

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CV-CS- 0078 – 2006**

YOWERI BAMUHIGA & 5 OTHERS.....PLAINTIFFS

VERSUS

FRANK BAGONZA & 3 OTHERS.....DEFENDANTS

BEFORE: THE HONOURABLE MR. JUSTICE A. C. OWINY- DOLLO

PROCEEDINGS

11/12/2006: M/S Mwesigye, Mugisha & Co. Advocates for the Plaintiff’s herein files a
plaint and fees paid.

Court: Let the plaintiff’s Advocate serve the Defendant with a plaint and summons to file
a defence.

Sgd. (J. B. SSEGGIRINYA)
DEPUTY REGISTRAR

18/12/2006: Mwesigwa Herbert of High Court Fort Portal herein files an affidavit of
service.

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DEPUTY REGISTRAR

27/12/2006: M/S Kaahwa, Kafuuzi, Bwiruka and Co. Advocates for the defendants
herein file a Written Statement of Defence.

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DEPUTY REGISTRAR.

11/02/2008: M/S Kaahwa, Kafuuzi, Bwiruka & Co. Advocates for the Defendants herein applies for a Scheduling Conference date.

Court: Let the Suit be fixed for Scheduling on the 26th day of May, 2008 at 2.00p.m.

Sgd. (BINDEEBA C. GODFREY)

For DEPUTY REGISTRAR

4/3/2008: M/S Ngaruye Ruhindi Spencer & Co. Advocates for the Plaintiff herein files an amended plaint.

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DEPUTY REGISTRAR.

19/3/2008: Mugisa Kaganda of Chief Magistrate’s Court Fort Portal herein files an Affidavit of service.

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DEPUTY REGISTRAR

28/4/2008: M/S Ngaruye Ruhindi, Spencer & Co. Advocates for the Plaintiff herein files an application for exparte hearing against Bundibugyo District Land Board.

Court: Let the Suit be fixed for the 26/5/2008.

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DEPUTY REGISTRAR

30/4/2008: M/S Kaahwa, Kafuuzi, Bwiruka & Co. Advocates for the defendant herein files a Consent amended Written Statement of Defence.

Court: Let the same be served upon the plaintiff's Counsel.

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DEPUTY REGISTRAR.

5/5/2008: M/S Ngaruye Ruhindi, Spencer & Co. Advocates for the Plaintiff herein files a Reply to amended Written Statement of Defence.

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DEPUTY REGISTRAR.

5/5/2008: Plaintiffs present. 1st defendant present, 2nd defendant absent.
Both Counsel present.
Irumba interpreter.

Mr. Ngaruye: The trial judge is not around we seek an adjournment.

Court: Adjourned till 6/10/2008.

Sgd. (KAREMANI J. KAREMERA)
MAGISTRATE GRADE I.

14/8/2008: Attorney General Mbarara herein files a Notice of Change of Advocate for 5th Respondent.

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DEPUTY REGISTRAR.

6/10/2008: All parties present. Ndibalema for the 5th defendant.
Ngaruye for the plaintiff present.
Dominic clerk.

Court: Judge is in Criminal Session adjourned to the 6 – 11 – 2008 for mention.

Sgd. (KAWEESA GODFREY)
MAGISTRATE GRADE I
6/11/2008.

6/11/2008: Attorney General Mbarara for the 3rd defendant herein files Written Statement of Defence. Fees paid.

Court: Let the same be served upon the plaintiff's Counsel.

Sgd. (J. B. SSEGGIRINYA)
DEPUTY REGISTRAR.

19/1/2009: M/s Ngaruye Ruhindi, Spencer & Co. Advocates for the plaintiffs herein files a Reply to the 5th defendants Written Statement of Defence.

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REGISTRAR

19/1/2009:

Ngaruye Ruhindi for the plaintiff.

Muhumuza Kaahwa for the 1st and 2nd Defendants.

Grace Mwebaze Ndibarema Senior state Attorney for the 3rd defendant.

The plaintiffs are in Court.

The 1st and 2nd defendant and the Chairperson of the 3rd defendant in Court.

Mr. Ruhindi: The parties have agreed on the following:-

- i) This Suit No. 68/2006 be consolidated and tried jointly with C.S. 78/2006.

O. 11 r. 1 provides for consolidation. In this case the issues are the same and the same Counsel appear for the parties in the two suits similar issues of law and facts are involved.

Court: In accordance with the provisions of O. 11, r. 1 of the CPR, the Civil Suits No. 68 and No. 78, both of 2006 are consolidated and shall be heard together as one.

Sgd. (A. C. OWINY – DOLLO)

JUDGE

19. 1. 2009.

