


THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL SUIT NO.44 OF 2016
BUNYORO KITARA REPARATION AGENCY LTD ::::::::::: PLAINTIFF

VERSUS

<p>1. MASINDI DISTRICT LAND BOARD</p> <p>2. KIRYANDONGO DISTRICT LAND BOARD</p> <p>3. HOIMA DISTRICT LAND BOARD</p> <p>4. KIBAALE DISTRICT LAND BOARD</p> <p>5. BULIISA DISTRICT LAND BOARD</p> <p>6. KAKUMIRO DISTRICT LAND BOARD</p> <p>7. KAGADI DISTRICT LAND BOARD</p>		<p>::::::::: DEFENDANTS</p>
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JUDGMENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] The plaintiff, a private company limited by guarantee brought this suit in a representative capacity on behalf of all the indigenous peoples of Bunyoro Kitara Kingdom hailing from the Albertine Graben, marginalized by reason of history and gravely affected by the ongoing Oil Exploration and Exploitation in the region, and the unlawful allocation of land in the region by the defendants.
- [2] The 1st - 7th defendants are Land Boards of the various Districts in the Bunyoro-Kitara Kingdom established under the Local Government Act.
- [3] The plaintiff sued the defendants seeking the following orders;
 - 1. A permanent injunction restraining the defendants and all other actors working as their servants, workmen, representatives or for and on their behalf from the sale, adverse use or transfer of interest on the suit land.

2. Declaration that the actions and conduct of the defendant Land Boards were not only unconstitutional but were clearly Human Rights Violation.
3. Declaration that all land titles granted by the defendant Land Boards contrary to or in contravention of the provisions of the constitution relevant to the law are null and void.
4. Cancellation of land titles so issued to individuals in the suit land.
5. General damages for trespass to land by the defendant Land Boards and Aggravated damages in compensation for the unconstitutional conduct of the defendant Land Boards.
6. Costs of the suit.

[4] The plaintiff's case is that the beneficiaries of the suit land are indigenous people of Bunyoro-Kitara Kingdom who at all material times were customary owners of all land in the Kingdom held in trust for them by their King (except those lawfully acquired by Government) which they since time immemorial used for settlement, cultivation, grazing, wood harvest, herbal medicines; and as having burial, religious and cultural activities. That the indigenous peoples of Bunyoro-Kitara Kingdom hailing from the Albertine Graben have been having and still have interest in and are entitled to the lands and resources within the Bunyoro-Kitara Kingdom suit land.

[5] The defendants on the other hand, in their respective Written Statements of Defence denied the plaintiff's allegations and contended as follows;

- a) The assets and various pieces of land that were restored to Bunyoro-Kitara Kingdom by the Central Government are known and were properly listed and therefore, all customary land in Bunyoro does not belong to Bunyoro-Kitara Kingdom and or indigenous people of Bunyoro-Kitara.
- b) That since their creation, the defendants have been operating within their Constitutional and Statutory mandate and all allegations against their operation by the plaintiff are false, misconceived and peddled by the plaintiff that lacks locus standi to institute this suit, and has not disclosed any cause of action against the defendants.
- c) That no indigenous person of Bunyoro-Kitara Kingdom hailing from the Albertine Graben has been marginalized or affected by

the ongoing oil exploration, exploitation and production in any manner attributed to the defendants.

- d) That no indigenous persons of Bunyoro-Kitara Kingdom or any one has been evicted by the defendants as alleged by the plaintiff.
- e) That no unlawful actions have ever been committed by the defendants violating the plaintiff's human rights.

[6] During joint scheduling done by the parties, the following issues were framed for the determination of the suit.

