to go back to the CFR, until the issue of who owns the land was resolved.

With regard to the existence of the CFR, he testified that Guramwa Forest Reserve was Gazetted in 1932 under the Forest Ordinance with an area of 0.9 square miles. It was again Gazetted in 1968 with an area of 5.97 square miles and that the area was confirmed by SI 63 of 1998. SI 63 of 1998 was tendered in evidence as Exhibit DE4. Lastly, he testified that the encroachers are not entitled to any compensation as they had no right to be in the forest.

In cross examination DW2 testified as follows: That the eviction notices issued in 2001 were directed to the Local Council of Kalangala which is outside the CFR. That the boundaries of the Forest Reserve were opened in 2004 and that a report to that effect was made. That people were mobilized over the radio to vacate and that he participated in mobilizing the people to leave the forest. District Leaders were notified about the eviction in writing.

That the eviction in Guramwa CFR was done once on the 21st August 2008. That there were no offices in the CFR. That contrary to misinformation by some people that the encroachers were beaten and harassed, a team led by the Regional Police Commander confirmed that the eviction was lawful and he directed them to continue with the eviction. That Mr. Byaruhanga told the people to temporarily stay in the Forest as the issue of ownership was being sorted out. He said that eventually the issue of who owns this land was sorted out and it was established that the land belongs to NFA. He referred to SI 63 of 1998, which Gazetted Guramwa as a Forest Reserve and that no title can be issued in a Forest Reserve. He maintained that the encroachers voluntarily left the CFR and that their houses were destroyed after about two to three days.DW1 insisted that the boundaries of the forest were opened up by the surveyors and that there is no private land within the CFR of Guramwa. He said Nkooko village is outside Guramwa CFR.

In cross examination by Mr. Kamugisha, counsel for the 2ndDefendant,DW1 testified that they involved local leaders, district leaders, NGOs from Hoima before the eviction. He confirmed that it is only NFA and the Police, who were involved in the eviction. In re-examination by Ms. Alinaitwe for the Attorney General's Chambers, DWI maintained that before the eviction they agreed that no person should be harassed or beaten; that no crops should be destroyed; that people should be allowed to go with some food and that houses of the encroachers should only be destroyed after they have been vacated.DW1, maintained that they never destroyed any crops. He said people were given chance to come and harvest their crops. He testified that Guramwa CFR was expanded in 1968 and that if at all there were people on the land, these people would have been enclosed in the forest and their land would be preserved. He said that in the case of Guramwa, there were no such people.

In cross examination by the court, DW2 maintained that the encroachers only returned to Guramwa Central Forest Reserve on the advice of Mr. Moses Byaruhanga, who advised the people to go back as the issue of ownership of the land was being sorted out. He also testified that the issue of whether the land is a central forest reserve was established when the High Court ruled that the CFR was 1,546 acres of land as par the Gazette of 1968 and not as the Magistrate had ruled in Kakumiro Court that the CFR was only 220 acres.

Mr. Sande Kyomya Christopher, the Chief Administrative Officer of Kibaale (DW2) testified that as a district, they had no interest in the suit land and that therefore none of its officials or staff participated in the eviction of the plaintiffs from the suit land. He testified that there was no way they would construct facilities on the land and then turn around to destroy them. In cross examination, DW2 testified that he knew very little about the dispute because she was not the Chief Administrative Officer of the Area at the time the alleged conflict between the people of Nkooko sub county and NFA happened. He told court that the suit land is in the district of Kakumiro and not Kibaale. She had not visited the area and was not therefore able to tell court whether there were service points in the area. He told court that he was not aware whether any district employees participated in the eviction.

In cross examination by court, he testified that paragraph 5 of his witness statement was false since he did not know what happened during the eviction. For ease of reference, DW2 in paragraph 5 of his witness statement, stated that:

> That the plaintiffs' allegations that the 2nddefendant participated in the alleged eviction, torture and destruction of their property is false and designed to blackmail and extort money from the 2nd defendant.

The evidence of DW2, will therefore be given a very low or no probative value for not being truthful.

6.0. Evidence at the Locus in Qou conducted on 18th October 2010

At the locus in quo, it was noted that the entire land comprising Guramwa Central Forest Reserve had been totally destroyed as a forest in terms of character with just a few trees left. There were also no visible boundaries such as beacons to indicate the boundaries of the forest. The parties also agreed that the court proceeds with the case on the original list of the plaintiffs.

7.0. Arguments of the Parties

7.1. The Plaintiffs Submissions

The plaintiffs' counsel submitted that for the eviction to be lawful it must be proved that the land from which the plaintiffs was evicted from was a Central Forest Reserve.

Counsel submitted that the plaintiffs were lawfully given the land in question by the Local Council Officials, after they paid registration fees. She submitted that after paying the fees, the plaintiffs were given the land, which they continued to occupy uninterrupted and undisturbed until they were evicted by the defendant from the area. She submitted that the second defendant through the Local Council authorities had authority to allocate the land to the plaintiffs.

Secondly, counsel submitted that the boundaries of Guramwa CFR have never been opened and are not known. She made reference to **Uganda vs. Mukubajje Peter and others, HCT -12-CV-002 -2-14;** where court among others, held that the issue regarding the status of the respondents(plaintiffs) could only be determined by a civil court and that is when the issue of opening boundaries can be appropriately issued. She made this argument in respect to the assertion by the defense that the High Court clarified that the boundaries of Guramwa CFR were not 220 acres as had been decided by the Magistrate Grade II but 1,546. She submitted that although the High Court revised the decision of the Magistrate Grade II, it nonetheless left the finding of the Magistrate II intact that the plaintiffs were not encroachers.

Thirdly, counsel submitted that although the defendant had relied on SI 23 of 1998 to buttress their claim that the suit land is a CFR, this instrument was issued after the plaintiffs had settled on the land and that at this point, the boundaries of the CFR had not been opened to confirm if the acreage of the forest is all covered by the forest or not.

She submitted that this can only confirm that the plaintiffs were lawful occupants of the land having settled thereon in 1996 and 1997 before the Government carried out the survey to open the boundaries to establish the exact acreage covered by the CFR.