Mr. Ruhindi: We have also agreed on the following:-

- i) The case for each of the parties be taken as they appear in the pleadings.

AGREED FACTS

- (i) The Suit land was at one time gazetted a controlled hunting area.
- (ii) Defendants 1 and 2 in Suit 68/2006 and Defendants 1, 2 , 3 and 4 in 78/2006 applied to defendant 3 in 68/2006 and 5 in 78/2006 for lease of the Suit land.
- (iii) The aforesaid applications were allowed.
- (iv) There are inspection reports regarding the Suit Land (Annexure B to plaint)
- (v) The Suit land was surveyed.
- (vi) The Plaintiffs in the 2 Suits disputed the grant of the Suit land.

2. ISSUES

- (i) Whether the plaintiffs had any interest in the Suit land at the time the Defendants applied for and got a grant of the same.
- (ii) Whether the Defendant Bundibugyo District Land Board granted the lease lawfully to the Defendants.
- (iii) Whether the parties are entitled to any remedies.

3- AGREED DOCUMENTS

Counsels shall consult and file in Court the list of documents agreed on. This shall be done before 3rd February , 2009.

4. WITNESSES

The parties shall rely on the witnesses listed in the respective pleadings.

Court: The parties have to file the necessary documents named herein above by the due date. The consolidated case shall come for hearing on 3rd February 2009 at 9.00a.m.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

19/01/2009

3/02/2009:

Ngaruye Ruhindi assisted by Mr. Businge Victor for the Plaintiffs.

Richard Bwiruka for the 1st and 2nd Defendants in CS. 68/2006, and for the 1st , 2nd , 3rd and 4th Defendants in C.S. No. 78/2006.

Grace Ndibarema for the 3rd Defendant in C.S. 68/2006 and 5th Defendant in C.S. No. 78/2006.

All parties in Court.

Clerk – Irumba Atwooki.

Mr. Ruhindi: We have not exchanged the documents as had been directed by Court.

Mr. Bwiruka: Counsel only availed us the said documents today, about five minutes from the hearing of the case.

Court: The case must proceed none the less.

Ngaruye: I have 8 witnesses in Court ready to proceed.

PWI: Yoweri Bamuhiga, Protestant sworn in, states:-

I am 70 years old, Herdsman (cattle keeper), resident of Kimara, Rwebisengo, Bundibugyo District.

I know Christine Mugara, Martin Bahinduka, Frank Bagonza, David Mwamba, Kyomuhendo Kabagambe and Yosefi Kabagambe. I have sued them because they surveyed off my land. This land is at Nyakera – Kimara. By the time Uganda got independence (in 1962) I was already staying on the land. I was the first to occupy the land.

I have also sued the District Land Board because they sent the surveyor to survey off my land.

When I occupied the land, some other people joined me on the land. These were: Kesi Kabona, Martin Kwonka, Jackson Nkuna, Kaggwa.

On this land my neighbours are the ones I have named. On the land I keep cattle and cultivate crops. I have houses on the land. I want Court to give me back my land and evict those disturbing me, and award costs of the suit. Before they fenced off the land nobody or authority had come to my land.

Cross-examination-by-Attorney General (Counsel for District Land Board)

- My village is Nyakera . Parish is also Nyakera, Rwebisengo Sub-County. The other plaintiffs are my neighbours. The Defendants are taking over my land. The first authority I saw was the one who planted mark stones. I am ever on my land as it is where I work.

This land is big chunk of land and I have various homes on the land for my cattle keepers. Every cattle kraal on the land has homes. If there were visitors who come and inspected the land I would have been informed. Nobody knew. When such a thing happens in the village the people would know. I have four to five homes (kraals) on the land.

- When I was now applying for the land I found that someone else had applied for the land. I was preparing to apply when the land was fenced off. I do not recall the year.

At the time of fencing off the land, some Congolese were on the land while others had left.

I had heard that this was a gazetted hunting area, but the Government got me on that land when they started the hunting issue.

As a herdsman there was no need to apply for the land. The business of applying came recently and when I tried to apply someone had already applied. The Land Board was not fair because it did not inform us. They should have announced at the village, Sub-County, and then after that they would have brought people to occupy the land.

Whenever there are orders from Government, notice is given to the people. When Zerali applied for his land there was notice to the people through the Parish Chief who informs the people.

Cross-examination – Richard Bwiruka:- I have documents from LCs showing boundaries between us. I never got any document from Game Department as this land was not for Game Department. The Game people used to come to chase us from the land, but we complained and we were left alone. We took the Game people to LC Courts and they left us. The plaintiffs here have land in Rwebisengo Sub-County and Kanara Sub-County.

