

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORTPORTAL**  
**HCT-01-LD-CS-0021**

**1. SYANYWANA KASEREKA WILSON**  
**2. THEMBO GIDEON MUJUNGU**  
**3. APOLLO KATHABANA AND 238 OTHERS=====PLAINTIFFS**

**VERSUS**

**1. THE REGISTRAR OF TITLES**  
**2. KASHAGAMA DANIEL BUSINGE=====DEFENDANTS**

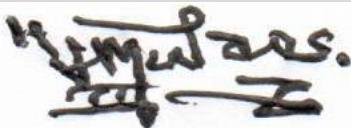
**BEFORE THE HON. JUSTICE VINCENT WAGONA**

**JUDGMENT**

**Introduction:**

The plaintiffs in their amended plaint brought this suit on behalf of themselves and in representative capacity for 238 others in respect of the suit land constituted in Leasehold Register Volume 1197 Folio 5, Plot No. 3, Busongora Block 5, Land at Bucumbamurro & Kihara, Kasese, a lease of 99 years from 1<sup>st</sup> September 1982, measuring Approx. 441.7 hectares, seeking among others the following reliefs as gathered from reading the amended plaint as a whole:

- 1. A declaration that the plaintiffs and other numerous persons having the same interest are customary / lawful occupants on the suit land.**



2. A declaration that the suit land does not form part of the estate of the late Amon Bazira and the 2<sup>nd</sup> defendant.

3. An order for cancellation of the certificate of title for the suit land registered in the names of Amon Bazira on the basis that the entries / endorsements by the Registrar of Titles to register Amon Bazira as the proprietor thereof were made in error, illegally and wrongfully.

4. A permanent injunction restraining any person from evicting or interfering with the plaintiffs' possession, occupation, farming and developmental activities on the suit land.

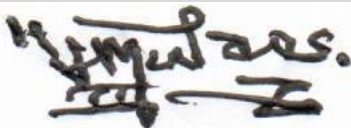
5. General damages.

6. Costs of the suit.

### **The Parties to the Suit:**

The 4 plaintiffs were granted a representative order to sue on their own behalf and to represent 170 other plaintiffs but through their pleadings, they later increased the number to 238 without leave of court and with no evidence that the additional plaintiffs had granted any such authority to be represented under the suit.

Order 1 Rule 10 (2) of the Civil Procedure Rules states that: *The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or*

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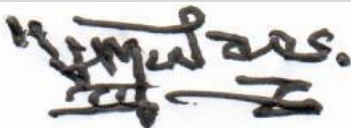
*defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.*

I find that the represented plaintiffs in excess of the 174 plaintiffs covered by the representative order were improperly joined to the suit and their names are hereby struck out. Further, the plaintiffs had originally sued 3 parties, but later withdrew charges against the 1<sup>st</sup> defendant who was the Administrator General. The case thus proceeded against the current defendants.

**The case of the Plaintiffs:**

The plaintiffs contend in their amended plaint that they are customary / lawful occupants on the suit land derived in succession from their ancestors. That on 6<sup>th</sup> May 2011 upon a search conducted from the registry of titles, it was discovered that the Registrar of Titles had unlawfully and erroneously registered Amon Bazira as proprietor of the suit land for a lease of 99 years under Instrument No. 212876 on 2/9/1982. The alleged violations by the Registrar of Titles were listed under **paragraph 9** of the amended plaint as follows:

- i) No notice for public hearing was issued or obtained from the Registrar of Titles and served upon the plaintiffs the persons in occupation of the suit land. Rules of natural justice were violated.
- ii) The Registrar of Titles ignored to direct notice in Form 2 of 4<sup>th</sup> Schedule and to keep the notice so posted for not less than 21 days prior to granting of application to bring the land under the Registration of Titles Act.



iii) Notice of application to bring the land under Registration of Titles was not posted on the suit land.

iv) The Registrar of Titles did not conduct hearing in public to receive sustainable objections from the plaintiffs.

v) The Registrar of Titles did not permit plaintiffs to make representations and be questioned on any aspects as persons claiming interest or having information about the suit land which was subject of application.

vi) The Registrar of Titles did not allow the plaintiffs as persons claiming an interest in the suit land to point out features of the land and make other points about the land and their interest in the land.

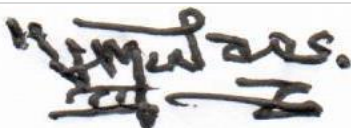
vii) The Registrar of Titles did not allow the plaintiffs to give evidence about boundaries of the land yet they were the community in occupation and as being trustworthy and knowledgeable about the suit land.

viii) The Registrar of Titles ignored the plaintiffs' human activities of growing crops, houses and other developmental activities on the suit land.

ix) The District Commissioner had no lawful mandate to cause District Land Committee members to inspect land and forward inspection report to Commissioner Land and Survey.

x) While the application for allocation of land was for 202 hectares which the plaintiffs were in lawful occupation and possession of, the certificate of title that was obtained illegally shows 441.7 hectares.

Further alleged violations by the Registrar of Titles are gathered from **paragraphs 13, 14 and 20** of the amended plaint as follows:

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1) The Registrar of Titles illegally, unlawfully and wrongfully registered and granted a lease title to Amon Bazira without a minute of approval from the Uganda Land Commission.

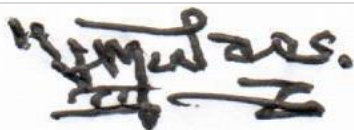
2) The suit land was at all material times owned by the plaintiffs at the time of the lease offer and as such it was illegal for the Registrar of Titles to issue a certificate of title in favour of Amon Bazira.

3) The Registrar of Titles acted without making a physical visit to the suit land to verify ownership, possession and related matters. The land was given out and registered in the names of Amon Bazira during the existence of the plaintiffs' buildings, homes, and cultivation of crops on the suit land.

The body of the amended complaint also makes averments against the Uganda Land Commission which however was not sued, namely, that: a lease offer was illegally offered and a lease illegally granted to Amon Bazira by the Uganda Land Commission without an approval Minute by the Uganda Land Commission and without the approval of the Kasese District Land Committee.

All of the above acts are under **paragraph 20** of the amended complaint attributed to all of the defendants and categorized as being **illegal** and **fraudulent**.

The specific case against the 2<sup>nd</sup> defendant (Kashagama Daniel Businge) as gathered from paragraphs **18 and 21** of the amended complaint is that in March 2012 he embarked on evicting the plaintiffs from the suit land alleging that they were trespassers. That in April 2013, the 2<sup>nd</sup> defendant caused some of the plaintiffs to be arrested and



dragged to court on charges of forcefully staying on the suit land but the charges were later dismissed by the Chief Magistrates Court of Kasese.

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**The case of the 1<sup>st</sup> Defendant:**

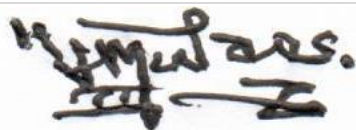
6 The 1<sup>st</sup> defendant did not file a written statement of defence or participate in the proceedings and also failed to respond to the court's *Notices to Produce* the supporting documents that resulted in the registration of Amon Bazira as proprietor  
9 of the suit land. The 1<sup>st</sup> notice was issued on 17<sup>th</sup> August 2016 and served on 22<sup>nd</sup> August 2016. The 2<sup>nd</sup> notice was issued on 20<sup>th</sup> October 2016 and served on 2<sup>nd</sup> November 2016. The required documents were:

- 12 a) Certified copy of certificate of title freehold land cadastral for the suit land;
- b) Certified copy of leasehold certificate of title for the suit land;
- c) Certified copy of lease deed;
- 15 d) Certified copies of all documents upon which Amon Bazira got registered as proprietor of the suit land;
- e) Original record of the cadastral.

18

**The case of the 2<sup>nd</sup> Defendant:**

21 The 2<sup>nd</sup> defendant Kashagama Daniel Businge averred that the suit land was registered in the names of his late father Amon Bazira with the history of having been pastoral land of his forefathers since time immemorial. That Amon Bazira had  
24 lawfully obtained a 99 year lease and certificate of title to the suit land in 1982. The 2<sup>nd</sup> defendant has since been registered on the title as administrator of the estate of

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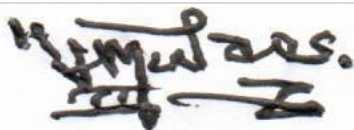
Amon Bazira. The 2<sup>nd</sup> defendant averred that none of the plaintiffs had any ancestral, past or current home or defendable interest in the suit land. That in any event the suit was time barred and should be struck out.

### **The Evidence of the Plaintiffs:**

The plaintiffs called the following witnesses: PW1 Baluku Simon; PW2 Baluku Uriah; PW3 Mugisa Kithula Francis; PW4 Bwambale Robert; PW5 Syanywana Kasereka Wilson; PW6 Kakara Flora; PW7 Dezi Kato; PW8 Bwambale John Tabalha; PW9 Mujungu Thembo Gideon; PW 10 Kayanja Ndolerire Herbert.

**PW1 Baluku Simon** was the LCIII Chairman for Nyamwamba Division. PW1 tendered **Exhibit PE2**, a letter by him dated 20<sup>th</sup> September 2013, to the Registrar High Court Fort-portal reporting that ever since the 2<sup>nd</sup> defendant came in the area, he had brought hostilities against the plaintiffs. In a letter dated 22<sup>nd</sup> September 2014 (**Exhibit PE1**) to the Directorate of Land Matters, State House, PW1 reported that Amon Bazira had fraudulently obtained a certificate of title to the suit land where the plaintiffs were legitimate customary owners, on which their livelihood entirely depended for growing food and cash crops; and that for the past 4 years the plaintiffs had been unable to freely access the land because the 2<sup>nd</sup> defendant used police and the army to deny them access.

**PW2 Baluku Uriah** had served as Chairperson Land Board Kasese since 2011. He testified that he wrote to the Chairperson LCV Kasese District who had requested him for information because of a dispute on ownership of the suit land and the 2<sup>nd</sup>

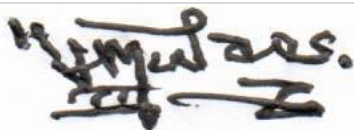


defendant was harassing the residents. PW2 stated that at the Kasese land office, they had no record of Amon Bazira's lease application. Amon Bazira's lease offer and land title were issued by Uganda Land Commission.

**PW3 Mugisa Kithula Francis** was the Kasese District Staff Surveyor. This witness did not conclude his testimony. After identifying what he described as part of a job record prepared by the cartographer Kedi Samson (**PID 1**), counsel for the plaintiffs indicated that he would apply to recall PW3 later. Apparently PW3 was never recalled, never tendered PID 1 as an exhibit, and was never cross examined.

**PW4 Bwambale Robert** was the LC1 Chairperson of Kihara Cell where the suit land was partly located. PW4 testified that on 23/01/2013, the 2<sup>nd</sup> defendant and his agents in the presence of the police invaded the suit land and harvested cotton and houses of the plaintiffs were demolished. The people who had been evicted went back and cultivated but were again evicted and 2 people got killed.

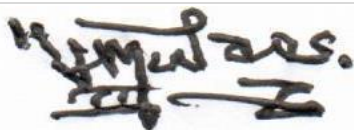
**PW5 Syanywana Kasereka Wilson** stated that he was born on the suit land in 1965 and was later informed by his father that their land approximately 40 acres was acquired from PW5's grandfather. Their neighbors were Mbusu Nzangwa Gedeon, Thabalha Amisi Bisowo and others. PW5 was in occupation on the suit land before 1982 and had a home with houses and he cultivated there and had livestock. His father died on the suit land but was buried elsewhere at the home of his elder wife as per the Bakonjo culture. After his father's death, the family continued living peacefully on the suit land until 2010 when the 2<sup>nd</sup> defendant appeared, claiming he was the administrator of the estate of his late father Amon Bazira. The 2<sup>nd</sup> defendant





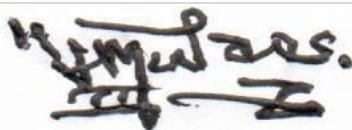
embarked on evicting the plaintiffs who were already in occupation, demolishing and burning their houses, and arresting them using armed security men who camped on the land. One person was killed and ten people were charged in court and later acquitted. *(See the judgment dated 01.03.2012 in Criminal Case No. 0543/2011 in the Chief Magistrates Court of Kasese).*

PW5 stated that around 2010 he learnt and subsequently confirmed it through a search at the land registry, that in 1982, Amon Bazira had illegally and fraudulently procured a lease and leasehold certificate of title to the suit land. That Amon Bazira had used his position as a Minister to grab the suit land. The witness pointed out the irregularities in the registration process to include the following: the names of those who signed for the lessor were not disclosed; Amon Bazira the lessee did not sign on the lease and his names were missing; Amon Bazira did not accept the lease offer; the lease was not witnessed; there was no lease offer minute by Uganda Land Commission approving the lease offer to Amon Bazira; there was no inspection and recommendation by Kasese District land authority to lease the suit land to Amon Bazira; the lease was dated 2<sup>nd</sup> September 1982 whereas the certificate of title bears a lease start date of 1<sup>st</sup> September 1982. The registration process had moved on resulting in issuance of title in 1982 without their knowledge yet they were already in occupation. In cross examination PW5 stated that that in 1979 Amon Bazira had come on the land and built a house and in 1982 PW5 had seen a surveyor one Langoya going through the land. That Amon Bazira had constructed his house on a piece of land belonging to his cousin Mary Byabashaija which was about 4 acres and was next to the suit land. In cross examination PW5 stated that he came to know in 2010 that the suit land was registered in the names of Amon Bazira.

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**PW6 Kakara Flora** testified that she was born in 1938 at Kihara Road, Rukoki Ward, Nyamwamba Division, Kasese District and had lived on her land since 1959, having acquired it from one Nyansio. Amon Bazira had been given only a small portion of land by the Chief but he went ahead and forcefully cultivated people's land, destroyed crops, grabbed the land the plaintiffs were cultivating, chased out the plaintiffs and fenced off the land. They feared Amon Bazira because whoever opposed him would be arrested. Later Amon Bazira went into exile and when the liberators came they occupied his house, removed the fence and allowed them to continue utilizing the land. When the 2<sup>nd</sup> defendant came in 2010, he chased them out of the land. PW6 is still living her land and allocated part of it to her children and grand children to construct thereon. Amon Bazira found her on the land and he constructed a house on the land that the chief had given him, which house is still there. PW6 saw the surveyors when they came on the land in 1980.

