

The Republic of Uganda
In The High Court of Uganda Holden at Soroti
Civil Suit No. 010 of 2016

Omiat Moses Plaintiff

10

Versus

Serere District Local Government

Atingu Joseph

15 Ejangu Stephen

..... Defendants

Okoja Sostine

Olinga Calvin

Before: Hon Justice Dr Henry Peter Adonyo

20

Judgment:

1. Facts:

Omiat Moses, the plaintiff herein filed this civil suit against the Serere District Local Government, Atingu Joseph, Ejangu Stephen, Okoja Sostine and Olinga Calvin the defendants herein for a claim for trespass seeking a declaration of customary ownership of land situate at Kasilo Village,

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[1] 

5 Kamod Parish, Bugondo Sub-county, Serere District, orders of eviction, permanent injunction, damages and costs of the suit.

Omiat Moses' case is that the suit land was originally owned by his father George William Amolo who had owned for a long time. He had inherited it customarily from his father called Edieku whose remains are even
10 buried on the suit land along with his other relatives.

The 1st defendant denied the above claims and contended that the suit land is government land under Serere District Local Government which has been in existence since the 1920s.

The 2nd, 3rd, 4th and 5th defendants denied the claims of the plaintiff and
15 contended that a bigger portion of the suit land belongs to the government and the rest belongs to them through customary ownership.

The plaintiff called nine witnesses while the defendants called thirteen witnesses.

2. Representation:

20 The plaintiff was jointly represented by M/s Ladwar, Oneka & Co Advocates of Gulu, M/s Ojok Advocates of Kampala and M/s Byamugisha, Lubega, Ochieng & Co Advocates of Kampala while the 1st defendant was represented by The Attorney General's Chambers, Mbale Regional Office, Mbale, the 2nd, the 3rd, the 4th and the 5th defendants were represented by
25 jointly by M/s Ogire & Co Advocates of Soroti and M/s Tungwako, ~~ALWOOKI & CO ADVOCATES OF KAMPALA.~~

Counsels filed written final submissions which are on record. I thank them for the hard work put in respect of this matter.

5 The pleadings, the witness statements, the exhibits and the authorities referred to by parties which are all on record have been taken into account while resolving the dispute herein between the parties.

3. Issues framed for the resolution of this suit:

The following issues were framed at scheduling;

- 10 a) Who is the rightful owner of the suit land?
b) How did the rightful owner acquire legal title?
c) Whether the defendants are trespassers on the suit land?
d) What remedies are available to the parties?

4. Legal background:

15 This matter is a civil suit and therefore as required by law, the burden of proof lies with the plaintiff as is provided for by **Section 101 (1) of the Evidence Act (Cap. 6)** which states that whoever so desires any court to give judgment as to any legal right or liability dependent on the existence of certain facts which he or she asserts, must prove that those
20 facts exist.

This position of the law was confirmed in the case of *Nsubuga vs. Kavuma [1978] HCB 307* where it was held that in civil cases the burden lies on the plaintiff to prove his or her case on a balance of probabilities.

25 A standard of proof is that level of certainty and the degree of evidence necessary to establish proof in a criminal or civil proceeding. For example, in criminal cases, the standard of proof to convict a person of an offence is proof beyond a reasonable doubt.

30 The preponderance of the evidence is the least demanding standard of proof and is used for most civil actions and some criminal defences such as insanity.

5 A clear and convincing proof is a more demanding standard of proof and is used in certain civil actions such as a civil fraud suit. Proof beyond a reasonable doubt is the most demanding standard and the one that must be met for a criminal conviction to result.

10 The above legal requirements are taken into account while resolving this civil dispute.

5. Resolution:

a. Issue 1 and 2.

- *Who is the rightful owner of the suit land?*
- *How did the rightful owner acquire legal title?*

15 I will discuss and resolve issues 1 and 2 together as, in my considered view, both relate to ownership of the land in dispute.

As to who is the rightful owner of the suit land and how did he/ she/ it acquire legal title to the suit land, I will examine the evidence adduced by witnesses on both sides to determine the same.

20 PW1 Omiat Moses is the plaintiff in this matter. He testified that in the early 1970's his late father George William Amolo returned from Nairobi where he had working and settled his family in their village home in Kasilo, Kamod Parish, Bugondo sub-county, Serere District. He testified that this was even the place where he always would return to when coming
25 back from school.

He further told court that the suit land which is now claiming through inheritance rights had previously customary had belonged to his grandfather who upon his death, the same passed onto his to late father called George William Amolo.

30 Omiat Moses further told court that in 1988 his late father George William Amolo was murdered in Kasilo village and that shortly after his burial

5 some unknown persons attacked their home making the whole family to flee the home and go into hiding in order to save their lives. That while in hiding his mother too passed away.

Omiat Moses additionally told court that subsequent to their running away in fear for their lives insecurity and insurgency engulfed Teso sub
10 region and that situation went on until 2007-2008 which made it difficult for him and his family members to go back to their home.

He, however, told court that he and his family members were only able to go back to their home in 2009 after the then Deputy Resident District Commissioner for Soroti District called Mr Bwalatum took up his family
15 issue and upon a meeting called by the elders of his village that he and his family members should return home so that they could be shown the boundaries of their late father's land since he left when he was very young. That he was subsequently shown the boundaries of the land left by his left father.

20 That in 2010 he sent his workmen to erect a house for him on the suit land but they were arrested.

That on 09.09.2011 he went to see the boundaries of the land and he was taken around by the elders, however, as they were doing so they were attacked by Ejangu Stephen who is the 3rd defendant and others.

25 He further told court that Serere District Local Government, the 1st defendant in the meantime had encroached on his father's land by constructing a road in it, building a house and also expanding its the market along the road.

As for Atingu Joseph, the 2nd defendant he had illegally entered the suit
30 land from the west and even built houses on it with Ejangu Stephen, the 3rd defendant, Okoja Sostine, the 4th defendant and Olinga Calvin, the 5th

5 defendant having encroached on the suit land from the north west and were cultivating and subsequently even built houses as well.

Omiat Moses disclosed to court that Ejangu Stephen who is the 3rd defendant was even his real relative and knows very well that the suit land belongs to his late father George William Amolo.

10 Omiat further disclosed that Atingu Stephen, the 2nd was a neighbor a neighbour to the suit land before and did not have any disputes with his late father at all but decided to take advantage of the death of his father and encroached on the suit land.

15 During cross-examination, Omiat Moses told court that he never saw his grandfather alive as he had died in 1960 before he was born and that he was then 17 years old by the time his father died in 1988 and no one had by then been named an administer of the estate of his grandfather and that during the insurgency time he himself sought refuge in Nairobi, Kenya.