My land in Rwebisengo is at Kanyamukura, while the one at Kanara is at Kachwankumu. The land which has been surveyed is at Kimara, Nyakera and Kachwankumu. This is my land and I have a home there. It is not just a grazing land used communally. The Defendant have never grazed from that land. It is only the Defendants who fenced off the land. I am not aware that Kesi Kabona has applied for the land.

I know Kahigwa. He is not my neighbour. He is on the disputed land. I know Timothy Magara. He is on the disputed land. I know Mukasa Hassan and Ruhweza Omuhereza. They are not staying on the disputed land.

Re-examination- Ngaruye Ruhindi:

I have never been to School. I can't remember particulars or details of years. I am a Ugandan. The Government has never stopped me from using this land. When we complained against the Game Wardens, nobody came to disturb us again.

Court examination: When I say I have been fenced off, I am referring to the markstones that have been planted in my land.

Court: Case adjourned to 2.30 p.m. for further hearing.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

3/02/2009

Court constituted as before.

PW2: Tinkasimire Jackson, Protestant sworn, states:-

I am 40 years old, and am a cattle keeper. I am resident of Harukoba village, Rwebisengo parish, Rwebisengo Sub-County. I am Ugandan. I know Christine Mugara, Martin Bahinduka, Frank Bagonza, Mwamba David, Kyomuhendo Kabagambe and Yofesi Kabagambe.

[Counsel amends Civil Suit No. 78/2006 so that 4th Defendant is correctly named as “Kabagambe Yofesu”

Court: Amendment allowed.

Witness continues:-

I sued the Defendants because they grabbed the land my father gave me. My father is Yoweru Bamuhiga (PWI). This land is at Kimara, Kangonzibwoha, Rwenyana.

Part of the land is in Rwebisengo Sub-County and the other in Kanara Sub-County. Kimara is in Rwebisengo, and Kangonzibwoha is also in Rwebisengo. Rwenyana is in Kanara Sub-County. In 2006 September, surveyors came and told us they were coming to survey for water as they were planning to supply people with water. Later on we got markstones on our land.

My father gave me this land in 1990, after he had stayed on that land for a long time. There were kraals and houses on that land.

I sued the Land Board for giving away my land. Before the land was surveyed no authority came to the land. At the time Frank Bagonza was Lands Registrar – Bundibugyo. Mwamba David was a member of the Land Board. On my land, I had houses and a structure for spraying cattle (crass).

I knew that the Land Board had allocated my land when I saw the mark stones, after which we made inquiries and discovered the allocation. My land borders my father's then Kesi Kabona, Asimwe Charles, Kaggwa.

On my land apart from my home there are no other homes. I am requesting Court to assist me recover my land, stop them from disturbing us, and cancel the lease offer. Court should award me general damages and costs.

Cross-examination-by-Attorney General's Counsel:

We acquire land by birth or through application. My land I acquired through birth. I was not born in a Game park. I do not know if I was born in a game park. There were animals in the area where we were also grazing. We never applied for permission to occupy the land. We are not staying there illegally. We are born from that land. I am suing for my own land. My neighbours are my father, Asimwe Charles, Kesi Kabona and Kaggwa Jackson. We have got marks such as trees bushy anthills etc. When natural marks are not there we plant trees or other plants such as sisal.

My land includes (extends to) Kacwankumu. When the surveyors came they deceived us when their intention was different. Before the surveyors came we had not seen the Defendants. No officers of the Land Board came to our area. I have never applied for the land. If I want I can go and apply. It is not true that I am not applying for title because of free for all grazing. It is because I do not have the funds yet to apply. The funds are there but I have not got the time to apply.

The houses I have, two are iron roofed and then two grass thatched, one of which is calves shed. Christine Mugarra (Defendant No. I in 68/2006) is the one with 2 houses and wattle grass thatched. They are not on my land. They are on my father's land. They were built around 2002 by her late husband. When we discovered the mark stones we reported to L.C. III after the L.C.I.

Cross-examination-by-Bwiruka:

I know Charles Rwabuhinga. His residence is at a distance from my land. He has ever contested for elections in the previous election before the one of 2006.

They have contested with the late Mugarra. Charles Rwabuhinga is not the one who mobilized us to come to court. He has never mobilized or held meetings over this matter. The Resident District Commissioner called a meeting in the area over this land matter. He was not with Charles Rwabuhinga. My place of abode is Harukoba. It is not far from the land in dispute. It takes about 30 minutes to walk to it. I have another home in the disputed land.

