

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CIVIL APPEAL No. 0019 OF 2018
(Arising from Kitgum Grade One Magistrate's Court Civil Suit No. 27 of 2013)

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OCAN ENSIO WANYAMA APPELLANT

VERSUS

OKENY CEASER RESPONDENT

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Before: Hon Justice Stephen Mubiru.

JUDGMENT

15 The respondent sued the appellant for recovery of 130 acres of land, at Tekot Ward, Layita Parish, Omiya Pacwa sub-county, Agago District, a declaration of ownership, an eviction order, a permanent injunction, general and special damages for trespass to land. The respondent's claim was that the land in dispute is owned communally by the respondent's father and his nine brothers. None had ownership over any specific portion. The appellant's father sought refuge
20 from cattle rustlers in 1978 and was given five acres of this land, for temporary use as grazing land. He later returned to his home in Omiya Pacwa Trading Centre. However, during insurgency in 1986, he returned and resettled on the land until people living in that area were displaced into an IDP Camp where he died in 2007. At the end of the insurgency, he appellant returned to re-occupy the land against the respondent's family members wishes. In his defence,
25 the appellant refuted the respondent's claim and contended that he lived on the land since birth and is therefore in lawful occupation.

P.W.1, Okeny Caesar, the respondent testified that the appellant is his cousin, son of his paternal uncle. The land in dispute was first occupied in 1896 by his late grandfather, Kwor son of
30 Omiya. It is now occupied by his lineal descendants. The land belongs to their clan. In 1979, the appellant's father was given a portion of this land, for temporary use as grazing land and later

five acres for cultivation of crops. He vacated the land in 1986. Later the appellant returned in the year 2011, built a house thereon in the area that his father used to occupy and began claiming 80 additional acres of the land. The Chairperson of the clan has powers to sue on behalf of the clan. The clan now wishes to recover its land from the appellant.

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P.W.2, Ebelina Otto, the respondent's mother, testified that the appellant is her nephew. The appellant's father came to settle on the land in flight from Karimojong cattle raiders. He was allowed to occupy approximately twenty acres of land. The family now wants the land back.

P.W.3 Okidi Joseph stated that in 1979, the appellant's father was given some land on which to
10 graze his cattle as he fled from Karimojong cattle rustlers. He established a settlement and garden on the land. He later left the land and returned to his place of origin where he eventually died. The appellant subsequently claimed the land as his on grounds that it had belonged to his father in the past.

15 P.W.4, Jali Charles stated that the appellant's father migrated from Karamoja and sought permission to settle on the land in dispute in 1979 when he came with his cattle. He left the land in 1986 and returned to his original home. He returned after his cattle had been rustled and left once again in 1988. In the year 2000 he was told never to return to the land. The appellant has since constructed house and established gardens on the land, against the will of the Kariam clan.

20 The appellant's mother was buried on that land. P.W.5 Omunga Martine testified that the land in dispute belongs to the clan. In 1979 the appellants father had been granted right to graze his cattle on part of the land in dispute, and in 1986 he was permitted to grow crops thereon. In 1987 he returned to his place of origin with his cattle. When his cattle were rustled, he returned to the disputed land and during his stay the appellant's mother died and was buried on that land.
25 The appellant has since taken possession of the land and refused to vacate. The Chairman of the Kariam Clan decided to sue the appellant. The respondent closed his case.

D.W.1 Ocan Ensio Wanyama, the appellant, testified that he began living on the land in 1969 and when his mother died she was buried on that land, with twelve of his other deceased siblings.

30 The land is occupied by his family and surviving step-mothers. The respondent has never lived on the land. D.W.2 Donasiano Banya testified that he is the appellant's neighbour. The

appellant's father settled on the land while it was vacant, virgin land. The land does not belong to the Kariam Clan and the appellant has graves of eleven relatives of his that were buried there.

D.W.3 Opio Alfonse testified that the appellant's father Yoweri Abwang used to live on the land in dispute and had a farm thereon. The land is now occupied by the appellant. Yoweri acquired
5 the land in 1969 at a time when it was vacant and he built a house on it during the year 1971. The land which belongs to the Kariam Clan is to the East of the land in dispute. It measures approximately a square kilometre. The land has never been occupied by the respondent. The appellant closed his case. The court then visited the *locus in quo*. The court found that the appellant and his family had a homestead on the land and graves of some of his relatives were
10 found to exist on the land. .

