

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT-01-CV-CS-020 OF 2003**

**(Formerly Civil Suit No. 56 of 2001 HIGH COURT AT KAMPALA)**

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**BYARUHANGA JOHN & 2499 OTHERS**

**(SUING THROUGH THEIR LAWFUL ATTORNEY-  
REPRESENTATIVES):..... PLAINITFFS**

10 **VERSUS**

**1. ATTORNEY GENERAL**

**2. KASESE DISTRICT LOCAL GOVERNMENT:.....DEFENDANTS**

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**BEFORE HON. MR. JUSTICE WILSON MASALU MUSENE**  
**JUDGMENT**

This suit has had a chequered history spanning a record of nineteen years in the registry of court  
20 having gone through the hands of over seven judges without determination. As can be gathered  
from the court file, the suit was first filed in the High Court of Uganda at Kampala on the 26<sup>th</sup>  
day of October 2001 as Civil Suit No. 56 of 2001, after the plaintiffs had obtained a  
representative order vide High Court Miscellaneous Cause No. 14 of 2001 dated 27<sup>th</sup> June 2001.  
The defendants were duly served and filed their respective defences. On 30<sup>th</sup> September,2004 an  
25 amended plaint was filed pursuant to an order of court to accommodate the plaintiff's plea to  
plead particulars of disabilities that had inhibited the plaintiffs to file their action in time. This  
amendment was allowed. The defendants filed defences in this respect. The High Court of  
Uganda at Kampala made an order transferring the suit to High Court of Uganda at Fort Portal  
whose registry received and registered the suit as Civil Suit No. 020 of 2003 around the 4<sup>th</sup> of

November, 2003. The plaint was again amended to incorporate the orders of court granted vide HCT-01-CV-MA-28 and 29 of 2016 thus what was formerly Civil Suit No. 56 of 2001 High Court of Uganda at Kampala became Civil Suit No. 020 of 2003 High Court of Uganda at Fort Portal which is now before Court for determination.

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The significance of this state of affairs is that whereas the former civil suit was an action for 241 plaintiffs, the later suit at Fort Portal High Court added more 2499 plaintiffs courtesy of the said application Vide HCT-01-CV-MA-029 of 2016. This suit has suffered unprecedented adjournments for one reason or another. The suit has also witnesses numerous legal brains for its prosecution without much success until the 4<sup>th</sup> day of December, 2013 when Messrs Kaahwa, Kafuuzi, Bwiruka & Co. Advocates was instructed and later Messrs Ngaruye, Ruhindi, Spencer & Co. Advocates. This also obtains with legal Counsel for the defendants in particular the office of the Attorney General, the 1<sup>st</sup> defendant. Ever since the filing of the suit, evidence was not taken until the 3<sup>rd</sup> day of July, 2015 when PW1 testified upon filing of witness statements.

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On the 19<sup>th</sup> day of August 2014, Court was informed that the only agreed fact that “..... ***the plaintiffs were evicted from the suit land around 1990.....***” this submission was made by learned counsel Ndibarema Mwebaze from the Chambers of the Attorney General for the 1<sup>st</sup> defendant.

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The plaintiffs’ case as gathered from the amended plaint and the plaints filed before is simply that around 1990, they were evicted from their respect lands situate at Kichwamba Sub-County in the present day Kasese District, in the villages of Kyabatukura, Ruhero, Kamuhaho, Katachenga and Rutoma where they had lived since 1971 having been allocated and resettled there by the Government of Uganda and Kigezi District Administration. The plaintiffs developed their respective lands, built houses, cultivated numerous seasonal crops and reared animals. The defendants on the other land provided the plaintiffs with the necessary rural services ranging from local administration, security, roads, schools, health services and agricultural services among others. To the plaintiffs’ surprise, they were evicted by the defendants, their houses and food crops destroyed, assaulted and battered in the course of the said eviction. The fact of eviction has been admitted by the defendants as earlier on pointed out.