She submitted that court needed to note that PW1 tendered a land title held by the Registered Trustees of the Native Anglican church issued in 1932, to establish that the church owned land in Guramwa. She submitted that the fact that the Anglican Church owns land in Guramwa raised questions concerning the legality of the 1968 and 1998 Statutory instruments regarding the boundaries of the Forest. She submitted that this was not helped by the fact that the defense did not prove the opening of boundaries or tender in a report to prove the boundaries between the church land and the CFR. She submitted that for CFR to exist, its boundaries must be marked and known by the community, which was not the case in the matter under consideration.

Fourthly, counsel submitted that the existence of Government schools, hospitals and poling in the suit land, all showed that the land which the plaintiffs were staying on was not a CFR because if it was, then government could not have constructed facilities on the land as section 13 of the Forest Act, prohibits the use of any land in a forest reserve for erection of buildings without authority.

With regard to issuances of notices to the plaintiffs to vacate the land, counsel for the plaintiffs submitted that although DW1 testified that residents of the area were notified to vacate the land, there was no evidence that the plaintiffs were given the notices. She submitted that the notice which was exhibited was addressed to the LCII Chairperson of Kalangala, which is outside the suit land. Furthermore, counsel faulted the defense for not producing minutes and notices about the alleged sensitization, prior to the eviction. She submitted that failure by the defense to show that notices were issued to the plaintiff made the actions of evicting the plaintiffs unlawful for which they should be compensated.

With regard to whether the plaintiffs suffered loss, counsel for the plaintiff submitted that the plaintiffs established that their houses, churches, gardens and livestock among others things were destroyed by the agents of the defendants. She submitted that DWI corroborated the evidence of PW1 and PW2, when he told court that the houses of the plaintiffs were destroyed after they had been evicted to stop them from returning to the CFR. Furthermore, counsel submitted that DW2 in cross examination admitted that he saw documents that showed that schools, health centres in Nkooko had been destroyed.

Fifthly, counsel submitted that the plaintiffs who had been on the land for 13 years had established livelihoods which were destroyed by the servants of the defendants.

On issue number 3 of whether the plaintiffs are entitled to any remedies, counsel for the plaintiffs addressed the court separately on each of the remedies. I will address them in the order of presentation.

Firstly, on a declaration that the plaintiffs are lawful occupants of the land situate in Nkooko sub county, counsel submitted the plaintiffs had established that they were lawful occupants with an equitable interest, on the land within the meaning of section 29 of the land Act, as they paid for the land after obtaining consent of the land owner to stay on the land and that their right to property is protected by article 26 of the Constitutions. She submitted that the plaintiffs should be declared lawful occupants of the land based on the evidence on the record.

Secondly with regard to a declaration that the plaintiffs are entitled to compensation from defendants for the various properties destroyed, lives lost in the illegal eviction, counsel submitted that the defendant evicted the plaintiffs in 2009 without opening the boundaries to clarify if the land occupied by the plaintiffs formed part of Guramwa CFR. She submitted that on 18th October 2012, when Justice Ralph Ochan visited the locus in quo to verify the land in issue, he found that the entire Guramwa CFR had been destroyed and that the CFR had no character of a forest.

She submitted that since the land was being used for cultivation and occupation, the 1st and 2nd defendants should have degazetted the area instead of illegally evicting the plaintiffs from the area.

With regard to the claim for compensation for general damages, counsel for the plaintiff submitted that the plaintiffs are entitled to compensation because their property was destroyed. She relied on article 26 of the Constitution which protects the right to property; the Case of **Turyamureba Benon & 132 others (supra)** and **Kabarole District HCCS 207 of 1993,** *where the plaintiffs were each awarded UGX. 10,000,000/= (Uganda Shillings Ten Million only) as general damages*

and UGX. 2,000,000/= (Uganda Shillings Two Million only) as exemplary damages for being unlawfully and inhumanely evicted from a Forest Reserve.

She also relied on **Amos Bakeine and Others vs. Attorney General (Supra) & Uganda Wildlife Authority CS No.1022 of 2001**, *were the plaintiffs were awarded UGX 6,000,000/= (Uganda Shillings Six Million only).*

Counsel for the plaintiffs also relied on **Uganda Commercial Bank vs. Kigozi (2002) 1 EA 305,** *where the court held that in assessing the quantum of damages, it is guided by the value of the subject matter, the economic inconvenience that the plaintiffs may have been put through and the nature and extent of the injury suffered.*

She submitted that in this case the plaintiffs lost livelihoods, houses, cash crops, injury and for some, loss of life for which they should be compensated to the tune of general damages of UGX. 15,000,000/= (Uganda Shillings Fifteen Million only) per person. The plaintiffs also prayed for a permanent injunction to stop the defendants from evicting them from the area to safeguard their rights as bonafide occupants.

Counsel for the plaintiffs, submitted that the plaintiffs were entitled to exemplary damages because of the oppressive acts of the defendants' agents, who destroyed the plaintiffs' property without compensating them despite a Presidential Directive. She referred the court to the case of **Kanji Karan Patel vs. Noor Essa and Another (1965) 1 EA 484** where the court held that, "*exemplary damages should be awarded only in cases where the wrong complained of was an oppressive, arbitrary action by a servant of Government or where the defendant's conduct is calculated by him to profit himself.*"

Lastly, counsel for the plaintiffs asked for costs and interest of 18% p.a, on general damages, exemplary damages and costs from the date of judgment till payment in full.

7.2.1. Arguments of the 1st Defendant

Counsel for the 1st defendant submitted that:

1. Firstly, its case was founded on the suit land being a Gazetted forest, which was Gazetted in 1932, then in 1968 and its existence confirmed by SI 63 of 1998 as having a land area of 5.97 square miles.
2. Secondly that the CFR had been encroached upon by the plaintiffs.
3. Thirdly, that the plaintiffs were given notice to vacate the forest.
4. Fourthly, that the plaintiffs were peacefully evicted from the CFR.
5. Lastly that the plaintiffs did not suffer any damage.

She submitted that according to the evidence of DW1, the plaintiffs were living in a CFR and that when the authorities came to learn of their existence, they were issued with eviction notices to vacate the forest in 2001. The plaintiffs however refused to vacate the forest until 2008 when they were finally evicted from the forest.