In his judgment, the trial magistrate found that the respondent's evidence was consistent and appears truthful. On the other hand, D.W.3 appeared untruthful and turned up drunk in court. The appellant produced contradictory evidence when he claimed that he found the land vacant and
15 virgin land and at the same time claimed to have acquired it from Yoweri. The respondent accordingly proved that he is the rightful owner of the land in dispute. He was declared as such and the trial magistrate then found the appellant to be a trespasser on the land. The trial magistrate then issued an order of vacant possession, a permanent injunction, awarded general damages of shs. 3,000,000/= with interest thereon at the rate of 6% per annum from the date of
20 delivery of the judgment until payment in full, and the costs of the suit.

Being dissatisfied with the decision, the appellant appealed to this court on the following grounds, namely;

1. The trial Magistrate erred in law and fact when he failed to properly consider the
25 limitation period for a claim of recovery of land thereby reaching a wrong conclusion and occasioning a miscarriage of justice.
2. The trial Magistrate erred in law and fact when he held that there was a cause of action disclosed thereby occasioning a miscarriage of justice.
3. The trial Magistrate erred in law and fact when he did not evaluate the evidence properly
30 to establish a customary interest in the suit land which occasioned a miscarriage of justice to the appellant.

The respondent, a self represented litigant, was not in court when the appeal came for hearing. The court being satisfied that the respondent was in court on 7th September, 2018 when it considered and granted an application for stay of execution, where after the appeal was fixed
5 inter-parties for hearing, and there being no explanation for his absence on the date the appeal was due for hearing, accordingly granted counsel for the appellant leave to proceed ex-parte under Order 43 rule 14 (2) (a) of *The Civil Procedure Rules*.

In her submissions, counsel for the appellant Ms. Alice Latigo argued in respect of ground one
10 the law of limitation is s. 5 of *The Limitation Act*. The proceedings indicated that the defendant he settled on the land in 1979. It was only in 2011 that the plaintiff requested him to leave the land. Exhibit P.E.1 a letter written and signed by the respondent as a chairperson of the clan. All the eyewitnesses including P.W.2 alluded to the fact that the defendant's father had settled on the land in 1979 and it was more than twenty acres. He said there had not been any land dispute.
15 This evidence was re-echoed by P.W.4 who stated that he is aware that so many people are buried on the land and that it was in 1979 that the defendant's father came and settled on the land. P.W.5 indicated that he lives near the suit land and that it belongs to the clan. He indicated that in 1979 the father of the appellant came and settled on the land and it is the land in dispute and that they are cultivating. D.W.1 the appellant indicated that he began living on the land in 1969 and
20 the his father several other relatives were buried there. 12 of his brothers were buried there. The dispute began in 2013 when the respondent came from Kampala and began claiming the land. The Court should have considered that the respondent was already time barred on the basis of limitation since he initiated the first case in 2013, more than 34 years from the time when the appellants began living o the land.

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Regarding the second ground 2, she argued that the scheduling notes indicate that four issues were raised but in the judgment two issues are considered but they are not the ones framed at the scheduling. The trial ignored the issue of cause of action. He raised his own issues. The first one was not raised for determination. *Auto Garage v. Motokov* settles the nature of a cause of action.
30 The proceedings indicate that the respondent never lived on that land. The plaintiff's father is stated to have been owner in 1978. Lucia Aparu had his own children and lineage of inheritance.

The record of proceedings indicates the land was given not by his father but Lucia Apará who had no issued with the appellant's father to-date. The respondent did not produce any evidence of powers of attorney or letters of administration or a beneficiary to the estate of Lucia Apará. All witnesses are consistent that it was Luca'a land. P.W.2 Everina Atto stated that she did not get
5 married to the father of grandfather of the respondent. She still lived on part of that land where the husband left her. She contested that it was not given to the father of the respondent. P.W.4 said he lived in the middle of the land in dispute and in 1979 Odong started living on the land until he died. He was buried in the camp because of insurgency.

10 She gave a description of what was on the land. D.W.1 and D.W.2 backed it up. He lived there since 1969. The respondent sued as chairman of the clan land. He indicated clearly that the land belongs to his clan and that the clan allowed him to sue as the chairperson of the clan land. He then said he was not there when the land was given. All members were on the Eastern not western side of the land. P.W.5 told court under cross-examination that the plaintiff only sued on
15 their behalf of in 2013, that is the clan. At the locus visit, the only thing for the respondent was a grinding stone yet he never testified about it. The plaintiff did not sue in his right but on behalf of the clan without powers of attorney or representative order. She prayed that the appeal be allowed and the decision of the court below be set aside, the costs be awarded to the appellant in the court below and of the appeal.