**PW7 Dezi Kato** stated that in 1978 he requested Laulensio Tibenda and Yakobo Kule for land and was given 25 acres on the suit land. PW7 came on the suit land from Kihara, 6 miles away, where he worked as a Parish Chief and had a home. His neighbours on the suit land included Florence Kakara, Nyamagambo Akiki and Nyangando Atwoki. He lived peacefully on the land until 1983 when Amon Bazira started burning people's houses and fenced off the land. They reported the matter to the District Commissioner Edward Ssempebwa who ordered that they continue staying on the land. In 2010 the 2<sup>nd</sup> defendant demanded that they leave. When they resisted, they were arrested. Amon Bazira did not live on the suit land but had 4 acres where he cultivated and had a house. PW7 came on the suit land before Amon

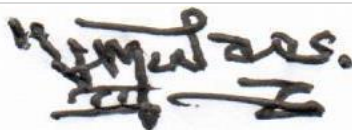


Bazira. Amon Bazira came and stole their land and chased them away; his certificate of title was fraudulently obtained. The land PW7 occupied was given to them by Government. PW7 had a home on the suit land and Amon Bazira was his neighbour.

**PW8 Bwambale John Tabalha** testified that he was born on the suit land in 1955.

His father had told him that he had acquired the land from Musangi Stanley the area Chief. Their neighbours were Benezeri Thembo, Pasicali Masereka and Nzangwa. They lived on the suit land until his father died in 1978 and was buried there. In 2010, the 2<sup>nd</sup> defendant appeared with a fraudulently acquired title and demanded that they leave. PW8 was living on the suit land but was chased away in 2010 by the 2<sup>nd</sup> defendant. He was growing cotton and beans on the land and also had 4 mud and wattle grass thatched houses there. He was resident on the suit land together with many other people who had occupied the land and built houses there. The houses were burnt down by the 2<sup>nd</sup> defendant.

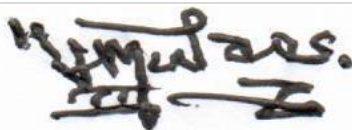
**PW9 Mujungu Thembo Gideon** stated that he was born on the suit land in 1964 and his father later informed him that the land approximately 60 acres was acquired from Musangi Stanley in 1956; that he requested for the land and he was given and he set up a home. His father had a home on the suit land another home elsewhere. During his childhood in the 1970s, their neighbours on the suit land included Bombo Kasighalire, Kitojo Ntambire, and Sibwenderwa, who were grandparents to some of the plaintiffs. PW9's father died in 1985 on the suit land but was buried elsewhere at the home of his elder wife as demanded by culture. After the burial they remained peacefully on the land until 2010 when the 2<sup>nd</sup> defendant appeared claiming to be the administrator of his late father's estate and having a land title believed to have

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been fraudulently obtained and demanded that they leave. When they resisted they were arrested and prosecuted but later acquitted. Their families were initially fenced  
3 inside the suit land and the 2<sup>nd</sup> defendant used the army to intimidate them. From 2011, armed men under the direction of the 2<sup>nd</sup> defendant illegally evicted the plaintiffs from the suit land and demolished their houses. PW9 had a home on the  
6 suit land consisting of 3 mud and wattle grass thatched houses that were destroyed.

PW9 stated that Amon Bazira illegally obtained a lease and certificate of title and  
9 did not compensate the plaintiffs who were customary owners and lawful occupants on the suit land and he had been illegally evicting people without compensation. The certificate of title was fraudulently obtained because among other irregularities,  
12 Amon Bazira did not sign on the lease agreement and his names were missing; the lease agreement was dated 2/9/1982 whereas the title term started from 1/9/1982; the lease agreement did not state the names of the authorized officer of the Uganda  
15 Land Commission. At the time of processing the lease, there was no notice of public hearing to receive any objections from the plaintiffs who were lawful occupants on the suit land. That Amon Bazira had used his position as a Minister to grab the suit  
18 land.

**PW 10 Kayanja Ndolerire Herbert** was a surveyor representing Kabarole  
21 Ministerial Zoning Office. He testified on the basis of information he had obtained from the Department of Survey and Mapping Entebbe and tendered the survey job record (**Exhibit PXZID**). PXZID starts with the instructions to survey dated **18<sup>th</sup>**  
24 **May 1982** issued by P. Wamala a Senior Staff Surveyor to Mr. D. Langoya a Surveyor. The instructions were to survey the suit land for Hon. Amon Bazira

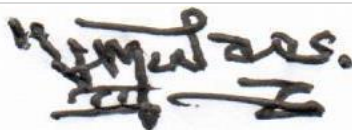


subject to the land being available and free from disputes. PW 10 testified that the survey was carried out and the file forwarded on **4/8/1982**. From 1982 the work stopped but resumed in 2011. PXZID shows that in 2011, the job resumed with checking and was passed for further action on **15-07-2011**. PW 10 stated that by 2011 the process was still ongoing and that in 2011 the job was computed and forwarded for plotting and the work was approved and forwarded for disposal.

### **The Evidence of the 2<sup>nd</sup> Defendant:**

The 2<sup>nd</sup> defendant called the following witnesses: DW1 Kashagama Businge Daniel the 2<sup>nd</sup> defendant; DW2 Teddy Z. Tibenderana; DW3 Kuhinira Florence; DW4 Byabasaija Mereki; and DW5 NO. 36127 D/SGT. Salimo Martin.

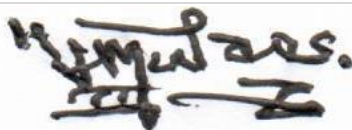
**DW1 Kashagama Businge Daniel** stated that he was the son of the late Amon Bazira and that he lived on the suit land from birth up to 1989 when he left for Canada. Amon Bazira was the registered proprietor of the suit land measuring 441.7 hectares with a lease of 99 years running from 1<sup>st</sup> September 1982. The suit land was always occupied and possessed by his Basongora ancestors from before the colonial days in 1891 through the 1950s, 1960s, 1970s until Amon Bazira lawfully applied for a lease in the 1970s, a trial lease in 1979 and subsequently obtained a lease and lease hold title in 1982. The suit land was previously ancestral land belonging to his family in Rukoki and he was presently the registered proprietor as administrator of the estate of his late father. The certificate of title is **Exhibit DX3**. Amon Bazira died in 1993 while in exile in Kenya and his estate remained under the care of his son David Ndolerire who also died in 2009. DW1 returned and on 9<sup>th</sup> July 2013 secured

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letters of administration (**Exhibit DX5**) and had the suit land transferred into his names. At the time of his return, there were only 3 families on about 5 acres of the suit land, namely, Kato Desderio, Nyamagambo, and Nyangendo. The said families are still on the suit land. Upon boundary opening, it was discovered that the house of PW6 Kakara Flora and that of her son were outside the suit land although she had sold some pieces of land within the suit land to one Likolongo and one Emmanuel Ntaganda.

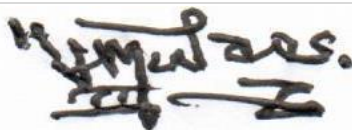
DW1 stated that majority of the plaintiffs were not known to him as people who were occupying the suit land when he lived there or upon his return. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs have never lived on, occupied any house, or owned any property or developments on the suit land and own no interest there. PW5 Syanywana Kasereka Wilson, PW8 Bwambale John Tabalha, PW9 Mujungu Thembo Gideon, and Chikenzera James were never in this area at the time when Amon Bazira became registered proprietor in 1982.

In cross examination DW1 stated that he was born in 1971 and that in 1982 he was aged about 11 years. His late father Amon Bazira had served as a Deputy Minister of Lands. Amon Bazira had a large farm with 450 cows on the suit land measuring about 1095 acres where the family lived with other relatives. The homestead had 15 houses. His grandfather and grandmother had their own homesteads. All their children and grand children lived there and they were a family of about 100 people. They even built a school there, belonging to his mother. He could not recall anyone that went through that school. The suit land originally belonged to the Basongora who were removed in 1931 and it turned into a national park. In 1952 it was turned



into a refugee camp for the Masai who were removed in 1989. In 1986 there was an army base. In 1989 DW1 left for Kenya and Canada and returned in 2010, and during his absence the land was under his brother who died in 2009. Amon Bazira did not chase anyone from the land in 1982 and DW1 had never evicted anyone.

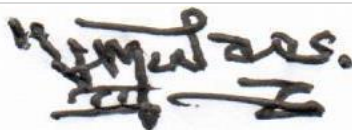
**DW2 Teddy Z. Tibendirana** stated that she was working at the County Chief's Office when Amon Bazira came applying for the suit land and that the then acting Sub County Chief James Wangira sent the application to the office of the County Chief Augustine Ndaboine. At that time the people who were on the land were Weibingahi, Batondole, and the father of Zakaria and Deo who were compensated by Amon Bazira and they all left. Those who remained were Atwoki/Nyangendo and Tibihikira Gabriel who were staying with their mothers as well as Nyamagambo. Lorenzo Tibenda, Yakobo Kule, Shyanywana and Mujungu had never lived on the suit land. Deziderio Kato had never been given land on the suit land but only entered the land and occupied a house on a small piece of land belonging to Regina Kenyana who had been chased away. Deziderio Kato currently lived in that house. The rest of the suit land had no settlements. When the 2<sup>nd</sup> defendant returned, the only house that was there was that of Amon Bazira. From 1985 to 1998, the government had an army base on the suit land and there was no way people could have lived there. DW2 started working with Kasere District Local Government in 1974 and the suit land was controlled by the Government and it was the Government that could grant a lease. By 1975 Amon Bazira had brought his mother to live on the suit land and had started carrying out some activity there. Amon Bazira started the process of leasing the land around 1976 when Augustine Ndaboine was the County Chief and the land was vacant. In cross examination DW2 stated that before 1980, Amon Bazira was





staying in Kampala. In 1986, when the Government brought a barracks on the suit land, it was vacant and bushy and there was a house there that the army turned into a school for their children. At this time, Amon Bazira and his family had left. The suit land was government land where many people would come and dig and go. The 2<sup>nd</sup> defendant did not find anyone on the land and did not chase any one from the land. In re-examination the DW2 stated that there is a storied house of Amon Bazira on the suit land.

**DW3 Kunihira Florence** stated that Amon Bazira was a young brother of his father and he took over and cared for her family following the death of her father Peter Ndoleriire. Around 1980, Amon Bazira brought her, her brother David Ndolerire, and the mother of Amon Bazira, to live on the suit land and they started farming and rearing goats and cows there. They found 3 families on the suit land who had mud and wattle houses with small plots. In 1986, Amon Bazira fled into exile and DW3 remained on the suit land with their grandmother. The NRA established an army base there. David Ndolerire became care taker of the suit land and was renting it out to farmers from the neighborhood only for cultivation but not for settlement and there were no houses there except temporary sun shelters. The 1<sup>st</sup> plaintiff was one of such people that were renting land for cultivation while the 2<sup>nd</sup> plaintiff had also been using the land. When the 2<sup>nd</sup> defendant returned into the country, there were only 3 homesteads on the land. In cross examination DW3 stated that in 1980 she was living in Bwera and Amon Bazira was living in Kampala. In 1980 when they came on the suit land, they first stayed in a uniport at the District but the mother of Amon Bazira was digging on the suit land and Amon Bazira built there a goat house, then he later built a house, and they moved there. When the mother of Amon Bazira

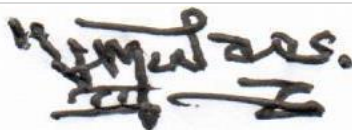




fell sick she was taken to Nairobi from where she died and the body was brought and buried in Bwera. DW3 and David Ndolerire remained on the land. David Ndolerire allowed people to use the land. When David Ndolerire died and the 2<sup>nd</sup> defendant returned, he tried to chase away the people who were using the land.

**DW4 Byabasaija Mereki** is a cousin of Amon Bazira who served as a Court Clerk at Kasese Court between 1975 and 1997. He testified that no one ever constructed a house on the suit land except that people came there to cultivate. Amon Bazira consulted DW4 on his desire to rear goats on the suit land and they approached James Wangira the Parish Chief who allowed Amon Bazira to take over the land as the land was free. Amon Bazira bought some goats and started grazing there and built there a hut and a semi permanent house and eventually started a permanent building. Amon Bazira eventually settled on the land and utilized it for his farming activities and throughout, there were no settlements there. When the liberation war started in 1978, Amon Bazira told him that he had acquired lease forms and had applied to the District Land Board to lease that land. In cross examination DW4 stated that Amon Bazira did not specify how much land he wanted. The Parish Chief allocated land to Amon Bazira by giving him a note that he used to support the land acquisition process. The suit land is in Kihara while Bwera is 38 miles away from the suit land. DW4 retired in 1997 and went back home to Bwera.

**DW5 NO. 36127 D/SGT. Salimo Martin** stated that between 2009 and June 2017 he was deployed at Kasese Central Police Station and visited the suit land several times and participated in investigations of cases of malicious damage and causing grievous harm against a number of the plaintiffs. The incidents started around March

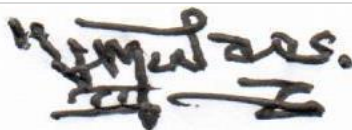


2011 when the 2<sup>nd</sup> plaintiff was campaigning for political position and he was promising the people that if they elected him, he had free land to give to them. He knew that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs had never had homes on the suit land or owned or lived on any portion of the suit land and that during PW5's time in Kasese, there were no people living on the land and the land only had the residential house built by Amon Bazira before he fled to exile. The only people with activities on the land were cultivators renting on the land only for cultivation and it was untrue that the 2<sup>nd</sup> defendant evicted people and destroyed homes.

### **Exhibits Tendered:**

At the start of the trial on 29.06.2015, the following documents were admitted as agreed by the parties: Letters of administration for the estate of Amon Bazira; leasehold certificate of title for the suit land; lease by urban authority dated 2/9/1982; the 2<sup>nd</sup> defendant's Canadian passport. The court further admitted all the documents attached to the witness statement of PW5 Syanywana Kasereka Wilson with a proviso raised by counsel for the 2<sup>nd</sup> defendant that the documents would have to be proved in evidence.