She dismissed the plaintiffs' assertion that they were lawful occupants of the suit land. She submitted that the plaintiffs knew that the suit land was a Gazetted forest and it is the reason the Chairperson of Kibaale Local Government wrote a letter advising NFA to degazette the Guramwa Forest Reserve. The relevant parts of the letter read as follows:

I am in receipt of your letter dated 25th August 2010 in which you submitted a council resolution recommending the degazetting of Guramwa Forest Reserve.

She submitted that based on this letter, the authorities clearly knew that the suit land is a forest reserve, that they wanted it to be degazetted. I wish to note that this was not exhibited and cannot therefore be used in evidence.

Furthermore, counsel for the 1st Defendant submitted that there was no way the plaintiffs can be considered as lawful occupants within the scope of the Land Act and that the payments they made to the Local Council Authorities, were illegal and cannot give the plaintiff rights in a protected

forest reserve, which is protected by section 44(1) of the land Act and article 237 of the Constitution.

She submitted that although the plaintiffs paid UGX 12,000, to the Local Authorities as registration fees to settle on the land, such payment was illegal and never conferred good title on the suit land on the them. She relied on **Makula International Limited vs. Cardinal Nsubuga and Another SC Civil Appeal number 4 of 1981,** *were the court held that once an illegality is brought to the attention of the court, it overrides all questions of pleadings including submissions.*

With regard to the claim that there were no defined boundaries of Guramwa CFR, counsel submitted that Guramwa Forest Reserve was first Gazetted in 1932 with an area of 0.9 square miles, in 1968, it was degazetted with an area of 5.97 square miles and in1998, the area was confirmed with the same area. She submitted that the boundaries of the forest reserve were opened in 2004 and that therefore, the plaintiffs cannot claim that they did not know the boundaries of the forest.

She submitted that the plaintiffs cannot rely on the decision of the Magistrate Grade II in **Uganda vs. Mukabaije Peter and others**, which among other things found that the boundaries of Guramwa CFR were not clear. She submitted that the High Court in **Uganda vs. Mukabaije Peter and Others, HCT-12-Cr-Cv-02-2014** revised and nullified the decision of the magistrate Grade II and that the plaintiffs cannot rely on to say that they are not encroachers on the suit land.

With regard to the existence of a freehold title held by the Anglican Church in Guramwa Forest, counsel submitted that no evidence was led to show that the land is within Guramwa Central Forest Reserve. She submitted, I guess, from the bar that the land of the Anglican Church is not in the CFR.

With regard to the existence of government facilities in the CFR, counsel submitted that no evidence was led to show that these facilities exist in the CFR. She added that in any case, section 13 of the Forest Act prohibits any person to settle in a forest without authority.

With regard to the issue of whether the notices were issued to the plaintiffs to vacate the CFR, counsel submitted that DW1 clearly told the court that they first issued notices to encroachers of the forest reserve in 2001 and that this was followed by community sensitization. That this was done by a task Force which sensitized the people before the evictions were done. She submitted that after the sensitization, the eviction of the plaintiff was conducted peacefully with no damage to property.

Last but not least, counsel submitted that there was no Presidential Directive for the plaintiffs to stay on the land and that the newspaper reports about the same were mere hearsay.

On the second issue of whether the plaintiffs suffered loss of property, lives or injury, counsel submitted that the plaintiffs were evicted lawfully and that no property was destroyed or life lost. She submitted that the allegations of loss of life were unfounded.
Counsel submitted that based on the evidence provided the plaintiffs never suffered and are therefore not entitled to any compensation.

On the third issues of remedies available to the parties, Counsel for the 1st defendant submitted that the plaintiffs are not lawful occupants within the meaning of section 29 (1) of the land Act and are not therefore protected by law.

She submitted that based on this finding the plaintiffs are not entitled to a declaration that they are entitled to compensation for various crops destroyed and a permanent injunction to restrain the defendant and its agents from being evicted from the forest.

She submitted that the plaintiffs did not suffer any loss because the eviction were carried after the plaintiffs had been notified and that the exercise was carried out in a peaceful manner. She submitted that the plaintiffs did not produce any evidence to show that people were injured and that in the absence of this evidence, the plaintiffs are therefore not entitled to compensation.

She submitted that the case of Turyamureeba is not applicable to this case because of the following reasons, namely: -

1) That people who settled in the forest reserve after 1959 were not protected by the law;
2) That the case distinguished those who were evicted from the forest from the rest of the country;
3) That the plaintiffs occupied the forest in 1996;
4) That in the Turyamureba case, the evictions were not carried out in an orderly manner as opposed to this case, were the evictions were organized and peaceful without any loss of property.

Counsel submitted that the plaintiffs were not entitled to exemplary damages because there was no evidence to show that property was lost or destroyed during the eviction. And that in any case there was no Presidential Directive to compensate the plaintiffs. Counsel submitted that it would be wrong to award exemplary damages against the defendant who was doing her constitutional duty of protecting encroachers from the forest.

With regard to the claim for payment of general damages, counsel submitted that the plaintiffs were not entitled to damages because it is illegal for anyone to settle in a forest reserve as this contravenes section 32 of the National Forest and Tree Planting Act, 2003.Last but not least, counsel submitted that the plaintiffs are not entitled to costs and interest on the damages because they had not established their case on a balance of probabilities. The 1st defendant therefore, invited the court to dismiss the case with costs.

7.2.2. Arguments of the 2nd Defendant

Counsel for the second defendant submitted that no official or agent of the 2nd defendant participated in the eviction. He relied on the evidence of Jimmy Ouna, DW1, who testified that the second defendant never participated in the eviction of the plaintiffs from the suit land. He also relied on the evidence of DW2, who similarly testified that no body from Kibaale Local Government participated in the eviction.

He also submitted that though the suit land may be in the CFR, a visit to the locus in quo showed that there was no forest on the ground as there were no beacons for demarcations to show the boundaries of the forest.

