

**THE REPUBLIC OF UGANDA**

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

**LD. CIVIL SUIT NO. 006 OF 2015**

**(CONSOLIDATED WITH CHIEF MAGISTRATE’S COURT CIVIL SUIT  
NO. 066 OF 2015)**

**1. KASOYA JUSTINE**

**2. KACWERE JULIUS =====PLAINTIFFS**

**(Administrators of the Estate of the late Gideon Musana Kacwere)**

**VERSUS**

**1. WILLIAM KAIJA**

**2. SUNDAY WILSON**

**3. PETER RUJUMBA**

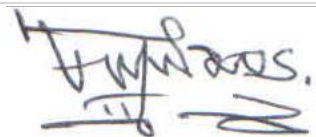
**4. VICTOR KUSHEMERERWA =====DEFENDANTS**

**BEFORE HON. JUSTICE VINCENT WAGONA**

**JUDGMENT**

**INTRODUCTION**

The Plaintiff filed this suit against the Defendants jointly and severally in trespass seeking a declaration, eviction order, permanent injunction, general damages, exemplary damages interests on damages and costs arising from the Defendants’ trespass to the land.



## PLAINTIFFS' CASE

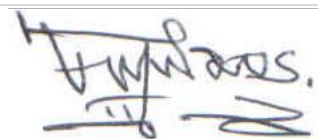
The Plaintiffs are administrators and among the beneficiaries of the estate of the late Gideon Musana Kacwere who owned registered land comprised in FRV 29, Folio 2, Mwenge Block 122, Plot 1 Kihooka measuring approximately 641 acres.

5 At the time of demise of the late Musana in 1962, Ndaula Joseph the father of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had a *Kibanja* thereon measuring approximately 11 acres and was recognized as such.

It was the case of the Plaintiffs that between 2005 and 2009, the 1<sup>st</sup> Defendant using his influence as LC5 Chairman of Kyenjojo District and later while holding  
10 the position of Resident District Commissioner (RDC), went beyond the *Kibanja* and together with his brothers the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, they trespassed upon the suit land, fenced it off, set up homes, and planted trees thereon without the consent and or authority of the Plaintiffs and amidst protest from the beneficiaries of the estate. That the 4<sup>th</sup> Defendant also trespassed upon the suit land and set up a home  
15 thereon. That during his time as RDC, the 1<sup>st</sup> Defendant used his security to brutalize, intimidate and unlawfully arrest some of the beneficiaries so as to enable his encroachment and annexation of more land and that at the time of filing the suit he had curved out over 100 acres for himself and together with the other Defendants, they have trespassed on over 135 acres of the suit land.

## 20 DEFENDANTS' CASE

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denied the Plaintiffs' claims and contended that they are lawful and or bona-fide occupants of a *Kibanja* of approximately 15 acres on the suit land, having inherited it from their father Ndahura Joseph s/o of Edward Rubuto who died in 1994. The 4<sup>th</sup> Defendant asserted that he also inherited his

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*Kibanja* from his father Kamanyire Victor who had acquired it from his father Bernard Kasongwire. The Defendants asserted that the Plaintiffs have never occupied and used the suit land whereas the Defendants were born and have grown up there and developed the land and hence they are bona-fide or lawful occupants  
5 on the suit land and cannot be evicted.

## ISSUES

1. Whether the Plaintiffs' suit is time bared.
2. Whether the Defendants trespassed on the Suitland.
3. Whether the Plaintiffs are entitled to the remedies sought.

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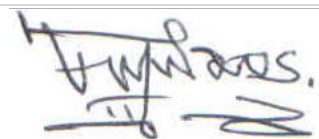
## REPRESENTATION

Counsel Wetaka Andrew Wobugwe of M/s Wetaka, Bukonya & Co. Advocates represented the Plaintiffs while Counsel Ahabwe James (RIP) and Bwiruka Richard of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the  
15 Defendants. The parties filed written submissions which I have considered.

1. Whether the Plaintiffs' suit is time bared:

### Plaintiffs' Submissions:

It was submitted for the Plaintiff that the suit is not time barred. Counsel cited Section 5 of the Limitation Act to the effect that no suit for recovery of land shall  
20 be brought after the expiration of 12 years from the date the cause of action accrued; and Section 6 providing that computation of time starts from the time the Plaintiff was disposed of the suit land. Counsel also cited *Ababiri Muhamood & 4*



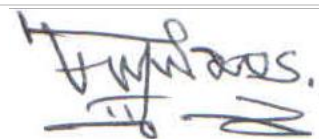
*others Vs. Mukomba Anastansia & Anor (2019) UGHC 16* where it was observed that in an action for recovery of land, the cause of action arises on the date the Defendant acquired the land; and *Justine E.M.N Lutaya Vs. Sterling Civil Engineering Co. Ltd SCCA No. 11 of 2002*, where it was held that trespass to land  
5 is a continuing tort and that the Defendant commits the same every day that passes.

It was pointed out that in this the plaint [para. 4(d) – (g)] shows that the trespass by the 1<sup>st</sup> Defendant started in 2005 and he was later joined by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in 2008 and 2009 and this was supported by the evidence of the Plaintiffs; and that the evidence of DW1 that he planted eucalyptus trees in 2008  
10 resonates with the Plaintiffs’ evidence. That DW2 indicated that he built his second one in 2006. It was pointed out that DW3 told court that his 1<sup>st</sup> house was built in 2011 while the 2<sup>nd</sup> one was built in 2015.

#### **Defendants’ Submissions:**

In response Counsel for the Defendants argued that the general rule with regards to  
15 limitation period in matters of recovery of land is that no action shall be brought by any person to recover land after the expiration of 12 years from the date on which the right of action accrued to him under section 5 of the Limitation Act. Counsel cited *Hajati Ziribagwa and Anor Vs. Yakobo Ntate HCCS 117/91* where the Hon. Lady Justice Byamugisha (as she then was) held that “*..since this was an action*  
20 *for recovery of land, the cause of action must have arisen at the date the Defendant acquired the land..*” That a cause of action relating to land should accrue on the date that the Plaintiff claims it was wrongly appropriated.