20 He confirmed that he was told that it was his grandfather who had planted the mvule trees on the suit land.

25 He conceded that he was not aware if there were other any graves on the suit land other than those of his relatives. He also conceded of not knowing the sizes of land occupied by the defendants or when they encroached on it but told court he was certain that they had encroached on part of the 150-acre land and that where the 2nd to 5th defendants originally lived was not in the area he had inherited.

30 He further testified that when he was called by the elders for a meeting in 2009 so that the boundaries of his late father's land could be shown to him, there were about 300 people present with the then Soroti Resident District Commissioner being fully involved in resettling his family.

5 During re-examination he stated that he did not return to the land after the father's death because the rebels who had brutally killed his father were also hunting for him to kill him and that currently he managed to secure part of the 100-150 acres which he had placed under his control.

10 PW2, Akia Victorina, an 84-year-old lady by the time of testifying and resident of Aboche Kasilo Village, testified that she was the only remaining daughter of the late Eseru Malaki, who was the owner of the land where the market is and which is opposite the suit land.

15 She told court that she was born in the area and grew up there till she got married in around 1940 or 1941. She told court she knew that the suit land belonged to one Edieku who was the father of the late George William Amolo and that the neighbours to the suit land before the encroachment of the suit land included Etemu, Ediege, Odeke and Ekokorun.

20 She confirmed to court that she knew the 3rd and 4th defendants well and that the home of Atingu Joseph was a little further from the land of the late Amolo and it had a tall "edukut" tree and that the home for Ejangu Stephen was not anywhere near the late Amolo's home and only came there recently.

25 She also testified that by the time she was married the sub-county was already at Bugondo where it is up to now and that that is also where the county headquarters was.

She further stated that during her lifetime no government ever occupied Edieku's land and any claim being made to the contrary was new.

30 During cross-examination she maintained that she was Edieku's neighbour, however, but could not tell how he acquired the land as she was young. She also stated that other people were buried on the suit land because of the insurgency.

5 She testified also that she knew the late George William Amolo who had stayed on the suit land and when he was brutally murdered his remains were buried on the suit land and that his son Omiat Moses left the suit land due to the then insurgency and fear for his life.

10 PW3, Opio Henry Harry, a 72-year-old by the time of testifying told court he was a resident of Omolok Ongaro village and that in 1982 he was appointed the sub-county chief of Bugondo sub county to which he tendered in court proof of his appointment letter PEX 11. He told court that upon his appointment he found that the late Amolo on the suit land and was its owner. That later in 1983 he was appointed acting county chief
15 for Kasilo county, a position which he occupied till 1985 when he returned to his position as the sub-county chief of Bugondo.

PW3 further told court that in 1991 he was once again re-appointed the county chief of Kasilo until 1995 and that when he went back to Bugondo he found that the late George William Amolo had been brutally murdered
20 and his family had fled their home for fear of their lives.

He told court that the late George William Amolo was well known to him because he was a prominent person in Bugondo sub county and was a good tax-payer, more educated than most people in the village and he used to visit his home frequently.

25 He testified that during his work came to know Ejangu Stephen, Atingu Joseph and Ejog Max and that all of them were living nearby but not very near the late land of the late Amolo.

He corroborated Omiat's evidence about the meeting held in 2009 called by the then RDC Bwalatum who even challenged the sub-county and
30 county officials who were claiming part of the late Amolo's land produce

5 proof of their claim over the land in dispute but all of them failed miserably.

He further stated that during his time at Kasilo and Bugondo, there was no land in Kamod Parish which was called government land and he only knew that the suit land belonged to the late George William Amolo.

10 He further stated that when Professor Omiat John, who a brother to the late George William Amolo died in 1985, he was contacted by the District Commissioner Soroti, to arrange for his burial which was held at the home of the late George William Amolo and that many government officials attended the function. He also confirmed that during his time as an
15 employee of local government in the area, no issue was ever raised either by Soroti DLG, Bugondo sub-county or Kasilo county that the land in dispute was government's as the only land handed over to him in the handover report as sub-county chief and acting county chief was where the currently the sub-county and county headquarters were and that he
20 knows from his own personal knowledge that the land in dispute had never been the property of the government and that it belonged solely to the late Amolo.

During cross-examination, he maintained that Ejog Max was staying near Omiat Moses but not on the disputed land as he was about 500 meters
25 away on the southern side.

He further testified that during his stay in the area as a sub county chief, and acting county chief, the disputed land was never for government and there was no case over its ownership at all.

He confirmed that personally he never even cultivated on the disputed
30 land and that during in his time of service, there was no government activity on the disputed land not even a government house.

5 PW4, Emuda Joseph, an 83-year-old at the time of testifying and resident
of Akocho village in Bugondo sub-county told court that he was a member
of the District Service Committee from 1975 and later he joined local
government administration as a parish chief of Kamod between 1981 and
10 1985 then as a sub-county chief of Bugondo sub county till he retired in
1999. He told court that throughout his service when he worked in the area
where the suit land is, he knew that the suit land belonged to the late
George William Amolo who was a very prominent man in the village home
he even used to visit frequently and it was located on the suit land.

He corroborates PW3's evidence that there was no land in Kamod parish
15 which was for government and that as an administrator and custodian of
all government property he would have known if it was government land.
He further corroborates PW3's evidence on the burial of Professor Omiat
on the late Amolo's ancestral land. He adds that Atingu Joseph, the 2nd
20 defendant was the then sub-county chief of Kyere sub county in Serere
district and that together with Ejangu Stephen who is the 3rd defendant
both were present at the burial of the burial of late Amolo and all of them
stayed at the home of the late Amolo for three days after his burial for
after-burial cultural meetings in which even all persons who believed they
had claims as against the late Amolo where were asked to make known
25 their claims but the 2nd to 5th defendants, who were present throughout,
did not raise any claim at all in regard to the late George William Amolo's
land. He confirmed that he knew and knows that the suit land belongs to
the late Amolo and nobody else.

During cross-examination he maintained that he knew the late George
30 William Amolo and his land. He conceded that he did not know whether
government was currently occupying part of the suit land.

5 He confirmed that Joseph Atingu's home was far away from the suit land and was not it. He maintained that Prof. Omiat was buried on the suit land and that the late Amolo had a home there and he was also buried there.

He further testified that Omiat is using part of the suit land thus corroborating the plaintiff's evidence that he is in control of part of the
10 suit land. He did not know where the defendants were currently staying and only knows Omiat's land.

PW5, Ongodia Silver, a 60-years-old man at the time of testifying told court that he was the LC II chairman of Kamod parish since 2002 and his home was about 1½ kilometers from the suit land. He confirmed to court
15 that he knew the late Amolo and the 2nd to 5th defendants very well. He further told court knew the suit land and where it was located and that it was along the road from Kamod centre to Kasilo centre. He confirmed seeing the late Amolo staying on the suit land as he grew up and that when he went to serve in the army, the late Amolo was still on the said land.