When the surveyors came, I was there. They came twice. I saw Mutoro at a meeting and was introduced as Chairman Land Board. He and others never visited the land before the surveyors came to survey. Earlier on the Wildlife Authority personnel had burnt our houses and we reported to police. This happened once, and I do not remember when, but around 2005.

This area we knew was a controlled hunting area. The land was not a communal grazing land. We did not use to graze in the park.

Re-examination – Ruhindi:-

This land is not in the national park. The land is not in the Game reserve. We did not need a licence to live on this land. In our area (Rwebisengo and Kanara) many people own land without title.

I recall that the late Mugarra's houses were built around 2006.

Court examination: In our area there is no land which is not owned by someone and where just any person can come and graze.

PW3: Kesi Kabona Protestant sworn, states:-

I am 62 years old, cattle keeper, resident of Kiranga I village, Rwebisengo Sub-County. I know the defendants. I have sued them because they grabbed my land. This land is in Kimara, Kacwankumu, and Kangonzibwa. This land I acquired by first occupation. It was free land. The only person there was PW1 (Yoweri Bamuhiga). I do not reside in the area. My children and herdsmen reside there. I have my cows, home, herdsmen and children on the land.

My herdsmen came to thank me that because of me they had been given water. I told them I did not know anything to do with water. Then they went ahead to inquire. They found that my home where they were staying had been enclosed within mark stones. Since many people were affected the LCs had been informed.

I discovered that it was the late Mugarra who had surveyed off the land. He had two houses on Yoweri Bamuhiga's land which I later learnt had been given to him by Yoweri Bamuhiga.

My own home is enclosed within the mark stones. I was never consulted about this matter before enclosing my land. The land was surveyed at once. Other Defendants came together with the late Mugarra. Before the survey no person or authority had come to the area.

I sued the Land Board because the Resident District Commissioner and Chief Administrative Officer held a meeting in our area and informed us that the Land Board had allocated the land and hence the survey.

I want court to cancel the lease offer and award costs of the Suit.

Cross-examination – State Counsel (Attorney General):

I was told by PWI that he gave the land Mugarra built on to him. He told me that the late Kabagambe (Mugarra) requested that land because he had no where to graze his cattle I went to that place before the late Mugarra.

During the time I acquired the land; one would identify good empty land and occupy it. In the past we never used to have boundaries. Land ownership has shifted from Communal to the current system of private ownership. Many people have now taken up to applying for titles over the land they own. I have applied for titles for certain land of mine. I applied due to the advice of the Secretary to the Land Board. The forms have not been returned yet. The Secretary of the Board is Frank Bagonza. I have sued the Land Board for allocating my land to others. The Land Board was wrong to allocate and survey the land without informing us the occupants of the land. Since we were already on the land they would have allocated to us.

On this land I have my homes, kraals etc. Some houses are iron roofed, others grass thatched. All in all there are 6 (six) houses enclosed within the marks tones.

Cross-examination-by- Bwiruka:

I cannot say when exactly the practice to acquire titles gained frequency. I can't tell when Mugarra built the houses on the land. I cannot recollect. I applied for the land. I can't remember the estimated land area. The land I have applied for is not the one in dispute. I applied for three lands. The lands are: - the one at Rwenyana, then Nyantaboma then at Kiranga.

I did not apply for this land because I had not yet reached it in my priority. My houses were also burnt by the Wildlife Authority. Their reason for burning the houses was that

they are built in a controlled hunting ground. We never got licences for grazing in the area.

My complaint is against all the Defendants as they all used one surveyor the same day. I did not establish which of the Defendants has surveyed my land.

Re-examination-by-Ruhindi:- I do not need a licence to utilise this land. The forms I filled on the advise of Bagonza I do not know where they were taken.

Court examination: The other two lands I have do have homes in them. In our area the land is all privately owned, only that people are allowed by land owners to come and graze on their land if they have grass.

Court: Case is adjourned to tomorrow Wednesday 4th/02/2009 at 2.30 p.m. for further hearing.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

3/02/2009

4/2/2009: Court constituted as before.

PW4: Martin Kwonka, Protestant, sworn states:-

I am 69 years old, cattle keeper, resident of Nyakasenyi village, Masaka Parish, Rwebisengo Sub-County, Bundibugyo District, Ugandan.

I know all the Defendants in this case. I have brought them to Court because they surveyed my land and enclosed me in. This was 2005. This was done without seeking my permission. This land is at Kangonzibwoha, Kimara and Kacwankumi. I acquired this land through first occupation. I found in the area Yoweri Bamuhiga (PWI) and Kesi

Kabona (PW3). There was no other person apart from the two. I put up my house and started grazing my cows from there.

At present I have homes on the land, structures for spraying cattle, my children are on the land.