He blamed NFA for evicting people from the forest when it was well aware about the Presidential Directive stopping the eviction of people in the forests. He submitted that NFA ignored the Presidential Directive and evicted the plaintiffs. He made reference to the Report on the operations conducted to evict encroachers from Guramwa CFR dated 1st September 2009 authored by Kakheti Patrick, sector manager Kagadi.

Lastly, counsel submitted that the plaintiffs had failed to prove their case against the 2nd defendant and asked the court to dismiss the case with costs to the 2nd defendant.

7.3. Plaintiffs' Arguments in Rejoinder

The plaintiffs' counsel reiterated that the plaintiffs are lawful occupants of the land because they occupied the suit land with the consent of the Local authorities after paying a registration fees.

Secondly, the plaintiffs' counsel reiterated that the first defendant never issued the plaintiffs with eviction notices and that the notices that were issued were for Kalangala, which is outside the suit land. The defendant was equally blamed for not availing minutes of the alleged sensitizations, which made the 1st defendant's claim that it notified and sensitized the plaintiffs before the eviction.

Thirdly, the plaintiffs' counsel asked the court to disregard a letter written by the Kibaale district authorities asking for degazetting of Guramwa CFR, which the defendant had claimed was exhibit P3 and yet exhibit p3, was the national identity card of the PW1.

Fourthly, counsel for the plaintiffs insisted that the evidence of DW1 fell short of proving that the suit land was in a forest reserve.

Fifthly, the plaintiffs' counsel submitted that if the NFA had wanted the suit land, it should have acquired the land in accordance with section 7(b) of the National Forest and Tree Planting Act, after paying adequate compensation to the plaintiffs instead of evicting them illegally.

Sixthly, that the visit to the locus in quo on 18th of October 2012, the court noted that the suit land had no semblance of a forest reserve as all the area was occupied by the plaintiffs who were carrying out farming. There were also schools and administrative units. Furthermore, there were also no visible boundary marks to indicate the extent of the forest reserve. Last but not least on this point, counsel submitted that DW1 testified that there was some private land within Guramwa CFR, which does not belong to the Forest Reserve, and that this explained the existence of freehold title of the Anglican Church, marked as exhibit PE5.

Counsel, submitted that in the absence of opening boundaries for the Guramwa CFR and the survey report, there was no way the plaintiffs can be called illegal occupants of the CFR, if any.

Lastly, counsel for the plaintiffs submitted that since the plaintiffs settled on the land in 1996 and 1997 and carried on farming activities before SI 23 of 1998 was Gazetted and before the boundaries were opened, then NFA, should have first established whether the plaintiffs were within the boundaries of the Forest Reserve, then they should have compensated them in accordance with section 7(b) of the National Forest and Tree Planting Act and articles 26 and 237(1) of the Constitution.

Finally, counsel submitted that the plaintiffs were illegally evicted from the suit land on which they had lawfully settled and should therefore, be compensated.

8.0. Consideration of the Issues

Although the issues at the scheduling conference were framed as follows,

1. Whether the plaintiffs have interests in the suit land and if so, what kind of interest?
2. Whether the eviction of the plaintiff was lawful and if so, who evicted them?
3. Whether the plaintiffs suffered loss to property, lives or injury?

4. What remedies are available to the parties if any,

the parties reframed the issues as they appear below but without losing sight of the issues as originally framed.

Issue Number 1: Whether the eviction of the plaintiffs was lawful?

I have carefully considered the evidence on the record and in dealing with this issue I start with how the plaintiffs came to the suit land.

It is admitted that the plaintiffs came to the suit land between 1996 and 1997. The plaintiffs were a mixed bag with some coming from as far as Kabale and others were refugees. Unlike the plaintiffs in the Turyamureeba case, who were invited and transported to Mpokya, these plaintiffs, moved to the suit land on their own motion, I believe due to pressure to find land from which they could establish a livelihood.

The plaintiffs did not settle in the area forcefully but sought the permission of the Local Council Authorities. The evidence on the record, shows that the land was vacant and the plaintiffs paid a nominal fee of UGX 12,000, to the local authorities, as registration fees for settling on the land. From the evidence of PW1 and PW2, each of the plaintiffs was allocated different sizes and pieces of land in the area.

The plaintiff lived on this land uninterrupted until 2001, when the Forest Authorities, discovered that there were encroachers in Guramwa Central Forest Reserve. Several alleged encroachers, were arrested and charged with being illegally in the forests. The Magistrate Grade II of Kakumiro, who heard, the case vide Cr. Case No. MSD-..Co 79 of 2001 Uganda **vs. Mukabaije Peter and other,** dismissed the case because the boundaries of Guramwa Central Forest Reserve, were not clear. The Magistrate, also relied on a 1932 gazette, and yet Guramwa Central Forest Reserve, had been expanded twice and was larger than the original forest in 1932. The Forest Authorities, being aggrieved with the decision of the Magistrate Grade II, applied to the High Court to revise the decision. The High Court vide **Uganda vs. Mukubajje Peter and others, HCT-12-Cr-Cv-02-2014;** Justice Simon Byabakama, nullified the decision of the Magistrate Grade II on the

ground that he decided the case against the accused persons under the Town and Country Planning Act instead of section 13 of the Forest Act, which prohibits the use or occupation of land in a forest reserve without authority. The judge said and I quote:

> "Use of the wrong law rendered the charge defective. The trial was a nullity. All orders therefrom a nullity."

By way of orbiter the judge said and I quote:

> "The status of Guramwa Central Forest Reserve can only be conclusively and effectively determined in a civil court. That is when orders for opening of boundaries can be appropriately issued and the matter of compensation determined after the evidence has been heard."

I have raised the issues of the criminal cases concerning this case because the plaintiffs were of the mistaken view that the High Court left the decision of the Magistrate Grade II, that they were not encroachers intact. The High Court, was very clear in its decision. It said all orders made by the Magistrate Grade II were a nullity including any observations that the plaintiffs were not encroachers.

Plaintiffs' acquisition of the land

As I have mentioned above, the plaintiffs settled on vacant land in Guramwa after they sought permission and paid registration fees to the Local Council Authorities of the area. According to the plaintiffs' counsel, the Local Authorities were closed with authority to give the plaintiffs land, I believe, based on the assumption that the suit land is public land.