It was pointed out that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants indicated in their witness statements that they were born and raised on the suit land. In cross examination

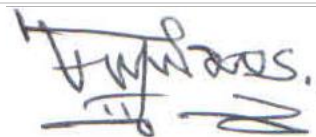
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DW1 testified that his father Ndahura Joseph gifted him the suit land in 1980, DW2 also testified that he was gifted with his portion in 1981 and DW4 indicated that he had been on the land for the last 44 years. Counsel further submitted that the PW1 Kasoya Justine confirmed that Rubuto Edward, the grandfather to the 1<sup>st</sup> to the 3<sup>rd</sup> Defendants was in possession and left the land to the son Ndahura Joseph. It was contended that the 4<sup>th</sup> Defendant is a grandson of Kasongoire who has also been in possession for a very long time. That this evidence confirms that the Defendants had been on the land for more than 12 years by the time the suit was filed.

10 **Rejoinder by the Plaintiffs:**

It was submitted that for the Defendants to assert that they were born on the suit land and they are thus bona-fide occupants contradicts the defence pleadings that they inherited their respective portions. That this was so because the word inherits per the **Black's law Dictionary 9<sup>th</sup> edition** connotes to receive property from an ancestor under the laws of intestate succession upon the ancestor's death or to receive property as a bequest or devise. That the 1<sup>st</sup> – 3<sup>rd</sup> Defendants had pleaded in their WSD that Rubuto died in 1994 following which the estate was inherited by Ndahura Joseph and so they cannot claim to own the suit land by virtue of being born there. That similarly the argument that they inherited the suit land upon the death of Rubuto in itself wipes the claim that they are bona-fide occupants.

That the same position applies to the 4<sup>th</sup> Defendant who said he started putting up his house in 2015 and claims to have acquired the land from his deceased father who had been gifted the same by Kasongoire an act which is illegal for lack of consent from the landlord per section 34(9) of the Land Act. That further, no

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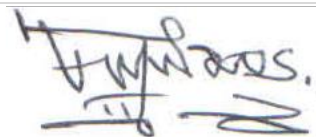
evidence was led by to prove that Kasongoire owned the portion he allegedly gave to the 4<sup>th</sup> Defendant's father or that he had a *kibanja* on the suit land. That in *Hajjat Ziribagwa & Anor Vs. Yakobo Ntale, HCCS No. 117 of 1991* a cause of action relating to land should accrue on the date the Plaintiff claims it was wrongly appropriated and this was 2005 for the 1<sup>st</sup> Defendant and 2008 for the others.

## 2. Whether the Defendants are trespassers on the suit land.

### Plaintiffs' Submissions:

Learned Counsel for the Plaintiffs submitted that trespass is defined by the **Black's Law Dictionary 9<sup>th</sup> edition** to mean an unlawful act committed against the person or property of another especially wrongful entry onto another's real property. He also cited *Justine E.M.N. Lutaya* where trespass was define thus: *"Trespass to land is the unlawful interference with another person's right to land, the person bringing the action must have been in its possession at the time of filing of the action. Possession in the primary sense is the visible possibility of exercising physical control, coupled with the intention of doing so either against the entire world or against all except certain people."* That in *Emmaus Foundation Ltd Vs. Antwani Kawaddwa HCCS No. 53 of 2011* court observed that trespass means entry onto land without the consent of the owner.

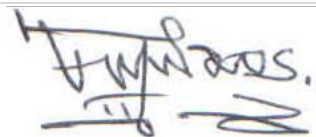
Learned Counsel invited court to Section 2 and 59 of the Registration of Titles Act to the effect that a certificate of title is conclusive proof of ownership of the land registered under the Act. Counsel argued that in the *Justine Lutaya* case, it was noted that a certificate of title is conclusive evidence of ownership and that the title holder has legal possession of the land and can sue even when not in possession including parting with possession.



Counsel argued that the fact that the Plaintiffs are registered proprietors of the suit land is acknowledged and undisputed by the Defendants. It was contended that the Defendants did not plead the size of their respective pieces of land and also failed to show the boundaries and the acreage of the land they claim they inherited. That these were clear acts of trespass as expounded by the Authors of *Winfield and Jolowiz on Tort, 19<sup>th</sup> edition, Sweet and Maxwell* at page 427 thus: “..It may be asked whether tortious liability for trespass to land, like that of trespass to person, requires proof of intention or at least negligence on the part of the Defendant. We must however, be careful to define what that intention or negligence goes to, for it is clear law that an entry upon another’s land is tortious whether or not the entrant knows he is trespassing. Thus it is no defense that the only reason for his entry was that he lost his way or even that he genuinely but erroneously believed the land was his.” It was submitted that since the Defendants were uncertain of the size of the land they claim they inherited and the Plaintiffs have a certificate of title to the suit land, it is reasonable to conclude that the Plaintiffs are the owners of the suit land and the Defendants are encroachers.

Counsel also contended that the Defendants are not bona-fide or lawful occupants within the definition in Section 29 (1) of the Land Act and the position in *Ndiwibo Sande & 3 others Vs. Allen Peace Ampaire CACA No. 65 of 2011* as inheritance is not envisaged. Further, that it is Ndahura who inherited the land from his father Edward Rubuto and not the Defendants and that as such their claim of inheritance of the suit land does not apply; that it could only apply after the death of their father.

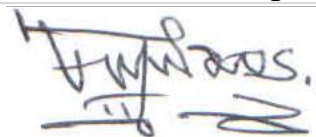
**Defendants’ Submissions:**

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In response Counsel for the Defendants argued that PW1 Kasoya Justine confirmed in cross examination that Rubuto, the father of Ndahura Joseph was in occupation of the suit land and she found them on the land. She also confirmed that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants are sons of Ndahura Joseph. She also testified that DW4 is a son of Kamanyire Victor and Kasongoire Benard is a grandfather to the 4<sup>th</sup> Defendant. That PW2 also confirmed that Ndahura Joseph was occupying about 10 acres. PW3 stated that Ndahura Joseph was occupying approximately 10 – 15 acres.

It was contended that the Plaintiffs do not dispute the occupancy of the suit land by the late Rubuto as well as by Ndahura and the Defendants. It was submitted that the Defendants brought evidence to confirm their ownership of the suit land. That DW4 Kaliba Leo aged 90 years and DW6 Manyindo Kachwere aged 72 years and a brother to the Plaintiffs confirmed the occupation of the suit land by the Defendants for a long time. It was submitted that that when court visited the locus in quo, each of the Defendants showed court their respective developments; that court was shown a grave yard where Rubuto and Ndahura Joseph and other relatives were buried. It was pointed out that the registered land is also occupied by other occupants.