- a) *Whether the people represented by the plaintiff have an interest in the suit land and have suffered grievance and/or have a cause of action against the defendants.*
- b) *Whether the suit land is owned by the people represented by the plaintiff under customary land tenure.*
- c) *Whether the defendants have power to allocate land and facilitate the grant of titles to any part of the suit land.*
- d) *What remedies are available to the parties.*

Counsel legal representation

[7] The plaintiff is represented by **counsel Crispus Ayena Odongo of M/s Ayena Ondongo Co. Advocates, Lira** while initially the 1st, 3rd, 4th, and 5th defendants were represented by **counsel Simon Kasangaki of M/s Kasangaki & Co. Advocates, Masindi**, the 2nd defendant by **counsel Mugisa Ronald of M/s Kiiza & Kwanza Advocates, Kampala**, the 6th and 7th defendants by **State Attorney Nyeko Anthony of The Attorney General's Chambers Kampala**, and at the hearing of the suit, **Counsel Simon Kasangaki** appeared holding brief for both **Mr. Mugisa Ronald** and **Mr. Nyeko Anthony** but with instructions to proceed on their behalf. Both counsel filed their respective written submissions for consideration while determining this suit.

ISSUE NO.1 and 2

- a) **Whether the people represented by the plaintiff have an interest in the suit land and have suffered grievance and/or have a cause of action against the defendants.**
- b) **Whether the suit land is owned by the people represented by the plaintiff under customary land tenure.**

Locus Standi

- [8] Counsel for the plaintiff submitted that the claim by the defendants that the plaintiff has no locus standi lacks merit. He argued that as per **paragraph 1 of the plaint**, the plaintiff is a company limited by guarantee with the main objective of championing the cause of humanity in general, but in particular, to assiduously pursue and seek justice for the indigenous peoples of the Bunyoro-Kitara Kingdom with particular focus on redressing the historical injustices suffered during the advent of colonialism and subsequent to the independence of Uganda, which adversely affected their interest in land.
- [9] Counsel submitted further that the plaintiff as a corporate person with legal capacity to sue and to be sued, obtained a Representative order to represent the indigenous Banyoro, marginalized by reason of history, gravely affected by the ongoing oil exploration in the region and the unlawful dealings in land by the defendants, which land is customarily owned by the people represented by the plaintiff.
- [10] That on the authorities of **Nuru Hassan Shariff Vs The Administrator of the Estate of the late Shamji Jamal Lakan, H.C.C.S No.034/2011, Fakrudin & Anor Vs Kampala DLB & Anor H.C.C.S No. 570/2015, and Advocates Coalition for development and Environment Vs A.G H.C.Misc.Cause No. 100 of 2004**, locus standi means the legal capacity of a person which enables him to invoke the jurisdiction of the court in order to be granted a remedy; and in so far as locus is intrinsically related with the cause of action in any given suit to enable a plaintiff move court to hear him or her, it is clear from the pleadings in the plaint and the evidence on record that the plaintiff has the legal capacity i.e, **locus standi**, to bring this suit.
- [11] Under common law, **locus standi in judicio** (locus standi or standing) is the set of principles that governs whether an individual or group may bring an action in court with respect to a specific issue. It depends on the relationship between the applicant seeking redress and the right that has been violated. The Applicant must show a “direct and substantial interest” in the subject matter or the outcome of the application; see **Trust Co. Insurance t/a Legal Shield Namibia & Anor Vs Deed Registries Regulation Board & Ors 2011(2) NR 76 (SC) at para.16** and **United Watch & Diamond Co. Pty Ltd & Ors Vs Disa Hotels Ltd & Anor (1972)4 SA 409(c) at 415 B.**

[12] The concept of a “direct and substantial interest” connotes an interest in the right which is the subject matter of litigation; **Henri Viljoen (Ppty) Ltd Vs Awerbach Brothers 1953 (2) SA 151 (o) at 166 A**. This interest was described in **Polokwane Local & Long Distance Taxi Association Vs Limpopo Permission Board & 3 Ors S.C of S.Africa Case No. 490/2016** as a “legal interest” in the subject matter of the action which would be prejudicially affected by the judgment of the court.

[14] In **Fakrudin & Anor Vs Kampala District Land Board & Anor H.C.C.S No.570/2015**, court observed that;

“By locus standi, it means the legal capacity of a person which enables him or her to invoke the jurisdiction of the court in order to be granted a remedy. Locus standi is intrinsically related with the cause of action in any given suit to enable the plaintiff to move court.”

It is a requirement that, locus standi to institute a suit, by whatever mode described must be established at the time the suit is filed. This is done by expressly pleading facts that give the plaintiff the legal standing to institute the suit. It must be expressly clear on the facts pleaded; particularly those that give rise to the cause of action in the plaint.