The 2<sup>nd</sup> defendant was served with the plaint and the hearing notice on the 13<sup>th</sup> June, 2017 for hearing on 26<sup>th</sup> June, 2017 and by this date the 2<sup>nd</sup> defendant had not filed a reply to the amended plaint. The affidavit of service dated 15<sup>th</sup> June, 2017 was filed on court record on 16<sup>th</sup> June, 2017.

5 It follows that the 2<sup>nd</sup> defendant did not challenges in the amended plaint. The 1<sup>st</sup> defendant duly filed amended defence and what can be gathered from the defence is that;

- a. That the plaintiffs were never settled on the suit land by the Government or any local government at all.
- 10 b. That the plaintiffs on their own and without the permission, consent or knowledge of the government of Uganda, migrated from various places in Kabale, Rukungiri, Bushenyi and other districts and temporarily settled on the suit land.
- c. That the suit land has at all material times been government land and occupied by and in the hands of different government institutions.
- 15 d. That none of the plaintiffs was ever lawfully settled on any piece of the suit land;
- e. That the plaintiffs who were encroachers on various pieces of government land were evicted lawfully from the suit land.
- f. That the plaintiffs had before the eviction in issue been notified of the intended eviction.
- g. That none of the plaintiffs had a permanent structure on the suit land; as all the illegal  
20 migrants of the suit land had grass thatched mud and wattle huts, tents and could not have been allowed to erect any permanent structures on government land.
- h. That the majority of the present plaintiffs under the amended plaint had never settled on the suit land at all
- i. That the present suit has been filed out of time and therefore irregular and in breach of  
25 governing laws.

On 19<sup>th</sup> day of August, 2014 six issues were framed for court's determination and these are;

1. Whether the suit is time barred.
2. Whether the plaintiffs had any valid interest in the suit land at the time of eviction.
- 30 3. Whether the plaintiffs were lawfully evicted from the suit land.
4. Whether the plaintiffs suffered any damages or losses.

5. Whether they are entitled to any damages
6. What remedies are available to either parties?

### **Representation**

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The plaintiffs were represented by learned counsel Joseph Muhumuza Kaahwa of Messrs Kaahwa, Kafuuzi Bwiruka & Co. Advocates and was later joined by Businge A. Victor of Ngaruye Ruhindi Spencer & CO. Advocates while the defendants were represented by learned counsel Ndibarema Mwebaze from the Attorney General's Chambers who was later succeeded  
10 by learned counsel Isaac Singura assisted by Ms. Rachael Atumanyise. The 2<sup>nd</sup> defendant was at some point represented by learned Counsel Joyce Tukahirwa of Muhumuza, Kizza & Co. Advocates who later left the first defendant to persecute the matter.

Advocates on both sides filed written submissions which are on record.

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This court has carefully considered and analysed the submissions on both sides. I have also studied the pleadings on record and evidence of all witnesses, for the plaintiffs, and for defendants.

20 And needless to emphasize, sections 101-106 of the evidence Act provides that each party is required to prove his or her case on the balance of probabilities. I shall therefore proceed to handle the issues one by one

issue one

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### **Whether the suit is time barred.**

This was pleaded under paragraph 7(a) of the 1<sup>st</sup> defendant's defence to the effect that the present suit has been filed out of time, irregularly and in breach of the governing laws. The plaintiffs  
30 under paragraph 13 of their amended plaint filed on the 8<sup>th</sup> of June, 2017 pleaded particulars of disabilities that incapacitated the plaintiff's ability to institute a suit within the required time.

PW1-PW3 indicated that since the unfortunate incidence occurred no application nor suit had been instituted against the defendants within the prescribed time for the reason of the conduct of the defendants. The plaintiffs had been displaced from their homes, scattered in various places and had also been subjected to physical and mental torture from the turmoil and agony of the  
5 eviction. The government delayed attempts to resettle some of them after 1990 and it was about 1999 that the plaintiffs were able to take steps to institute the suit. On partial resettlement in 1990, the government kept promising the plaintiffs that they would be compensated.