20 He testified that he saw the 3rd defendant who was a neighbour to Amolo recently enter the suit land but in the neighboring village of Opungure. He further testified that he received a letter from the ACAO in charge of Kasilo county asking him to stop Omiat from carrying out any activities on the suit land but that, however, having made inquiries he found out that there
25 was already a criminal complaint by the ACAO in police so he waited for the outcome. That the outcome of that inquiry was the advice by the RSA advising the complainant to file a civil case which advise he forwarded to the ACAO but despite being reminded the ACAO never did anything, not even a single communication was made in that regard. He presented the
30 documents in that regard which were admitted as PEX 13-17. This witness further testified that he did not know how Serere DLG which is the 1st defendant came to build on the land, he also corroborated the plaintiff's

5 evidence that the market had encroached on the suit land and that some of the mvule trees on Amolo's land have even been uprooted by the 1st defendant while expanding a road.

During cross-examination he maintained that the Atingu moved onto the suit land from his previous home and that the 2nd to 5th defendants were
10 residents in Opungure village yet the suit land is in Kasilo village and there is a boundary between these two villages. He told court he joined the army in 1985 and that before he went to the army, none of the defendants were on the suit land. He testified that there are 8 villages in Kamod parish and the 2nd to 5th defendants are not in any of those villages as they were from
15 Kongoto parish and he knows the LC II of the area.

During re-examination he confirmed that part of the suit land was in Kamod and the other part in Kongoto parish. He further testified that he did not know Edieku but he knew his children. He also testified that the suit land was used to host internally displaced persons around 2002. He
20 corroborated Omiat's evidence that his grandfather planted mvule trees on the suit land.

PW6, Aliano Samuel, an adult aged 74 years at the time of testifying told court that he was the clan leader for Ikarebwok Idongei clan and that Atingu Joseph, the 2nd defendant was related to him as a clan brother from
25 the same lineage. He told court that his home was near the suit land and he knew the boundaries of late Amolo's land very well. He testified that when he noticed Atingu Joseph had entered the land of Amolo after his family had fled and he told him to leave the land of Edieku's children but Atingu Joseph ignored him and even after the suit was already in court
30 Atingu Joseph began constructing more houses on the same and when he asked him to stop grabbing the land of Amolo's orphans he was attacked by Atingu's children and relatives. He testified that Ejangu also

5 encroached on the land little by little and he has remained there to date. He stated that during the insurgency when many people sought refuge in Serere district and that was the time Atingu and Ejangu grabbed more land belonging to Amolo and even constructed and cultivated on it. He testified that he was quite sure that the land in dispute belongs to the
10 Omiat as his ancestral customary land and the defendants had encroached on it.

He also corroborated the evidence of PW2, 3 and 4's that the suit land ever belonged to the government and the defendants took advantage of Amolo's death and the subsequent fleeing of his family to grab the land.

15 During cross-examination he stated that he has been resident in the area for a long time and he used to go to Edieku's house and he found him on the land in dispute when he was born. He testified that Edieku was cultivating and rearing his animals on the land and he was not a herdsman to the parish chief.

20 He further testified that government land was in Bugondo. He maintained that the land is for Omiat and that the defendants had never been on the suit land before Amolo died and he even knew the graves on the suit land.

PW7, Amwata Phillip, a 68 years old at the time of giving testimony testified that he was born in Kongoto parish and he still lives there to date.
25 He told court he was the RC I chairman of Opungure village since the beginning to the RC system and when it changed he became the LC I chairman till 2017. He confirmed knowing very well the suit land which told court partly was in Opungure village and partly in Kasilo village and that he was very familiar with the boundary of the two villages. He told
30 court he knew the boundaries of Amolo's land very well because his home is less than a kilometer away from the suit land. He also told court he knew the late Amolo very well and also knows all the defendants very well and

5 was even related to Omiat Moses as well as Ejangu Stephen, the 3rd defendant. He testified that as he grew up he saw the late Edieku and Amolo staying on the suit land and using it till their deaths and they were buried there.

10 He corroborates the evidence of PW6 that the 2nd and 3rd defendant began encroaching on the little by little in the absence of Amolo and later during the insurgency he moved further and settled on the part of the suit land in Opungure. He lists the neighbours to the suit land. He testified that of recent Ejangu sold part of the land he encroached on to Amunya, father of Olinga Calvin and he witnessed the sale by stamping the sale agreement
15 under duress because a rebel called Atau was present and he was notorious for killing people who did not comply with his desires. He further testified that he does not know who allowed Okoja Sostine to cultivate the suit land.

20 During cross-examination he stated that the land does not belong to the government and there is no government land in that area. He maintained that he knew the late Edieku very well and even attended his burial. He testified that the suit land belonged to the late Edieku who got it from his clan Atekok-Ibelakojo. He testified that there were refugees on the land during the Kony insurgency and the community accepted them, however,
25 they left after. He denied that Atingu and Okoja have 12 relatives buried on the disputed land and told court that he knew Amolo's land very well as his brother and that Ejangu is related to Alikisi Anatu.

PW8, Adweka John Mark, 78 years old at the time he testified told court that he was the councilor to Bugondo sub-county between 2000-2006 and
30 then later the chairman of the sub-county court from 2006-2009. He told court he knew both Edieku and Amolo personally and that Edieku, Amuku and Epali used to graze their animals together. That Amuku married his

5 aunt and he used to stay in their home and that is how he met Edieku.
When his aunt passed on in 1956 he moved to stay with his sister and her
home was a quarter kilometer from suit land and he got to know Edieku,
his land and his neighbours more. He clearly states the boundaries of the
suit land and goes ahead to stated that he knew Atingu very well for he
10 even knows his father and grandfather and that his grandfather was a
neighbour to Edieku but Otutu who was Atingu's father had settled in
Apapai but in 1956 Atingu returned from Apapai and settled on the
grandfather's land near the suit land. He goes ahead to give the years when
Edieku and his wife and children passed on. He further testified that as a
15 councilor of Bugondo sub county he was well aware that the suit land had
never been claimed by the sub-county as its own.

He also testified that when the cattle market was shifted to its current
position opposite the suit land, he was the secretary of finance for
Bugondo s/county and they resolved to compensate PW2's father for the
20 land. However, the market was not on the plaintiff's land and the 1st
defendant allowed people to cross the road onto the plaintiff's land.