[14] In the instant case, the question is, does the plaintiff have a right to commence this suit against the defendants and for the remedies prayed for?

[15] From the pleadings, it is evident that the plaintiff is on behalf of all the indigenous peoples of Bunyoro-Kitara Kingdom hailing from the Albertine Graben, marginalized by reason of history and gravely affected by the ongoing oil exploration and exploitation in the region suing defendants for unlawful allocation of land in the kingdom which at all material times, they were customary owners held in trust for them by their king.

[16] Counsel for the plaintiff submitted that the plaintiff is a private company limited by guarantee established primarily to champion the interest of the indigenous Banyoro marginalized by reason of history. In particular, it focuses on seeking redress against the effects and

consequences of the unlawful land acquisition or registration by the defendants, jointly and severally, granted to various title holders in the districts comprised in Bunyoro-Kitara Kingdom.

[17] **First**, the plaintiff company as per its certificate of incorporation on record was incorporated on **30th May 2013**. It commenced the present proceedings by way of a representative order under **O.1 r.8 CPR** which provides thus;

“8. One person may sue or defend on behalf of all in the same interest-

(1)Where there are numerous persons having the same the interest in one suit, one or more of such persons, may defend in such suit, on behalf of or for the benefit of all persons so interested...”

The Representative order obtained by the plaintiff therefore, is not a power of attorney or deed by which one person empowers another to represent or act in his stead either general or for specific performance. Unlike in public interest litigation cases under **Article 50(2) of the 1995 Constitution of Uganda**, each party including the plaintiff must have an interest in the subject matter of the action which would be prejudicially affected by the judgment of the court.

[18] The plaintiff’s membership in this case was not disclosed in the pleadings i.e either in **Misc. Application No. 29 of 2016** where the Representative order was granted permitting the commencement of the suit in that capacity or in the plaint. **Therefore, it follows that the plaintiff’s identity as one of the “indigenous peoples of Bunyoro” was neither pleaded nor can it be ascertained.**

[19] **The plaintiff’s interest in the subject matter of the litigation appear as per the pleadings to be only limited to its championing the cause of the indigenous people of Bunyoro-Kitara but not its own interest in the subject matter of the action ie the suit lands.** It took up the role to represent and pursue the interests of the indigenous people by pursuing for the sought prayers in the plaint but itself, the plaintiff agency has no interest in the suit land. As conceded by **Duviko Batwale (PW1)**, the plaintiff’s coordinator, the plaintiff does not hold any land in Bunyoro-Kitara under any of the recognized land tenure in Uganda nor purport to had ever owned one. It is therefore not clear how the judgment of court in this matter shall either benefit or prejudice the plaintiff.

[20] **Secondly, Duviko Batwale (PW1) during cross examination described himself as a *legal activist*, the plaintiff through PW1 appear to had proceeded as if it is holding a power of attorney of the indigenous peoples of Bunyoro and has been empowered to represent or act on behalf of these people instead of proceeding as an interested party in the Representative suit. A holder of power of attorney need not have interest in the suit property but a holder of a Representative order must have and be enjoying an interest in the suit property.**

[21] **Thirdly, in any case, according to another persuasive Namibian authority of *Clear Channel Independent Advertising Namibia (Ppty) Ltd Vs Trans Namib Holdings 2006 (1) NR (121) at para.49*, citing *Plettenberg Bay Entertainment Vs Minister Van Wet en Orde 1993(2) SA 396 (C) at 401*; an interest that has been extinguished cannot support standing.**

In the instant case, even if one was to find that the plaintiff had any interest in the suit land by virtue of PW1 being a Munyoro, it is the pleadings of the plaintiff that the indigenous peoples the plaintiff brings this suit in a representative capacity were

“marginalized by reason of history and gravely affected by the ongoing oil exploration and exploitation in the region...”

It follows that any interest the indigenous peoples of Bunyoro could have had was extinguished by historical events in Uganda ie, the advent of colonialism and subsequent events to the independence of Uganda. A court has no discretion to grant an interdict to protect a right that does not exist anymore. The purported interests of the indigenous peoples of Bunyoro in the suit lands passed into history.