Learned Counsel further submitted that the Plaintiffs are seeking to evict the Defendants who are bona-fide occupants on the land. That the Defendants continued in possession of the portions previously occupied by their parents and grandparents and have been on the suit land since they were born and grew up on it because their father also lived there. That their evidence was supported by that of Kaliba Leo, DW5 and DW6 Manyindo Kacwere, a brother to the Plaintiffs who testified in chief that the Defendants were born and grew up on the suit land. That the said evidence confirms that the Defendants are bona-fide occupants within the

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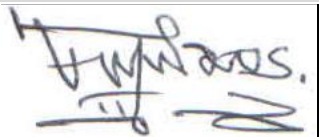
meaning under Section 29 (2) of the Land Act since they had occupied the land for more than 12 years before coming into force of the 1995 Constitution of the Republic of Uganda. That DW3 stated that he was born on the suit land in 1983 and has been in possession since then as such a bona-fide occupant. Learned Counsel also contended that Article 237(9) of the 1995 Constitution and Section 31 of the Land Act guarantees security of occupancy by a bona-fide and lawful occupancy. That it implies that the Defendants are not trespassers under the law.

**Rejoinder by the Plaintiffs:**

In rejoinder Learned Counsel for the Plaintiffs argued that the Defendants failed to prove their claim that they are bona-fide occupants. It was pointed out that the 1<sup>st</sup> Defendant corroborated the Plaintiffs story when he stated that when he became the area Chairperson he developed the suit land when got some money.

Counsel further submitted that the correct position as laid down in **Justine E.M.N Lutaya** case is that a registered proprietor has legal possession of the titled land and bears no burden to prove actual possession of the land in a suit for trespass. That the argument by the Defendants that the Plaintiffs are not in possession of the suit land should be rejected for being misleading and further on ground that the register proprietor need not prove actual possession in a case for trespass.

Counsel further asserted that PW1 told court the truth that he knew Ndahura who was occupying about 10 -15 acres of the suit land. That this evidence was not challenged and thus the land to which the Defendants claim title should be the 10 – 15 acres and the extra of what Rubuto was using was trespassed upon by the Defendants. Learned Counsel further maintained that whereas the Constitution



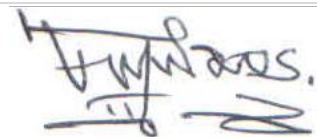
offers protection to the bona-fide occupants, such protection does not extend to trespassers.

### 3. Whether the Plaintiffs are entitled to the remedies sought.

#### Plaintiffs' Submissions:

5 Counsel submitted that the Defendant should be declared trespassers and an order of eviction be issued to that effect and a permanent injunction. Counsel also prayed for general damages to which he invited court to the decision of *Stroms Vs. Hatchison (1905) A.C 515* where it was observed that general damages flow from the ordinary course of things. That they are intended to put the injured party back  
10 to the position he or she ought to have been had the wrong not occurred and most importantly they are discretionary. Learned Counsel thus asked for an award of UGX 30,000,000/= as general damages for the trespass committed by the Defendants.

Learned Counsel also asked for an award of exemplary damages. He submitted that  
15 the law as set out in *Uganda Revenue Authority Vs. Wanume David C.A.C.A No. 43 of 2010* is that exemplary damages are awarded to punish the Defendant for the unconstitutional, malicious, vindictive and high handed conduct of the Defendant. That in this case, it was the Plaintiffs' evidence that the 1<sup>st</sup> Defendant started encroaching on their land upon becoming the area Chairperson L.C.V and RDC  
20 and later invited his brothers to do the same. It was contended that the fact that the 1<sup>st</sup> Defendant used his political clout, the court should punish him for his impunity by way of an award of exemplary damages of UGX 10,000,000/= to the Plaintiff.

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Counsel also prayed for interest. He submitted that Section 28 of the Civil Procedure Act gives court the discretion to award interest on money passed in the decree. He thus prayed for interest of 20% on the award of damages.

5 Learned Counsel also asked for costs. He submitted that Section 27 (1) of the Civil Procedure Act is to the effect that costs follow the event and that a successful party is entitled to costs and he cited *Makula International Ltd Vs. H.E Cardinal Nsubuga (1982) HCB 11*.

**Defendants' Submissions:**

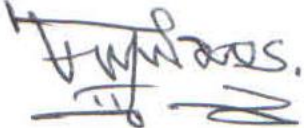
10 In reply, Counsel submitted that since the Plaintiffs' suit is barred by limitation, they are not entitled to any reliefs. That since the Plaintiffs failed to prove that the Defendants are trespassers and thus qualify as bona-fide occupants, the Plaintiffs' claim has no merit and as such should be dismissed.

**CONSIDERATION BY COURT:**

15 **1. Whether the Plaintiffs suit is time bared.**

*The Black's Law Dictionary* 4<sup>th</sup> edition at page 2716 defines limitation as a statutory period after which a lawsuit or prosecution cannot be brought in court. *Meriam Webster*, Online Dictionary defines limitation as a certain period limited by statute after which actions, suits, or prosecutions cannot be brought in the  
20 courts.

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Section 5 of the Limitation Act Cap. 80 provides that: *“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”* The time

5 prescribed under section 5 starts running from the time the right of action accrued.

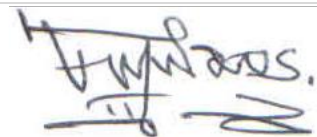
In cases of recovery of land Section 11(1) provides that: *“No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”), and where under sections 6 to 10,*

10 *any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land.”*

The period of limitation starts to run from the time the person is dispossessed of the land in dispute. This is because recovery of land is an action by which a person not in possession of land can recover both possession and title from the person in possession if he or she can prove his or her title.

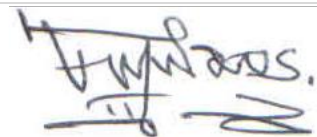
The limitation under Section 5 of the Act is applicable to all suits in which the claim is for possession of land, based on title or ownership i.e., proprietary title, as distinct from possessory rights. *See Odyek Alex & Anor Vs. GenaYokonani, Civil Appeal No, 09 of 2017*). The major import of the statute of limitation was stated by the Hon. Justice Mubiru in *Odyek Alex & Anor. Vs. GenaYokonani & 4 others Civil Appeal No. 09 of 2017* as follows:

25 *“Two major purposes underlie statutes of limitations; protecting Defendants from having to defend stale claims by providing notice in time*



to prepare a fair defence on the merits, and requiring Plaintiffs to diligently pursue their claims. Statutes of limitation are designed to protect Defendants from Plaintiffs who fail to diligently pursue their claims. Once the time period limited by The Limitation Act expires, the Plaintiff's right of action will be extinguished and becomes unenforceable against a Defendant. It will be referred to as having become statute barred. Moreover, uninterrupted and uncontested possession of land for a specified period, hostile to the rights and interests of the true owner, is considered to be one of the legally recognized modes of acquisition of ownership of land (see *Perry v. Clissold* [1907] AC 73, at 79). In respect of unregistered land, the adverse possessor of land acquires ownership when the right of action to terminate the adverse possession expires, under the concept of “extinctive prescription” reflected in sections 5 and 16 of The Limitation Act. Where a claim of adverse possession succeeds, it has the effect of terminating the title of the original owner of the land (see for example *Rwajuma v. Jingo Mukasa*, H.C. Civil Suit No. 508 of 2012). As a rule, limitation not only cuts off the owner’s right to bring an action for the recovery of the suit land that has been in adverse possession for over twelve years, but also the adverse possessor is vested with title thereto.”