In the course of the proceedings, the following documents were formally tendered and exhibited: **(1) PE1** a report dated 22<sup>nd</sup> September 2014 authored by PW1 Baluku Simon to the Directorate of Land Matters, State House, titled **“Re: Forged Land Certificate Of Title For 441.7 Hectares Block 5 Plot 3 LRV 1197 Folio 5 of Butsumbamuro/Kihara, Kasese Municipal Council, Kasese District;** **(2) PE2** a report dated 20<sup>th</sup> September 2013 authored by PW1 Baluku to the Registrar High Court Fort-portal titled: **Report On The Acts of Mr. Kashagama B. Daniel and**

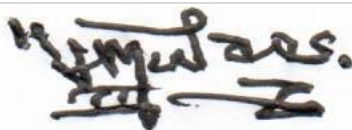


his Agents Against the People in Butsumbamurro – Kihara Nyamwamba Division, Busongora, Kasese District; (3) **PX2ID** the cadastral record relating to the survey instructions and actions relating to the suit land tendered by PW 10 Kayanja Ndolerire Herbert a surveyor representing Kabarole Ministerial Zoning Office; (4) **DX1** a ruling in Kasese District Land Tribunal Civil Claim No. 003/KDLT/2003, Kibaya Hustus and 117 others versus Biregho Daudi; (5) **DX2** the National ID of DW1 Kashagama Businge Daniel; (6) **DX3** original land title in respect of the suit land; (7) **DX4** search certificate relating to the suit land; (8) **DX5** Letters of Administrations granted to the 2<sup>nd</sup> defendant DW1 Kashagama Businge Daniel in respect of the estate of his father's estate the late Amon Bazira.

**Evidence Arising From Locus Visits by Court:**

**Locus Visit of 4/4/2014:**

The record shows that on 4/4/2014 the court then presided over by Justice Batema visited locus to for the purpose of interpreting orders that court had earlier issued under the previous judge. Justice Batema observed that the applicants (plaintiffs herein) had at that time obtained interim and temporary injunctions to maintain the status-quo of staying on the land, whereas they had already been evicted from the land. The judge observed that almost all the land was at that time in the physical possession of the 2<sup>nd</sup> defendant. That there were old remains of cotton gardens and ruins of several demolished homesteads belonging to some plaintiffs / applicants.



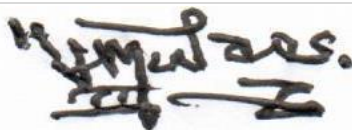
The judge at that time ordered that: *“The only people to benefit from the orders to maintain a status quo are those whose homes I have met standing on the land.*

3 *They shall continue to occupy their lands and cultivate their pieces of land of Bibanja as it were”.* The judge listed these people as: Flora Kakara; Francis Bikoranga; Nyamutale; Kato; Likaranga Francis (Congolese); Ntaganda Emmanuel;  
6 and Zakaliya c/o Flora.

**Locus Visit of 8/11/2023:**

9  
On 8/11/2023 the court visited locus at the conclusion of court proceedings and was taken around the land. The plaintiffs showed court what they claimed were sites of  
12 past settlements that were said to have existed before the plaintiffs were allegedly evicted by the 2<sup>nd</sup> defendant. At one site, the court saw concrete debris where it was said had hosted a grinding mill and also a grass thatched home. The court was shown  
15 a place now covered by a thicket where one of the plaintiffs claimed his relatives were buried, but the graves were no longer visible because of the thicket. The court was shown an area at the edge of the suit land close to the main road where a family  
18 is still in occupation with some complete permanent houses while others are incomplete. The court was not shown any evidence of past or present settlements in form of houses, homes or a school by the 2<sup>nd</sup> defendant on the suit land.

21  
**Representation of the Parties:**



The case went through a number of lawyers and was concluded by Counsel Denis Musede of Ms. Tropical Law Advocates for the Plaintiffs and Counsel Francis Kasigazi of Ms. Acellam Collins & Co. Advocates for the 2<sup>nd</sup> Defendant.

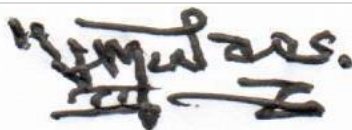
**Issues:**

1. Whether the plaintiffs' suit is superfluous, frivolous, and vexatious and should be struck out for not disclosing a cause of action.
2. Whether the plaintiffs' suit was filed out of time and should be struck out.
3. Treatment given to exhibits and documents.
4. Whether the Lease Deed dated 2<sup>nd</sup> September 1982 under which Lease Hold Certificate of Title LRV 1197 Folio 5 Area 441 hectares of land on Block 5 Plot 3 Kasese District was created on 1<sup>st</sup> September 1982 is illegal, invalid, not perfectly executed, null and void.
5. Whether the Lease Hold Certificate of Title LRV 1197 Folio 5 Area 441 hectares of land on Block 5 Plot 3 Kasese District was illegally and fraudulently created for Amon Bazira as proprietor and hence should be cancelled.
6. Who is the rightful owner of the suit land?
7. What remedies are available to the parties?

**RESOLUTION OF THE ISSUES:**

**1<sup>st</sup> Point of Law:**

1. Whether the plaintiffs' suit is superfluous, frivolous, and vexatious and should be struck out for not disclosing a cause of action.

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### **Submissions for the 2<sup>nd</sup> Defendant:**

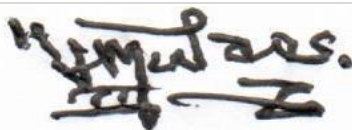
Counsel for the defendant after stating the above issue which is a preliminary point of law, made no submissions on it.

### **Submissions for the Plaintiffs:**

On the other hand it was pointed out for the plaintiffs that it had been pleaded that the plaintiffs were lawful customary owners on the suit land since time immemorial, having occupied it through succession from their fore fathers before they were forcefully and unlawfully evicted by the 2<sup>nd</sup> defendant in 2010. Thus, the suit could not be said to be frivolous and vexatious. I was referred to a number of authorities: *(Tororo Cement Co. Ltd. versus Frokina International Co. Ltd, SCCA NO. 2 of 2001 for the definition of 'cause of action'; Lucy Nelima & 2 Ors versus Bank of Baroda Uganda Ltd., Civil Suit No. 55 of 2015 requiring consideration of only the plaint and annexure to determine disclosure of cause of action; and Kivanga Estate Ltd. versus National Bank of Kenya Ltd., Civil Appeal No. 217 of 2015 for the definition of 'frivolous' and 'vexatious')*

### **CONSIDERATION BY COURT:**

For one to establish a cause of action, they must plead facts in the plaint which if proved would entitle them to judgment in respect of the claim in the plaint. The plaintiff must prove that he enjoyed a right which is protected by statute, common law or equity; that that right was violated and that the defendant is responsible for

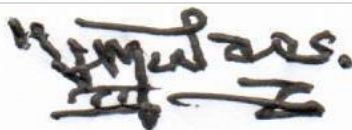


such violation to entitle him to the reliefs sought. (*See (Tororo Cement Co. Ltd vs Frokina International Ltd SCCA No. 2 of 2001)*). The ascertainment of a cause of action should consider only the plaint and the annexure thereto. (*See Kebirungi vs. Road Trainers ltd & 2 others [2008] HCB 72*). A party for instance cannot claim that the cause of action is well pleaded in the reply to the written statement of defense since a reply is not a pleading that commences an action in law (*Mwesige v Kazooba and 2 Others (Civil Suit 36 of 2022) [2023] UGHCLD 201 (8 June 2023)*).

The court should be slow to summarily dismiss a suit for failure to disclose a cause of action. In *Yaya Towers Limited vs. Trade Bank Limited (In Liquidation) Civil Appeal No. 35 of 2000* court expressed itself thus: “*No suit should be summarily dismissed unless it appears so hopeless that it is plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment.*” Where a cause of action is remote from the pleadings it may be clarified by an amendment. But where plaint clearly discloses no cause of action, or where the claim disclosed is too weak to be redeemed by an amendment, then court must strike out the suit for non-disclose of a cause of action against a specific party. (*See Mwesige v Kazooba and 2 Others (Civil Suit 36 of 2022) [2023] UGHCLD 201 (8 June 2023)*).

In this case it is averred in the amended plaint that:

*“...since time immemorial at all material times, the plaintiffs as successors in title to their grandparents have been have been customary occupants of their ancestral land” on the suit land. (para. 7).*



3 *“The 3<sup>rd</sup> [now 2<sup>nd</sup>] Defendant Kashagama Daniel Businge on 9<sup>th</sup> March*  
4 *2012 obtained from the 1<sup>st</sup> Defendant Certificate of no objection No. 5104*  
5 *Ref Toro Administrator General’s cause No. 3080 of 2005 [in] the names of*  
6 *the deceased Bazira Amon [and] immediately he embarked on evicting*  
7 *plaintiffs on the suit land alleging plaintiffs are trespassers on the land ...”*  
8 *(para. 18).*

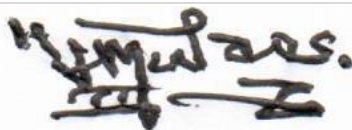
9 *“On 12<sup>th</sup> April 2013 3<sup>rd</sup> Plaintiff Annex 29 despite documentary evidence of*  
10 *his acquiring the land from his father Annex 32 to 34 plaintiffs were*  
11 *dragged on charges of forcefully staying on the suit land. The charges were*  
12 *dismissed by the Chief Magistrates’ Court Kasese ruling Annex 30 to 31.”*  
13 *(para. 19).*

14 I agree with counsel for the plaintiffs that the claim of the plaintiffs is that they are  
15 bona fide customary owners on the suit land and that they were unlawfully evicted  
16 by the 2<sup>nd</sup> Defendant and thus their suit cannot be said to be frivolous and vexatious.  
17 I find that the plaintiffs’ suit discloses a cause of action. The preliminary point of  
18 law raised in this regard is overruled.

## **2<sup>nd</sup> Point of Law:**

21 **2. Whether the plaintiffs’ suit was filed out of time and should be struck**  
22 **out.**

## **24 Submissions for the 2<sup>nd</sup> Defendant:**



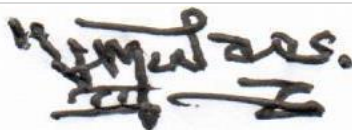


It was submitted for the 2<sup>nd</sup> defendant relying on Section 5 of the Limitation Act that the plaintiffs' suit was filed out of time and should be struck out. It was contended that by their averments in paragraph 17 of the plaints and the annexure referred to, the plaintiffs by 21<sup>st</sup> August 1997 were aware of the existence of the lease to Amon Bazira over the suit land. Further that PW5 and PW6 had admitted in cross examination to having seen surveyors around 1980.

### **Submissions for the Plaintiffs:**

It was pointed out for the plaintiffs that in a suit for recovery of land based on fraud, the time begins to run the moment the fraud is discovered. (*See: Section 25(a) of the Limitation Act; Patrick Iyamulemye versus Stephen Kwiringira & Ors, Civil Suit No. 0118 of 2019*). It was contended that in this case the plaintiffs discovered that the late Amon Bazira had procured a certificate of title on the suit land in the year 2010 when the 2<sup>nd</sup> defendant began to forcefully evict them from the land on the basis that he had acquired letters of administration for the estate of his late father Amon Bazira which included the suit land for which Amon Bazira had allegedly obtained a lease and certificate of title. That in 2010 after the plaintiffs conducted searches and discovered that Amon Bazira had fraudulently acquired a certificate of title over the suit land then filed this suit in 2013.

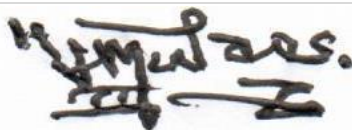
### **CONSIDERATION BY COURT:**

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In an action for recovery of land, Section 5 of the Limitation Act sets 12 years from the date the action arose as the time within which an action for recovery of land should be presented in Court.

The time prescribed starts running from the time the right of action accrued. Sections 6 (1) and 11 (1) offer clarity as to when the right accrues, to the effect that the right arises from the time the person is dispossessed of the suit land. The period of limitation thus starts to run from the time the person bringing the action is dispossessed of the land in dispute. (*See also: Odyek Alex & Anor Vs. GenaYokonani, Civil Appeal No, 09 of 2017*). Once the time period limited by The Limitation Act expires, the plaintiff's right of action will be extinguished and becomes unenforceable against a defendant. It will be referred to as having become statute barred. (*See: Alex & Anor. Vs. GenaYokonani & 4 others Civil Appeal No. 09 of 2017*).

In the case of an action based on fraud, Section 25 of the Limitation Act provides for postponement of limitation period for the time to start running when the fraud was discovered. In that case the limitation period does not begin to run until such a time when the plaintiff is invariably aware, or could have with reasonable diligence been aware of the fraud, but this must be pleaded (*see Sunday Edward Mukooli v. Nabbale Teopista and three others, H.C. Civil Suit No. 282 of 2013*). Fraud must not only be specifically pleaded but also the particulars of the fraud alleged must be stated on the face of the pleading (*see BEA Timber Co. v. Inder Singh Gill [1979] EA 463*). Being an exception, Order 7 Rule 6 and Order 18 rule 13 of the Civil Procedure Rules it is mandatory to plead the exception and failure to do so renders

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the plaint defective (see *E. Otabona v. Attorney General (1991) ULSLR 150; Iga v. Makerere University [1972] EA 65*). A plaint that does not plead an exception where the cause of action is barred by limitation is bad in law. The plaint must plead facts to bring the suit within the statutory exception.

Regarding whether or not a suit is time barred, reference must be made to the plaint and the annexure thereto and the timelines pleaded by the plaintiff as to when the cause of action arose. However, Court can also make reference to other documents on record or evidence adduced by the parties. In this case the plaintiffs' action is based on alleged dispossession of the suit land through unlawful evictions and fraudulent acquisition of a lease deed and certificate of title to the suit land. In relation to the alleged dispossession of the suit land through unlawful evictions, it was averred in the amended plaint as follows:

*"The 3<sup>rd</sup> [now 2<sup>nd</sup>] Defendant Kashagama Daniel Businge on 9<sup>th</sup> March 2012 obtained from the 1<sup>st</sup> Defendant Certificate of no objection No. 5104 Ref Toro Administrator General's cause No. 3080 of 2005 [in] the names of the deceased Bazira Amon [and] immediately he embarked on evicting plaintiffs on the suit land alleging plaintiffs are trespassers on the land ..."* (para. 18).