[23] **Lastly, the plaintiff’s claim to seek justice for the indigenous peoples of the Bunyoro-Kitara Kingdom with particular focus on redressing the historical injustices suffered during the advent of colonialism and subsequent to the independence of Uganda which adversely affected their interest in land is hypothetical if not speculative. Such cannot found/establish or form basis of locus standi; *Nuru Hassan Shariff Vs The Administrator of the Estate of the late Shamji Jamal Lakhan (supra)*.**

[24] In the premises, I find that the plaintiff have no interest in the subject matter of litigation, the suit lands and therefore had no locus standi to file and prosecute this Representative action.

Representative Order under O.1 r.8 CPR

[25] This court has had an occasion to pronounce itself on the propriety of the plaintiff filing a Representative action in **Bunyorro Kitara Reparations Agency Ltd Vs A.G & 3 Ors in H.C.C.S No.023 of 2016** as follows;

“Order 1 rule 8 of the Civil Procedure rules which is relevant to this application provides that; where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued or may defend in such suit, on behalf or for the benefit of all persons so interested. But court shall in the case give notice of the institution of the suit to all such persons either by personal service or where, from the number of persons or any other cause, such service is not reasonable practicable, by public advertisement, as the court in each case may direct.

A representative action filed under Order 1 Rule 8 Civil Procedure Rules must be in respect of a definitive and identifiable group of persons who all bear the same interest.

In Ibrahim Buwembo & 2 Ors Vs M/s UTODA Ltd H.C.C.S.No.664 of 2003, Justice Kiryabwire, as he then was observed that:

The object of Order 1 rule 8 is to facilitate a large group of persons who are interested in the same action to sue collectively without recourse to the formal procedure where each of them would individually maintain a separate suit... The person concerned must have the same interest in the suit and can collectively be called plaintiffs or defendants.”

[26] This court went further and added:

“...the intended plaintiffs must be interested in the same remedies and their consent must be obtained before an application for a representative order can be applied for. Order 1 rule 8 further requires that the representative order must be advertised as directed by the court and it must contain the full list of the identified prospective plaintiffs or defendants.”

This was emphasized in the case of *Dr. James Rwanyarare and Others Vs Attorney General, Constitutional petition No.7 of 2002*.

[27] In **Dr. James Rwanyarare** case, court observed that;
“Under Order 1 rule 8 (1) of the Civil Procedure Rules, a person may bring a representative action with leave of the trial court. It would have been at that stage of seeking leave, that the first petitioner would have disclosed the identity of those to be represented and whether he had their blessings to do so. We cannot accept the argument of Mr. Walubiri that any spirited person can present any group of persons without their knowledge or consent. That would be undemocratic and could have far reaching consequences. For example, as counsel for the Respondent rightly submitted, if the first and second respondents lost the action with costs to the respondent but they were unable to raise the costs, how would the respondents recover those costs from the unknown people called Uganda Peoples Congress.”

[28] The import of this decision is that once a party opts to file a representative action, he/she must not do so without seeking the other person or persons’ informed consent and it is mandatory to notify the person or persons on whose behalf the intended suit is going to be instituted so that they are aware and can own up both the positive and negative consequences of the suit.

[29] The plaintiff in the instant suit applied for the representative order but fell short of the requirements of **O.1 r.8 CPR** for he did not name and particularize all the intended plaintiffs. 2ndly, he did not seek the consent of these intended plaintiffs who must include the King of Bunyoro Kitara who as per the pleadings, held the suit land in trust for them to bring the action on their behalf. 3rdly, the plaintiff did not advertise all the names of the intended plaintiffs other than just naming them as indigenous peoples of Bunyoro Kitara kingdom, which is generic and lacks specificity as required in **O.1r.8 CPR**. 4thly, the purported beneficiaries, the indigenous peoples of Bunyoro-Kitara Kingdom are not a legal entity who can sue and be sued and therefore, are incapable of giving the plaintiff consent to file a representative action on their behalf. A suit brought on behalf of a none existent entity is a nullity; **Uganda Freight Forwarded Association Vs A.G & Anor,**

Constitutional Petition No.22 of 2009 and The Trustees of Rubaga Miracle Centre Vs Mulangira Ssimbwa and Anor, H.C.Misc. Application No.576 of 2006[2006] UGHC 69.