I have sued the land Board because they gave away my land which is not theirs. Before the surveyors came, no authority came to me. I want this court to order these people to remove the mark stones from my land and pay me general damages, and costs of the Suit.

Cross-examination-by-Counsel for the state:-

I have been on this land since 1981. In this period I have not heard that this land is a gazetted hunting ground. My houses were burnt by Wildlife Authority Personnel. I know why they were burnt. This was because we had built houses near the Game (poles put as boundary) and our cows would stray into the Game and be chased away. The houses were not burnt to chase us out of the controlled hunting area.

This land was at one time occupied by Congolese nationals. some left, whereas others are still there.

Land ownership in our area was by first occupation when people were still few. Now the situation is different. The current situation is that every person has got his or her own land and to acquire land is through purchase. I have not applied to register the land I am on. It is not wrong to apply. In my area cattle ownership vary from person to person. The cattle graze separately, but cows graze beyond the land of their owner, into neighboring lands.

Cross-examination-by-Bwiruka: I have homes on all the three chunks of land I have named I did not establish which of the Defendants has got mark stones on my land. My permanent place of abode is Nyakasenyi village. The other places are 3 to 4 miles from Nyakasenyi.

The land was not surveyed without my land on account of my absence. I would have known. I knew of the survey in 2005. My herdsmen informed me of a vehicle which went round my land. I saw three mark stones. The Congolese were not on my land. They were on Kesi Kabona and Yoweri Bamuhiga's land. They came to that land when they fled the war in the Congo.

I do not border any of the Defendants. I do not know if the late Mugarra had land in the area. After the survey, none of the Defendants came to occupy the land.

When our houses were burnt we reported to the L.C.III at the Sub-County and the area Member of Parliament then. After this they did not come back. The L.C.III Chairperson was and is still Nathan Wamala. The Member of Parliament was Charles Rwabuhinga. He is not the Member of Parliament any more.

No re-examination -

PW5 – Kaggwa Jackson, Protestant sworn, states:- I am 34 years old, Cattle keeper resident of Kasungu village, Rwebisengo Sub-County, Bundibugyo.

I know the Defendants in this case. I brought them to Court because in September 2006, our herdsmen saw a vehicle surveying our land and planting mark stones. They informed me the day after the survey was done. I saw the mark stone. I did not find out on whose behalf the stones were planted. This land is in Kimara, Kacwankumu L.C.I and part of Kangonzibwoha. Martin Kwonka (P4) is my father. He is the one who gave me the land. We graze on the land and also grow crops.

On my land I am grazing my cattle. There are my homes and cows on that land. I have sued the Land Board because after inquiring from L.C.I and L.C.III and the meeting they convened, I learnt that it was the Land Board which had authorised the survey and planting of the mark stones. Before the planting of mark stones, I saw no authority in our

area. I would like the Land Board to order cancellation of the offers, and costs, removal of mark stones.

Cross-examination-by- State Counsel: - I never saw any person or authority come to me before the survey. I stay in Kasungu village but each morning I visit the suit land. The land is about three to four hours walking distance from my residence.

On the day of surveying the land I was not on the land. I was at Kasungu. I know the Defendants and their jobs. Bagonza Frank used to work with the Land Board. Mwamba David also used to work there.

I never talked to the two about registering my land. None of the Defendants owns land in the area. At least I do not know if any of them has a house or home there. I am not aware that the Mugarra family has a house there.

I know the size of the land but cannot express the size. I border Kwonka, Agaba, Edward Mugisa, Ankuna Jackson and Kesi Kabona. I am not aware that my father or any of the plaintiffs's applied for their lands.

I remember that our houses were burnt but can't remember when. The reason was that we were near the park and it was intended to scare us away. After we reported to L.C.I, L.C.III and Police, they never came back.

The mark stones enclosed my land and those of other people like:- Tinkansiimire, Kesi Kabona, Kwonka Martin. I do not know if any of the Defendants grazes cows, grows crops or has a house there. I have never seen any. I am not lying.

Cross-examination-by-Mr. Bwiruka:-

Our houses which were burnt were a distance from the park, about an hour's walking distance. I do not know that this was a controlled hunting area. I know Charles

Rwabuhinga as my former Member of Parliament. He comes from Mukimba village which is a long distance. One would take the whole day walking there.

Re-examination: I have never measured the distance from my house to the national park. The houses were burnt because our cows used to stray into the park.

Court examination: I know PWI. Between us is Kesi Kabona. I can see cattle when they are grazing on PI's land. Yoweri (P1) has grass thatched houses. I knew Mugarra. He came from Makimba. I am not aware he had a house on PI's land. I am not aware he has land in the disputed area.