The 1st Defendant, on its part submitted that the suit land is a Gazetted Forest Reserve known as Guramwa Central Forest Reserve. According to the evidence tendered in court, the colonial Government first Gazetted Guramwa Forest Reserve in 1932 with a land area of 0.9 square miles.

The forest was again re-Gazetted in 1968 with a much bigger land area of 5.97 sq. miles. In 1998, the same area was confirmed by SI 63 of 1998, which was received in evidence as Exhibit D1.

The plaintiffs do not contest the gazzetting of Guramwa as a Central Forest Reserve but they argue that the area where they are settled is not part of the Central Forest Reserve. Their claims are based on the following arguments, namely that:

1) Boundaries of Guramwa Central Forest Reserve have never been opened and so the forest is at large;
2) That the Church of Uganda, owns titled land in the area. A certificate of title was tendered in evidence as exhibit PE5;
3) That there are schools, health and local council offices in the area;
4) That there is a polling center in the area;
5) That there is no forest in the area- following a visit to the locus in quo that noted that the area was vacant with scattered trees and had lost the character of a forest.

The 1st defendants on its part, insisted that the entire land area in Guramwa is a Central Forest Reserve and that in accordance with section 13 of the Forest Act, no one including governmental institutions are allowed to stay or operate from the forest without authority. With regard to the boundaries of the central forest reserve, the 1stdefendant, through DW1 told court though the initial opening of the boundaries of Guramwa Central Forest Reserve were resisted by the encroachers until 2004 when the Government was able to open the boundaries.

I have considered the evidence of both parties on this point. It is a fact that Guramwa Central Forest Reserve exists as a Gazetted forest reserve in Guramwa area. This is seen from the gazette instruments and maps of the forest that were tendered in evidence. This forest does not however, exist in a vacuum. This forest is bordered by a community who live around the forest. From the evidence on the record there, has always been tension between the community in this area and Guramwa Central Forest Reserve, which culminated into some of the plaintiffs being charged in court with encroaching or in legal terms for trespassing on the Forest Reserve, without authority. In the matter before the Magistrate Grade II, the issues of the boundary of Guramwa Forest Reserve came up and no definite decision was made (although the Magistrate emphasized that, quite

correctly, that, the boundaries of the Central Forest Reserve needed to be known if the Forest Authorities, were to succeed in their fight to flash out encroachers).

In 2015, Justice Byabakama in a decision dated 16th February 2015, by way of obiter, after revising the decision of the Magistrate Grade II of Kakumiro, advised the Forest Authorities to resolve the status of Guramwa Central Forest Reserve vis a vis the residents and encroachers. He said and I quote:

> "The status of Guramwa Central Forest Reserve can only be conclusively and effectively determined in a civil court. That is when orders for opening of boundaries can be appropriately issued and the matter of compensation determined after the evidence has been heard".

The advice of the Hon Justice Byabakama as he then was in very simple terms, asked for the opening of the boundaries of Guramwa Central Forest Reserve, to determine the exact boundaries of the Reserve, which despite being Gazetted as a forest three times, appears not to have been fully determined.

I am aware that DW1, said that the boundaries of Guramwa Forest Reserve were opened in 2004 by the Survey Department of Government. However, DWI, did not produce the survey report to prove the opening of the boundaries. The National Forestry Authority, which is the real defendant in this case, never called evidence to back up the claims by DW1, that the boundaries of this forest were ever opened up. In light of lack of any conclusive evidence from the defendants about opening up of the boundaries of Guramwa Forest Reserve, I am constrained not to believe DW1 that the boundaries of the Central Forest Reserve were opened at all.

In fact, the evidence from the locus in quo, which was conducted on 18th October 2012, found that there were no boundary marks or beacons in the area to show the extent of the forest and that the area, had very few trees and had lost the character of a forest. This evidence, supports the evidence of the plaintiffs, that the suit land may not necessary be a forest reserve, given that the church of

Uganda has titled land in the area and the fact that public social infrastructure like schools and a health center, do exist in the area.

In reaching this conclusion, I am cognizant of the fact that the 1st defendant said that the plaintiffs had not established that the land of the Church of Uganda, was actually in Guramwa Central Forest Reserve. This evidence, however, came from the Bar and was not backed up by any documentary proof. I would have expected the first Defendant, who represents Government in Courts of Law, to have called evidence to the contrary, from the responsible departments from the Ministry of Lands, Housing and Urban Development, to pin point exactly, where the land of the Church of Uganda, comprised in Freehold Register Volume 34 Folio 19, which was exhibited as exhibit PE5, was located but specifically, that it was outside Guramwa Central Forest Reserve. In the absence of this evidence from the defendant, the court takes the view that the land of the Church of Uganda is in Guramwa (and by implication that in Guramwa area- there is both a CFR and private land).

The existence of schools and a healthy center in the suit land makes the case of the plaintiffs more compelling. The argument of the plaintiffs, was that, Government, could not have built this social infrastructure in a Forest Reserve and that by implication therefore, the land, was public land, quite separate from Guramwa Central Forest Reserve and the land of the Church of Uganda. The plaintiffs, also pointed out that there was a Polling Centre on the suit land and that this too, indicated that the suit land was not a forest reserve. The 1st Defendant, it was illegal for anyone, including the Government, to build any infrastructure without authority in the forest. Counsel for the 1st Defendant relied on section 13 of the Forest Act, which provides that:

Subject to any exemptions granted under this Act, no person shall cut, take, work or remove forest produce in or from a forest reserve, village forest or open land unless he or she is licensed to do so under this Act.

Except as may be permitted by rules made under this Act, no person shall-

(a) Clear, use or occupy any land in a forest reserve for- (i) gazing; (ii) camping; (iii) fish farming; (iv) the planting or cultivation of crops; (v) the erection of buildings or enclosures; or (vi) recreational, commercial, residential or industrial purposes; or

(b) Construct or reopen any road, track or bridge in a forest reserve.

It goes without saying that Government – through its institutions, agencies and agents- would be in conflict of the above provisions, if it constructed public infrastructure such as schools, health units or administrative units without seeking appropriate authorization from the Forest authorities. By implications, the mere presence of the public infrastructure in a Gazetted forest reserve, is no evidence that the area where the infrastructure is sitting is not a protected forest. It was, however, upon the 1st defendant to dispute, with evidence, that the said public infrastructure was built in CFR. Unfortunately, I received no such evidence except strong arguments from the bar.