*"On 12<sup>th</sup> April 2013 3<sup>rd</sup> Plaintiff Annex 29 despite documentary evidence of his acquiring the land from his father Annex 32 to 34 plaintiffs were dragged on charges of forcefully staying on the suit land. The charges were*

*dismissed by the Chief Magistrates' Court Kasese ruling Annex 30 to 31.”*  
*(para. 19).*

In relation to the alleged fraudulent acquisition of a lease deed and certificate of title to the suit land, this is gathered from **paragraphs 4, 9, 13, 14 and 20**. In particular, it was averred in the amended complaint as follows:

*“The plaintiff sues the 2<sup>nd</sup> [now 1<sup>st</sup>] defendant seeking for declaratory judgment that all entries endorsement made in error, illegally and wrongly obtained to register Amon Bazira as proprietor certificate of title LRV 1197 Folio 5 Lease of 99 years from 1<sup>st</sup> September 1982 Block 5 Plot 3 area 441.7 Hectares of land at Kasese District”. (para 4).*

*“On 6<sup>th</sup> May 2011 search from 2<sup>nd</sup> [now 1<sup>st</sup>] Defendant’s registry Annex 6. It was found that 2<sup>nd</sup> Defendant unlawfully, erroneously registered Amon Bazira as proprietor under Inst. No. 212876 on 2/9/1982 LRV 1197 Folio 5 Lease of 99 years from 1<sup>st</sup> September 1982 Block 5 Plot 3 area 441.7 Hectares Busongora Kasese District”. (para 14).*

*“Each of the Defendants in one way or the other contributed to illegal and fraudulent transaction dealings on the suit land. LRV 1197 Folio 5 Lease of 99 years from 1<sup>st</sup> September 1982 Block 5 Plot 3 area 441.7 Hectares Busongora Kasese District”. (para 20).*

The amended complaint in paragraph 9 stated the particulars of illegalities which in paragraph 20 are also categorized as illegal and fraudulent transactions committed

in the process of acquisition of the lease and leasehold certificate of title to include absence of notice to members of the public to bring objections; absence of public hearing; ignoring plaintiffs' occupation and use of the suit land; allocation of 441.7 hectares not applied for. Other alleged illegalities are detailed in paragraphs 10 – 14 and 20 of the amended plaint and relate to the absence of approval minute from Uganda Land commission, grant of lease and title certificate before concluding the survey process, erroneous and unlawful registration of Amon Bazira as proprietor of the suit land. The plaint though poorly drafted does bring out the particulars of fraud and illegalities.

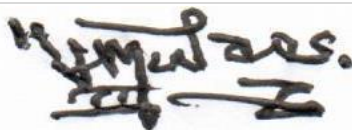
The dispossession of the plaintiffs from the suit land by the 2<sup>nd</sup> defendant through evictions is stated in the amended plaint to have started in 2012- 2013. The alleged fraudulent acquisition of a lease and certificate of title is stated to have been discovered in 2011 following a search. I am therefore satisfied that the suit is not barred by limitation, having been filed in 2013. The point of law raised by counsel for the defendant in this regard is also overruled.

### **3. Treatment given to exhibits and documents:**

#### **Submissions for the Defendant:**

Counsel for the 2<sup>nd</sup> defendant pointed out that the plaintiffs wrongly sought to rely on a number of documents that were neither formally tendered nor received as exhibits on the court record.

#### **CONSIDERATION BY COURT:**

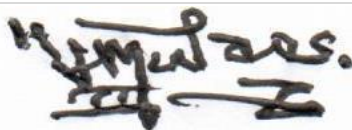


This court has previously held in *Fortportal Civil Appeal No. 002 of 2022*  
3 *Byamugisha David versus Kebirungi Venny* as follows:

6 “I have perused the record of the trial Magistrate and found that the report  
by the Agricultural Officer was not tendered in as evidence for the  
Respondent. The question would be whether or not a document not tendered  
in by parties as an exhibit can be relied upon by court.

9  
This question is exhaustively answered by the dicta in *Kenneth Nyaga Mwigwe*  
*v Austin Kiguta & 2 others (2015) eKLR* which position was cited with  
12 approval in *Sofie Feis Caroline Lwangu v Benson Wafula Ndote [2022]*  
*eKLR* thus:

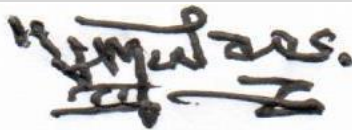
15 “The mere marking of a document for identification does not  
dispense with the formal proof thereof. How does a document  
become part of the evidence for the case? Any document filed and/or  
18 marked for identification by either party, passes through three stages  
before it is held proved or disproved. First, when the document is  
filed, the document though on file does not become part of the judicial  
21 record. Second, when the documents are tendered or produced in  
evidence as an exhibit by either party and the court admits the  
documents in evidence, it becomes part of the judicial record of the  
24 case and constitutes evidence; mere admission of a document in  
evidence does not amount to its proof; admission of a document in

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evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved or not or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents- this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the court would look not at the document alone but it would take into consideration all facts and evidence on record.

The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of the document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.

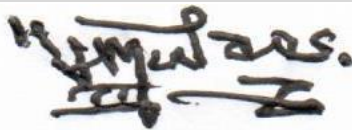
Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation or its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the documents produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence



and not formally produced and proved, the document would be hearsay, untested and unauthenticated account.

In Des Raj Sharma –vs- Reginam (1953) 19 EACA 310, it was held that there is a distinction between exhibits and articles marked for identification; and that the term “exhibit” should be confined to articles which have been formally proved and admitted in evidence. In the Nigerian case of Michael Hausa –vs- The state (1994) 7-8 SCNJI44, it was held that if a document is not admitted in evidence but is marked for identification only, then it is not part of the evidence that is properly before the trial judge and the judge cannot use the document as evidence.

Guided by the decision cited above, a document marked for identification only becomes part of the evidence on record when formally produced as an exhibit by a witness. In not objecting to the marking of a document for identification, a party cannot be said to be accepting admissibility and proof of the contents of the document. Admissibility and proof of a document are to be determined at the time of production of the document as an exhibit and not at the point of marking it for identification. Until a document marked for identification is formally produced, it is of very little, if any, evidential value.

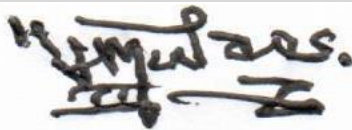
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In the instant case, we are of the view that the failure or omission by the respondent to formally produce the documents marked for identification being MFI 1, MFI 2 and MFI 3 is fatal to the respondent's case. The documents did not become exhibits before the trial court; they have simply been marked for identification and they have no evidential weight. The record shows that the trial court relied on the document "MFI 2" that was marked for identification in its analysis of the evidence and determination of the dispute before the court. We are persuaded by the dicta in the Nigerian case of Michael Hausa –vs- The state (1994) 7-8-SCNJ 144 that a document marked for identification is not part of the evidence that a trial court can use in making its decision.

In our view, the trial judge erred in evaluating the evidence on record and basing his decision on 'MFI 2' which was a document not formally produced as an exhibit. It was a fatal error on the part of the respondents not to call any witness to produce the documents marked for identification.....' (emphasis added).

Therefore, a document only forms part of the evidence of the parties if the same is tendered in and received as by court as an exhibit. This is so because once such a document is exhibited, it can be tested through cross examination. Therefore, documentary evidence only forms part of the evidence before court after the same is exhibited".



I have thus not considered documents that were not agreed upon, not formally tendered and exhibited on the court record or remained unproven.

3

### **Burden and Standard of Proof:**

6 Sections 101-106 of the Evidence Act, Cap 6 impose the burden of proof on the party who alleges the facts to exist and the standard of proof is on the balance of probabilities.

9

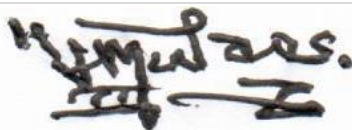
There is a legal burden of proof and an evidential burden of proof. Legal burden of proof is a burden fixed by law and is a fixed burden of proof  
12 (*See Cross & Tapper on Evidence-8th Edition at page 121*). In civil cases, the standard is on a balance of probabilities.

On the other hand, evidential burden of proof is the burden of adducing  
15 evidence to prove a fact in one's favour. While the evidential burden keeps shifting, the legal burden never shifts. (*See Phipson Law of Evidence, 14th Edition*).

18

Section 103 of the Evidence Act, Cap 6 provides thus: *The burden of proof as to any particular fact lies on that person who wishes the court  
21 to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*

24 It is convenient to handle Issues 4 and 5 together:

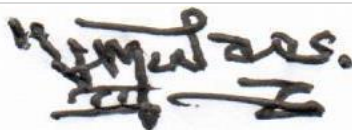
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4. Whether the Lease Deed dated 2<sup>nd</sup> September 1982 under which Lease Hold Certificate of Title LRV 1197 Folio 5 Area 441 hectares of land on Block 5 Plot 3 Kasese District was created on 1<sup>st</sup> September 1982 is illegal, invalid, not perfectly executed, null and void.
5. Whether the Lease Hold Certificate of Title LRV 1197 Folio 5 Area 441 hectares of land on Block 5 Plot 3 Kasese District was illegally and fraudulently created for Amon Bazira as proprietor and hence should be cancelled.

**Submissions for the Plaintiffs:**

It was submitted for the plaintiffs that the lease deed was not perfectly executed, because it lacked the seal of Uganda Land Commission, lacked the names of the representatives of Uganda Land Commission, and lacked the signature of the Amon Bazira the lessee. I was referred to Sections 147 and 148 of the RTA and the authority in *Fredrick JK Zaabwe versus Orient Bank Ltd and 5 others, SCCA No. 4 of 2006*.

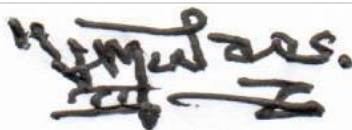
Regarding the alleged illegality involved in the creation of the leasehold certificate of title, it was pointed out that illegality means an act that is not authorized by law; the state of not being legally authorized; and the state or condition of being unlawful (*Hilda Wilson Namusoke & Ors versus Owalla's Home Investment Trust (EA) Ltd, SCCA No. 15 of 2017*). It was further pointed out that under Section 1 of the *Land Reform Decree of 1975* all land had been declared to be public land to be administered by the Uganda Land Commission in accordance with the *Public Lands*

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*Act of 1969*. That under Section 23 (2) of the Public Lands Act, the Uganda Land Commission could grant statutory leases to urban authorities, that the urban authorities could then lease out to individuals. It was further pointed out that the Uganda Land Commission and the Urban Authorities worked independently from each other.

It was contended that the lease and certificate of title were granted without any application from Amon Bazira. The lease offer dated 13<sup>th</sup> April 1982 was made before the land was surveyed. The survey job record (**Exhibit PXZID**) and the evidence of PW10 reveal that the lease and certificate of title were granted before the land was survey process was completed and in the absence of any deed plans. It was further contended that the lease and certificate of title were granted without any authorization minute from Uganda Land Commission. I was referred to the authority in *Livingstone Sewanyana versus Martin Alier SCCA No. 4 of 1990* as cited in affirmation in *Kampala Bottlers Ltd versus Damanico (U) Ltd, SCCA No. 22 of 1992* for the position that a ‘*Minute*’ is the root from which the offer and certificate of title derive their validity. In other words there cannot be a title or lease offer without a minute from the Uganda Land Commission and the minute should be cited in the lease documents.

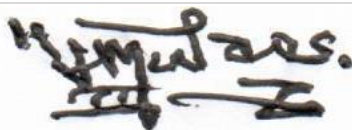
It was furthermore contended that the extension of the lease offer from the initial 5 years to 99 years was done in the absence of any application for extension from Amon Bazira and lacked the Uganda Land Commission ‘*Minute*’ approving the extension. I was referred to *Kampala Bottlers Ltd versus Damanico (U) Ltd, SCCA No. 22 of 1992* for the position that upon expiry of the initial period, the lessee must

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apply for extension of the lease. Upon receipt of such an application, the Uganda Land Commission by a new minute is meant to consider the application and approve the extension on the basis that the applicant has satisfied the terms of the initial lease. Such an act in *Kampala Bottlers Ltd (supra)* was held to amount to an irregularity that warranted the cancellation of the title.

It was pointed out that the office of the Chief Registrar of Titles had gone ahead to issue the certificate of title without any minute of approval from the Uganda Land Commission. The processing agency had to satisfy itself of the existence of the authorizing minute from the Uganda Land Commission. (*Kampala Bottlers Ltd (supra)*). it was contended that the officials from the office of the Chief Registrar of Tiles issued the title with knowledge that there was no authorizing minute from the Uganda Land Commission which constitutes fraud.

It was submitted that the lease and certificate of title were processed and issued without carrying out an inspection exercise and issuance of an inspection report on the suit land. Had the District Land Committee inspected the land, they would have established that the land was in occupation and use by the plaintiffs. It was pointed out that the evidence of DW2 who claims to have typed Amon Bazira's lease application and the evidence of DW3 supported the evidence of the plaintiffs that the land was in use by people who had settled on the land and others who cultivated on the suit land. I was referred to the case of *Bahesco Ltd versus National Forest Authority, CS No. 16 of 2009* for the position that the inspection report enables the issuing authority to appreciate whether or not the land applied for is available for leasing; and that failure to conduct and inspection and issuing a certificate of title



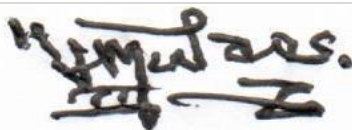
without an inspection report from the area land committee amounts to fraud, as the omission is intended to avoid discovering unfavorable facts.

3

It was submitted to the effect that the inconsistencies in the evidence of the 2<sup>nd</sup> defendant further demonstrated that Amon Bazira's application for a lease was aimed at fraudulently defeating the interests of the defendants on the suit land. Whereas the 2<sup>nd</sup> defendant claims that the land was ancestral having belonged to his Basongora forefathers from time immemorial, the evidence of the other witnesses of the 2<sup>nd</sup> defendant shows that before 1980, Amon Bazira had resided in Kampala while his mother was in Bwera before they came on the land.

12 **Submissions for the 2<sup>nd</sup> Defendant:**

It was pointed out that a certificate of title is conclusive evidence of ownership as provided under Section 59 of the RTA. That the Uganda Land Commission was never sued and that the claims of the plaintiffs were not backed by evidence; that no witness was brought from the Ministry of Land and Urban Planning to testify to the land title acquisition process. It was contended that the submissions of the plaintiffs regarding alleged illegalities in the process for creation of leasehold certificate of title, absence of lease and extension applications, absence of a minute from Uganda Land Commission, were based on assumptions and speculation. It was submitted that the amended plaint did not plead fraud and no witness testified to it. I was referred to *Kampala Bottlers Ltd versus Domanico (U) Ltd, SCCA No. 22 of 1992* for the position that fraud must be specifically pleaded and proved.