PW6: Wamala Asa, Protestant sworn states:-

I am 74 years old, cattle keeper and Chairperson L.C.III Rwebisengo Sub-County. Resident of Butungama village. I know the plaintiffs in this case. I know the Defendants too. I know the matter in dispute.

I became Chairperson L.C.III Rwebisengo on 2nd August 1985. This was because Bundibugyo had already been captured by Yoweri Museveni. I have been in the chair since.

The land in dispute belongs to the plaintiffs. They acquired these lands as follows:-

At first PWI's house was at Kanyamukura, he went and got land at Kimara in Rwenyana. He was the first person to settle on that land. He built his home and started grazing his cattle there.

Kesi Kabona also went and settled at a place called Kigugu and started grazing his cattle. Later, Martin Kwonka also went and settled at Kangonzibwoha. All these places are in Rwebisengo Sub-County. I know the boundary of the Game reserve. The land is not in

the game reserve. I have never got any correspondence from the Land Board that it was coming to inspect land in my area.

When the Land Board is coming to my area, the practice has been to notify my office. In the case before me I was not notified. I do not know if it was proper. When notified, I inform the Chairperson of the respective area and the population. I never got any communication from the L.C.I and L.C.II of the areas concerned of any communication to them from the Land Board. I received complaints from the plaintiffs against the Defendants for planting markstones on their lands. When I got this I went to the area with my Committee to see. I found the markstones and I went to the end of the land near the game parks.

The markstones encircled the homes of the plaintiffs. I did not ask the Defendants about the markstones, because there were a lot of confusion and I decided to report to the Resident District Commissioner, Chairperson L.C.V, and the Chief Administrative Officer. I was able to see only the Vice Chairperson L.C.V who advised me to come back to see the Chairperson L.C.V.

I wrote to the office of the President. The Office of the President wrote to the Resident District Commissioner and copied to me.

The Resident District Commissioner notified me of a proposed meeting and I mobilized the residents. The meeting took place at Kimara in September 2006. The meeting was attended by: PW1, PW2, PW3, PW4, PW5 and plaintiff No. 5. Of the Defendants were:- Hon. Mr. Mugarra (now late), Frank Bagonza, Mwamba David, Kyomuhendo Kabagambe, Kabagambe Yofesi, from the Land Board were:- Chairperson - Mutoro, Bagonza who is the Secretary, David Mwamba –member.

The meeting took place, and then we went to inspect the mark stones. In the meeting the Defendants said it was the Chairperson of the Land Board who allocated the land to them. I asked the Chairperson of the Land Board how he had come to allocate the lands in

issue. He kept quiet. When we visited the land, it was only the late Hon. Mugarra who had a house near a mark stone. He had another house under construction. The other Defendant had no houses in the area. We did not survey the entire land.

The defendants were saying they had been allocated the land. Hon. Mugarra did not show us the boundary of the land which was his. The plaintiffs are all Ugandans. The Resident District Commissioner went and made a report, copy of which was given to me. The matter was not concluded. Later the Chief Administrative Officer came and I and my executives showed him the mark stones and boundaries.

The date of the Resident District Commissioner's report I can't remember it. I got a copy of the report. I can recognise it.

When the Chief Administrative Officer came Kyomuhendo Gideon Kabagambe was there. We then went to the Sub-County Headquarters and sat at Kamuhigi Primary School. The late Hon. Mugarra was present. The Chief Administrative officer told us to solve the matter locally. We failed to solve it locally.

At the moment, it is the Plaintiffs in occupation of their Lands (the one in dispute).

There were incidents of burning of houses on the lands. The Chairperson L.C.I notified me of this. The burning was by Game people. I notified the L.C.V Chairperson and the Hon. Member of Parliament. We sat down with the Game people who realized they had made a mistake.

Cross-examination-by-State Counsel:

I can hear English but can't speak well. I studied up to Junior 2. I can understand a little English. Parish Land Committees have just started. By the time the disputed land was surveyed there were no land Committees in existence. Before the land Committees were in place an applicant would collect forms from the District Land Board. The Land Board Chairman and his team would come and inspect the land applied for.

With regard to these allocations when I asked the Chairperson of the Land Board why he had not come to inspect the land, he kept quiet. The first time I went with my Committee to the disputed land I was with:-

1. Edison Komunjara – Secretary Education.
2. Asante Bomera – Secretary Works
3. John Kisémbó – Vice Chairperson.

We went on motorcycles. It was in the morning. I can't recall the exact date. It was 5th or 6th of September 2006. Of the Defendants I knew only Hon. Mugarra and he was in Kampala. It was only when the Resident District Commissioner came for the meeting that I knew the other defendants. When I went with my Committee I went as the Chairperson to acquaint myself with the matter. Usually when we receive a complaint we call a meeting. The late Hon. Mugarra had two homes and a kraal, but when we went there the cattle had been taken for grazing. The homes, kraal and cattle are still there to date. If anybody says these things are not there he or she would be lying.