Counsel for Plaintiffs submitted that the plaintiffs during all the time that they were destitute.  
10 There was mass suffering, their homes were burnt, they had no water, their children fell sick and some died due to lack of treatment and there was no food, their crops had been destroyed, they never let them harvest and pick anything from their houses. Their children were denied education to date. Through 1993 the plaintiffs continued to heed to the government promises for compensation in a letter dated 15<sup>th</sup> July 1993 which was attached to the plaint and marked  
15 Annexure A.

In my view, the inability, delay and lapses are largely due to the government's own action herein enumerated arising of the wanton nature of eviction and the resultant displacement of the plaintiffs. The law governing Limitation of cause of action of this nature is that, "If on the date  
20 when any right of action accrued for which a period of limitation is prescribed by this Act the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of twelve months from the date when the person ceased to be under a disability or died, whichever even first occurred, notwithstanding that the period of limitation had expired.....". See Section 5 of the Civil Procedure and Misc. Provisions Act, Cap 72.

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Furthermore, the record reveals that Justice Owiny Dollo as he then was rules that the suit was not time barred in light of the pleaded incidents of disability by the plaintiff. The first issue is therefore resolved in the positive. The suit is not time barred.

30 **Issue 2**

**Whether the plaintiffs had any valid interest in the suit land at the time of eviction.**

The plaintiff's evidence can be summed up as follows. It was the evidence of PW1, PW2 and Pw3 that they had initially settled in the South Western districts of Uganda namely, Kisoro, Kabale, Rukungiri, Mbarara, Bushenyi and Kasese and that in 1971, his Excellency Idi Amin Dada allocated them the suit land that was under national service.that the idea behind this  
5 resettlement was to alleviate over population in the said districts. That the allocation of the land took place at Hima Cement Factory in Kasese District when his Excellency had come to inaugurate Hima Cement Factory. That the said President directed local administrators and leaders to comply and distribute the land. That the allocation was prompted by the plaintiffs' petition to His Excellency. After the said allocation, the plaintiffs settled on their respective  
10 lands, built houses, cultivated seasonal crops and reared animals thereon.

The defendant on the other hand provided the plaintiffs with the necessary rural services ranging from local administration, security, roads, schools, health services and agricultural services among others. The plaintiffs paid graduated taxes to the local administration among other taxes  
15 and by 1990 they had lived on the suit land for over 21 years. The said witnesses testified that in the course of eviction, the defendants burnt their houses and crops, cut down and destroyed banana plantations, coffee plantations, cotton, cassava and other crops, beat up, assaulted, battered the plaintiffs and forced them to flee their homes bare handed. Later the plaintiffs were forcefully provided with transport by Kasese District Local Government Administration and the  
20 Ministry of Local Government and were dumped in Ibuga refugee camp without any assistance and many of their children died of diseases and starvation.

PW4 testified and tendered in exhibit PE3 which is the Technical Assessment and valuation Report of lost and destroyed property at Kyabatukura, Ruhero, Katachenga, Kamuhaho, Kabirizi  
25 and Rutooma Villages in Kitchwamba Sub-County, Bugoye County, Kasese District in 1990. The said assessment and valuation was in accordance with the Kasese District Local Government Compensation Rates for the year September, 2014 passed under minute KDLB/09/2014 (4) of the Kasese District Land Board meeting held on the 3<sup>rd</sup> to the 4<sup>th</sup> of September, 2014.

30 On the other hand, the defence evidence was adduced by DW1 Kawalya Roanld, DW2 David Mugenyi and DW3 William Wilberforce Bwambale to support the defence case. The defence

witnesses conceded not having knowledge of the plaintiffs and visiting of the suit land. Both witnesses did not adduce evidence of the plaintiffs' encroachment, notices of eviction and how they relate with the suit land. DW1 admitted that his informants Lubwama Samuel, Kaata Ronald and Ruziriza are not residents of and had no knowledge of the suit land DW1 did not have  
5 information and details pertaining to the alleged temporary period of settlement of the plaintiffs on the suit land or did he know how the plaintiffs came to be settled on the suit land.