[30] In the premises, since court has already found that the plaintiff has no locus standi to file and prosecute this representative action and the indigenous peoples of Bunyoro-Kitara Kingdom being a none legal entity not capable of suing or be sued, I would accordingly dismiss the suit with costs to the defendants.

[31] However for purposes of having the judgment complete by having all the issues determined, I proceed to the other merits of the suit.

ISSUE NO.3; Whether the defendants have power to allocate land and facilitate the grant of titles

[32] Both **Article 240(1) & (2) of the Constitution of Uganda 1995 as amended** and **S.56 (1) & (2) of the land Act 1998 as amended** provide that there shall be a District Land Board for each district and **Article 241(1) of the Constitution** and **S.59(1) of the Land Act** further stipulate the functions of the Defendant District Land Boards, among others to hold and allocate land in the district which is not owned by any person or authority, to facilitate the registration and transfer of interests in land and to deal with all other matters connected with land in the district in accordance with laws made by parliament.

[33] In the instant case, **Kisakye Ruth** (DW1) the secretary of the Land Board, Masindi, during cross examination testified that not all land in Bunyoro is held under customary system. It is held under various tenures which affect other people in Uganda at large. There is a list of all the properties that were restored to Bunyoro Kitara Kingdom by the Central Government and people who lived on lands whether customary or titled that were expropriated for oil activities were compensated and conversion of customary land to other tenure is demand driven by the respective customary tenure holders.

[34] The evidence of **DW1** was not challenged at all during cross examination. It follows therefore that the indigenous people of Bunyoro Kitara who owned land under the customary tenure, have owned and continued to own it under the system save for those who may have

opted to convert their holdings into lease or freehold tenure. There is no evidence on record to the contrary or that the Defendant Land Boards have contravened the provisions of **Article 237(1) of the Constitution** which provides that;

“(1) Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.”

The defendants do therefore operate in their Constitutional and statutory mandate.

[35] In this case, the indigenous peoples of Bunyoro Kitara claim to had owned land under customary tenure system since time immemorial. Whereas I agree that during the pre-colonial days, the indigenous people held and owned land under communal and or customary tenure, a judicially noticed fact, where a community or group based the fundamental principle of land ownership on collective ownership, they enjoyed usufructuary rights in land, it could only be transferred through inheritance

[36] However, to date, both the Constitution and the Land Act recognize customary tenure while aiming at defining ownership rights; **Article 237(3) of the Constitution (1995)** provides that;

“3 Land in Uganda shall be owned in accordance with the following land tenure systems-

(a) Customary; (b) freehold; (c) Mailo; and (c) lease hold”

“4 All Uganda citizens owning land under customary tenure may acquire a certificate of ownership.”

S.4 (1) of the Land Act provides that;

“Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land...”

SS.6 and 7 thereof provide for procedure for application for certificate of customary ownership and mandate the Defendant District Land Boards to approve the issue of a certificate of customary ownership, with or without conditions, restrictions or limitations as they deem fit.

[37] According to **S.8 of the Land Act**, a certificate of customary ownership shall be taken to confirm and is conclusive evidence of the customary rights and interests specified in it, or the land to which the certificate refers shall continue to be occupied, used, regulated and any

transactions in respect of the land undertaken and any third party rights over the land exercised in accordance with customary law.

[38] A certificate of customary ownership confers on the holder rights not limited to leasing the land or part of it, mortgaging or pledging the land or a part of it, selling the land or a part of it, transferring the land or a part of it to any person in response to an order of court and disposing of the land either as a gift inter vivos or by will; **S.8 (2) of the Land Act. S.9 (1) of the Land Act** provides further that;

“Any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure.”

[39] The ultimate aim of the above provisions of the law were to transfer customary tenure into individually owned estates. This was essentially to meet the demands of socio-economic developments in Uganda to wit; security of tenure since land collectively owned as it were by the indigenous peoples in the pre-colonial days is difficult to be used as collateral for credit offering institutions, breeds disputes and hampers the rights to sale yet in the course of time, land had become a tradable commodity.