During cross-examination, he maintained that he knew Edieku very well
and he listed all his children. He further stated that after Edieku's death
his children continued to use the land till Amolo was brutally killed and
25 that two of Edietu's children were still alive and married. He testified that
the land is for Edietu's clan and he was once a herdsman for Edieku. He
has never seen government use the suit land and the government house
was not there when Amolo was alive.

PW9, Agetu Michael, a 57 years old man at the time of testifying told court
30 that he is in charge of the household of Alikisi Anatu and when he came to
live in Alikisi's home he was shown the boundaries of their land with
Amolo's and the LC I chairman Amwata was present. He testified that he

5 knows Ejangu Stephen well because he is a member of his clan but not from the same lineage and that because of that he was not entitled to inherit from the home of Alikisi. He told court that he also knew Okoja as his neighbour and he was away from the suit land and there is a path separating them from Amolo's land and he came there recently.

10 During cross-examination he stated that he was shown the boundary to Amolo's land in 1992 by the LC I Chairman, Ejangu Stephen and his in-laws. He testified that the government was never before on the suit land. He corroborates the evidence of PW6 and PW8 that the Atingu encroached on the plaintiff's land in phases. Ejangu started encroaching
15 on the land and he was followed by Atingu, then came Amuya who sold the part he encroached into to Okoja. He testified that Omiat's burial ground is on the side which the government was claiming.

The defendants on the other hand testified as follows.

DW1, Egoji Max who was 79 years old at the time of testifying told court
20 that he was born and raised on the suit land where he stayed with his family members including his late father Engicu Sedulaka. That his father was allowed to squat on the suit land and they knew it as government land. That his father died in 1988 was buried on the suit land along with his other family members. He testified that he knew Edieku and he stayed on
25 government land as a herdsman to a sub-county chief Epyelu and they shared a common boundary. That Epyelu used to stay at Bugondo sub-county which was about 1 kilometer from the disputed land. He testified that by the time Edieku came to the suit land mvule trees which had been planted by Semei Kakungulu were already in existence. He told court he
30 knew Edieku's children and that Edieku died after 10 years. That after the death of Edieku his family left, Amolo went to Nairobi and returned in 1980. He left the suit land during the insurgency for about three years and

5 returned around 1990. That they stayed on government land till government began clearing part of the land for construction of a veterinary house. They left and returned to Oculura.

During cross-examination he testified that Edieku died when he was alive, and he died before his father who died in 1988 after Amolo. He admitted
10 that Professor Omiat was buried near his father on the disputed land. He admits that Edieku's wife and his brother were buried on the suit land. He stated that there was dispute between his father and the clan members, he wrote a complaint to IGG that the chairman of Bugondo was taking over his land and destroying the graves. He settled with Bugondo sub-county
15 when this case was already in court. He testified that there was no insurgency when he buried his people on the suit land, and that Edieku had houses on the suit land and was cultivating. That Amolo had house on the suit land. He knew Etemu and he was in the neighbouring village, Otutu was not neighbouring Edieku.

20 He further testified that the land was donated to the government from Obula, Elemara and Epili, however, he confirmed was not present during the donation. That he only heard so from his father. That Odeke was a clan mate of Amolo.

DW2, Abong James who was 64 years at the time of testifying told court
25 that he worked in the 1st RC Council from 1986 to 1989 in Olobai village. That from 1989-2001, he worked as the RC3 Bugondo sub-county and hence the custodian of the disputed land. That in 1998/1999 the council resolved to have a veterinary office constructed on the disputed land and construction works began and he personally supervised the works. That
30 the disputed land was occupied by internally displaced persons from 2003 to 2015. He told court that he had never seen the plaintiff or his father on the suit land and it was a common practice for people to bury on

5 government's land. That Odeke James, Ejangu Stephen, Atingu Joseph, Ikoja Florence among others. The land is government land and it has used it for several years for construction works and cultivation.

During cross-examination he stated that it was the District and Local governments which settled the internally displaced persons on the suit
10 land. That in 1985 he was in Kampala therefore did not know Prof. Omiat. His knowledge that the land in dispute belongs to the government was got from the community. He suspected that there was a LC IV resolution to construct on the suit land but he has never seen it. He testified that he based his opinion on neighbours and that he got a document taking over
15 the land but he did not have it.

He further testified that there was no leasehold or land title or sales agreement to the suit land. He later states that he was told about the resolution by his predecessor and he cannot remember the LC IV by then.

DW3, Odeng Wilson Alegan, an 80 years old at the time of testifying told
20 court that the land was government land as it had mvule trees planted which had been planted by Semei Kakungulu. He confirmed that the late Edieku used to live near Kamod Primary School and when he later got a job as a herdsman to Epyelu he moved on to the government land he stayed on the exact spot where Engicu used to stay while Epyelu stayed
25 where the sub-county offices were located. He told court that after Edieku's death his family briefly stayed but later on left. He lists the same neighbours to the suit land as DW2.

During cross-examination he testified that Epyelu's kraal was at the sub-county headquarters.

30 DW4, Ojobi Joseph, a 75 years old man at the time, testified that he was an office assistant from 1978-1981 in Kasilo county. That at the peak of the

5 insurgency he abandoned work. He told court that the Edieku was a
herdsman. He testified that Edieku's children were buried on the suit land
since their father was also buried there. He further testified that
government workers used to cultivate the suit land including PW3. During
cross-examination he stated he is related to Atingu and that he was the
10 son of Yona Etemu. He testified that the insurgency ended in 1990 but a
camp for IDPs was created on the suit land from 2003 to 2015. That the
government constructed grass thatched houses which are across the suit
land where there is no dispute. He did not know how the government
owned the land but he only heard about it.

15 DW5, Odeng Kupuliano, at 70 years old at the time of testifying told court
that he knew that Engicu lived on the suit land with his family but later
passed on. He corroborates the evidence of DW2, 3 and 4 on how Edieku
came to the suit land, the IDP Camp, the neighbours, the veterinary house
and that the land is government land.

20 During cross-examination he testified that he knew Edieku and Amolo
very well and that they lived on the land, that Amolo was murdered in
1988 during the insurgency and his family left. He told court he knew
Alikisi but his land is far from the suit land.

DW6, Imuko Patrick, 74 years at the time, testified that in 1978 they were
25 told that Kasilo County was going to be rebuilt on county land, some grass
thatched structures were constructed for offices and some staff junior
quarters and nobody complained. The land was given to government by
the Isuguro clan through some chiefs in the 1920s. He corroborates the
testimonies of other witnesses that a veterinary house, IDP camp, Engicu
30 and the neighbours were on the suit land. During cross-examination he
testified that he was not there when land was given or when the trees were

5 planted but that he was merely told. He did not know whether PW3 used to cultivate the land or not, he did not know Engicu physically.