The statute of limitation therefore is a sword used by one in possession to cut and kill whatever claim a person may have over land. The sword cares not about how valid the claim could be, how touching the case may be. It has no mercy to whoever it finds, it pays no attention to the age of the claimant or tribe or stature of people or their social, cultural or economic background. Once it falls, it cuts all

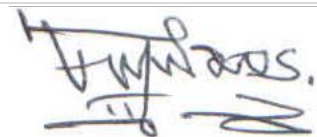
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with no mercy, and leaves no such claim standing. Therefore, for one to avoid such sword of vengeance, they should bring their claim within the time provided for under the Limitation Act or must plead exceptions as provided for under the Act.

In this case the original plaint was filed in 2015. In paragraph 3 of the amended  
5 plaint, the Plaintiffs contended that: ***“This suit is filed by the Plaintiffs who are the joint proprietors of the suit land against the Defendants jointly and severally and it is seeking a declaration, an eviction order, a permanent injunction, general and exemplary damages, interest and costs of the suit all arising from the Defendant’s trespass to land.”*** In paragraph 4(d) and (g) the Plaintiffs  
10 indicated that the alleged trespass occurred between 2005, 2008 and 2009 and indicated the particulars of trespass under paragraph 5. From the reading of the amended plaint, the Defendants trespassed upon, occupied and exploited are still in occupation and exploitation of the suit land. In the final prayers, the Plaintiffs asked court to declare the Defendants’ trespassers on the suit land, and issue an  
15 order of eviction and permanent injunction among other orders. Therefore the trespass is continuous.

In ***Justine E.M.N Lutaya Vs. Stirling Civil Enginerring Co. Ltd, Civil Suit No. 11 of 2002*** it was stated that: ***“Trespass to land is a continuing tort, when an unlawful entry on the land is followed by its continuous occupation or  
20 exploitation. Proof of such continuous unlawful occupation, is sufficient proof of trespass, even if the date it commenced is not proved.”***

In this case it is the case of the Plaintiffs that the unlawful entry on the suit land was followed by continuous occupation and exploitation that continues to date. In any event, the Plaintiffs indicated that the alleged trespass in excess of the land (10

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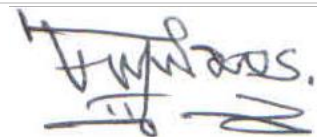
– 15 acres) that was originally occupied by Rubuto, commenced between 2005, 2008 and 2009 when the Defendants are alleged to have committed the trespass complained of, that continues to date as they still occupy and utilize the suit land. The suit was filed in 2015. I thus find that the Plaintiffs’ suit was not time barred.

5        **2. Whether the Defendants are trespassers on the suit land.**

Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. (See *Justine E.M.N Lutaya vs. Sterling Civil Engineering Co. Ltd. SCCA No. 0009 of 2017*). It is trite that possession may physical or constructive.

10      An action for the tort of trespass to land is therefore for enforcement of possessory rights rather than proprietary rights. The gist of an action for trespass is violation of possession, not challenge to title. ((See *Odek Alex & Anor Vs. GenaYokonani& 4 others, Civil Appeal No. 0097 of 2017*). In the case of registered land, a person holding a certificate of title has, by virtue of that title, legal possession, and can sue  
15      in trespass (See *Justine E.M.N Lutaya vs. Sterling Civil Engineering Co. Ltd. SCCA No. 0009 of 2017*).

In this case it is uncontested that the Plaintiffs are the registered proprietors of the suit land being administrators of the estate of the late Gideon Musana Kacwere. A certificate of title for the suit land being land described as FRV 29 Folio 2,  
20      Mwenge Block 122, Plot 1 at Kihooka was admitted in Court as PEX1. The Plaintiffs recognize that part of the suit land was occupied as a *Kibanja* by the late Rubuto Edward who passed it on to the Ndahura, the father of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants. The Plaintiffs recognized the late Joseph Ndahura as a bona-fide and lawful occupant on the suit land occupying approximately 11 or 10 – 15 acres and

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they have no claim over this portion of the land. The claim of the Plaintiffs is over the extra land that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants annexed beyond what originally belonged to the late Joseph Ndahura. For the 4<sup>th</sup> Defendant, the Plaintiffs contend that for him he is a trespasser and his interests are not known to them.

5

Section 29 (2) of the land Act define a bona-fide occupant thus:

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

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

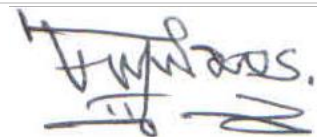
(b) *had been settled on land by the Government or an agent of the Government, which may include a local authority.*

15 In *Isaya Kalya & 2 others Vs. Moses Macekenyu Kagobya, Court of Appeal Civil Appeal No. 82 of 2012* the court appeal observed thus:

***“In order for one to qualify as a bona fide occupant that person must satisfy the conditions set out in Section 29 (2) of the Land Act, that is;***

20 (i) *Must have occupied and utilized the land in issue for 12 or more years before the coming into force of the Constitution on 8<sup>th</sup> October 1995 unchallenged by the registered owner or*

(ii) *Must have developed the land in issue unchallenged by the registered owner for 12 or more years before 8<sup>th</sup> October 1995, when the Constitution came into force.*





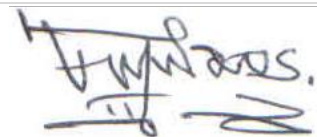
(iii) *Must have acquired interest of a person who satisfied the above conditions.*”

The principle consideration is that for one to qualify as a bona-fide occupant, he or she must have been in occupancy and utilization or developed the land unchallenged for 12 years before the coming into force of the constitution.