Congolese would come to us the leaders (LCS) and we allocate them to various people for temporary settlement. Some Congolese are still on these lands. Some have gone back. The report from the Resident District Commissioner on the meeting held in our area was read to me and interpreted. The report, with regard to Hon. Mugarra, was that it was wrong for him to put mark stones on the land. There is no modern farming in my area at the moment. Hon Mugarra contested against Hon. Charles Rwabuhinga. The Resident District Commissioner who came to the land was Kazinga and he is still the one at the station. The Chief Administrative Officer is the very one at the station even now. At the meeting of the Chief Administrative Officer the following Defendants were there. Mwamba Daudi, Gideon Kyomuhendo, Yofesi Kabagambe and Hon Mugarra, Christine Mugarra was not there. This was 2006. The Defendants said the land had been allocated to them by the District Land Board.

Other people used to apply come to our office, we would inspect the land and then make a report. When the houses were burnt by Game people, the Member of Parliament was Matte.

Cross-examination by-Bwiruka: I am related to some of the plaintiffs. Yoweri Bamuhiga is my brother (same father but different mothers). Martin Kwonka is my cousin (son of my maternal uncle). Tinkansiimire Jackson the son of Bamuhiga is my brother's son.

The lands of the plaintiff I cannot estimate the size. It took us about an hour or more on foot to tour the land. The grazing practice in the area used to be communal, but now it is privatized and the land is being fenced. I like the new method of land use.

I have my land in the area. I have filled the forms for the land. It has been inspected by the Chairperson Land Committee of Rwebisengo. He was together with the L.C.I Chairperson of the area and the Locals. There is no controlled hunting area in my Sub-County. The burning of the houses by the Wildlife people we sued them and withdrew the case. We were not advised to pursue degazetting.

Re-examination:- I am not testifying in favour of plaintiffs as my relatives but in my capacity as Chairperson of the Sub-County.

Court examination: The land of Hon. Mugarra was enclosed within the mark stones. The mark stones were for Hon. Mugarra. It was Bamuhiga complaining of those Mark stones because it was near his cattle spraying structure.

Court: Case adjourned to 9th February 2009 at 8.30 a.m. The District Land Board is advised to ensure that their Counsel is accommodated at Fort Portal for the Sunday night preceding this day of adjourned hearing. Counsel shall have sorted themselves out on the documents in this case before this date.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

4/02/2009.

9/02/2009: 8.45 A.M.

- Mr. Mwebaze Ndibarema for the 3rd and 5th defendant in the 2 suits.
- Businge Victor for the plaintiffs.
- Later Mr. Ruhindi appears and with an apology explains that he had gone out to raise his colleague Richard Bwiruka.

Court: This matter was adjourned to today in order to conclude on the plaintiffs' case, and proceed to the Defendants case. I had also ordered that the Counsel sort out themselves on the documents. This I am made to understand has not been done. In the circumstances, I do stand this matter over to 10.00a.m. to enable Counsels sort themselves out on the documents.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

9/02/2009.

- Representation as at the commencement of the case.
- Parties are all present with the Land Board represented by the Chairperson, Secretary and two other officials.

Clerk - Irumba Atwooki.

Mr. Ngaruye: To expedite the disposal of the matter we have agreed as follows:-

That the following documents be admitted in evidence as exhibits to be relied upon by both sides. They shall be called consent Exhibits (CE) as follows.

CE1 – All the applications by the Defendants:- For Christine (Hon. Mugarra) is CE1 (a).

- By Bagonza Frank and Mwamba David is CE1 (b).
- Kyomuhendo Kabagambe Gideon is CE1 (c).
- Kabagambe Yofesi is CE 1 (d).

Then the inspection Reports:-

- For Christine (Hon. Mugarra) is CE 2 (a).
- For Bagonza Frank and Mwamba David is CE 2 (b).
- For Kyomuhendo Kabagambe Gideon is CE 2 (c).
- For Kabagambe Yofesi is CE 2 (d).

The Lease Offers

These are named CE 3 (a) to CE3 (d) following the order above for CE1 and CE2.

The General Receipts:

These will also follow the same order as above, but will be named CE 4 (a) to CE 4 (d).

Instructions to Survey:

These are CE 5 (a) and CE 5 (b) following the order above.

Instructions to prepare Lease Documents.