DW7, Atingu Joseph and second defendant was 77 years old at the time of testifying and he told court that he was the rightful owner of 65 acres which he inherited from his father Erasmus Otutu way back in 1956 and
10 has been in possession of the same since without any complaint from the plaintiff. The land had 12 graves of his relatives. That the plaintiff's father was buried on the suit land with the permission of Bugondo sub-county. He also testified that the plaintiff is not his neighbour and was born in Asuret but, however, during cross-examination he admitted that his land
15 and that of the plaintiff are not bordering although they are near each other. He further stated that his land is bordering the government land, with Omiat's land being on the right hand side of the Kamod/Kasilo road. He also admitted that Erasmus Otutu his father was buried in Kampala and Yona Etemu was not buried on the suit land. He admitted that he
20 knew Edieku, Amolo and Prof Omiat who all lived in Kasilo and were buried on the suit land. He admitted that some of his relatives were buried outside the suit land and some do not live on the suit land.

DW8, Ejangu Stephen, defendant 3, testified that he acquired 45 acres of land from his late paternal uncle Alikisi Anatu and Olinga Calvin, the 5th
25 defendant was his biological brother. He told court that he had been in possession of the suit land since his birth and the land had graves of his relatives.

During cross-examination he testified that Alikisi's sons were still alive, he also stated that Alikisi was his father. He further stated that Edieku was
30 a brother to his father Amolo Estefania, Omiat is his son and Edieku tried to settle on the land in dispute. He admits that Edieku, Amolo and Prof. Omiat were all buried on the suit land.

5 DW9, Okoja Sostine, 4th defendant testified that his late father Okoja
Sostine and Atingu Joesph, the 2nd defendant were the rightful owners of
65 acres of land in the disputed land and that he was born on the suit land
and later inherited it from his father who passed on in 1998 and has been
in possession since and two (2) of his relatives were buried on the land.
10 He told court that Omiat, the plaintiff had never been his neighbour and
he was born in Asuret. He denied ever seeing Omiat's father or
grandfather doing any activity on the suit land and that none were ever his
neighbours. He also stated that the plaintiff's father was buried on the suit
land with permission of the sub-county but that he was told so by
15 someone. During cross-examination he stated that his father died in 1988,
and that he ever planted any tree or cultivated on the suit land and he was
surprised to be sued when he had no claim to the land in dispute. He
admitted that when he was 4 years he saw the remains of Amolo's house
and the grave was there and he confirmed having no claim on the part of
20 the land which has graves.

DW10, Olinga Calvin testified that he is the rightful owner of
approximately 45 acres together with his father Amunya and Ejangu
Stephen, the 3rd defendant. That the land was in both Kongoto and Kamod
parish. That the land was a gift to him from Ejangu Stephen the 3rd
25 defendant after his father passed on. That he was born and raised on the
suit land and has been in possession of the land since birth and there are
7 graves on the suit land. He repeats the same statements made by DW9
that he has never seen the plaintiff or his father or grandfather doing any
activity on the suit land and they have never been his neighbours.

30 During cross-examination he testified that he did not know how many
acres belonged to his father who died in 2019. He testified that he was
given the land by Ejangu his maternal grandfather who first gave his

5 father. He was not around when persons mentioned under paragraph 12 of his witness statement were buried but that in fact they are related to the 3rd defendant.

DW11, Otim William testified that Ejangu Stephen, the 3rd defendant was the rightful owner of the 45 acres of land which he acquired from his uncle
10 Alikisi, that his land was neighbouring the land belonging to Bugondo sub-county. He corroborated Ejangu Stephen's testimony. He admitted that paragraph 4 of his witness statement where he claims his land is neighbouring the sub-county's land was an error. He also admitted that he heard from the elders that the 3rd defendant was the rightful owner of
15 the 45 acres. He stated that Atingu uses his own land and not the one in dispute, however, after pausing he adds that Atingu uses part of the suit land and that Okoja Sostine also uses it. He was never steady when he made all these statements. He later changed and stated that Mzee Alikisi owned the suit land that his grandchildren included Omiat.

20 DW12, Odong John Robert testified for the 2nd defendant and his written testimony is similar to that of the 2nd defendant. During cross-examination he testified that he does not know Amolo. He confessed that the neighbours which he stated in his witness statements were not correct.

DW13, Odeng Julius Ochana testified that he knew Omiat, the plaintiff
25 because they were classmates in P.6 and P.7. That he used to stay in the trading centre with his father but the father later went to Kagologolo at his in-laws. He testified that Omiat pestered him till 1995 to help him with issues regarding the disputed land and he took him to his father, an elder who told him that the land was government land and advised him to
30 negotiate with the government. During cross-examination he stated that he did not know how government owned the disputed land. He also stated

5 that there are papers showing that the land is for the district. He tendered no evidence to that effect in court.

The above concluded witness testimonies in court in regard to the ownership of the suit land.

10 The court went to *locus in quo* and according to the locus report, there were no clear boundaries between the 2nd to 4th defendant or with the neighbours. That DW7 failed to show evidence of a former house, that DW4 has a home outside the suit land, that no evidence of the former county offices was seen on the suit land and the 3rd defendant contradicted himself on the boundaries of his land. All witnesses with graves on the suit
15 land showed them to court.

b. Analysis of evidence and conclusions in respect of Issues 1 and 2:

The plaintiff's case relies entirely on customary ownership of the land having inherited the same from his father. He led evidence to prove that his family was indeed on the land till the tragic death of the father which
20 caused them to flee and later the insurgency stopped him from returning home. The fact that Amolo stayed on the suit land and was brutally killed causing his family to flee was undisputed.

The fact that the plaintiff's relatives are buried on the suit land is also undisputed, although the 2nd -5th defendants tried to mislead court that
25 Amolo was buried on the land with permission of the sub-county.

In fact, the 1st defendant which is the local government did not have that anywhere in its testimony. The claim by the defendants that Edieku came onto the land as a herdsman for a one Epyelu a sub-county chief is not substantiated.

30 First DW1 stated that when Edieku came onto government land and he stayed in the exact spot where one Otiga, a squatter used to stay. DW3

5 stated that Edieku stayed exactly where Engicu used to stay. DW3 testified that Epyelu the sub-county chief used to stay at the sub-county headquarters and his kraal was there too. This just does not add up because why would Epyelu who stays in the sub-county offices over a kilometre away with his kraal put Edieku the herdsman on the suit land?
10 The defendants claim that it was because there was no place near the kraal does not stand because they all testified that Edieku had home near Kamod Primary school, so he could have moved from his home to go graze cattle. I, therefore find and conclude that no substantive evidence was adduced to prove that Edieku was a herdsman as alleged.