Is the suit land part of Guramwa Central Forest Reserve?

From the available evidence, in the absence of opening the boundaries of this Forest Reserve, it is not certain that the suit land sits in the Central Forest Reserve of Guramwa. The boundaries of the Guramwa Central Forest Reserve need to be opened up as a matter of urgency, to end conflicts between the community and NFA and legally empower the NFA to evict any unauthorized persons in the forest and reclaim the forest.

What is the status of the plaintiffs on the suit land

The plaintiffs submitted that they are lawful occupants on the land because they settled on the suit land after getting authorization of the Local Authorities upon payment of a registration fee. The 1stdefendant, on the other hand submitted that the plaintiffs were lawful occupants on the suit land because they were settled on a forest reserve. Counsel for the 1st Defendant referred to a letter from Kibaale District Local Government, entitled degazetting Guramwa Forest Reserve – Rutooma, whose contents were briefly:

"I am in receipt of your letter dated 25th August 2010 in which you submitted council resolution recommending the degazetting of Guramwa Forest Reserve."

She submitted that based on this letter the plaintiffs knew that the land they were settled on was a forest reserve. It should, however, be noted that this letter was not exhibit P3 as claimed by the 1st

defendant. Exhibit P3, was actually the voter's card of PW2. This letter, therefore, will not be used in this case as it was never tendered in as evidence.

Going back to the issue of whether the plaintiffs are lawful occupants, Section 29(1) of the Land Act, defines a lawful occupant as:

(a) A person occupying land by virtue of the repealed –
    (i) Busulu and Envujjo Law of 1928;
    (ii) Toro landlord and Tenant Law of 1937;
    (iii) Ankole Landlord and tenant Law of 1937;
(b) A person, who entered the land with the consent of the registered owner, and also includes a purchaser; or
(c) A person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

The plaintiffs do not fall under any of the characterizations of lawful occupants on the land. At best, the plaintiffs despite paying registration fees of UGX. 12,000 each, are licensees on the land.

Did National Forest Authority issue evictions notices issued to the plaintiffs before the eviction?

The case for the plaintiffs was that they were not notified before being evicted from the suit land. The First defendant maintained that the plaintiffs were notified of the eviction through eviction notices and public sensitization. The first defendant relied on the evidence of DW1, who participated in the eviction of the plaintiffs from Guramwa Central Forest Reserve. At the trial, DW1, was, however, unable to prove that the forest authorities issued notices to the plaintiffs prior to the eviction. The eviction notice, marked as exhibit DE1, which DW1 relied on to prove that the plaintiffs were notified about being evicted from the CFR, turned out to be a notice to the Chairperson LCII, of Kalangala, which was outside the suit land. With regard to the public sensitization conducted by the Forest Authorities, no such materials, minutes or reports, were tendered in court to establish that indeed, sensitizations were conducted to tell the community on

the suit land to leave the forest reserve. It's the finding of the court that the plaintiffs were evicted from the suit land without notice.

Is the eviction of the plaintiffs unlawful?

The answer to this question would have been straight forward if the boundaries of Guramwa Central Forest Reserve were clear and there was no evidence of existence of private land and government infrastructure in the area. The lack of clarity on the exact boundaries of the Guramwa Central Forest Reserve, made it abundantly clear, that before the 1st Defendant evicts any one from the suit land, it had to be certain that the area was a forest reserve. As advised by Justice Byabakama as he then was in **Uganda vs. Mukubajje Peter and others (Supra),** the 1stDefendant, should have followed the due processes and obtained relevant eviction orders to flush out trespassers or encroachers on the Central Forest Reserve. Unfortunately, the 1st Defendant took the law in its hands and therefore, robbed itself of any legality in evicting the plaintiffs from the suit land. The agents of the first defendant, in evicting the plaintiffs from the suit land did not pay attention to observing the fundamental rights of the victims. In particular, the agents of the first defendant violated article 24 of the Constitution, when they evicted the plaintiffs without notice and unrestrained force without caring where they were going next. For emphasis article 24 of the Constitution provides that:

No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.

The makers of the Constitution, in providing for article 24 in the constitution, had at the back of their mind the overarching obligation to protect the dignity of every person, particularly the weak and vulnerable, who, in the face of state power or any powerful person may not stand a chance in defending themselves due to their vulnerabilities. Article 24 of the Constitution, therefore places an obligation on the state and indeed, any person who stands in a position of dominance to treat others with respect especially in situations, where people's rights are likely to be violated such as in evictions.

If the state in this case had paid attention to article 24 of the Constitution, it would have put in place an orderly plan of first of getting out the plaintiffs from the suit land by first of all using peaceful means to convince them to leave. Secondly, if peaceful means had failed, they should have filed cases against the plaintiffs in trespass or used the criminal legal regime to get the plaintiffs out of the suit land. Thirdly, the 1st Defendant, assuming it was successful in getting evictions orders against the plaintiffs, would have notified the plaintiffs to leave and if they resisted, then they would have used reasonable force to secure the suit land. The state failed in this noble duty of treating the plaintiffs with dignity and must therefore suffer the consequences.

Therefore, this court finds that the eviction of the plaintiffs from the suit land is unlawful for having been carried out in violation of article 24 of the Constitution; without notice and without following due process but specifically without a lawful court order.

Issue number one is therefore answered in the affirmative.

Issue Number 2: Whether the plaintiffs suffered loss of property, lives and injury

The plaintiffs testified that they had been settled on the land from 1996 – a period of 12 to 13 years from when they were evicted from the suit land. The plaintiffs claimed to have established homes, farms and livelihoods which were rudely terminated or interfered with by the eviction. The plaintiffs also claimed to have been injured, lost animals and they said that some of the people suffered death.

The 1st defendant through DW1, said that the eviction of the plaintiffs from the suit land was voluntary, peaceful, organized and well-coordinated. DW1, relied on a report, he made to his boss, marked as exhibit DE3, to drive his point home. It was also DW1's evidence that people with semi-permanent houses were allowed to remove the iron sheets before the houses were destroyed.