**Plaintiffs’ claim against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants:**

The Plaintiffs claim as pleaded in the amended complaint is for a tort of trespass. The amended complaint states as follows: **Para. 4(b):** “*At all material times, the suit land which measures approximately 641 acres was owned by the late Gidion Musana Kacwere, he having been registered as proprietor thereof on the 2<sup>nd</sup> day of March 1953 Vide Instrument No. 113086.*” **Para. 4(c):** “*By the time of his death in December 1962, the late Gidion Musana Kacwere had 1 squatter on the suit land called Joseph Ndahura who is still in occupation and who happens to be the father of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants occupying about 11 acres and as a matter of fact, all the late Gidion Musana Kacwere’s beneficiaries recognize him as a lawful occupant on the suit land.*”

The Plaintiffs stated that the 1<sup>st</sup> to the 3<sup>rd</sup> Defendants went beyond the 11 or 10 – 15 acres which belonged to their father and trespassed on their land. The Defendants on the other hand denied being trespassers on the suit land and pleaded to be bona-fide and lawful occupants who were born on the land and have lived there. The 1<sup>st</sup> to the 3<sup>rd</sup> Defendants being the sons of Joseph Ndahura stated in paragraph 5 and 6 of the Written Statement of Defense that the land formerly belonged to their paternal grandfather, the late **Edward Rubuto** who lived on the

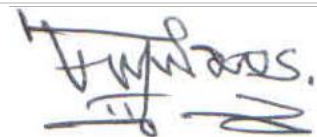
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land for decades, had a residential home and produced children from there and when he died, he was buried on the suit land.

**Evidence:**

**PW1 Kasoya Justine** stated in chief that she knew the Defendants were occupying part of their land. That she knew the 1<sup>st</sup> to the 3<sup>rd</sup> Defendants since childhood. That it was because their father Ndahura Joseph was a *Kibanja* holder on their land. That the 4<sup>th</sup> Defendant is a village mate and a son of the late Kamanyire and a grandson of Kasongwire and that the Defendants commenced trespass on the suit land between 2008 and 2014. She stated that the Defendants did not seek or obtain consent or authority from them the owners of the land. That the land measures about 1 square mile and it is described as FRV 29, Folio 2, Mwenge County at Kihoka and it is registered in the Plaintiff's names as joint administrators of the estate of their father the late Gideon Musana Kacwere. That they have a homestead on the said land, trees and various other plants and also use the same for grazing.

The witness stated that the Defendants encroached and currently are occupying and using over 135 acres of the entire land according to her estimation. She said that the 1<sup>st</sup> Defendant alone has annexed over 100 acres while the others have annexed a total of about 35 acres. That the Defendants have built their residential houses and have planted trees including pine and eucalyptus. It was her evidence that the Defendants encroached on the suit land under the encouragement of the 1<sup>st</sup> Defendant who happened to be the L.C.V of Kyenjojo District. That the 1<sup>st</sup> Defendant used his influence to intimidate and muzzle all means of contest of his illegal conduct and that the actions continued.

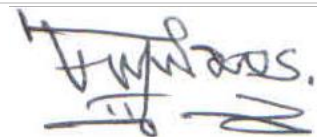
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In cross examination she accepted that the 1<sup>st</sup> Defendant's Grandfather Rubuto Edward was still alive in 1968 and stated that Rubuto was staying on the suit land and was occupying about 10 acres. That the land Rubuto used to occupy is the land that his son Joseph Ndahura took over. That she was aware that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are sons of Ndahura and were born on the portion occupied by their father and not the land in dispute.

That she knew Kusemererwa the 4<sup>th</sup> Defendant and that he was a son of Kamanyire Victor. That she also knew Kasongwire Benado because he used to border the land in dispute. That Kansongwire Benado was a grandfather of Victor Kamanyire and that they were not on the land but he has since also encroached. That Kasongwire was a neighbor and the boundary marks were mark stones.

That the Defendants started using the land between 2000 and 2008 when the 1<sup>st</sup> Defendant became the chairperson L.C. 5 of Kyenjojo District and supported his brothers who also started to use the land and the 1<sup>st</sup> Defendant fenced it in 2008. That they exceeded their fathers land and entered the Plaintiffs' land.

**PW2 Edward Ihura** stated in chief that the Defendants trespassed on their land and that they forcefully occupied and are currently using their land without the consent of the family. He said that the 1<sup>st</sup> Defendant has used his political clout to cheat them. He stated that before the trespass, the land was occupied and used by the family members for various developments including residence, grazing and cultivation of crops. That the 1<sup>st</sup> Defendant trespassed thereon in 2005 when he started to construct his residential house while the other Defendants encroached on the land between 2008 and 2014 and that it was done amidst protests from him, the Plaintiffs and other family members. That the claim that they inherited the suit land

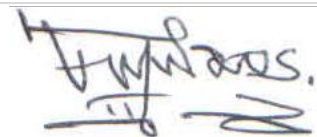


from Ndahura was false because he was still alive and occupied only about 10 acres of the land. That the Defendants had never revealed how much land was gifted or inherited by them but they kept on annexing more and more of the Suitland.

5 In cross examination he stated that the farm of the 1<sup>st</sup> Defendant was started between 2005 and 2006. That Joseph Ndahura was occupying 10 acres of the land separate from the farm. That on the 10 acres there used to be a house for his son Wilson Sunday the 2<sup>nd</sup> Defendant and that the 1<sup>st</sup> Defendant had annexed a farm estimated at around 50 acres. That before the sons of Ndahura occupied the land in  
10 dispute, it used to be vacant and the Plaintiffs' family was using it but there was no body living there. That before the 1<sup>st</sup> Defendant constructed his new house he lived with his father.

In re-exam he stated that Ndahura occupied about 10 to 11 acres and he has never moved from the land where he is. That the claim by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants that  
15 they inherited the land is false as Ndahura is still alive and lives on the land.

**PW3 Kabasomi Buladina** stated in chief that the Defendants trespassed on family land and are currently occupying and utilizing. That of late there are developments by the Defendants who occupied a huge portion thereof amidst protests from the family members. The witness stated that the 1<sup>st</sup> Defendant in particular used his  
20 influence as Chairperson L.C.V to trespass on the land in connivance with his brothers the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. That the Defendants have also built their residential houses and have planted a variety of trees thereon, most of which were planted after the case was filed.

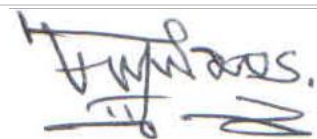
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That the 1<sup>st</sup> Defendant encroached on the suit land some time in 2005 when he started constructing his residential house thereon amidst protests from her and her family members, while others started encroachment recently in 2012 and 2014. That they filed complaints with security people but no meaningful results accrued there from given the 1<sup>st</sup> Defendant's position as LCV Chairperson and RDC who intensified his actions and kept threatening violence against her and has on various occasions physically attacked her and assaulted her.