15 The next matter to consider is the alleged government's ownership of the land. The defendants claim the land was donated to the government in the 1920s. DW6 claimed this was done by the Isuguro clan. It is worth noting that the government represented by Defendant 1 did not call any Isuguro clan member to testify to this fact. Surely if it was a clan deed, the clan
20 would still be in existence to date with at least one elder who has this history unfortunately, this was. This allegation is worsened by the fact that none of the defendant's 13 witnesses were alive when this donation allegedly happened and all relied on hearsay. The same applies to the mvule trees on the suit land which the defendants all claim they were
25 planted by Semei Kakungulu as told by their elders. None of the elders were brought to court to confirm this firm. It remained a mere allegation and hearsay.

DW2 who was an RC testified that he was given a document taking over the land when he assumed office, however he did not have it and neither
30 did he produce it in court. He also agreed that there is no leasehold or land title or even an agreement relating to the land. Even the veterinary house

5 he suspected that there must have been a resolution but he had not seen the resolution nor did he produce it in court.

All these merely went on to solidify the fact of government having no interest in the suit land. DW1 testified that he was a squatter on the government land and admitted that he was compensated by the government after complaining to the government that the Bugondo sub-county chairman wanted to take his land and was destroying his graves. If indeed he was a squatter why would the government compensate him? A squatter is a mere licensee who stays on another's land as such with no rights at all. Again this evidence was even challenged by PW3 who knew his land to have been 500 meters from the suit land. It was the defendants claim that the government let its workers use the suit land for cultivation and PW3 in his positions as sub-county chief and county chief use to cultivate the land, however the one witness who was supposed to lead evidence in this regard because he used to be with PW3 failed to turn up in court and his witness statement was expunged from the court record. Furthermore, the claims that the land was in use by the government is defeated by the defendants who testified that the place was a bush and that even when Prof. Omiat was buried, they had to clear the same and so if the government had been using the land for its activities, the question to ask is why would the land be bushy yet government workers were even allegedly using it for cultivation and grazing their animals?

DW13 testified that the plaintiff's father used to stay in the trading centre but later went to his in-laws at Kagologolo but this testimony is contradicted by DW3 who stated that Amolo stayed near Kamod Primary School and DW9 who stated that at 4 years old he saw the remains of Amolo's house on the suit land. These contradictions are grave and goes to the root of determining whether the plaintiff's father lived on the suit

5 land yet in comparison to the plaintiff's evidence, in my considered view
by himself and his witness were straight forward in this respect with no
interpolations at all.

It is, therefore, clear from the evidence that the government or someone
allegedly using the government's name began laying claims on the suit
10 land only after the brutal murder of the late George William Amolo and
the subsequent fleeing of his family for their dear lives then from people
who wanted to finish the whole family and then later when the insurgency
engulfed Teso sub region which incidences kept the Amolo's family away
from the suit land resulting in encroachment by various persons including
15 allegedly government.

The fact that the land was used as a camp does not in itself speak to
ownership of the suit land. It only meant that it was free land whose
owners were away.

In analysis the depth and width of the evidence of all witnesses who
20 testified in court, I find that I am more inclined to believe that of the
plaintiff that the defendant's for most of the plaintiff's witnesses were non
interested parties who were in position of governmental authority such as
LCs or sub county or county chiefs of the area with none of them ever
recalling while serving as such that government had land which is the suit
25 land. Those witnesses were firm in their testimonies that the only
government land and that the only known government land for which they
were custodians of were those where the sub county and county
headquarters were located and nowhere else.

This fact is at par with the fact that all sub-county and county chiefs took
30 up residence there. According to PW2 she testified that by the time she got
married around 1940 or 1941 the sub-county was already at Bugondo was

5 there where it still is to date and that that was where even the county headquarters was as well.

The fact that there is not a single document tendered in by the government to prove its claim on the suit land goes further to that government has no interest in the suit land with the alleged governmental interest being a
10 concoction by the defendants to defeat the course of justice. This fact is better appreciated from the position where when the ACAO of the area had raised the matter with the police of the area that the plaintiff's family had encroached on government land, he was advised by the lower local authorities to seek legal redress via a civil suit with regard to the suit land
15 which he never did as testified by PW5.

The claim that government once constructed staff quarters and offices on the suit land is not believable because at locus the demolished structures were not shown to court and furthermore DW4 contradicted this when he testified that the government constructed grass thatched houses across
20 the suit land where there is no dispute. I would thus find and conclude that on a balance of probabilities there is no substantial evidence proving that the suit land was ever belonged to government other than the plaintiff.

With regard to whether the suit land belonged to defendants 2 to 5, Atingu
25 Joseph (DW7) and Okoja Sostine(DW9) claim 65 acres from Erasmus Otutu who inherited it from Etemu. The evidence led by these two plus the plaintiff's witnesses indicate that indeed Atingu inherited land from his grandfather, however, he has since encroached on the suit land over time. Indeed, PW6 testified to this fact and even stated that he warned Atingu
30 to stay away from Amolo's land but he instead he continued with his grabbing spree of the suit land and even went ahead constructed a house on it when the matter was already in court.

5 PW8 Adweka John Mark in an unwavering grip on the history of the suit
land knew how Atingu inherited land from his grandfather after he left
Apapai where his father Otutu had settled. DW11, Otim William during
cross examination stated that Atingu uses his own land and not the one in
dispute, however, after some hesitation he goes on to state that Atingu
10 uses part of the suit land with Okoja. This witness was never steady while
making this statement as observed by court.

DW9 Okoja Sostine, during cross-examination testified that he was
surprised to be sued because he had no claim over the suit land but later
changes this and state that he had no claim on the part of the suit land that
15 has graves.

It is clear to me that that Etemu's land was near the suit land and he
encroached on the suit land in phases as testified by PW 6, PW8 and PW9.
This fact is strengthened additionally by the observation at locus that
there were no clear boundaries between the 2nd to 4th defendants or their
20 neighbours.

From the analysis of the evidence in respect of the suit land, I am more
inclined to believe that the 2nd and 4th defendants used the absence of the
plaintiff's family from the suit land to progressively encroach on the suit
land which clearly is for the plaintiff's family.

25 The 3rd and 5th defendant on the other hand testified as DW8 and DW10.
They claimed the land through Alikisi Anatu. The relationship between
them is not clear, DW8 claims DW10 is his biological brother. DW10
claims DW8 is his maternal grandfather who first gave his father land then
also gave him a portion as a gift.

30 DW8's evidence takes a turn when he claims Edieku is brother to his father
Amolo Estefania and Omiat is his son. This kind of contradiction does not

5 favour his evidence and even at locus he was confused and kept changing the positions of his boundaries, bringing new claims that he gave land to a one Ariyo. DW10 was not aware of the acreage of his father's land and worse still admitted that all the people he listed to have graves on the suit land were the 3rd defendant's relatives and not his.