DW1 –DW3 did not have the alleged refugee status of the plaintiffs. DW2 testified with knowledge as if the plaintiffs were refugees which is false and an allegation that was not pleaded  
10 in the defence. DW1 could not remember, nor name, identify and produce a list of the plaintiffs he claimed to have been registered and transported by train from Bisozi in Mityana to Nalweyo in Kibale District and knowledge of a list of those plaintiffs who were allocated land, a list of those plaintiffs who were given relief surplus and a list of the plaintiffs who were resettled in the villages of Muhinga, Mpasema, Nsita and Kyangogata in Kibale District.

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DW2 did not know and has never visited the villages comprising the suit land. DW3 who testified for the 2<sup>nd</sup> defendant conceded that at the time the cause of action arose in 1990 he was still at Makerere University pursuing a degree in Bachelors of Science in Forestry. DW3 admitted that he did not know how the plaintiffs came to settle on the suit land; that he does not  
20 know and has never visited the suit lands in which the villages are located. DW3 did not have a list of those plaintiffs who were found inside the boundaries of Kisangi Forest Reserve. DW3 did not have a list of those plaintiffs who were found inside the boundaries of Kisangi Forest Reserve. DW3 admitted that he was not around when the alleged boundary opening of the said forest reserve was done nor did he know the particulars of those persons he claims opened the  
25 boundaries of the forest reserve. DW3 claimed that his evidence was based on records from office although he produced none to support his claims.

Counsel for the 1<sup>st</sup> defendant submitted that the plaintiffs were not lawful occupants on the land but were squatters who were lawfully notified and evicted by government with respect. I find and  
30 hold that the plaintiffs, having been allocated the land in question by IDi Amin Dada, who was

the Head of state and fountain of Honour at the time, then they could not be taken as mere squatters.

Furthermore, that fact the plaintiffs were allocated and settled on the suit land by his Excellency  
5 Idi Amin Dad was not challenged by the defendants. In the circumstances, I find and hold that the plaintiffs became lawful owners of the suit land as they acquired such lawful and equitable interest in the suit land. Issue No. 2 is therefore hereby resolved in the affirmative.

### **Issue 3: Whether the Plaintiffs were lawfully evicted from the suit land?**

10 Counsel for the Plaintiffs submitted that it was not in dispute that the Plaintiffs were evicted however; the contention is on the manner in which they were evicted. That PW1, PW2, and PW3 all testified that the eviction of the Plaintiffs was forceful involving Officers from the forces who were armed and Local Authorities and no reason was given as to why they were being evicted. That the Plaintiffs' property was destroyed, animals killed and others arrested. That they were  
15 never allowed to go back and pick their properties only to be gathered and dumped at Ibuga Prison Farm where a camp was set up. That no evidence had been adduced by the defendants to the contrary and thus, the Plaintiffs were violently, and unlawfully evicted.

Counsel for the 1<sup>st</sup> Defendant on the other hand submitted that there was no documentation produced by the Plaintiffs to prove that indeed they were given the suit land to settle on. That  
20 none of the leaders under whom they claim to have been resettled by were brought in Court as witnesses and it is trite law that he who alleges must prove as per **Sections 101, 102 and 103** of the Evidence Act and the case of **Jovelyn Barugahare versus Attorney General, SCCA No. 28 of 1993**. Thus, the Plaintiffs were not in lawful occupation of the suit land and were merely squatters who were notified as per DW3's evidence and the notices were exhibited in Court and  
25 evicted at no cost.

Counsel for the Plaintiffs in rejoinder submitted that the Court is empowered and enjoined under **Section 55** of the Evidence Act to take judicial notice to the effect that Iddi Amin's regime was a military regime which meant a Government in power during a period from 25<sup>th</sup> January 1971 to the 3<sup>rd</sup> June 1979. That it was the evidence of PW2 and PW3 that the allocation of the suit land  
30 was in the year 1971 by his Excellency Iddi Amin Dada. There was no need to adduce evidence



of any such Local Administrator and leaders since it was done by the head of State ruling by decree.