[40] As a result, over time, there has been evolution of tenure in Uganda and land has been undergoing individualization and change through post-independence legislations; **Public Lands Act 1962 and 1969, Land Reform Decree 1975, the 1995 Constitution of Uganda and the Land Act 1998.**

[41] **S.42 of the Land Act** read together with **Articles 26 & 237(2) of the Constitution** empowers the Government or a local Government to compulsorily acquire land in public interest for example for public use, public order, public morality, public health and in the interest of defence. However, this has to be subject to the constitutional provisions in **Article 26(b)(i) of the Constitution** which provides for
“prompt payment of fair and adequate compensation, prior to taking of possession or acquisition of the property”

[42] The inadequacies of these provisions of the law and challenges in their implementation aside, the present state of affairs point to one thing; though the indigenous people of Bunyoro and Uganda at large may have

owned land customarily, historical and political, social-economical changes have dictated that they do move from that form of land holding to a more convenient tenure that ensures sustainable utilization of land. The foregoing dictated a corresponding land management policy.

[43] In the bid to streamline the ownership and management of land, the constitution of Uganda established the Uganda Land Commission under **Article 238** thereof and the District Land Boards under **Article 240**. Under the **Land Act**, they are established under **SS.46 and 56** respectively, decentralizing land administration with a District Land Board with mandate to inter alia;

“(a) hold and allocate land in the district which is not owned by any person or authority.

(b) facilitate the registration and transfer of interests in land.”

[44] The impugned land titles in Bunyoro are a product of the Defendant District Land Boards and must have arisen from either of the following;

- 1) There are indigenous Banyoro people whose ancestors held and owned land communally or under the customary system and their descendants have either maintained that system or have leased or converted the land to freeholds thus they are among the current holders of the impugned certificates of titles, the plaintiff seeks cancellation.
- 2) There are those indigenous Banyoro people whose ancestors held and owned land communally or under the customary system and in the course of time, the descendants sold their customary interests to fellow indigenous or non-indigenous peoples who have either opted to maintain that system or lease and or convert them to free holds and therefore, form the current title holders to be affected prejudicially by the plaintiff’s action.
- 3) Lastly, there are those indigenous Banyoro people whose customary and free hold lands have been appropriated by Government in public interest but such acquisition must be subject to prompt payment of the fair and adequate compensation. If not, the person who has the interest or right over the land and has been compulsorily deprived of his/her land has a right to access a court of law for redress.

[45] The plaintiff in this case, from the foregoing, has not shown or demonstrated and there is no evidence that, the ongoing oil

exploration, exploitation and production in the Albertine Graben has the effect of unlawful land acquisition or deprivation from the indigenous peoples of Bunyoro without the requisite compensation. Where they have been gravely affected by the ongoing oil activities without the requisite compensation, the affected people whether indigenous or not have a right to access a court of law for redress.

[46] In the premises, I find that the defendant District Land Boards' performance of their constitutional and statutory duties of allocating land and issuing land titles, leasing or otherwise dealing with the lands in their respective districts has not in any way contravened **Article 237 of the Constitution** and this 1st issue, which I have elaborated on more, is found in the affirmative. It is in the favour of the defendants.

Remedies to the parties

The plaintiff sought the following orders as remedies;

A. A permanent injunction restraining the defendants and all other actors working as their servants, workmen, representatives from sale, adverse use or transfer of interest of the suit lands.

[47] This court has found that the defendants are performing their constitutional or statutory duties of allocating and issuing land titles leasing or otherwise dealing with the lands in their respective districts. There is no evidence that they have contravened in any way **Article 237 of the Constitution**. As such, as was held in **Alcohol Association of Uganda & Ors Vs A.G & Anor H.C.M.A No.744/2019**,

“public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good.”

[48] From the foregoing, it is clear that this court cannot grant the sought order for it has not been shown that the defendants are exercising their mandate unlawfully.

B. Declaration that the actions and conduct of the defendant Land Boards were unconstitutional and Human Right Violation.

[49] There is no evidence adduced by the plaintiff to support any unconstitutional action or conduct of the defendants including the claim of eviction of the indigenous peoples of Bunyoro from their respective owned customary land or proof of any human rights violations in the oil exploration, exploitation and production in the region.