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This being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see in *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17of 2000; [2004] KALR 236*). In a case of conflicting evidence the appeal court
25 has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.

The second ground of appeal impugns the decision for failure by the trial magistrate to find that the respondent had no cause of action against the appellant. Although presented in those terms, it
30 appears to me that the issue is of one of *locus standi* entangled with considerations of the existence of cause of action. In law, the right to bring an action is based on the ability of a party

to demonstrate to the court that he or she has sufficient connection to the harm flowing from the action challenged to support that party's initiation of or participation in the case. Save for public interest litigation, to possess *locus standi*, the party must demonstrate that he or she; (i) has suffered or imminently will suffer injury or an invasion of a legally protected interest; (ii) a causal connection exists between the injury and the conduct complained of, so that the injury is fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party who is not before the court; and (iii) a favourable court decision will redress the injury.

For any person to have *locus standi*, such person must have “sufficient interest” in respect of the subject matter of a suit, which is constituted by having; an adequate interest, not merely a technical one in the subject matter of the suit; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be current, not hypothetical. The requirement of sufficient interest is an important safe-guard to prevent having "busy-bodies" in litigation, with misguided or trivial complaints. If the requirement did not exist, the courts would be flooded and persons harassed by irresponsible suits. Courts deny *locus standi* to anyone who appears to be a mere busybody or mischief maker.

In the instant case, in paragraph 4 (b) of the plaint, the respondent pleaded that the land in dispute was owned communally by his grandfathers, and so did his father together with his paternal uncles who took after them. In his testimony, he stated that he was claiming on behalf of the Kariam Clan. This was confirmed by P.W.4, Jali Charles who stated that the appellant is occupying the land against the will of the Kariam clan. P.W.5 Omunga Martine testified that the land in dispute belongs to the clan. It is in his capacity as Chairman of the Kariam Clan, that the respondent decided to sue the appellant. Section 1 (j) of *The Land Act* defines "community" as an indigenous community of Uganda as provided for in the Third Schedule to the Constitution, or any clan or sub-clan of any such indigenous community communally occupying, using or managing land. The respondent thus sought to enforce some form of communal claim to land held under customary tenure.

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Communal customary land ownership is to be contrasted from private land ownership. Private land ownership allocates particular parcels of land to particular individuals to use and manage as they please, to the exclusion of others (even others who have a greater need for the resources) and to the exclusion also of any detailed control by society. In exercising this authority, the property owner is not understood to be acting as an agent or official of the society. He or she may act on their initiative without giving anyone else an explanation, or may enter into cooperative arrangements with others, just as they like. They may even transfer this right of decision to someone else, in which case that person acquires the same rights they had. In general the right of a proprietor to decide as she pleases about the land they own applies whether or not others are affected by their decision.

On the other hand, customary land ownership recognises communal "ownership" and "use" of land (see section 3 (1) (f) of *The Land Act*). Under section 15 (1) of *The Land Act* an association may be formed for the "communal ownership and management" of land. By providing for customary tenure of a communal type, *The Land Act* deals with various forms of what is essentially the authority over the use and disposition of land, such as; "ownership", "use", and "management." In the Act, communal "ownership," presents the idea of "collective property," based on the notion that the community as a whole determines how important resources, such as land, are to be used. The idea is that the community allocates land for the private use of its members. These determinations are made on the basis of social interest through mechanisms of collective decision-making or collective control, of varying levels of formality, anything from a leisurely debate among the elders of the community to the formation and implementation of strict rules. In this sense, land is "owned" by the community and the individual members enjoy only rights of user.

Alongside the idea of "communal ownership," by providing for "use" and "management," through providing for the setting aside of one or more areas of land for "common use" by members of the group for such activities as; the grazing and watering of livestock, hunting, the gathering of wood fuel and building materials, the gathering of honey and other forest resources for food and medicinal purposes, or such other purposes as may be traditional among the community using the land communally (see section 23 (1) of *The Land Act*), the Act creates a

right of commons within a community where each member has a right to use independently the holdings of the community. Access to tracts of land that are categorised as "common property" or a "common good" is regulated at the community level by restricting exploitation to community members and by imposing limits to the quantity of goods being withdrawn from the common good. Under a communal land ownership system, non-members of the community are excluded from using the common areas, except with permission of the community. Less frequently, and generally only among hunter-gatherer and pastoral communities, no part of the domain is earmarked for private use.