That the claim by the Defendants that they inherited the suit land is false because Joseph Ndahura whom they claim they got the land from is still living and only had about 10 acres as opposed to 139 acres in her estimation encroached upon by the Defendants and they keep adding. That the complaint by the family is not in respect of the 10 acres occupied by Ndahura but the pieces of land encroached upon. That the 4<sup>th</sup> Defendant's father is still living and occupying different pieces of land and therefore the 4<sup>th</sup> Defendant cannot have inherited from him.

PW3 in cross examination accepted that Ndahura Joseph is the father of the 1<sup>st</sup> to the 3<sup>rd</sup> Defendants. That Kasongwire is the grandfather of Victor Kusemererwa and that she found Ndahura in the area. That Ndahura had about 10 to 15 acres and she even saw his father Rubuto. That the Defendants are not in Ndahura or Rubuto's land.

**DW1 Kaija William** the 1<sup>st</sup> Defendant stated in his evidence in chief that his grandfather Edward Rubuto died in 1994 and his land was inherited by his son Ndahura Joseph. That he now owns the land as a son of Ndahura Joseph and grandson of Edward Rubuto. That he was born and grew up there and has a residential home there as well as a forest and other developments. In cross

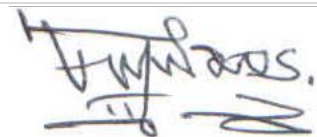
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examination he stated that he was a bona-fide occupant on the land in dispute based on the *Kibanja* originally occupied by his grandfather Edward Rubuto. That the land is not surveyed and he did not know the size of the land he is occupying.

5 **DW2 Sunday Wilson Joseph** the 2<sup>nd</sup> Defendant in his evidence in Chief stated that he was a son of late Edward Rubuto and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants are his brothers and that the suit land belonged to his grandfather late Edward Rubuto who died in 1994 and he was buried on the suit land. That when his grandfather died the land was left to his father Joseph Ndahura his only son and he is in occupation of the suit land as a son of Joseph Ndahura and grandson of Edward Rubuto. That he  
10 was born on the suit land and grew up thereon and hence he cannot be a trespasser but a bona-fide occupant. That he has houses on the suit land and he is grazing cattle on the land and grows seasonal crops thereon. In cross examination, the witness stated that he does not know how much land he is occupying. That he got a share of the land from his father Ndahura.

15 **DW4 Peter Rujumba** in his evidence in chief stated that the suit land belonged to his grandfather late Edward Rubuto who died in 1994 and he was buried on the suit land. That when his grandfather died the land was left to his father Joseph Ndahura his only son and he is in occupation of the suit land as a son of Joseph Ndahura and grandson of Edward Rubuto. That he was born on the suit land grew up thereon  
20 and hence he cannot be a trespasser but a bona-fide occupant. That he has his homestead on the suit land, trees, is grazing cattle and grows seasonal crops thereon.

**DW 5 Kaliba Leo** stated that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are biological sons to Joseph Ndahura and grandsons of Edward Rubuto. That Joseph Ndahura inherited

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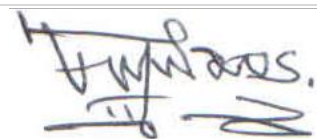
the suit land now occupied by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from his late father Edward Rubuto. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have residential houses, trees, crops and other developments on the suit land and it is where their grandfather was buried. That the Defendants were born and grew up on the suit land and they have  
5 never gone beyond the boundaries of their land.

**DW6 Manyindo Kachwere** stated that by the time he was born he found late Edward Rubuto on the suit land with clear boundaries which land is now occupied by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and it is where late Edward Rubuto was buried.  
10 The witness stated that the Defendants are bona-fide occupants on the suit land and they have never gone beyond their known boundaries. That the Defendants were born, grew up on the suit land, have residential houses thereon and other developments.

## 15 **PROCEEDINGS AT LOCUS**

### **Observations by Court:**

The locus visit was conducted on 16/9/2022. The court was shown the home of the 1<sup>st</sup> Defendant with both a new house and an old house. The old house is located where the original home of Ndahura Joseph was located before Ndahura shifted to  
20 a new site that the court also visited. There are about 15 graves next to the old house. It was reported that the relatives of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were buried there, including their grandparents and their father. There is a relatively new house next to this area, being the new home of the 1<sup>st</sup> Defendant, who reported that he built it where his grandfather originally lived.

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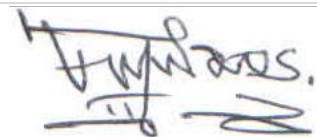
The court was shown the new home of the late Ndahura Joseph the father of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants. It is a brick house that is not plastered. The land is demarcated with mango trees forming the boundaries. There are eucalyptus trees below, reported to have been planted by the 1<sup>st</sup> Defendant. The area above the home of the late Ndahura Joseph, is occupied by Peter Rujumba the 3<sup>rd</sup> Defendant, with a permanent house said to have been constructed in 2008. The Plaintiffs say that Rujumba occupies 8 – 10 acres.

The home of the 4<sup>th</sup> Defendant has a new permanent house located next to an old house of his father. It was reported that the new house of the 4<sup>th</sup> Defendant was built during COVID-19 lockdown. The court was shown grown and growing young eucalyptus trees said to have been planted in 2017.

**Locus Hearing:**

The Plaintiffs did not adduce any additional evidence at locus. The 1<sup>st</sup> Defendant testified that on the land he has an old house built in 1988, and another house built in the year 2000. That he has trees covering 8-10 acres planted in 2010. That he occupied only what his father was occupying before his father shifted to a new site. In cross examination he said he was occupying 10-15 acres out of the entire land on the land title. That Sunday Wilson was occupying about 5 acres; while Peter Rujumba was occupying about 1 acre. That Kusemererwa is occupying 1-2 acres or less. The 4<sup>th</sup> Defendant testified that he has less than 1 acre of land on the suit land. That the land is located within the land title and he got it from his father.