I have reviewed the evidence and these are my observations: The eviction of the plaintiffs was not organized and peaceful as alleged by DW1. If indeed, it was peaceful and organized, why did they arrest the ring leaders of the plaintiffs – to allow the eviction to go on. Secondly, a report made

by Kaketo Patrick, the sector manager, Kagadi entitled Report on the Operation conducted to evict encroachers from Guramwa directed to The Range Manger, Budongo System, Masindi, dated 1st September 2009, describes the eviction as being intense. I will quote the relevant portion: **'The Operation was intensive for eight days and all the encroachers had been flashed out of the reserve.'** One can read from the terseness of the language applied that this eviction was not as simple as taking Holy Communion in Church. The matters at stake were grave and so, the agents of the 1st Defendant used all the necessary force to evict or flash out the plaintiffs. It is true that the well to do were given chance to ferry their properties off the suit land, as I can see vehicles loaded with property on the suit land, but what about the less able bodied and vulnerable, who could not only manage but take refuge in Mwitazingye center?

Given the lack of notice, the resistance offered by the evictees as can be seen from the arrest of their leaders and the intense nature of this eviction, I am satisfied that the eviction against the plaintiffs was not organized and without incident. The eviction was forceful and people lost properties such as houses and gardens were destroyed to clear the suit land of human settlement. PW1 lost 11 goats, 20 cattle, 7 sheep and that several neighbors also lost their property during the eviction. The plaintiffs, also, suffered damage to their personal dignity given the high-handed nature the agents of the 1st defendant who carried out the evictions. This said, I did not however, believe the plaintiffs that there was loss of life as nobody is reported to have lost their lives.

Issue Number 3: What remedies are available?

The plaintiffs asked for the following remedies:

- A declaration that they are lawful occupants of bibanja situate in Nkooko sub county, Kibaale district;
- An order that the plaintiffs be paid compensation from the defendants for the various properties destroyed, lives lost in the illegal eviction;
- Permanent injunction against the defendants and or their agents or servants from interfering with the plaintiff's occupation of their bibanja;

- Exemplary damages;
- General damages;
- Costs;
- Interest on (b) and (c) above at 18% from the date of filing the suit until payment in full;
- Interest on (e), (f) and (g) hereinabove from the date of filing the suit

Before I delve into the remedies, I have after reviewing the evidence and resolving the issues, not found any evidence to link the 2nd defendant in the unlawful eviction of the plaintiffs from the suit land. The 2nd defendant was therefore wrongly sued and or added to the suit. The suit against the 2nd defendant is accordingly dismissed with costs.

I will now address the remedies to which the plaintiffs are entitled to as against the 1st defendant.

a) **A declaration that they are lawful occupants of bibanja situate in Nkooko sub county, Kibaale district**

I have found that the plaintiffs are not lawful occupants on the land but licensees. I am not therefore in position to make an order declaring that the plaintiffs have bibanjas in Nkooko sub county. Such a declaration can only be made when the boundaries of Guramwa Forest Reserve are opened and the pieces of land owned by the plaintiffs are found to be outside the reserve.

b) **An order that the plaintiffs be paid compensation from the defendants for the various properties destroyed, lives lost in the illegal eviction**

While it's admitted that the plaintiff's properties were lost destroyed and damaged, no comprehensive report was tendered in court to show what each of the plaintiffs lost. This compensation, which is akin to special damages, ought to have been specifically pleaded and proved. In the absence of specific evidence proving this loss, I am unable to award this claim to the plaintiffs.

c) **Permanent injunction against the defendants and or their agents or servants from interfering with the plaintiff's occupation of their bibanja**

I am unable to issue a permanent injunction stopping the 1st Defendant and its agents from evicting the plaintiffs from the suit land until the boundaries of Guramwa Forest Reserve are opened.

d) General damages;

The plaintiffs asked for general damages to compensate them for the losses they suffered to their body and property as a result of the unlawful eviction. The plaintiffs' counsel suggested that each plaintiff be awarded a sum of fifteen million shillings because the case has stayed in court for ten years and money has lost value due to inflation. This proposal was premised on the Turyamureba case, where each of the plaintiffs was awarded general damages of ten million shillings in 1999.

The 1st defendant asserted that the plaintiffs were not entitled to any compensation or damages because no property was lost in the eviction, which was conducted peacefully and in an organized manner. Equally, the 1st defendant asserted that the plaintiffs encroached on a Gazetted forest reserve and cannot therefore get any compensation. The 1st defendant asserted that the plaintiffs had not proved any loss of life, which I found to be correct.

There is no merit in the arguments of the 1st defendant except as it relates to loss of life, which never occurred. I have found that the eviction was un lawful, it was carried out in a disorganized manner and people lost homes, property and crops that were razed to the ground during the eviction. The plaintiffs also lost crops in the gardens in as much as some were allowed to harvest crops that were mature. Young crops and other perennial crops that remained were destroyed by the agents of the 1st defendant and NFA. Furthermore, people lost livelihoods given that they had stayed in the area for more than ten years. In these years, they had invested in activities of personal development that were suddenly brought to a halt because of the unauthorized acts of the defendant. All these losses surely should call for compensating the plaintiffs.

How should the quantum of damages be assessed?

General damages are compensatory in nature and are meant to put the plaintiff in as much as the same position, he or she would not have been in if the defendant had not injured their rights. For example, in **Kabandize and 21 Others vs. Kampala Capital City Authority Civil Appeal No.**

36 of 2016 [2019] UGCA 48, where the COA held that, *"the general rule regarding award of general damages was that the award was such a sum that would put the person who had been injured as adjudged by court in the same position as he /she would have been had he or she not sustained the wrong for which he or she is getting compensation."*

In **Uganda Commercial Bank vs. Kigozi (2001) 1 EA 35**, the court said that, *"the value of the subject matter and economic inconvenience caused to the plaintiffs are among the variables to be taken into consideration in assessing general damages."* I agree with the reasoning in the case of **Uganda Commercial Bank (supra)** but I would wish to limit its application to cases where a court is dealing with only economic loss. However, in other cases where the court is dealing with both economic and other losses, the court has to take an open mind in assessing damages so that the plaintiffs are restored wholesomely to the position they would have been in if the injury had not been committed.