10 A system in which resources are governed by rules whose point is to make them available for use by all or any member of the society, is in essence a "common property" system. A tract of common land, for example, may be used by everyone in a community for grazing cattle or gathering firewood. The aim of any restrictions on use is simply to secure fair access for all and to prevent anyone from using the common resource in a way that would preclude its use by others. Therefore, the system of customary communal land ownership and use established by *The Land Act* is one that has aspects of "collective property" alongside "common property" and limited "private ownership" rights enjoyed by individuals or households.

Conversely, there are also communities whose lands are entirely comprised of discrete family parcels, but who use, govern, and transfer these in accordance with community sustained norms ("customary law"). For example, section 22 (1) of *The Land Act* recognises that even for land communally owned, part of the land may be occupied and used by individuals and families for their own purposes and benefit, "where the customary law of the area makes provision for it." Individuals or households may as well cause their portions of the land to be demarcated and transferred to them, of such land which in accordance with customary law, is made available for the occupation and use of that individual or household, (see section 22 (3) (b) of *The Land Act*). This presents the reality of limited private ownership rights existing even within communal customary ownership. Individual and family interests to specific parts of the community property are acknowledged and nested under collective tenure as derivative rights. While permitting the alienation of private parcels from the community area or its authority, this provision at the same

time leaves the definition of private rights in community lands to community decision-making or customary law.

Hence communal land refers to the entire domain of the community, including parcels set aside
5 for the exclusive use of a family, individual or sub-community group under usufruct rights. A
Certificate of Customary Ownership issued under section 4 (1) of *The Land Act* to a community
holding land under customary tenure therefore covers both communally owned lands and parcels
allocated for exclusive private use of community members. Save for registered private owners,
title to communal land is vested directly in communities, a form of exclusive collective
10 possession. The implication of section 8 (2) (f) of *The Land Act*, is that Communal owners to
whom a certificate of customary ownership has been issued may alienate certain parts of that
property or the entire property, unless restricted by the conditions of the certificate. This may
entail majority community support, and / or the permission of elected or traditional leaders. Of
course, communities may themselves determine that their land is not alienable or even leasable.

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This complex communal customary tenure comprises rights in common to pastures and forested
land alongside more or less exclusive private rights to agricultural and residential parcels. In this
context, the word ownership is misleading. A person does not really own land, but rights in land.
Communal customary tenure is in essence a bundle of rights, which may vary from community
20 to community. The holder of all these interests, if they vest in one person in relation to land, will
have the whole bundle of rights and interests. The "owner" of land therefore only has an interest
or estate in the land, whose categorisation will depend on the degree of exclusive use that is
accorded to that person, such that limited "private ownership" offers the highest degree, while
"common property" confers exclusivity only as against non-members of the community.

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The common law recognises a number of property interests, such as ownership, possession, use
and management. Consequently, there are many variants of customary communal ownership of
land. In some communities, the system may confer rights of direct use, including the right to
forage, plant, build etc. Some of these rights might be vested in individuals, usually male, others
30 in larger groups such as descent groups (for example clans) or those to whom they gave
permission, or they may be vested in a small group, such as an individual and his or her

household (family). These rights could be acquired directly or indirectly through marriage or by marriage, permission or affiliation. Sometimes sex, age and status may be determinants of the acquisition or vesting of such rights.

5 In other communities, there could be rights of control over types of land and over the transfer of property vested in leaders and those of status in the social hierarchy, such as elders and chiefs. Some would vest in those lower in the hierarchy such as household heads. Residual and symbolic rights vested in the descent group or individuals may exist in which property interests are closely related with the status of different holders of rights. The granting or transfer of property rights in this type of society reflects not just property interests or wealth but political, social organisation,
10 kinship ties etc. There may be rights to indirect economic gain, tribute or rent vested in descent groups or representatives of such groups, in return for land use rights. Such rights might include the right to receive goods and services, but also to receive symbolic things.