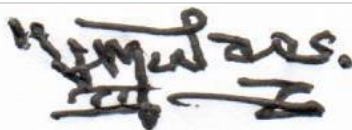
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## **CONSIDERATION BY COURT:**

Section 59 of the Registration of Titles Act (RTA), guarantees that a title deed is conclusive evidence of ownership of registered land. A title deed is indefeasible, indestructible or cannot be made invalid save for specific reasons listed in Sections 64, 77, 136 and 176 of the RTA, which essentially relate to **fraud** or **illegality** committed in procuring the registration. See: *Olinda De Souza v. Kasamali Manji* [1962] EA 756; *John Katarikawe v. William Katwiremu & Anor* [1977] HCB 187.

In the case of **Fredrick J. K Zaabwe v. Orient Bank & 5 Ors**, S.C.C.A.No. 4 of **2006** (at page 28 of the lead judgment) Justice Katureebe (JSC as he then was), relied on the definition of fraud in **Black's Law Dictionary**, (6<sup>th</sup> Ed) page 660 which states as follows:

*“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth, or look or gesture.....A generic term, embracing all multifarious, means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all*



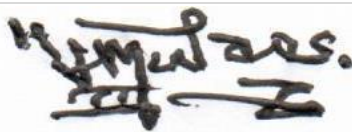


*surprise, trick, cunning, dissembling, and any unfair way by which another is cheated, dissembling, and any unfair way by which another is cheated.*

3 *“Bad faith” and “fraud” are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. ....*

6 *As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes*  
9 *anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo, by speech or by*  
12 *silence, by word of mouth, or by look or gesture.....”*

The Hon. Justice Stephen Mubiru in *Loum Kennedy & Anor. Vs. Obwoma Charles*,  
15 *Civil Suit No. 021 of 2016* held that fraud within the context of transactions in land has been defined to include dishonest dealings in land or sharp practices to get advantage over another by false suggestion or by suppression of truth and to include  
18 all surprise, trick, cunning, dissembling and any unfair way by which another is cheated or it is intended to deprive a person of an interest in land, including an unregistered interest (*see: Kampala Bottlers Limited v. Damanico Limited, S.C. Civil Appeal No. 22 of 1992; Sejjaaka Nalima v. Rebecca Musoke, S. C. Civil Appeal No. 2 of 1985; and Uganda Posts and Telecommunications v. A. K. P. M. Lutaaya S.C. Civil Appeal No. 36 of 1995*). The Learned Judge further noted that in  
24 seeking cancellation or rectification of the title on account of fraud in the transaction, the alleged fraud must be attributable to the transferee. It must be brought home to





the person whose registered title is impeached or to his or her agents. The burden of pleading and proving that fraud lies on the person alleging it and the standard of proof is beyond mere balance of probabilities required in ordinary civil cases though not beyond reasonable doubt as in criminal cases (see: *Sebuliba v. Cooperative bank Limited* [1987] HCB 130 and *M. Kibalya v. Kibalya* [1994-95] HCB 80).

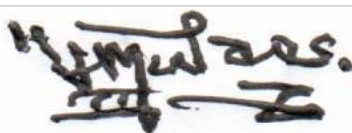
In *Kampala Bottlers Ltd vs Damanico (U) Ltd, SCCA No.22 of 1992*, it was held that:

*“ fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters, it was further held that;*

*‘The party must prove that the fraud was attributed to the transferee. It must be attributable either directly or by necessary implication, that is; the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.’*

It is contended that the amended complaint did not plead or particularize fraud. Notably, the claim of the plaintiffs is based on fraud and illegalities. I have already pointed out elsewhere in this judgment that it was averred in the amended complaint as follows:

*“The plaintiff sues the 2<sup>nd</sup> defendant seeking for declaratory judgment that all entries endorsement made in error, illegally and wrongly obtained to register Amon Bazira as proprietor certificate of title LRV 1197 Folio 5*

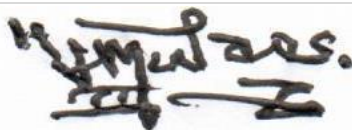


*Lease of 99 years from 1<sup>st</sup> September 1982 Block 5 Plot 3 area 441.7 Hectares of land at Kasese District”. (para 4).*

*“On 6<sup>th</sup> May 2011 search from 2<sup>nd</sup> Defendant’s registry Annex 6. It was found that 2<sup>nd</sup> Defendant unlawfully, erroneously registered Amon Bazira as proprietor under Inst. No. 212876 on 2/9/1982 LRV 1197 Folio 5 Lease of 99 years from 1<sup>st</sup> September 1982 Block 5 Plot 3 area 441.7 Hectares Busongora Kasese District”. (para 14).*

*“Each of the Defendants in one way or the other contributed to illegal and fraudulent transaction dealings on the suit land. LRV 1197 Folio 5 Lease of 99 years from 1<sup>st</sup> September 1982 Block 5 Plot 3 area 441.7 Hectares Busongora Kasese District”. (para 20).*

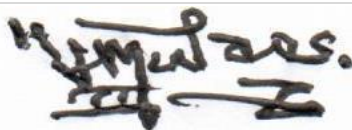
The amended complaint stated the particulars of illegalities committed in the acquisition of the lease that resulted in the issuance of the certificate of title in respect to the suit land to include absence of notice to members of the public to bring objections; absence of public hearing; ignoring plaintiffs’ occupation and use of the suit land; lack of mandate by District Commissioner to cause inspection of the land; allocation of 441,7 hectares to Amon Bazira whereas he had applied for only 202 hectares. Other alleged illegalities are detailed in paragraphs 10 – 14 of the amended complaint. I find that the amended complaint though poorly drafted, sufficiently brought out the particulars of fraud and illegalities complained about.



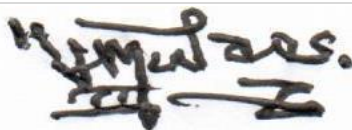
**PW5 Syanywana Kasereka Wilson** testified that in 1982 Amon Bazira fraudulently procured a leasehold certificate of title to the suit land because: the names of those who signed for the lessor are not disclosed; Amon Bazira the lessee did not sign on the lease and his names are missing; Amon Bazira did not accept the lease offer; the lease was not witnessed; there was no lease offer minute by Uganda Land Commission or Kasese District Land Board approving the lease offer to Amon Bazira; there was no inspection and recommendation by Kasese District land authority to lease the suit land for 99 years to Amon Bazira; the lease is dated 2<sup>nd</sup> September 1982 whereas the certificate of title bears a lease start date of 1<sup>st</sup> September 1982. Amon Bazira used his position as a Minister to grab the suit land.

**PW9 Mujungu Thembo Gideon** corroborated PW5 and added that at the time of processing the lease, there was no notice of public hearing to hear any objections from the plaintiffs who were lawful occupants on the suit land.

**DW 1 Kashagama Daniel Businge** stated that his father Amon Bazira was the registered proprietor of the suit land measuring 441.7 hectares with a lease of 99 years running from 1<sup>st</sup> September 1982. That Amon Bazira obtained a lease and a certificate of title in 1982. **DW2 Teddy Z. Tibendirana** stated that in 1976, Amon Bazira came to the County Chief's Office to apply for the suit land and she was the one that typed the application. That she was aware that Amon Bazira went through the normal process and acquired the lease. **DW4 Byabasaija Mereki** stated that when the liberation war started in 1978, Amon Bazira told him that he had acquired lease forms and had applied to the District Land Board to lease the land.



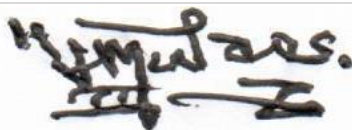
In my considered evaluation, there was no evidence presented to prove that any of the irregularities alleged by PW5 and PW9 were attributed to Amon Bazira. There was no evidence adduced to demonstrate that Amon Bazira played any role in or had any knowledge regarding the alleged omission of the names of those who signed for the lessor; the alleged omission to witness the lease document; the alleged absence of lease offer Minute by Uganda Land Commission; the alleged omission of notice of public hearing and the public hearing; the alleged omission of inspection and inspection report; and the lease date being 2<sup>nd</sup> September 1982 whereas the certificate of title bears a lease start date of 1<sup>st</sup> September 1982. Furthermore, no evidence was adduced from the Uganda Land Commission or the Office of the Registrar of Titles to prove these claims of PW5 and PW9. Notably there was also no evidence adduced from the Uganda Land Commission to prove that Amon Bazira did not accept the lease offer and that there was no offer Minute by Uganda Land Commission. No evidence was adduced of any act or acts allegedly committed by Amon Bazira that would assist the court to make a determination that Amon Bazira used his position as a Minister to fraudulently obtain registration of the suit land. During final submissions, the court requested the parties to provide more clear copies of the lease document and certificate of title and the 2<sup>nd</sup> defendant produced **CE1** where the lease document bears the names of Amon Bazira and. Although there are no witnesses stated, and the names of the representatives of Uganda Land commission are not written there, the document indicates that it was signed by the Chairman and Secretary of Uganda Land Commission. The omission to have the lease document witnessed was not fatal. Moreover, the evidence suggests that the lease document was executed in several copies with the possibility that not everyone signed on every copy – whereas **CE1** is not signed by Amon Bazira and it is not



witnessed, **CE2** that was used in Libyan Arab Uganda Bank in 2015 for a mortgage was signed by Amon Bazira and witnessed. There is no evidence that the Uganda Land Commission disowned the said lease document. The plaintiffs contended that there was no lease application in respect of the lease offer. DW2 however testified that she typed out such application for Amon Bazira. **DW4 Byabasaija Mereki** stated that when the liberation war started in 1978, Amon Bazira told him that he had acquired lease forms and had applied to the District Land Board to lease the land. Fraud must be strictly proved, the burden being heavier than one on balance of probabilities generally applied in civil matters. The plaintiffs failed to prove that the alleged fraud was attributed to the late Amon Bazira. The alleged fraud must be attributable either directly or by necessary implication, that is, the late Amon Bazira must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

I find based on the above considerations that the plaintiffs failed to prove on a balance of probabilities that the Lease Deed dated 2<sup>nd</sup> September 1982 under which Lease Hold Certificate of Title LRV 1197 Folio 5 Area 441 hectares of land on Block 5 Plot 3 Kasese District was created on 1<sup>st</sup> September 1982 was illegal or invalid or ill executed. The plaintiffs have also failed to prove on a balance of probabilities that the Lease Hold Certificate of Title LRV 1197 Folio 5 Area 441 hectares of land on Block 5 Plot 3 Kasese District was illegally and fraudulently created for Amon Bazira. I thus resolve issues No. 4 and No. 5 in the negative.

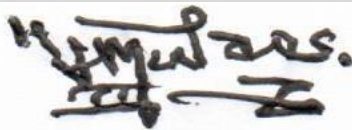
#### **6. Who is the rightful owner of the suit land?**



### **Submissions for the Plaintiffs:**

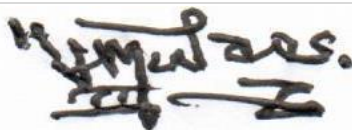
3 It was contended for the plaintiffs that they were customary owners on the suit land.  
Counsel for the plaintiffs pointed out that Section 54 of the Public Lands Act of 1969  
had defined customary tenure as “*a system of land tenure regulated by laws or*  
6 *customs which are limited in their operation to a particular description or class of*  
*persons*”. Customary tenure is recognized by Article 237 (3) of the 1995 Uganda  
Constitution and Section 2 of the Land Act, Cap. 227.

9  
It was submitted that the plaintiffs assert that at all material times the suit land  
belonged to their forefathers and they are successors in interest as customary owners  
12 of the suit land. PW6 aged 81 years was born and still lives on the suit land and over  
the years she has distributed her land to her children and grand children and this was  
confirmed by the locus visit of 4.4.2014 by Justice Batema. PW5 was a customary  
15 owner who was born and raised on the suit land. Amon Bazira came and found him  
there and acquired 4 acres on the suit land after being introduced to the Parish Chief  
by DW4. The evidence of PW1, PW2 and PW4 proves that the plaintiffs at all  
18 material times occupied and cultivated on the suit land. The evidence of DW2 and  
DW4 shows that Amon Bazira by 1980 lived in Kampala and acknowledges that  
people would come on the suit land and cultivate it on and off. The evidence of the  
21 2<sup>nd</sup> defendant’s witnesses DW2 and DW4 disproves the 2<sup>nd</sup> defendant’s claim that  
the suit land was ancestral land from the time of his forefathers. I was referred to  
***Magbwi Elikulano versus MTN Uganda Limited and Obukpwo Ray, Arua High***  
24 ***Court Civil Appeal No. 0027 of 2012*** for the position that actual possession is  
established by evidence showing sufficient control demonstrating both intention to



control and an intention to exclude others. Customary ownership of land may and indeed will be presumed from the evidence of actual possession of a house, field, garden, farm, or message on the land. (See for example *Marko Matovu and 2 Ors versus Mohammed Sseviiri & 2 Ors, SCCA No. 7 of 1997* where it was held that growing of seasonal crops on land a person occupies or grazing cattle thereon may create customary rights over the land they use). This coupled with proof that such occupancy and use was in accordance with known customary rules, accepted as binding and authoritative in respect of that land settles the issue of ownership.

It was also contended for the plaintiffs that they were lawful occupants on the suit land, having been customary tenants thereon, at the time when Amon Bazira acquired the leasehold certificate of title and he did not compensate them. It was submitted that whereas Section 22 of the Public Lands Act of 1969 did not prohibit lease grants on land occupied by customary owners, they were protected from unnecessary evictions and were entitled to be provided with alternative land or compensation, which was not done in this case. I was referred to Section 29(1)(c) of the Land Act Cap. 227 for the definition of *lawful occupant* as *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*. I was referred as an example of evidence of occupation to the existence at the time of locus visit by court of 4.4.2014, of 7 families with standing homes following the evictions by the 2<sup>nd</sup> defendant, with old remains of cotton gardens and ruins of several demolished homesteads of the plaintiffs. The plaintiffs also relied on evidence of evictions as testified by their witnesses.