In this case, the plaintiffs lost material property in terms of homes, household property, plants, animals, loss of livelihood and were greatly inconvenienced and suffered harm to their human dignity following grave violations of their basic fundamental freedoms as defined and protected in Chapter 3 of the Constitution. These factors and the economic realities on the ground will therefore be taken into account in assessing the general damages to be awarded to the plaintiffs. The court, will also take into account awards made in similar cases like the Turyamureeba case, which more or less involved similar circumstances in assessing the damages. In view of the factors I have enumerated above, I award each of the plaintiffs' general damages of UGX. 14,000,000/= (Uganda Shillings Fourteen Million only) as adequate compensation for the injuries and damage they suffered as a result of the actions of the 1st defendant's agents.

e) Exemplary damages

The plaintiffs asked for exemplary damages because the agents of the 1st defendant destroyed and neglected to compensate them despite a Presidential Directive to compensate them for loss of property and related wrongs.

According to **Rookes vs. Barnard (1964) AC 1129 (HL),** exemplary damages will only be awarded if the conduct of the servants of the state is oppressive, arbitrary and unconstitutional. In **Sindanovs. Ankole District Administration (High Court Civil Suit Number 463 of 1969 –** quoted in (7.E. Aril. j 76 (1971) Justice Youds, while giving a basis for award of exemplary damages said:

> Before however, I can award 'exemplary 'or 'aggravated damages as they are sometimes called, I have first to consider the principle of law involved which entitles such damages to be awarded over and above the ordinary compensatory damages that are normally awarded to a wronged plaintiff in a civil action at one time it was thought that the object of allowing 'exemplary' damages was punitive and to deter the offender or others from offending in like cases. The better view appears, however, to be that such damages are consolatory rather than penal, resting upon the principle that where there is malice the plaintiff suffers from a sense of wrong and is entitled to a solatium for that mental pain.

According to Justice Youds, exemplary damages are meant to compensate an injured person for injured feelings.

The plaintiffs asked for exemplary damages to punish the 1st defendant for the high-handed manner in which its agents conducted the eviction, without notice, destruction of their property and refusing to compensate them for the injuries suffered. I have found that the allegations of the plaintiffs about the actions of the servants of the 1stdefendant, have merit and fall within the limited scope of awarding exemplary damages both as a punitive remedy but also as a solatium for the injuries and embarrassment the servants of the 1st defendant subjected the plaintiffs to. I have also noted that the court in the Turyamureeba case, awarded the plaintiffs exemplary damages of Two Million Shillings because of the high-handed manner in which the evictions were handled. In this case, while the eviction was handled in a high-handed manner, its ferocity did not go to the level of the Turyamureeba case to justify a similar or higher award. I therefore, consider a sum of UGX. 1,800,000/= (Uganda Shillings One million, Eight Hundred Thousand only), as adequate award of exemplary damages to compensate each of the plaintiffs for which I am awarding the plaintiffs as exemplary damages.

f) Interest on General and Exemplary Damages

The plaintiffs asked the court to award the interest on general damages, exemplary damages and costs at the rate of 18 percent from the date of judgment till payment in full. They relied on **Mukisa Biscuits Manufacturing Co. Limited vs. West End Distributors Ltd (2) [1970] EA 469,** where the court held that, "*interest has to be reasonable and the basis for award is to compensate the Plaintiff for the use made by the defendant of the money as was held in the case.*"

The 1st Defendant, opposed the award of interest of 18% on damages because the plaintiffs had not adduced evidence to support the award arguing that to award interest of 18% p.a would be unconscionable. She also submitted that the case of **Mukisa Biscuits Manufacturing Co. Limited (supra)** cited by the plaintiffs was not applicable to this case.

The case of Mukisa **Biscuits Manufacturing Co. Limited (supra)** dealt with award of interest in commercial cases where money meant for business is withheld by the defendant to the disadvantage of the plaintiff and so the court is obliged to take this factor into account in crafting an adequate remedy to the plaintiff. However, in this case, we are dealing with civil rights, whose considerations are very different with regard to interest. With regard to the instant case, I will follow the guidance of Justice Mulenga (JSC) as he then was in **Milly Masembe vs. Sugar Corporation and Kagiri Richard SCCA Number 1 of 2000**, where he held that:

> An award of interest is within the discretion of the court, and should not be interfered with on appeal, unless it is shown that the discretion was exercised on a wrong principle or otherwise un-judicially. It is the accepted principle that interest should run from the date the amount awarded became due, and for that reason it is normal to order that interest shall run on special damages from the date of filing the suit (and sometimes even earlier), and on general damages from the date of judgment till payment in full. ***He went on to hold that***: ... the rate of interest is also within the absolute discretion of the court.

Following the guidance of this case, I award the plaintiffs interest on the general and exemplary damages at the rate of 12% p.a from the date of judgment until payment in full. I have considered the rate of 12% p.a to be reasonable given the prevailing economic circumstances and inordinate delays government experienced by successful litigants in processing court awards.

g) Costs

According to section 27 of the Civil Procedure Act, cost of any action, cause or matter shall follow the event unless the court or judge for good reason shall order otherwise. In this case I see no contrary reasons not to award the plaintiffs costs as against the 1st defendant. I award the costs of this suit against the 1st defendant. The plaintiffs will however, pay costs to the 2nd defendant whom they dragged to court without justification. The costs will attract interest of 12% p.a from the date of taxation till payment in full for the same reasons given regarding the damages.

9.0. Decision

Judgment is entered in favor of the plaintiffs as follows:

1) Each plaintiff is awarded general damages of UGX 14,000,000;
2) Each plaintiff is awarded exemplary damages of UGX 1,800,000;
3) The plaintiffs are awarded costs of the suit as against the 1st defendant;
4) The plaintiffs are granted interest on (a), (b) and (c) at the rate of 12% p.a from the date of judgment till payment in full.

5) The suit is however, dismissed against the 2nd Defendant with costs.

It is so ordered.

Gadenya Paul Wolimbwa

JUDGE