C. Declaration that all land titles granted by the defendant Land Boards are null and void and be cancelled.

[50] There is no evidence on record that all the land titles granted by the Defendant Land Boards were in contravention of the provisions of the constitution or any other law.

[51] I agree with counsel for the plaintiff's proposition in his submissions in rejoinder that the plaintiff doesn't specifically have to prove fraud when pursuing cancellation of a title as long as it can point out any illegalities perpetrated by the defendants in issuing out the Certificate of title in question.

[52] In **Hilder Wilson Namusoke & 3 Ors Vs Owalla's Home Investments Trust (E.A) Ltd & Anor, S.C.C.A No. 15/2017** while quoting Black's Law Dictionary, court defined illegality and fraud as follows;

"Illegality is -

(i) An act that is not authorized by law

(ii) The state of not being legally authorized.

(iii) The state or condition of being unlawful.

Fraud is -

The concealment or false representation through a statement or conduct that injures another who relies on it in acting.

Not every illegality is rooted in fraud" (emphasis added).

Prof. Lillian Tubatemwa-Ekiribinza JSC therein concluded that;

"I therefore respectfully disagree with the court of Appeal's interpretation that the word illegality in section 91(2) of the Land Act covers fraud."

- [53] The above clearly show that one can proceed on illegalities alone to have a certificate of title cancelled. However, whereas both fraud and illegalities are grounds for cancellation of a certificate of title under **S.177 RTA** and **S.91(2) of the Land Act** respectively, both must be pleaded with particulars as required under **O.6 r.3 CPR**. The plaintiff in this suit fell short of pleading the alleged illegalities with their particulars in the issuance of the impugned titles and later on prove the illegalities.
- [54] 2ndly, the record clearly show that the plaintiff is targeting unnamed non indigenous people of Bunyoro who may be holding various titles of land on lands that were formally held under customary system. This in my view is discriminatory ie, the plaintiff is discriminating ownership of land in Bunyoro against non-indigenous people which violates the provisions of **Article 21 and 37 of the Constitution**.
- [55] 3rdly, the right to be heard is a fundamental basic right. It is one of the cornerstones of the whole concept of a fair and impartial trial; the principle of "*Audi Alteram Partem*"; **R Vs University of Cambridge [1923]1 Str.557 (Fortescue J.)**, see also **Article 28(1) & 44 of the Constitution of Uganda**. In this case, the sought relief for cancellation of the titles which are already being held by individual third parties as registered proprietors who were not parties to this suit when they are not heard, violates their right to be heard. These 3rd parties cannot be disentitled of their respective interests in the suit land without being heard, to do so would be contrary to **Article 28 of the constitution**. In this aspect, the suit and the sought orders are incompetent to the extent that they affect 3rd parties that are not party to the suit.
- [56] In the premises, for the reasons above, this court is inclined to reject the prayer for cancellation of the titles so issued by the defendant Land Boards.

D. General damages and Aggravated Damages

- [57] Trespass to land occurs when a person directly enters upon land in possession of another without permission and remain upon the land, places or projects any object upon the land; **Salmond & Heuston on the law of Torts, 19th edn (1987) 46**. See also **Justine E.M.N Lutaya Vs Sterling Civil Engineering Co. Ltd S.C.C.No.11 of 2002**.

[58] It is a possessory action where the remedies are to be awarded, the plaintiff must prove a possessory interest in the land. The plaintiff must therefore demonstrate his or her exclusive possession and control of the land and the entry of the defendant onto the plaintiff's land must be unauthorized. The plaintiff in this case did not lead any evidence of possession of the suit lands and therefore, there is no basis for this court to award him any damages. There is no evidence supporting either the general or aggravated damages.

Conclusion

[59] As the plaintiff failed to demonstrate that they had *locus standi* to institute this representative action and the indigenous people of Bunyoro whom the plaintiff purported to sue on their behalf lacked legal capacity to sue, the suit is tragic one with no sense of direction. It is accordingly dismissed with costs to the defendants.

Dated at Masindi this 2nd day of **June, 2022.**

Byaruhanga Jesse Ruggyema
JUDGE.