Most communities in which permanent user rights are granted allow for land inheritance. In
15 some communities, sales of communal land are more or less still banned since ownership of land does not confer any personal individual right of ownership (see for example *Tufele Liamatua v. Mose American Samoa, Pacific Law Materials 1988*), while in others such transactions are strictly regulated by members of the family, the clan or the chiefs, where an "owner" may sell a land, if his next of kin agree or approve (see for example the Pacific Islands case of *Tereia Timi*
20 *v. Meme Tong Kiribati Land Appeals No. 1 of 1996*). Yet in others communal control is all but practically gone. Many customary norms prevent members of the community selling community property, although each member may hold an exclusive right to land, including the right to bequeath it to heirs. In some customary regimes, sale of family parcels within the domain has long been permitted, subject to permission of the traditional authority.

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Some communities that still have control over vast land are yet to transit into a state of "collective property." In such communities, land is "common property" and any member of the community may have the right to take up and use available land, and in so doing, hold it in his or her exclusive possession for as long as he or she continues using it. The limit to this right is that
30 such member should not hold land out of use, nor take up so much as to deprive others their own right to similarly take up land.

Although communal ownership of land as "collective property" does not confer any personal individual right of ownership but rather rights of use subject to community interest, as individual clan or traditional leaders of the community exercise more and more control over such property, sometimes allocating more land to themselves and their assigns, it is gradually converted into private property. The categorisation of interests in communal land thus depends on the extent of one's right to exclusive use. There are rights of direct use, rights of indirect economic gain, rights of control, rights of transfer, residual rights and symbolic rights (see Tony Chapelle, *Customary Land Tenure in Fiji: Old Truths and Middle-aged Myths*, The Journal of the Polynesian Society, Vol. 87, No. 2 (June 1978), pp. 71-88). There is no universal practice. How these rights or interests are divided will vary from community to community.

The nature of any suit for recovery of land simply is that it seeks to enforce the rights of exclusion conferred by a specific category of ownership or possession by a person in whom those rights vest. Considering the myriad forms and rights that may be encompassed by communal customary land ownership or use, a plaintiff seeking recovery of communal customary land therefore should not only disclose the fact that the rights sought to be enforced vest in the plaintiff but should also disclose the nature of the rights sought to be enforced. In a suit for recovery of land in which rights are enjoyed communally, it should be made evident by the facts pleaded in the plaint as to whether the land in issue is "collective property," "common property" or "private property." This is because "common property" gives rise to usufructuary rights only and a legal right to manage but not own or possess, in which case the litigant sues as a steward in protection of group interests, while "collective property" gives rise to rights to private use subject to community interests, of land allocated by the community and "private property" gives right to individual or household use and management as the member may please, to the exclusion of others. With regard to "collective property", one would be enforcing only those user rights that are based on the extent of exclusive possession of the land allocated to him or her by the community which may or may not have ripened into private property rights, since in some communities such land may not be freely alienated.

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That aside, customary law has a tendency to give different treatment to family members depending on their status in the family and their gender. It also tends to protect the social position of men. Customary tenure is, by definition, a community-based property regime, it follows that statutes generally admit customary law as the main source of rules and norms by which communities govern their properties, subject to limitations established in the Constitution and other statutes, including the land law itself. The applicable rules of customary law to that "collective property" or "common property" will then need to be measured against the constitutional standard to determine their enforceability, since according to article 2 (2) of *The Constitution of the Republic of Uganda, 1995* and section 15 (1) of *The Judicature Act*, the only enforceable existing customs, are those which are not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with the Constitution or any written law. They accordingly should be customs reflecting cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution.

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Whereas at common law it is possible to have co-owners who have individual property rights in land, communal ownership of land does not necessarily confer any personal individual right of ownership. Similarly, whereas at common law adverse possession beyond a specified length of time would confer property rights by prescription, actual occupation under communal ownership does amount to adverse possession, even if it is over and beyond the statutory period of limitation. The separation of the enjoyment of property rights in land and its administration, implies that there may exist, side by side, all of these types of proprietary interests. Sometimes they will co-exist peacefully, sometimes they will come into conflict, importing the common law notion of plurality of owners on one parcel of land. Exploitation of unequal power relationships within communities, for example, may result in some members fencing off portions of communal lands for their own exclusive use, thereby denying access by other members of the community to shared grazing lands. A public spirited individual within the community who intends to enforce community rights in collective or common property may then be faced with issues of *locus standi* to sue for the restoration of those rights.