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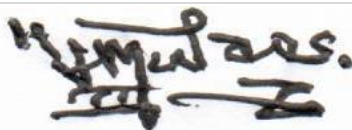
It was contended that the 2<sup>nd</sup> defendant had no lawful claim on the suit land that entitled him to evict the plaintiffs and take over possession of the suit land, his father Amon Bazira having fraudulently and illegally acquired title to the suit land. I was referred to *Rwejuma versus Jingo Mukasa (Civil Suit No. 508 of 2012)* for the position that a party could not get a better title than his predecessor's title.

### **Submissions for the 2<sup>nd</sup> Defendant:**

It was submitted that the evidence of DW2, DW3, DW4 and DW5 corroborated that of DW1 that he was the lawful owner of the suit land. DW2 stated that Amon Bazira came to acquire and asked for the land and she typed his application when the land was plain and vacant and the land belonged to the Government and people would come and dig on the land and go. Most people were at the boundaries. It was submitted that the evidence of the plaintiffs supported the evidence of the 2<sup>nd</sup> defendant that Amon Bazira owned the suit land. It was pointed out that PW1 stated that the farmers had given Amon Bazira 100 acres of land as a gift for fighting for them and that he had a home on the suit land. PW5 stated that Bazira built on the land. PW6 stated that Amon Bazira was given land by the Chief and he constructed a house on the suit land and the house was still there and that she had seen surveyors on the land in 1980.

### **CONSIDERATION BY COURT:**

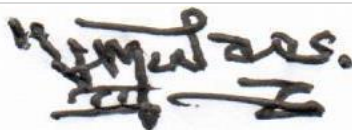
It is the submission of the 238 plaintiffs represented by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs that they are lawful claimants / occupants and customary owners on the suit land.





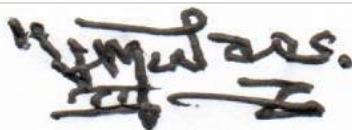
Customary tenure is recognized by Article 237 (3) (a) of the 1995 Uganda Constitution and Section 2 of the Land Act, Cap 227 as one of the tenure systems of Uganda. Under Section 24 (1) of the Public Lands Act, 1969, which was the law in force in 1982 when Amon Bazira obtained a lease and leasehold title over the suit land, it was lawful for persons holding by customary tenure, to occupy without grant, lease or license from a Controlling Authority, any un-alienated public land vested in an Administration Land Board;- (a) which was not in an urban area; and (b) in respect of which no tenancy or other right of occupancy had been created. "Customary Tenure" was defined by Section 54 of the Public Lands Act, 1969, to mean "a system of land tenure regulated by laws or customs which are limited in their operation to a particular description or class of persons." Under Section 1 of the ***Land Reform Decree of 1975*** all land had been declared to be public land to be administered by the Uganda Land Commission in accordance with the ***Public Lands Act of 1969***. Under Section 23 (2) of the Public Lands Act, the Uganda Land Commission could grant statutory leases to urban authorities that the urban authorities could then lease out to individuals. The Uganda Land Commission and the Urban Authorities worked independently from each other.

Customary tenure is characterized by local customary rules regulating transactions in land, individual, household, communal and traditional institutional ownership, use, management and occupation of land, which rules are limited in their operation to a specific area of land and a specific description or class of persons, but are generally accepted as binding and authoritative by that class of persons or upon any persons acquiring any part of that specific land in accordance with those rules. Therefore, a person seeking to establish customary ownership of land has the onus



of proving that he or she belongs to a specific description or class of persons to whom customary rules limited in their operation, regulating ownership, use, management and occupation of land, apply in respect of a specific area of land or that he or she is a person who acquired a part of that specific land to which such rules apply and that he or she acquired the land in accordance with those rules. The onus of proving customary ownership begins with establishing the nature and scope of the applicable customary rules and their binding and authoritative character and thereafter evidence of acquisition in accordance with those rules, of a part of that specific land to which such rules apply. (*See Atunya Valiryano versus Okeny Delphino, Gulu High Court Civil Appeal No. 0051 of 2017, by Stephen Mubiru, J.*)

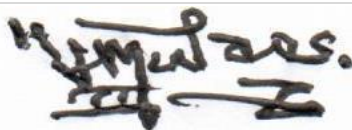
Customary tenure is governed by customary law concepts and practices. The law did not specify the customs, which remain to be proved in terms of the customary land tenure system applicable to a specified area, as under customary tenure, land is governed and managed according to the norms and practices of a particular (customary) community. Depending on the customary concepts and practices of the specified area, it may be necessary to establish from the evidence who is responsible for determining the rights of the beneficiaries, when land may be held as an individual proprietary interest or right or held communally by the family to whom it belongs or to the clan or a particular section of the community. Customary “ownership” may include usufruct rights which may include rights to use the woodlot to hunt in the hunting grounds, to graze livestock in the grazing grounds and to whatever other uses or purpose. Land ownership may be considered communal and subject to allocation for specific uses to beneficiaries by a system of

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customarily recognized institution with authority to do so. The individual landholder may have his right under customary tenure to utilize his holding as he thinks best, to rest or lend his piece of land for temporary purposes; to pledge crops on his land but not land itself; sell land subject to the approval of the family, dispose of the land according to the customary laws of inheritance and prohibit grazing near his homestead. He could also fence his homestead. The clan or family may have the right to settle land disputes within the area of control; exercise the right to buy any land offered for sale by its members; prohibit sale of clan land to undesirable persons and declare void any land transaction which had not received its approval.

**(Hon. (Rtd) Justice Galdino Okello Moro & Ors. Versus Attorney General & Ors., Constitutional Petition No. 28 of 2019, citing: Amodu Tijani v Secretary, Southern Provinces [1921] NGSC 1 (11 July 1921); John T. Mugambwa: Source Book of Uganda's Land Law Published by Fountain Publishers, 2002; Carolin Dieterle (2022) in Global Governance Meets Local Land Tenure: International Codes of Conduct for Responsible Land Investments in Uganda: The Journal of Development Studies 58. 582 - 598 at p. 588 — 589).**

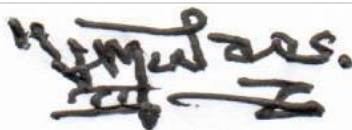
In this case it was incumbent upon the plaintiffs to adduce evidence of their customary tenure. Proof of mere occupancy and user of unregistered land, however long that occupancy and use may be, without more, is not proof of customary tenure. Possession or use of land does not, in itself, convey any rights in the land under custom. The occupancy should be proved to have been in accordance with a customary rule accepted as binding and authoritative. (see: *Bwetegeine Kiiza and Another v. Kadooba Kiiza C.A. Civil Appeal No. 59 of 2009; Lwanga v.*



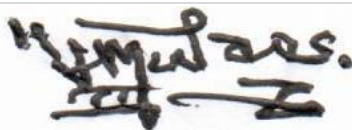
*Kabagambe, C.A. Civil Application No. 125 of 2009; Musisi v. Edco and Another, H.C. Civil Appeal No. 52 of 2010; and Abner, et al., v. Jibke, et al., 1 MILR 3 (Aug 6, 1984), all cited by Stephen Mubiru, J in Okeny Delphino, Gulu High Court Civil Appeal No. 0051 of 2017, by Stephen Mubiru, J).*

**PW5 Syanywana Kasereka Wilson** stated he was born on the suit land in 1965 and later informed by his father that the land approximately 40 acres was acquired from the estate of his grandfather. **PW6 Kakara Flora** testified that she was born in 1938 at Kihara Road, Rukoki Ward, Nyamwamba Division, Kasese District and she lived on the suit land from 1959 up to the time this case came up having acquired her land from one Nyansio. Amon Bazira had been given only a small portion of land by the Chief but he went ahead and forcefully cultivated people's land, destroyed crops, grabbed the land the plaintiffs were cultivating, chased out the plaintiffs and fenced off the land. **PW7 Dezi Kato** testified that in 1978 he requested for land from Laulensio Tibenda and Yakobo Kule and was given 25 acres of land for settlement on the suit land. He lived peacefully on the land until 1983 when Amon Bazira started burning people's houses and fenced off the land. **PW8 Bwambale John Tabalha** testified that he was born on the suit land in 1955, and that his father had told him that he had acquired the land from the area Chief one Musangi Stanley. **PW9 Mujungu Thembo Gideon** stated that he was born on the suit land in 1964 and his father later informed him that the land approximately 60 acres was acquired from Musangi Stanley in 1956.

**DW1 Kashagama Businge Daniel** stated that the suit land was always occupied and possessed by his Basongora ancestors from before the colonial days in 1891

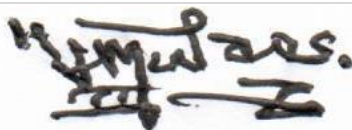


through the 1950s, 1960s, 1970s until Amon Bazira applied for a lease in the 1970s, a trial lease in 1979 and subsequently obtained a lease in 1982. That the suit land was previously ancestral land belonging to his family in Rukoki. In 1931 and it turned into a national park; in 1952 it was turned into a refugee camp for the Masai who were removed in 1989; in 1986 there was an army base. **DW2 Teddy Z. Tibendirana** stated that from 1985 to 1998, the army had a base on the suit land and there was no way people could have lived on the suit land. The suit land was controlled by the Government and it was the Government that could grant a lease. By 1975 Amon Bazira had brought his mother to live on the suit land and had started carrying out some activity on the land and that Amon Bazira started the process of leasing the land around 1976 when Augustine Ndaboina was the County Chief and the land was vacant. Before 1980, Amon Bazira was staying in Kampala. In 1986, the Government brought a barracks on the suit land when the place was vacant and bushy and there was a house there that the army turned into a school for their children. At this time, Amon Bazira and his family had left. The suit land was government land where many people would come and dig and go. **DW3 Kunihira Florence** stated that around 1980, Amon Bazira brought her, David Ndolerire, and the mother of Amon Bazira to live on the suit land. They first stayed in a uniport at the district but the mother of Amon Bazira was digging on the suit land and Amon Bazira built there a goat house, then he later built a house, and they moved there. They started farming, growing maize, soya beans, and rearing goats and cows. They found 3 families on the suit land who had mud and wattle houses with small plots but there were no other settlements. **DW4 Byabasaija Mereki** stated that no one ever constructed a house on the suit land except that people came there to cultivate. Amon Bazira consulted him on his desire to rear goats on the suit land and they



approached James Wangira the Parish Chief who allowed Amon Bazira to take over the land as the land was free of use. Amon Bazira then bought some goats and started grazing there and built there a hut and a semi permanent house and eventually started a permanent building. Amon Bazira eventually settled on the land and utilized it for his farming activities and throughout, there were no settlements there. When the liberation war started in 1978, Amon Bazira told him that he had acquired lease forms and had applied to the District Land Board to lease that land.

My analysis of the evidence as a whole leads me to the following conclusions. The suit land was public land. From time to time the land was used for different government or government aided activities such as setting up a refugee camp, and army base, and when the land became idle, it naturally turned into a game park. Different categories of people from the neighbourhood and others would use the suit land for cultivation and many others like the plaintiffs ventured and settled there. Some of the people went on the land with authority from area chiefs; Amon Bazira got some land through the Parish Chief James Wangira while the land claimed by PW8 and PW9 was acquired through a Chief called Musangi Stanley. Others seem to have been encouraged and allowed by those who were already on the land; PW7 for example requested for land from Laulensio Tibenda and Yakobo Kule and was given 25 acres but he also stated that the land belonged to Government. In similar circumstances Amon Bazira also obtained permission from the Parish Chief James Wangira and came on the land and brought his mother and some 2 dependants from Bwera while he continued living in Kampala.

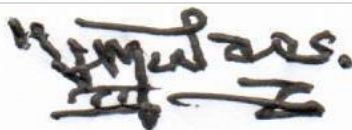


The above evidence and analysis demonstrates in summary that area chiefs and some individuals allocated public land or gave permission for its use, while some individuals also allowed others to come on the land contrary to the prevailing law. The prevailing law which was the ***Land Reform Decree of 1975*** and the ***Public Lands Act of 1969*** did not grant powers or authority to area chiefs and individuals to allocate or sell public land or simply allow others to enter upon, occupy or use public land. These methods of land acquisition in my understanding could not create customary occupancy or interests on the suit land. Moreover, Section 5 ( 1 ) o f the Land Reform Decree also provided that: "***with effect from the commencement of the decree, no person may occupy public land by customary tenure except with the permission in writing of the prescribed authority which permission shall not be unreasonably withheld and provided that the Commissioner may, by statutory order, specify areas which may be occupied by free temporary licence which shall be valid from year to year until revoked.***" There was no evidence that any of the plaintiffs had in accordance with the above requirement sought authority to occupy or remain on the suit land by customary tenure or that the Commissioner had specified areas which could be occupied by free temporary license.

I find that the methods of land acquisition and occupation employed by the plaintiffs over the suit land did not establish any of the plaintiffs as customary tenant.

As to whether any of the plaintiffs qualified as a '***lawful occupant***' or '***bona fide occupant***' Section 29 of the Land Act Cap. 227 provides as follows:

***Meaning of "lawful occupant" and "bona fide occupant".***

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(1) *“Lawful occupant” means—*

(a) *A person occupying land by virtue of the repealed—*

(i) *Busuulu and Envujjo Law of 1928;*

(ii) *Toro Landlord and Tenant Law of 1937;*

(iii) *Ankole Landlord and Tenant Law of 1937;*

(b) *A person who entered the land with the consent of the registered owner, and includes a purchaser; or*

(c) *A person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.*

(2) *“Bona fide occupant” means a person who before the coming into force of the Constitution—*

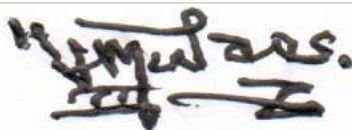
(a) *Had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or*

(b) *Had been settled on land by the Government or an agent of the Government, which may include a local authority.*

(3) *In the case of subsection (2) (b) —*

(a) *The Government shall compensate the registered owner whose land has been occupied by persons resettled by the Government or an agent of the Government under the resettlement scheme;*

(b) *Persons resettled on registered land may be enabled to acquire registrable interest in the land on which they are settled; and*





*(c) The Government shall pay compensation to the registered owner within five years after the coming into force of this Act.*

3

*(4) For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section.*

6

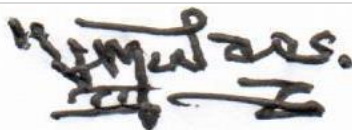
*(5) Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act.*

9

12 None of the plaintiffs and the other witnesses who testified adduced evidence that qualifies any of the plaintiffs as a *“lawful occupant”* or *“bona fide occupant”*.