I have already ruled under issue No. 2 that the Plaintiffs had valid interest on the land in question, having been lawfully settled thereon by the Government. They had not only settled and stayed there for over 20 years, but they had substantial developments which were destroyed. And whereas the Defendants through DW3 claimed to have issued and served eviction notices to the Plaintiffs, none was exhibited in Court to prove that any of the Plaintiffs was ever served with such notice. I also agree with Counsel for the Plaintiffs that the Plaintiffs were entitled to adequate and appropriate compensation for their developments before eviction. And the manner in which the Plaintiffs were evicted from the suit land was violent, in humane torturous and unlawful. The third issue is resolved in the negative. The Plaintiffs were unlawfully evicted from the suit land.

**Issue 4 and 5:**

**4. Whether the Plaintiffs suffered any damages or losses?**

**5. Whether they are entitled to any damages?**

This Court shall deal with issues 4 and 5 together as submitted upon by both parties. PW1, PW2, and PW3 testified that the agents of the Defendants burnt houses, crops, cut down banana plantations, coffee plantations, cotton, cassava and other crops. They were beaten up, assaulted battered and forced to flee their homes empty handed. They were later forcefully dumped in Ibuga Refugee Camp without any assistance and many of their children died of diseases and starvation. They pleaded for various damages under paragraph 5 and 13 of the plaint and averred that they suffered special damages being the monetary value of the property to wit buildings, crops, household items, animals and other movable chattels lost and unlawfully destroyed by Defendants, assessed and valued at Shs. 105, 317,266/= (one hundred five billion and three hundred seventeen million, three hundred seventeen thousand two hundred sixty six shillings only).

They also prayed for general, exemplary and punitive damages for wrongful and violent eviction, inhumane treatment, starvation, psychological torture, pain and suffering, loss of lives due to starvation and lack of daily necessities, inconveniences, loss of income and livelihood,

displacement, forced refuge, denial of right to property, loss of homesteads and dispossessing them of land, homes and property to a tune of Shs. 5 Billion.

PW1, PW2 and PW3 alluded to the fact that the valuation and assessment of the damages suffered was done by PW4 who exhibited the Technical Assessment and Valuation Report of lost and destroyed property at Kyabatukura, Ruhero, Katachenga, Kamuhaho, Kabirizi and Rutooma Villages in Kitwamba Sub-County, Bugoye County, Kasese District in 1990.

PW4 was the District Agricultural Officer at the time of the Plaintiff's eviction from the suit land. PW4 was also a member of the District Planning Committee who offered various services to the Plaintiffs ranging from agricultural extension services, field visits and other related crop husbandry practices.

PW4 further indicated that he had interacted with the Plaintiffs for a period of over 7 years. PW4 had kept a register of crop activities and that he had visited the Plaintiffs in their various areas where they had settled after the eviction and interviewed them about the quantities of the properties lost.

PW4 maintained that he knew the acreage of land as well as the nature of the crops each of the Plaintiffs had owned and has seen them before the Plaintiffs were evicted and that he vividly remembers what the Plaintiffs owned having been the Agricultural Officer for over 7 years, had lived in Kasese for 12 years and also based his knowledge on the information from the District Planning Committee, Veterinary Officers and engineers.

PW4 also pointed out that at the District level there are extension workers who work under the Principal Agriculture Officer up to the Village level and that they make monthly reports on the crop activities in the District.

PW4 further added that he visited the area after the eviction and some computations were based on information available to PW4 by the Plaintiffs while for others PW4 relied on previous knowledge of what they owned and to others PW4 employed the scientific term of random sampling. PW4 maintained that his assessment and valuation report was in accordance with the Kasese District Compensation Rates for the year 2014/2015 which had been approved by the

Government valuer. Counsel for the Plaintiffs submitted that the expert knowledge and experience of PW4 and his long interaction with the Plaintiffs is credible and believable.

Counsel for the 1<sup>st</sup> Defendant on the other hand submitted that the Plaintiffs had not proved nor pleaded special damages and what was submitted was a copy of Technical Assessment and Valuation Report as exhibited in Court, which report is vague. That the author is not competent enough to conduct such an assessment in matters of such a

nature, where Government is a party. That the said expert and his report were defective, illegal and suspicious both at law and in practice as per the case of **Omito Luka and 5 Others versus Attorney General, HCCS No. 0073 of 2004 [2017]**.