In my analysis, the totality of the evidence shows that the Plaintiffs recognize that Joseph Ndahura was a bona-fide occupant approximately 11 or 10 – 15 acres of the suit-land. The evidence shows that Joseph Ndahura had obtained the land from his

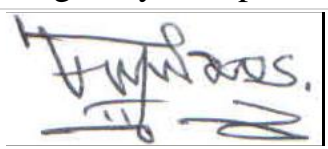
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father Edward Rubuto. It is important to note that this is the land that each of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants claim to have obtained a share of. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants assert that their occupation is limited to the land that they got from their father. Regarding the size of the land being occupied, the 1<sup>st</sup> Defendant stated that he was occupying 10-15 acres out of the entire land on the land title. That Sunday Wilson the 2<sup>nd</sup> Defendant was occupying about 5 acres; while Peter Rujumba the 3<sup>rd</sup> Respondent is occupying about 1 acre. I deem it fair to conclude that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants as well as their father are in bona-fide occupancy of 15 acres of the suit land and cannot be evicted there from, in respect of the said 15 acres.

It is the case of the Plaintiffs that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants have exceeded the original land of their father and grandfather and they have encroached and or trespassed upon over 135 acres of the suit land. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants maintain that they have stayed within the limits of the land obtained from their father who had obtained it from their grandfather.

The court did not benefit from any independent evidence or survey report to determine the size of the land currently occupied by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to assist the court in determining whether or not they have exceeded the 15 acres that they claim they occupy as bona-fide occupants. In my visit to the locus I observed that the land occupied by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants may be way more than 15 acres. It appeared to be a significant chunk of land. It is the case of the Plaintiffs that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants exceeded their fathers ***Kibanja*** and they have trespassed upon, occupied and are utilizing the titled land of the Plaintiffs. I find the case of the Plaintiffs more believable and more probable that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have left the ***Kibanja*** that was originally occupied on the basis

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of bona-fide and lawful occupancy and they have trespassed upon and settled on and they are utilizing the land of the Plaintiffs.

The totality of the above analysis leads me to the conclusion that 15 acres of the suit land belonged to Edward Rubuto who per the evidence lived on the land before 1968. Thus by virtue of section 29 (2), of the Land Act as amended, Edward Rubuto qualified as a bona-fide occupant on the said 15 acres of the suit land. Upon his death, the land was passed to his son Ndahura Joseph and the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as sons of Ndahura do qualify as bona-fide occupants. From the evidence, this land is located where the original home of Ndahura Joseph was, where there are about 15 graves where the relatives of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were buried, including their grandparents and their father.

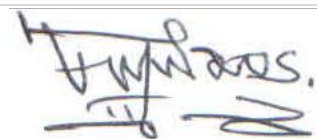
I find that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are trespassers on the suit land in respect of the land that is in excess of the 15 acres of the land that originally belonged to Ndahura Joseph s/o of Edward Rubuto.

**Plaintiffs' claim against the 4<sup>th</sup> Defendant:**

The Plaintiffs contended that the 4<sup>th</sup> Defendant is not known to them. That his father owned land neighboring the titled land and the 4<sup>th</sup> Defendant took advantage of the fact that the land was not in use to trespass upon the same and thus asked court to declare him a trespasser.

**Evidence:**

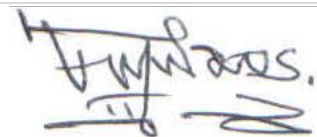
PW1 stated in chief that the 4<sup>th</sup> Defendant is a village mate and a son of the late Kamanyire and a grandson of Kasongwire and that he commenced trespass on the suit land between 2008 and 2014. In cross examination she stated that Kasongwire



is not even staying or occupying any portion of the suit land. That she knew Kasongwire Benado because he used to border the land in dispute and the boundary marks were mark stones. That Kusemererwa was sued because he constructed a house on the Plaintiffs' land without their consent as the landlords.

5 PW1's evidence was supported by that of PW2 who stated that the 4<sup>th</sup> Defendant's father has never occupied the suit land and his grandfather Kasongwire Bernard who was alive was not occupying the land in dispute. PW3 also stated in examination in chief that the 4<sup>th</sup> Defendant's grandfather was still alive and occupying a different piece of land and therefore he cannot have inherited the same  
10 from him.

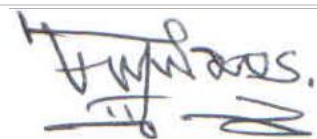
On the other hand the 4<sup>th</sup> Defendant who testified as DW3 stated in chief that he was born in 1983 on the land in dispute when his father Kamanyire Victor was already in occupation of the suit land before he died in 1993 leaving him on the disputed land. That his late father was given the suit land by his grandfather  
15 Kasongoire Benado who also inherited it from Nyamutale. That having stayed on the land from 1983 and upon inheriting the same from 1993, he was wrongly sued by the Plaintiffs. He stated that his father had a residential house which is still visible on the land and other crops like jackfruits and a coffee plantation; that after inheriting the land from his father, he also developed the same with a banana and  
20 coffee plantation and constructed a permanent house thereon. That the land belonged to him as a bona-fide occupant and the Plaintiffs wanted to grab his land. In cross examination he indicated that he had not measured the land he was occupying. That he assumed possession in 1993 when his father died. That he was born on the land and he was 36 years having been born in 1983. That he has spent  
25 over 12 years on the suit land and that is why he calls himself a *Kibanja* or bona-

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fide occupant. The 4<sup>th</sup> Defendant **DW3**'s evidence was supported by that of **DW5** who stated in his examination in chief that the 4<sup>th</sup> Defendant is a grandson to Benado Kasongoire who is the son of late Nyamutale and he is a bona-fide occupant on the suit land. In cross examination he stated that he grew up and found  
5 people on the suit land who included among others, Nyamutale, Joseph Ndahura, Edward Rubuto, Geresom Kamwanga, Isreal Mpaka and others shifted and went. **DW6** also stated in chief that the 4<sup>th</sup> Defendant is a grandson of Benado Kasongoire and he is on the land of Benardo Kasongoire as a bona-fide occupant. In cross examination he stated that the Defendants were bona-fide occupants  
10 because they never went passed their boundaries. In re examination he stated that Victor Kusemererwa is on his grandfather's land.

I have considered the evidence in totality. The Plaintiffs claim that the 4<sup>th</sup> Defendant trespassed on their land. The Plaintiffs averred that Kasongoire Benad was a neighbor to their land and the two were separated by mark stones. The 4<sup>th</sup>  
15 Defendant and his witnesses do not dispute the fact that the land occupied by the 4<sup>th</sup> Defendant falls within the titled land of the Plaintiff. They also do not dispute the fact that Kasongoire Benad was a neighbor to the land that belonged to the Plaintiffs' father. The Plaintiffs do not claim the entire land which belonged to Kasongoire but a portion occupied by the 4<sup>th</sup> Defendant which they assert falls  
20 within the titled land. The 4<sup>th</sup> Defendant testified that his father was in occupation and use of the land but did not produce any member of the family or Kasongoire himself to testify about the same. None of the immediate neighbors of said land testified about his father's use and occupancy of the said land.