10 PW9 testified was the in-charge of Alikisi's household and he knew Ejangu as a clan member but not same lineage from Alikisi therefore he could not inherit from him and that he came to the suit land recently.

This fact is corroborated by PW2 and PW7 who both testified that Ejangu encroached on the land and even sold a portion to Amanyu, the 5th defendant's father.

15 DW11 who was testifying for the 3rd defendant merely reproduced the 3rd defendant's witness statement and admitted as much during cross-examination.

It should be noted that DW11 was testifying for the 3rd defendant and he testified that the disputed land was 45 acres and belonged to Mzee Alikisi and that his grandchildren Omiat are on the land. He creates more contradictions when he brings the 2nd and 4th defendant in the mix.

Another common theme in the witness statements of the 2nd to 5th defendants and their witnesses is the assertion that the plaintiff, his father or grandfather have never been their neighbours and that the plaintiff was born in Asuret.

25 During cross-examination they claim they were told he was born in Asuret.

I find therefore, that on a balance of probability, that the 3rd and 5th defendants are not truthful and have never had any right of ownership of

5 the 45 acres which they claim out of the suit land. Their statements are too inconsistent to be believable.

In *Uganda Versus Abdallah Nasser [1983] HCB*, it was held that where grave inconsistencies occur, the evidence may be rejected unless satisfactory explained while minor inconsistencies may have no adverse
10 effect on the testimony unless it points to deliberate untruthfulness.

Alfred Tajar v Uganda 167 EACA of 1967 it was held that major inconsistencies will lead to the evidence of a witness being rejected and minor inconsistencies will not have the same result unless they point to deliberate falsehood.

15 The evidence of all the defendants in this matter are filled with major inconsistencies and generally is hearsay and the same is not explained. These inconsistencies go to the root of their case especially with regard to how Edieku and his family got on the suit land.

Conclusively, therefore, I am inclined to believe that given the smooth
20 flow of the testimony of the plaintiff as opposed to the disjointed and generally hearsay evidence of the defendants, I more inclined to believe the testimony of the plaintiff that the suit land originally belonged to his grandfather Ediege which land eventually was inherited by his late father George William Amolo and which he claims as his by being a son of the
25 late Amolo.

Therefore, my finding and conclusion is that the plaintiff has proved his case on a balance of probability that the suit land in question belongs to him his having acquired the same through inheritance from his late father called George William Amolo. Issues 1 and 2 succeeds.

30



5 c. Issue 3:

Whether the defendants are trespassers on the suit land?

Having determined in issue 1 and 2 above that the suit land belongs to the Omiat Moses who is the plaintiff herein by virtue of inheritance, it follows that all the defendants are trespassers on the suit land which belongs to
10 the plaintiff. Issue 3 succeeds.

d. Issue 4:

The remedies are available to the parties

The plaintiff sought a declaration that he and his family are the lawful owners of the suit land. He further sought for general damages for
15 trespass, damages for conversion upon harvest of timber on the suit land, an eviction order against the defendants, a permanent injunction restraining the defendants and their agents from further interference and disturbance of the plaintiff's quiet enjoyment of the suit land and costs of the suit.

20 The plaintiff specified the various activities that the defendants had and were doing on the suit land including cutting down trees for timber, cultivation, brick making and using the same as a dumping site for waste matters.

He tendered in court pictures of these negative activities and they were
25 not objected to by the defendants.

The plaintiff further gave the estimated price of the cut trees and timber amounting to UGX 300,000,000 and bricks amounting to UGX 1,500,000. These figures were not contradicted.

5 Therefore, having found as a matter of fact and declared that the plaintiff is the rightful owner of the suit land, I am inclined to agree that he is entitled to the claims he has made which he has effectively proved to my satisfaction. He is thus entitled to remedies; as below.

- 10 a) A declaration that he and his family are the lawful owners of the suit land.
- b) A permanent injunction restraining the defendants and their agents from further interference and disturbance of the plaintiff's quiet enjoyment of the suit land.
- c) An eviction order against the defendants.
- 15 d) General damages for trespass.
- e) Damages for conversion upon harvest of timber on the suit land.
- 1) Costs of the suit.

The plaintiff having adduced evidence in issues 1 and 2 confirming ownership and how he acquired the suit land by way of inheritance from his late father Amolo George William who also inherited the same from his late father Edieku, a fact that all the witnesses both for the plaintiff and the defendant confirmed to this honorable court during their evidence in chief and cross examination.

It is also not in dispute that the plaintiff is in occupation and possession and use of part of the suit land with a home and has never been challenged by anybody in any courts of law including the defendants and none of them presented a counterclaim.

It is then no longer in dispute that none of the defendants have any claim over the area in the current possession of the plaintiff, i.e. where the graves are, the houses, the ruins, the trees and so on and so forth. He has already been declared the lawful owner thereof.

The evidence on record also confirms that Omiat Moses' father the late George William Amolo and his late grandfather Edieku lived, cultivated and had homes on the suit land and are all buried on the suit land among the other relatives of the plaintiff.

10 The plaintiff prayed for a declaration order that he is the lawful owner of the suit land and that of his family.

This court has already found and declared the plaintiff as the lawful owner of the customary land situated at Kasilo village, Kamod Parish, Bugondo sub county in Serere District measuring approximately 150 acres currently
15 being trespassed on by the defendants.

The plaintiff prayed for an award of general damages for trespass against the defendants for their wanton actions, destruction of trees, expansion of the road on part of the land forming the plaintiffs suit land, encroachment of the plaintiffs land by extension of the market to the suit land without
20 compensating the plaintiff and or seeking his consent and permission which amounts to arbitrary deprivation of land, dumping of garbage from the market to the plaintiffs land including buveras that have severally destroyed the environment and the soils, inconveniencing the plaintiff's quiet possession and use of the suit land for over 10 years now.

25 The 1st defendant cut down the trees of the plaintiff and converted them to its use. It did not challenge this evidence at all. The environmental report was not challenged at all. The evidence of trespass was seen by court during locus visit.

The general principle of law is that the award of general damages is at the
30 discretion of court and as always the law will presume that general

5 damages are the natural consequence of the defendants' act or omission.
See: **James Fredrick Nsubuga Vs AG. HCCS No. 13 of 1993.**

It is trite law that general damages are awarded by courts whenever there is breach of a legal duty by a party who owes to another a prescribed legal duty. See: **Esther Bambanza Vs Barclays Bank (U) Ltd High**
10 **Court Civil Suit No. 547 of 2012 at page 5.**

The plaintiff adduced evidence of loss suffered and inconvenience caused by the defendants for which he ought to be compensated by an award of general damages in order to put him back in the same position he would have been had the defendants not trespassed on the suit land.