10 He added that in the circumstances of the instant case, no proof was exhibited before Court as to the specific items, the quantities and the value of loss suffered by each of the Plaintiffs listed. It therefore makes it impossible to determine whether the figures present a fair estimate of the purported loss or not. Thus, the Plaintiff's claim for special damages should be rejected and the said valuer did not submit proof of registration and license with the Board of Surveyors and Valuers and it is trite law that the Chief Government Valuer's findings deduced in a report are always to be taken as evidence of an expert, which is not the case in the instant matter. That the number of claimants also does not correspond and PW4 formerly the District Agricultural Officer of the 2<sup>nd</sup> Defendant could not confirm some of the claimants as listed.

20 Counsel for the 1<sup>st</sup> Defendant further submitted that the award of general damages is discretionary in respect of what the law presumes to be the natural and probable consequences of the Defendant's act or omission as stated in the case of **Erukana Kuwe versus Isaace Patrick Matovu and Another, HCCS No. 177 of 2003**. That 205 families had already been compensated and these represented the interests of the current claimants and that none of the Plaintiffs have proved that they fall in the ambit for the award of general damages.

25 In regard to exemplary damages Counsel for the 1<sup>st</sup> Defendant relied on the case of **Oketha versus Attorney General, HCCS No. 0069 of 2004 [2017] UGHCCD 135** while citing the case of **Kanji Naran Patel versus Noor and Another Essa and Another [1965] 1 E.A 484**, where it was stated that; exemplary damages should only be awarded in two categories of cases i.e. cases in which the wrong complained of was an oppressive, arbitrary or unconstitutional action by a

servant of a Government or where the Defendants conduct has been calculated by him to make profit for himself which may exceed the compensation made to the complainant.

Further, that in the circumstances of this case Government did not act in a highhanded manner towards the complainants who evidently settled on Government land, evicted lawfully, relocated  
5 to Kagadi and compensated per household. Thus, there is no justification for the award of exemplary damages.

Counsel for the Plaintiffs on the other hand in rejoinder submitted that the competence of PW4 was not challenged during cross examination and the authorities as cited by Counsel for the 1<sup>st</sup> Defendant are distinguishable from the instant case. That PW4 never testified as a surveyor and  
10 valuer but rather as the then District Agricultural Officer of the 2<sup>nd</sup> Defendant at the time of eviction and thus there was no need for him to submit a license.

This Court has considered the submissions on both sides in issue 4 and 5. The finding and holding of this Court is that the case of **Omito Luka and 5 Others versus Attorney General, HCCS No. 0073 of 2004** relied on by Counsel for the Defendants is distinguishable from the  
15 instant case. None of the defense witnesses challenged the evidence of PW4. Whereas the eviction took place in 1990, PW4 relied on the compensation rates for the year 2014/2015. This is because the law provides that the Land Board of every District shall review every year the list of rates of compensation, thus the valuation must be based on the prevailing rates at the time of assessment and not at the previous rates. **See: Section 59(1) (f) of the Land Act as amended.**

20 This Court finds that PW4 in making PE3 was guided by compensation rates which have values attached and approved by the Government Valuer before they are effected by the District Land Board. In doing so, PW4 was only computing and therefore his registration and license with the Board of Surveyors and Valuers was not necessary. Whereas he Court accorded the Defendants ample time to produce the report of the Government Valuer, none was done and exhibited in  
25 Court. They cannot therefore turn round to say that there was no Government Valuer's report when they kept on seeking adjournments to call a Government Valuer but in the end, they failed who was to blame?