At locus I observed a new house and trees planted by the 4<sup>th</sup> Defendant in 2017  
25 even when there was an injunction granted by court on 18<sup>th</sup> April 2017. In my

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view the 4<sup>th</sup> Defendant wanted to create evidence during the trial, on which to cling, to claim the Plaintiffs' land.

I find the evidence of the Plaintiffs in this regard more believable that the 4<sup>th</sup> Defendant took advantage of the fact that the neighboring land was not used and he went ahead to encroach on and started use of the same. In therefore find that the 4<sup>th</sup> Defendant is a trespasser on the Plaintiffs' land.

In the result, I find that the Plaintiffs have on the balance of probabilities proved their case against each of the Defendants. The suit therefore succeeds.

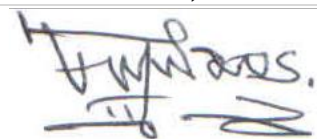
## **REMEDIES**

### **10 Defendants as Trespassers**

The Plaintiffs contend that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have exceeded the 11 or 10-15 acres of land where they qualify to be bona-fide occupants while the Defendants assert and maintain that their occupation is limited to the 10-15 acres. It is necessary to curve out the 15 acres so to establish ensure that the Defendants are restricted to the 15 acres. As for the 4<sup>th</sup> Defendant, his trespass is at the boundary, is limited to only about 2 acres, and he has his new residential home there; it is fair that he be given an option of compensating the Plaintiffs.

### **General damages:**

Damages are intended to compensate the innocent party for the loss and suffering he or she has been subjected to by default of the party in the wrong. These are awarded at the discretion of court taking into consideration the suffering and inconvenience a party has been subjected to. (See *Luzinda v. Ssekamatte & 3 Ors* (Civil suit -2017/366 [2020] UGHCCD 20 (13 March 2020)). No evidence was

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presented to support the justification for the claim of UGX 30,000,000/= as general damages. I have found no compelling reason to warrant an award of general damages.

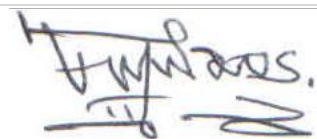
**Exemplary damages:**

5 These are awarded to punish the Defendant for the unconstitutional, malicious, vindictive and high handed conduct committed to the Plaintiffs (*Uganda Revenue Authority vs. Wanume David Kitamirike CACA No. 43 of 2010 (1982)*). Exemplary damages should not be used to enrich the Plaintiff, but to punish the Defendant and deter him or her from repeating his conduct which has been  
10 adjudged by court as illegal. Court must take into account the nature of the Defendant's action and his or her conduct to establish whether they were provoked. (See *Luzinda v. Ssekamate & 3 Ors (Supra)*). The Plaintiff sought punitive damages for the wanton conduct of the 1<sup>st</sup> Defendant whom they claimed had trespassed on their land with impunity using his political clout. However, no  
15 specific instances of malicious, vindictive and high handed conduct by the Defendants were demonstrated. There is no sufficient justification for the award of exemplary damages.

In the case of the 4<sup>th</sup> Defendant, at locus I observed a new house and trees planted by the 4<sup>th</sup> Defendant in 2017 even when there was an injunction granted by court  
20 on 18<sup>th</sup> April 2017. In my view the 4<sup>th</sup> Defendant wanted to create evidence during the trial, on which to cling, to claim the Plaintiffs' land. This conduct on the part of the 4<sup>th</sup> Defendant is sufficient justification for the award of exemplary damages.

**Costs:**

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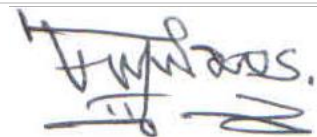


Section 27(2) of the Civil Procedure Act is to the effect that costs follow the event and a successful litigant is entitled to costs. However, court may in compelling circumstances deny an award of costs if it would bring calmness and togetherness among the parties.

5 The Plaintiffs being the successful party, I grant the following Declarations and Orders:

1. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are bona-fide occupants in respect of 15 acres of the suit-land that originally belonged to Ndahura Joseph s/o of Edward Rubuto and they cannot be evicted there from or prevented from occupying and utilizing the said land. For avoidance of doubt, the said 15 acres of land is located starting at the original home of Ndahura Joseph, where the said Ndahura Joseph, Edward Rubuto and other relatives of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were buried.
2. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are trespassers on the suit land in respect of the land that is in excess of the said 15 acres of the land referred to in No. 1 above.
3. That the Registrar of this Court shall cause a Government Surveyor to be appointed to determine the 15 acres of land referred to in No. 1 above. The Government Surveyor shall work closely with the parties or their representatives in this regard and shall submit a report to the Registrar within 2 months from the date of delivery of this Judgment. Any expenses incurred in this exercise shall be met by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants.
4. That the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants are hereby directed to vacate and relinquish to the Plaintiffs the suit land that they trespassed upon, within a period of 6 months from the date of delivery of this Judgment; in default

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whereof, an Eviction Order that hereby doth issue against the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants, shall be enforced.

5. That the 4<sup>th</sup> Defendant is a trespasser on the suit land.

6. That the 4<sup>th</sup> Defendant is hereby directed to pay compensation to the Plaintiff at the current market value, so as to retain 2 acres of the suit land, within a period of 6 months from the date of delivery of this Judgment; in default whereof, an Eviction Order that hereby doth issue against the 4<sup>th</sup> Defendant for his eviction from the suit land, shall be executed.

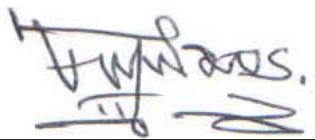
7. The 4<sup>th</sup> Defendant shall pay to the Plaintiffs UGX 3,000,000/= as Exemplary Damages.

8. A Permanent Injunction doth issue restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and their agents and servants from committing any further or new acts of trespass and/or carrying out any new activities on the suit land trespassed upon.

9. A Permanent Injunction doth issue restraining the 4<sup>th</sup> Defendant and his agents and servants from committing any further or new acts of trespass on the suit land.

10. That the Defendants shall pay to the Plaintiffs the costs of the suit.

It is so ordered.



Vincent Wagona

High Court Judge / FORT-PORTAL

17.02.2023