15 From the evidence on record right from the time the father of the plaintiff, the late Amolo George William was brutally and horridly murdered, it is true that the plaintiff and his fellow family members have suffered unacceptably suffered grave inconveniences as a result of the none use of the land for a very long period of time due to the defendants' illegal
20 interference and dealing with the plaintiff's land for which he is entitled to general damages.

It is clear to me that it not even possible to measure loss suffered in general damages.

However, in assessing the quantum of damages, the courts are mainly
25 guided by the value of the subject matter and the economic inconvenience that a party may have been put through by the wrongful act of the losing party. See: **UCB vs. Kigozi [2002] EA 305.**

The general rule regarding measure of damages applicable under the common law has its origin in what Lord Blackburn stated in **Livingstone**
30 **Vs. Ronoyard's Court Co. (1880)5 App. Cas 259.** The learned judge defined measure of damage as;

“That sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he now getting his compensation or reparation.”

The above holding was cited by the Supreme Court of Uganda in **Robert Coussens Vs. AG SCCA NO. 8 of 1999**.

Similarly, in the case of **Kampala District Land Board and Another Vs. Venansio Babweyaka & 3 others Supreme Court Civil Appeal No. 2 of 2007**, the Supreme Court of Uganda noted that it is trite law that damages are the direct probable consequences of the act complied of such consequences may be loss of use, loss of profit, physical inconvenience, mental distresses, pain and suffering.

Physical inconvenience was held to be damages in the case of **Assist (U) Ltd Vs. Italian Asphalt and Haulage Limited and Another NCCS No. 1291 of 1999** per Kiryabwire, J (as he then was)

The governing principle on the award of general damages is that they are compensatory in nature and are awarded to put a plaintiff in the position they lived in before the wrong was committed.

In the instant matter, it is not disputed that since the plaintiff and his family returned from Kenya in the 1970's, they have greatly suffered not arising from their own mistake but as a result of a number of deadly events including the gross murder of the head of their household and the subsequent insurgencies.

Then the worst case scenario comes in with the defendants without any colour of right went ahead to take advantage of the plaintiff's miseries and

5 further exacerbated the plaintiff's suffering and inconveniences due to their unlawful and totally unjustifiable acts. It is thus evident and necessary that the plaintiff's suffering and inconveniences be to ameliorated by putting him in the position as near as possible had he been not made to suffer the wrong unleashed on him by the defendants.

10 Accordingly, I would find and conclude that the plaintiff herein suffered both pecuniary and non –pecuniary loss. The former being money loss is capable of being arithmetically calculated in money.

The plaintiff as a result incurred additional costs and expenses to instruct three firms of lawyers to represent him for he prays for general damages.

15 In the present case the plaintiff suffered grave inconvenience, mental anguish, psychological torture, stress and deserves adequate compensation.

An award of UGX 200,000,000/= as general damages is found reasonable in the circumstances.

20 The plaintiff is also entitled to compensation of the commercial value of the trees cut down by the 1st defendant who it to its own use.

I would award UGX. 70,000,000/= as against the 1st defendant the same the commercial value of the trees cut down, the same being of very high value.

25 The 1st defendant also after the court had issued an injunction order still went ahead to sink a borehole in the suit land. Further all the defendants continued to utilise the suit land in spite of their own knowledge that they were doing so illegally and even continued to threaten the plaintiff and his family. Such lawlessness and the disobedience of court orders cannot be
30 entertained by a court of law for letting such behaviour and impunity to continue can lead to serious breakdown of law and order in a democratic

5 country. I would thus award as against the defendants UGX 50,000,000/= as exemplary damages.

The plaintiff further pray that an eviction order be issued against the defendants from the suit land henceforth. This Honourable court having found that the suit land belongs to the plaintiff doth issue an eviction order
10 against all the defendants from the suit land comprised of over 150 acres of land.

The plaintiff also prayed for a permanent injunction to be issued against the defendants restraining them and their agents from further interferences and disturbance of the plaintiff's quiet enjoyment of the suit
15 land. The same is issued accordingly.

Lastly the plaintiff prayed for the costs of this suit. The general principle of law is that costs follow the event unless for good reasons court directs as provide for by **Section 27 Civil Procedure Act**.

The award of costs is also an exercise of judicial discretion as was held in
20 ***Jennifer Rwanyindo Aurelia & Anor vs. School Outfitters (U) Ltd., CACA No. 53 of 1999.***

In the instant matter, the plaintiff has proved to this honourable court the inconveniences he and his family has suffered as a result of the defendants conduct for which he had to take court action through instructing three
25 law firms comprised of counsels. He prays that he is entitled to the costs of the suit.

I do find that, without the unlawful actions of the defendants who took advantage of the misery the plaintiff and his family were encompassed in and without any colour of right or any lawful excuse illegally blatantly
30 encroached on the plaintiff's land, I would find that there is no reason brought forward for me to deny the plaintiff of the costs of this suit,

5 therefore, by virtue of **section 27 of the Civil Procedure Act Cap 71 I**
award to the plaintiff the costs of this suit due to its the nature and
complexity.

6. Conclusion:

10 This suit by the plaintiff succeeds on all issues as it has been proven on a
balance of probabilities as required for a civil suit. All the prayers thus are
allowed as per pleadings of the plaintiff.

7. Orders:

- a. This suit is found to have merits and as such it succeeds.
- b. The Plaintiff is hereby declared as the customary owner of a block of
15 land comprised of approximately 150 acres situated at Kasilo village,
Kamod parish, Bugondo sub county, Serere district which was
owned by the late George William Amolo, the late father of the
plaintiff who inherited from one Edieku, both of whom are since
deceased.
- 20 c. The plaintiff is awarded UGX 200,000,000/= as general damages
as against the defendants jointly to be paid in equal amounts.
- d. The plaintiff awarded UGX. 70,000,000/= as against the 1st
defendant as compensation for the commercial value of the trees cut
down by the 1st defendant which converted the same to its use thus
25 unlawfully enriching itself from the proceeds of the cut trees which
are of high value.

5 e. The plaintiff is awarded as against the defendants UGX
50,000,000/= as exemplary damages to be paid in equal amounts.

f. There is hereby issued a permanent injunction against the
defendants jointly and severally restraining them and their agents
from further interferences and disturbance of the plaintiff's quiet
10 enjoyment of the suit land.

g. I also award interests at the rate of 18% per annum on (c) and (e)
above from the date of this judgment till payment in full and on (d)
above from the date of filing this suit till payment in full.

h. The plaintiff is awarded the costs of this suit.

15 I so order.



.....
Hon. Justice Dr Henry Peter Adonyo

Judge

15th June 2022

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