15 I find that none of the plaintiffs is or was a customary or lawful or bona fide occupant on the suit land.

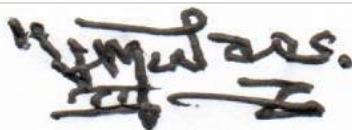
18 It is accepted that Amon Bazira obtained a lease and title in 1982. It has been noted however, that on his part, the 2<sup>nd</sup> defendant did not present an accurate account to court when he painted a picture that the suit land was always occupied and possessed  
21 by his Basongora ancestors from before the colonial days in 1891 through the 1950s, 1960s, 1970s until Amon Bazira applied for a lease in the 1970s, a trial lease in 1979 and a lease 1982. The evidence of ancestral ownership was disproved by the  
24 evidence of the plaintiffs and also contradicted by the 2<sup>nd</sup> defendant’s witnesses. Although the 2<sup>nd</sup> defendant claimed that the family owned a school, many houses or

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homes, over 450 heads of cattle, and many relatives on the land, his witnesses only made reference to a few goats, the presence of Amon Bazira's mother and 2 other dependants, and some cultivation; the only reference to a school was a house the army had turned into a school for their children when they set up base on the suit land. During locus visit the court was not shown those many houses referred to or a school or any sign of their having existed. The 2<sup>nd</sup> defendant exaggerated in his evidence to paint a picture that the suit land was massively occupied and utilized by Amon Bazira and many relatives and carried out large scale operations including a cattle farm, agriculture, a school and homesteads. The evidence as I have found is that Amon Bazira first came on the land after being allowed by the Parish Chief James Wangira and there is no evidence that the said Parish Chief gave him the entire suit land. Nonetheless Amon Bazira subsequently obtained a lease and title for the entire suit land.

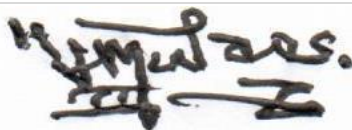
I therefore find based on my earlier resolution of the 4<sup>th</sup> and 5<sup>th</sup> issues that the 2<sup>nd</sup> defendant Kashagama Daniel Businge is the rightful owner of the suit land as administrator of the estate of the late Amon Bazira.

**The follow-up issue is the manner in which the plaintiffs left the suit land.** The plaintiffs sought damages on the basis of their averments that they were unlawfully evicted from the suit land, arrested, detained and prosecuted and obstructed from cultivating and harvesting their crops and as a result they suffered damages. It was submitted that the plaintiffs had suffered damage caused by the 2<sup>nd</sup> defendant's forceful evictions. That the plaintiffs had undergone a lot of stress and had lost livelihood for the period they had been kept out of the land by the 2<sup>nd</sup> defendant.



On the other hand it was submitted for the 2<sup>nd</sup> defendant that the plaintiffs were not entitled to any remedy. The 2<sup>nd</sup> defendant averred in his written statement of defence that there had been only seasonal cultivators who were tenants on the suit land but they had since harvested their crops and left the land peacefully. The 2<sup>nd</sup> defendant further averred that the plaintiffs with their agents had trespassed on the suit land and were stopped from trespassing over the land using lawful procedures.

Although informal settlements seem to have existed for a long time in Uganda, there had been no legal framework on evictions and demolitions. Over the years however, there have been growing concerns by government, political leaders and affected people concerning the management of land evictions and demolitions. In 2018 the Minister for Lands issued a notice to all Resident District Commissioners and Police not to allow any evictions during the December festive season of 2018. The Judiciary in acknowledgement of the problem of forced evictions issued a Practice Direction in 2007 which provided guidelines for a fair and smooth operation of orders in respect of registered land which affect or have an impact on tenants by occupancy. Under guideline S(b) it was stated that; A court when ordering the eviction of an illegal occupant of registered land, should determine a just and equitable date on which the occupant shall vacate the land and remove the illegal structure, and to determine the date on which a demolition and an eviction order may be carried out if the illegal occupant has not removed himself or herself, and his or her structure, or otherwise vacated the land as ordered. In 2021 the Chief Justice acting under powers conferred by Article 133 (1) (b) of the Constitution, issued the *Constitution (Land Evictions) (Practice) Directions, 2021*. The said *Directions* among others highlight the need for carrying

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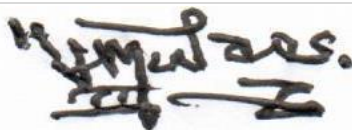
out evictions in a manner that respects the dignity, right to life, property and security of all persons affected; no arbitrary deprivation of property or possessions as a result of the eviction; and giving opportunity for evictees to salvage their property or remove illegal structures.

The Hon. Justice Ssekaana Musa in ***Misc. Cause No. 127 of 2016 (Civil Division), Muhindo James and 3 others versus Attorney General*** observed that:

*“Evictions normally result in severe human rights violations, particularly when they are accompanied by use of force. The victims of the forced evictions are put in life and health threatening situations and often lose access to food, education, healthcare and other livelihood opportunities. Indeed, forced evictions often result in losing the means to produce or otherwise acquire food or in children's schooling being interrupted or completely stopped.*

*Forced evictions usually result in people being pushed into extreme poverty and as such pose a risk to the right to life. This could further tantamount to cruel, inhuman and degrading treatment, particularly when carried out with violence as it was in the case of Lusanjja in 2018”.*

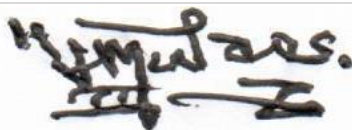
The Learned Judge further cited ***Social and Economic Rights Action Centre (SERAC) & Another vs Nigeria (2001) AHRLR 60 (ACHPR 2001)*** where it was held that the wanton destruction of property during evictions violates the right to housing and when housing is destroyed, property, health and family life are adversely affected.



Whereas evictions or forced evictions from land may be carried out without a court order there is need to protect those affected. *“In Uganda, the Land tenure system acknowledges that there are people who have settled on either public land or private land and indeed deserve protection especially after such period of time and this has become their home. The protection of such people should not in any way be linked to whether they have any proprietary interest in the land or they are squatters/trespassers”*. (Muhindo James and 3 others *supra*).

The Learned Judge further stated that: *“Furthermore, as was held in case of Port Elizabeth Municipality vs Various Occupiers {2005} (1) SA 217{CC} 55; “It does not matter that the Applicants do not hold title to the suit premises and even if they had been occupying shanties, the 1st Respondent was duty bound to respect their right to adequate housing as well as their right to dignity. Wherever and whenever evictions occur, they are extremely traumatic. They cause physical, psychological and emotional distress and they entail losses of means of economic sustenance and increase impoverishment”*.

**PW1 Baluku Simon** was the LCIII Chairman for Nyamwamba Division. PW1 tendered **Exhibit PE2**, a letter by him dated 20<sup>th</sup> September 2013, to the Registrar High Court Fort-portal reporting that ever since the 2<sup>nd</sup> defendant came in the area, he had brought hostilities against the plaintiffs. In a letter dated 22<sup>nd</sup> September 2014 (**Exhibit PE1**) to the Directorate of Land Matters, State House, PW1 reported among others that the plaintiffs were legitimate customary owners on the suit land on which

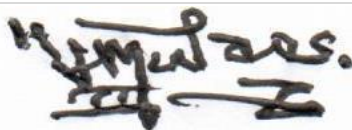


their livelihood entirely depended for growing food and cash crops; and that for the past 4 years the plaintiffs had been unable to freely access the land because the 2<sup>nd</sup> defendant used police and the army to deny them access.

**PW2 Baluku Uriah** had served as Chairperson Land Board Kasese since 2011. He testified that he wrote to the Chairperson LCV Kasese District who had requested him for information because of a dispute on ownership of the suit land and the 2<sup>nd</sup> defendant was harassing the residents.

**PW4 Bwambale Robert** testified that on 23/01/2013, the 2<sup>nd</sup> defendant and his agents in the presence of the police invaded the suit land and harvested cotton and houses of the plaintiffs were demolished and the plaintiffs were evicted. The people who had been evicted went back and cultivated but were again evicted and 2 people got killed.

**PW5 Syanywana Kasereka Wilson** stated he was in occupation on the suit land before 1982 and had a home with houses and he cultivated there and had livestock. His father died on the suit land but was buried elsewhere at the home of his elder wife as per the Bakonjo culture. After his father's death, the family continued living peacefully on the suit land until 2010 when the 2<sup>nd</sup> defendant embarked on evicting the plaintiffs who were already in occupation, demolishing and burning their houses, and arresting them using armed security men who camped on the land. One person was killed and ten people were charged in court and later acquitted. *(See the judgment dated 01.03.2012 in Criminal Case No. 0543/2011 in the Chief*



*Magistrates Court of Kasese*). Bwambale Zalimon (Plaintif No. 64) and Geoffrey Baluku (Plaintiff No. 165) were among those charged.

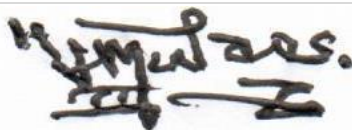
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**PW6 Kakara Flora** testified that when the 2<sup>nd</sup> defendant came in 2010, he chased them out of the land.

6 **PW7 Dezi Kato** stated that he lived peacefully on the land until 1983 when Amon Bazira started burning people's houses and fenced off the land. They reported the matter to the District Commissioner Edward Ssempebwa who ordered that they  
9 continue staying on the land. In 2010 the 2<sup>nd</sup> defendant demanded that they leave. When they resisted, they were arrested.

12 **PW8 Bwambale John Tabalha** testified that he was living on the suit land but was chased away in 2010 by the 2<sup>nd</sup> defendant. He was growing cotton and beans on the land and also had 4 mud and wattle grass thatched houses there. He was resident on  
15 the suit land together with many other people who had occupied the land and built houses there. The houses were burnt down by the 2<sup>nd</sup> defendant.

18 **PW9 Mujungu Thembo Gideon** stated that his father had a home on the suit land and another home elsewhere. During his childhood in the 1970s, their neighbours on the suit land included Bombo Kasighalire, Kitojo Ntambire, and Sibwenderwa, who  
21 were grandparents to some of the plaintiffs. PW9's father died in 1985 on the suit land but was buried elsewhere at the home of his elder wife as demanded by culture. After the burial they remained peacefully on the land until 2010 when the 2<sup>nd</sup>  
24 defendant demanded that they leave. When they resisted they were arrested and prosecuted but later acquitted. Their families were initially fenced inside the suit



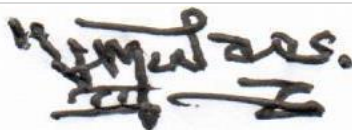


land and the 2<sup>nd</sup> defendant used the army to intimidate them. From 2011, armed men under the direction of the 2<sup>nd</sup> defendant illegally evicted the plaintiffs from the suit land and demolished their houses. PW9 had had a home on the suit land consisting of 3 mud and wattle grass thatched houses that were destroyed.

**The locus visit court record** shows that on 4/4/2014 the court then presided over by Justice Batema visited locus to for the purpose of interpreting orders that court had earlier issued under the previous judge. Justice Batema observed that the applicants (plaintiffs herein) had at that time obtained interim and temporary injunctions to maintain the status-quo of staying on the land, whereas they had already been evicted from the land. The judge observed that almost all the land was at that time in the physical possession of the 2<sup>nd</sup> defendant. That there were old remains of cotton gardens and ruins of several demolished homesteads belonging to some plaintiffs / applicants.

On 8/11/2023 the court visited locus at the conclusion of court proceedings and was taken around the land. The plaintiffs showed court what they claimed were sites of past settlements that were said to have existed before the plaintiffs were allegedly evicted by the 2<sup>nd</sup> defendant. At one site, the court saw concrete debris where it was said had hosted a grinding mill and also a grass thatched home. The court was shown a place now covered by a thicket where one of the plaintiffs claimed his relatives were buried, but the graves were no longer visible because of the thicket.

**DW1** the 2<sup>nd</sup> defendant on the other hand testified that he had never made any attempt to evict the plaintiffs and never destroyed any of their property.

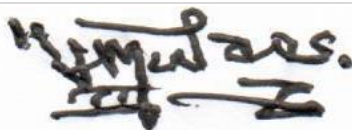
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**DW3 Kunihira Florence** stated that when the 2<sup>nd</sup> defendant returned, he tried to chase away the people who were using the land.

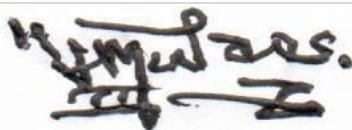
**DW5 NO. 36127 D/SGT. Salimo Martin** stated that between 2009 and June 2017 he was deployed at Kasese Central Police Station and visited the suit land several times and participated in investigations of cases of malicious damage and causing grievous harm against a number of the plaintiffs.

In my consideration of this case, this court is fully alive to the existence of potential land grabbers who encroach or settle on other peoples land without any colour of right. In my evaluation of the evidence in this case however, I find the evidence of the plaintiffs more believable that the plaintiffs had lived on the suit land for a long time where they had homes and they cultivated crops such as cotton and beans and had livestock. The plaintiffs had come on the land in circumstances similar or related to those of Amon Bazira. Amon Bazira got land through the Parish Chief James Wangira while the land claimed by PW8 and PW9 for example was acquired through a Chief called Musangi Stanley. Amon Bazira came on the land when the 2<sup>nd</sup> defendant was only 11 years old. The 2<sup>nd</sup> defendant later left the country in 1989 and returned in 2010. The 2<sup>nd</sup> defendant does not claim to have lived on the land. From the evidence of DW3, the only people who occupied the land on behalf of Amon Bazira were his old mother and 2 dependants who were DW3 Kunihira Florence and her brother Peter Ndoleriire. I am inclined to believe that the 2<sup>nd</sup> defendant did not know much about the settlements or happenings on this land which spanned a whole 1095 acres.