Special damages as claimed in PE3 on a balance of probabilities. The compensation rates relied upon are in line with **Section 59 Sub Sections (1) (e) and (f) and 5** of the Land Act as amended

Cap. 227. Any estimate expertly arrived at cannot be said to be an act of guesswork as long as the witness expertise is not denied. **See: Mparo Limited versus Attorney General, HCCS 726/1992 reported at P. 557 [1996] KALR.** The knowledge, experience and expertise of PW4 was not challenged in cross examination. Courts have held that an element of variation of actual  
5 in valuation reports is possible and not an exaggeration and held that there is no valuation report that can be 100% accurate since it always or contains some measure of speculation and such do not render the valuation report irrelevant or unreliable. **See: Dr. James Ssekajugo versus Woodstock Enterprises, HCCS No. 396 of 1992 reported a P. 642 [1998] KALR.**

PW4 provided a scientific base for his conclusions and computations in the valuation report  
10 earlier on pointed out. The Court's criticism against PE3 and PW4 is that there was no consideration that the majority of the destroyed properties were agricultural products subject to economic price fluctuations and vulnerable to the vagaries of nature, and the immovable properties were aged structures and the fact that the Plaintiffs have not suffered for eternity. In view of these factors and considering the plight of the Plaintiffs in their large numbers, I decline  
15 to award the full quantum of UGX 105,317,317,226/= as special damages but rather discount special damages by 50%. The Court therefore awards Shs. 52,658,658,633/= (Fifty two billion and six hundred fifty eight million, six hundred fifty eight thousand six hundred thirty three shillings only) as special damages.

For general, exemplary and punitive damages, the law is settled. **See: the cases of Muyingo  
20 John Paul versus Abbas Rugemwa and 2 Others, High Court Civil Suit No. 229 of 2011 Rookes versus Benard and Others (1964) A.C. 1129.** Such damages are awarded at Courts discretion considering the nature of the suffering encountered. They are compensatory in nature and are intended to put the victim in the position they were in before the cause of action arose.

Exemplary and punitive damages are awarded especially where citizens' rights are arbitrarily  
25 abused. PW1-PW3 explained the misery, suffering, torture and inhumane treatment they were subjected to by the agents of the Defendants and how they have lived as destitutes and as internally displaced people in their own country. Majority of the Plaintiffs that braved to appear before Court during the hearings notwithstanding that they had representatives really looked destitute and miserable. The Plaintiffs pleaded for a consolidated sum of Shs. 10 billion for

general, punitive and exemplary damages and given the long period of suffering that the Plaintiffs have endured.

Counsel for the Defendants submitted that this case of the Plaintiffs does not warrant general damage since the plaintiffs were evacuated to Kibale District, now Kagadi district and  
5 compensated by Government. However, I have earlier on disregarded the claim of resettlement in Kagadi District due to lack of supportable evidence. And whereas counsel for the defendants further submitted that the claim for general and exemplary damages is not justified, this court's finds to the contrary. The evidence on record reveals the suffering of the plaintiffs at the hands of government functionaries, particularly the police and army. They acted in a high handed manner  
10 towards the plaintiffs. They are therefore entitled to exemplary damages. Nevertheless I find the sum of UGX 10 Billion requested by counsel for plaintiff for general, Punitive and exemplary damages on a higher scale.

In the circumstances, I shall award a sum of UGX 4 billion as general and exemplary damages, to atone for the inconvenience, pain suffering and misery occasioned to the plaintiffs.

15 **Issue 6: What remedies are available to either party?**

All in all and in view of what I have resolved on the issues above, I do hereby enter judgment in favour of the plaintiffs and make the following orders;

- a. A declaration that the plaintiffs were wrongfully evicted and were not encroachers on the various lands they were evicted from.
- 20 b. An order for the defendants to pay the plaintiffs special damages of Shs 52,658,658,633/= (Fifty Two Billion and six hundred fifty eight million, six hundred fifty eight thousand six hundred thirty three shillings only).
- c. An order for the defendants to pay the plaintiffs general, exemplary and punitive damages of Shs 4 billion.
- 25 d. An order for the defendants to pay the plaintiffs interest at court rate from the date of judgment till payment in full.
- e. Costs of the suit are awarded to the plaintiffs.

Dated at Fort Portal and delivered this 28<sup>th</sup> day of May 2019

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**Hon. Mr. Justice Wilson masalu Musene**

**Judge**

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