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For example in the Botswana case of *White v. Kgalagadi Land Board and another* 2012 1 BLR 764 (HC), In 2004, the second respondent was allocated a ranch by the respondent Land Board (first respondent). In 2006, the appellant objected to the allocation. The land board dismissed his objection. His appeal to the Land Tribunal was dismissed for lack of *locus standi* and he
5 appealed further. Prior to the allocation, the land in question had been communal grazing land and some of the residents of surrounding settlements, including the appellant, had grazed their cattle on the land. The appellant's objection was that his cattle production enterprise would be prejudiced by the allocation as his cattle would no longer be able to graze on the land. It was held that in order for a litigant to have *locus standi*, one had to have a real and substantial interest in
10 the subject-matter of the dispute. The Land Tribunal was correct in holding that the appellant lacked *locus standi*. The appellant was found to be a busybody who has made it his business to champion without mandate, the rights of those members of the society whom according to him were voiceless and downtrodden.

15 Therefore, for an individual to maintain a suit in respect of communal land, the rights sought to be enforced must be exclusive as against the community at large, such rights being independent of the rest of the members of the community and exercisable by such individual as of right. Otherwise, where the rights sought to be enforced are exclusive only in the limited sense that they depend for their enjoyment upon similar rights in others, such rights are subordinate to those
20 of the community. In the latter case, since the question is one of a common or general interest of many persons, the options available are; (i) to sue as a communal land ownership committee, incorporated under section 18 (3) of *The Land Act* (community as a legal person); or (ii) sue in a representative capacity in accordance with Order 1 rule 8 and Order 7 rule 4 of *The Civil Procedure Rules*; or (iii) initiate public interest litigation under article 50 of *The Constitution of*
25 *the Republic of Uganda, 1995*, all designed for members of a community or the public, in appropriate cases, to come forward to protect the rights of a person or persons belonging to a determinate class who, by reason of being numerous, poverty stricken, helplessness, disability, socially or economically disadvantaged persons, are unable to approach the court for relief.

30 Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may be authorised by court to sue in such cause or matter on behalf or for the

benefit of all persons so interested. The general rule in equity is that all persons materially interested in the subject matter must be made parties in order that complete justice be done. The suit is then deemed to have been instituted by everyone whose interest is permitted to be represented by the plaintiff. Otherwise, a suit brought by an individual without leave of court,
5 seeking remedies on behalf of numerous un-named persons having the same interest in one cause or matter, is incompetent and must be struck out (see *Paul Kanyima v. Rugoora Per Pre Kicumbi Barista Katwerana Society [1982] HCB 33*).

As a general rule all persons interested in a suit ought to be joined as parties to it, so that the
10 matter involved therein maybe finally adjudicated upon and fresh litigation over the same matters may be avoided. It is thus necessary for the representative party to give notice of such a suit to all persons who he or she thinks will be interested in such a suit either by personal service or by public advertisement. Such persons are entitled to put before the Court objections to the filing of the suit, to the capacity of the representative who seeks to be the plaintiff and even to
15 the merits of the cause which is to be put before Court in the shape of reliefs sought. Notice assumes particular importance due to the applicability of the principle of *res judicata*, the enforcement of orders and recovery of costs, since a decree is binding on all persons on whose behalf or for whose benefit the suit is instituted.

20 In the instant case, in paragraph 3 of the plaint, the respondent sought a declaration of "ownership" of 300 acres of land which in paragraph 4 (b) he described as being owned "communally meaning they were not given different portions and lived on the suit land communally," yet in paragraph 5 he stated that he had as a result of the appellant's activities on the land been deprived of "quiet possession and enjoyment of his property." His pleading is
25 clearly devoid of facts disclosing the violated real and substantial interest he has in the land which he otherwise describes to be communal, the identities and number of persons (at least by category) holding it communally, whether the rights he seeks to enforce are exclusive as against the rest of the communal holders at large or are those which depend for their enjoyment upon similar rights in the rest. Indeed the plaint does not disclose a cause of action as well as *locus*
30 *standi* and the suit as a result ought to have been dismissed. This ground alone disposes of the

appeal. Accordingly, the appeal succeeds, the judgement of the court below is set aside and instead the plaint is struck out with costs both of this appeal and the court below, to the appellant.

Dated at Gulu this 11th day of October, 2018

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Stephen Mubiru
Judge,

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