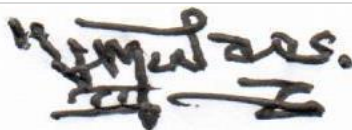


The available evidence ably demonstrates that the 2<sup>nd</sup> defendant starting in 2010 upon his return participated in and caused the plaintiffs' arrests, evictions, burning and demolition of their houses, as well as harvesting their crops and causing their malicious prosecutions. At the locus visit of 4/4/2014 the judge observed that the plaintiffs had already been evicted from the land. The judge observed that almost all the land was at that time in the physical possession of the 2<sup>nd</sup> defendant. That there were old remains of cotton gardens and ruins of several demolished homesteads belonging to some plaintiffs. At the locus visit of 8/11/2023 the plaintiffs showed court what they stated were sites of past settlements that existed before the plaintiffs were evicted by the 2<sup>nd</sup> defendant. At one site, the court saw concrete debris where it was said had hosted a grinding mill and also a grass thatched home.

The 2<sup>nd</sup> defendant committed the cited acts on the ground that he was dealing with trespassers on his land. These alleged trespassers (plaintiffs) however were not given time to prepare and vacate peacefully with their belongings after finding alternative settlements, and as a result the plaintiffs suffered loss of shelter and arbitrary deprivation of their belongings and crops as well as mental and physical suffering. The 2<sup>nd</sup> defendant committed these acts even before obtaining letters of administration which he obtained in July 2013. The letters of administration were obtained after this suit had already been filed in court. This suit was first filed in court in June 2013. The 2<sup>nd</sup> defendant then obtained letters of administration in July 2023 before filing his defence in August 2013.

A handwritten signature in black ink, appearing to be 'N. M. J. S.' with a stylized flourish underneath.

Notably, Amon Bazira had originally settled on the suit land in circumstances similar to the settlement by the plaintiffs except that he moved ahead of the plaintiffs and  
3 legalized his settlement on the suit land by acquiring a lease and a title in respect of the entire suit land. It was the uncontroverted evidence of the plaintiffs that the lease and title were obtained without their notice or knowledge and it was their evidence  
6 that was not successfully challenged that they had been in occupation of the suit land for a very long time. It was therefore inhuman, unfair and unjust for the 2<sup>nd</sup> defendant to suddenly evict them forcefully there from even before the 2<sup>nd</sup> defendant  
9 had obtained letters of administration and without affording the plaintiffs time and an opportunity to vacate peacefully with their belongings and harvests and after making arrangements for alternative shelter. I find that the evictions and demolitions  
12 moreover being accompanied by arrests, burning of the plaintiffs' houses, as well as harvesting their crops and malicious prosecutions committed against the plaintiffs by the 2<sup>nd</sup> defendant, were not carried out in a manner that respected dignity, right  
15 to property and security and resulted in suffering and arbitrary deprivation of the plaintiffs' possessions and shelter. The plaintiffs were not given an opportunity to salvage their property or remove their structures. The right thing to do would have  
18 been for the 2<sup>nd</sup> defendant to use lawful channels to ask the plaintiffs to leave and upon their refusal and claims that they were lawfully on the land, the 2<sup>nd</sup> defendant would have come to court or sought alternative remedies for a lawful resolution of  
21 the dispute. Although it was submitted for the 2<sup>nd</sup> defendant that the 2<sup>nd</sup> defendant had been inconvenienced by the acts of the plaintiffs for which he was entitled to general and exemplary damages, no evidence was adduced to support these claims.  
24 The plaintiffs having been subjected to the treatment as already analyzed could not have been the ones that had inconvenienced the 2<sup>nd</sup> defendant. I find that as a result



of the acts of the 2<sup>nd</sup> defendant, the plaintiffs suffered losses, suffering, arbitrary deprivation and inconvenience for which they are entitled to damages.

3

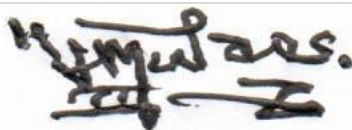
## **7. What remedies are available to the parties?**

### **General Damages:**

6

The law on general damages is that the damages are awarded at the discretion of the  
9 Court and the purpose is to restore the aggrieved person to the position they would  
have been in had the breach or wrong not occurred. See: *Hadley v. Baxendale (1894)*  
12 *9 Exch 341; Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993* and  
*Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992*. I find it fair to  
award UGX 15,000,000/= as general damages to each of the plaintiffs to be paid by  
the 2<sup>nd</sup> defendant to atone for the losses, suffering, arbitrary deprivation and  
15 inconveniences suffered arising from the evictions from and demolitions on the suit  
land, except PW6 Kakara Flora who was never evicted from the suit land. All the  
other claims of the plaintiffs have failed and are hereby dismissed. **The court issues**  
18 **the following declarations and orders:**

1. A declaration that the 2<sup>nd</sup> defendant Kashagama Daniel Businge is the  
rightful owner of the entire suit land as administrator of the estate of the  
21 late Amon Bazira.
2. A declaration that the plaintiffs are not customary tenants / owners or  
lawful occupants / owners on any part of the entire suit land.



3. The Lease Deed dated 2<sup>nd</sup> September 1982 under which the leasehold was created on the suit land on 1<sup>st</sup> September 1982 was legal, valid, and properly executed.

4. The Lease Hold Certificate of Title for the suit land was legally and properly created for Amon Bazira as proprietor.

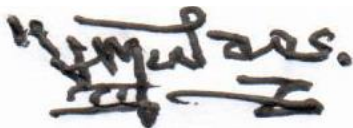
5. A permanent injunction doth issue restraining the plaintiffs, their agents or any person from illegal entry, occupation, use, or interference with any part of the entire suit land belonging to the 2<sup>nd</sup> defendant as administrator of the estate of the late Amon Bazira.

6. Each of the plaintiffs listed on the attached list of plaintiffs is awarded UGX 15,000,000/= as General Damages to be paid by the 2<sup>nd</sup> defendant to atone for the losses, deprivation, and inconveniences suffered arising from the evictions from and demolitions on the suit land. The payment shall be made upon proper identification of each plaintiff with the aid of a valid National Identity Card. Except that PW6 Kakara Flora who was never evicted from the suit land shall not benefit from this award.

7. Interest is awarded on the General Damages at the rate of 8% per annum from the date of delivery of judgment until payment in full.

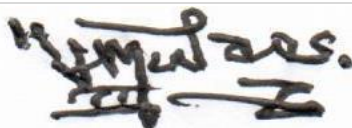
8. The plaintiffs are awarded half of the costs of the suit to be paid by the 2<sup>nd</sup> defendant.

It is so ordered.



Vincent Wagana

High Court Judge / FORT-PORTAL



**DATE: 19/04/2024**

3

6

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT FORTPORTAL  
HCT-01-LD-CS-0021**

9

**4. SYANYWANA KASEREKA WILSON  
5. THEMBO GIDEON MUJUNGU  
6. APOLLO KATHABANA AND 238 OTHERS=====PLAINTIFFS**

12

**VERSUS**

**3. THE REGISTRAR OF TITLES  
4. KASHAGAMA DANIEL BUSINGE=====DEFENDANTS**

15

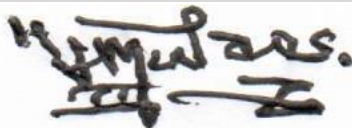
**LIST OF PLAINTIFFS**

18

1. Muhindo Selevest
2. Masereka Samuel
3. Mujungu Gidion
4. Kaminyirwa Alex
5. Godi Kisungu
6. Methende Elias
7. Bwambale Robert
8. Kule Rogers
9. Wahimba Fanahasi

21

24

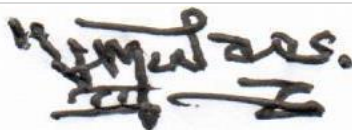


- 10.Kabugho Yezefina  
11.Masereka Yokana  
3 12.Kasabbu Masereka Alfred  
13.Kamalha Samson  
14.Bahati Ngotho  
6 15.Sunday Jana  
16.Wasukundi Edson  
17.Wasukundi Julius  
9 18.Kule Gilbert  
19.Bwambale Jowazi  
20.Baluku C.K.  
12 21.Baluku Isaya  
22.Masereka Yonah  
23.Kule Joseph  
15 24.David Muhasa Bulenge  
25.Muhindo Julius  
26.Baluku Sibughenderwa  
18 27.Sunday Zalimon  
28.Wakabalya Headmon  
29.Luka Ntambire  
21 30.Yosiya Ntambire  
31.Kiiza Racheal  
32.Biira Jeneva  
24 33.Mbambu Zoromina  
34.Syanywana Wilson

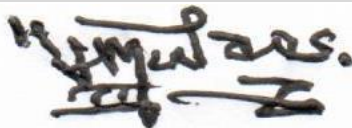
- 35.Mbusa Nzangwa Gedion  
36.Alinah Daniel  
3 37.Baluku Samson Nzangwa  
38.Bwahere Steven  
39.Rukendo John  
6 40.Appolo Kathabana  
41.Mutasi Yanasimu  
42.Raubeni Mwahulhwa  
9 43.Kule Amon  
44.Baluku Peter  
45.Dezi Kato  
12 46.Bisogho Amisi  
47.Sibughenderwa Joseph  
48.Mukusi Jackson  
15 49.Baluku Alexandar  
50.Bwambale Nason  
51.Mundala Jestus  
18 52.Kule Yokoniah Mundala  
53.Mbambu Yolesi  
54.Nzanguma Emmanuel  
21 55.Baluku Fanahasi  
56.Masika Farida  
57.Walyamba Jockim  
24 58.Kyakimwa Aidaloya  
59.Basuba Jestina



- 60.Masika Pesikezia  
61.Nzangwa January Masereka  
3 62.Mbutho Kokonia  
63.Muhesi Wilson  
64.Bwambale Zalimon  
6 65.Baculeza Eric  
66.Kathaba Moses  
67.Juma Kithakuli  
9 68.Wasyalya Yonasimu  
69.Balyebuga Daniel  
70.Kihuka Asasio  
12 71.Wlyamba Rabson  
72.Tsongo Nason  
73.Thabalha Neckson  
15 74.Bwambale Longino  
75.Muneyi Elijah  
76.Wahimba Fanahasi  
18 77.Mbambu Sikola  
78.Masereka Isemakaki  
79.Mbambu Faith  
21 80.Muhindo Elijah  
81.Tsongo Emmanuel  
82.Mughuna John  
24 83.Sirimughaniah Kule  
84.Kule Nelson

A handwritten signature or mark in black ink, possibly reading 'Muguna' or similar, with a stylized flourish below it.

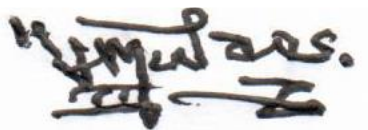
- 85.Nsubuga Tsongo  
86.Sindeghene Jockus  
3 87.Basuba Johnson  
88.Wasyalya Saimon  
89.Kihuka Jockim  
6 90.Kihuka Rabson  
91.Masereka Gedion  
92.Kule Janakaison Tsongo  
9 93.Salya Harozon Isebahasa  
94.Yovani Bwambale  
95.Bukombi  
12 96.Bwambale Jimmy  
97.Nzangwa Zedekiah  
98.Sele Kibahwa  
15 99.Ezaket Bwambale  
100. Wasyalya Hanning  
101. Thabugha  
18 102. Bahati Mike Katomera  
103. Tsongo Julius  
104. Samule Bisogho  
21 105. Bonifasi Bughogholo  
106. Surambaya Samson  
107. Kibaya Nehemiah  
24 108. Sele Tabalha  
109. Erikana Bwambale

A handwritten signature or mark in black ink, possibly reading 'Nsubuga' or similar, with some additional scribbles below it.

|    |      |                       |
|----|------|-----------------------|
|    | 110. | Ndobyia Zefaniah      |
|    | 111. | Mutsumba Joseph       |
| 3  | 112. | Sele Mithundira       |
|    | 113. | Kihuka Enosi          |
|    | 114. | Sarabuli Velentina    |
| 6  | 115. | Edson Wakabalya       |
|    | 116. | Kibaya Sowedi         |
|    | 117. | Bwambale Kassighalire |
| 9  | 118. | Kambere Moses         |
|    | 119. | Muhindo Jostus        |
|    | 120. | Thamwanzire Daniel    |
| 12 | 121. | Asasio Mabunda        |
|    | 122. | Thembo Rabson         |
|    | 123. | Sirimughania Robert   |
| 15 | 124. | Munywani              |
|    | 125. | Mwiregho              |
|    | 126. | Nzenda                |
| 18 | 127. | Kibaya Zaliya         |
|    | 128. | Mosoro Smith          |
|    | 129. | Nzwangene Jostus      |
| 21 | 130. | Bwambale Saimon       |
|    | 131. | Kyakimwa Robina       |
|    | 132. | Kabughho Pulikeria    |
| 24 | 133. | Basuba Eliza          |
|    | 134. | Masika Elizah         |

- |    |      |                       |
|----|------|-----------------------|
|    | 135. | Mbambu Yeresi         |
|    | 136. | Kyakimwa Yeresi       |
| 3  | 137. | Kabugho Jona          |
|    | 138. | Kabugho Sarah         |
|    | 139. | Kabugho Jethu Nyabani |
| 6  | 140. | Mauniah Daniel        |
|    | 141. | Kithamuliko Eriya     |
|    | 142. | Masika Yeresi         |
| 9  | 143. | Kihuka Alfred         |
|    | 144. | Mukandirwa Yowasi     |
|    | 145. | Kabugho Jethu         |
| 12 | 146. | Kule Jackson          |
|    | 147. | Mathumu Nelson        |
|    | 148. | Kalenda Augustine     |
| 15 | 149. | Kapere Araliyo        |
|    | 150. | Mutasi Kizito         |
|    | 151. | Sunday Kabalira       |
| 18 | 152. | Kasambangene Jofrey   |
|    | 153. | Bwambale Erifazi      |
|    | 154. | Kijabe Wilson         |
| 21 | 155. | Mbambu Staluzi        |
|    | 156. | Kiribyunza Silivano   |
|    | 157. | Kule Nziake           |
| 24 | 158. | Mubiri Isebahasa      |
|    | 159. | Ithungu Agness Nziake |

160. Kihathiro Uliah  
161. Kihathiro Simon  
3 162. Isemusoro Nyamayamuswa  
163. Kyakimwa Nyamatayo Surambaya  
164. Jackson Munyirungu  
6 165. Geoffrey Baluku  
166. Hangi Sabastiano Bakoko  
167. Bwambale Zephanusi  
9 168. Flova Kakala  
169. Nyamagambwa Akiiki  
170. Nyangando Atwooki  
12 171. Tereza Akiiki  
172. Yosinta  
173. Baywithire George  
15 174. Biira Grace



Vincent Wagona

18 **High Court Judge / FORT-PORTAL**

**DATE: 19/04/2024**