These are marked CE 6 (a) to CE 6 (d) following the order set out above.

Lease Agreements

This is CE 7 (b) according to the order above (the joint application).

Correspondences:-

CE 8 – Letter from LC. 3 Chairperson Rwebisengo Sub-County, dated 6/9/2006 addressed to the Minister of Lands.

- CE 9 is a letter from the Minister of State for Lands dated 26/9/2008 addressed to the Chairperson District Land Board Bundibugyo, with the following Annexures:- (i) Letter from the Ag. Executive Director UWA (Uganda Wildlife Authority) addressed to Hon. Kasirivu Atwooki – Minister of State for Lands, dated 23/9/2008, marked CE 9 (a).
- ii) Letter from Chairperson of Bundibugyo District Land Board to Minister of State Lands, dated 20/9/2008, marked CE 9 (b).
- iii) Letter from Bundibugyo Chairperson District Land Board to Chief Administrative Officer Bundibugyo District, dated 20/9/2008 marked CE 9 (c).
- iv) The extract of the Parliamentary Hansard of 2nd May 2002, marked CE 9 (d).
- v) The brief by Executive Director UWA on the states of controlled Hunting Area (CHA) marked CE 9 (e).

Then Letter from Chief Administrative Officer to Executive Director UWA, dated 13/02/2007 CE 10 (a).

Then letter in reply from the Executive Director UWA, dated 12/03/2007 marked CE 10 (b), it has got the following annexures which are:- SI 53 of 2003 marked CE 10 (b) 10 (c) The Uganda Wildlife (Declaration of Wild Life Conservation Area) (Tooro , Semuliki Wildlife Reserve) Instrument, 2003. SI 57 of 2003 marked CE 10 (b) 2 (The Uganda Wildlife (Declarations of Wildlife Conservation Area) (Rwangara Community Wild life Area) Instrument, 2003. Then S.I 64 of 2003 marked CE 10 (b)3 (The Uganda Wildlife (Declaration of Wildlife Conservation Area) (Ntoroko – Kanara Wildlife Sanctuary) Instrument, 2003.

Then letter from Justus Karuhanga on behalf of PPS to H.E. The President dated 11/09/2006 to Resident District Commissioner Bundibugyo marked CE 11 (a).

Then reply thereto from the Resident District Commissioner, dated 20th/9/2006, marked CE 11 (b).

Letter from Chairperson L.C.3 Rwebisengo dated 11/10/2006, to the Chairperson L.C.V, marked CE 12 (a).

Then a reply thereto, dated 24/10/2006, marked CE 12 (b).

Then Police reference:- SD – 05/24/7/2005 from Rwebisengo Police Post, marked CE 13.

Then a Memorandum from L.C.III Chairperson Rwebisengo to 2nd Deputy Prime Minister, dated 22/10/1997, marked CE 14. Then letter from Permanent Secretary Ministry of Tourism addressed to the Executive Director dated 30/5/1997, marked CE 15.

Then letter from Permanent Secretary Ministry of Tourism dated 22/10/2002 addressed to the Clerk to Parliament; marked CE 16. Attached to it are resolutions of Parliament as follows:- Letter from 1st Parliamentary Counsel dated 17/10/2000 marked CE 16 (a).

- Then the resolutions attached are:-

- (1) Semuliki Flats CHA (degazetting) marked CE 16 (b).
- (2) Semuliki Flats CVHA (declaring Rwangara Flats as a CHA marked as CE 16 (c).

Report by Uganda Wildlife Authority with map, marked CE 16 (d).

Then Minutes of the Land Board for the meeting held on 17/03/2005, marked CE 17.

The above documents are in photocopy forms, but they are acceptable to all the parties.

Court: The documents are exhibited by consent and marked according as CE1 onwards.

[Calling of witnesses continues]

PW7: Kisembo Swizen, Protestant sworn, states:-

I am 49 years old, cattle keeper, and resident of Kimara, Kasungu Parish, Rwebisengo Sub-County, and Chairperson L.C.I Kimara. I know the plaintiffs in this case. They have homes in my village. I know the individual defendants in the Suit. The late Hon. Mugarra was our Member of Parliament.

Frank Bagonza I know him as we come from the same Sub-County but his home is at Bweramule.

David Mwamba – I know him as someone with his home at Makondo in Rwebisengo. Kyomuhendo Kabagambe, I know him as one with his home near the Sub-County Headquarters. Kabagambe Yofesi – I know him as he has his home at Haibale in Rwebisengo. I know what is in dispute between the parties. It is land. I know the land. The land belongs to the plaintiffs.

I have never seen members of the Land Board coming to inspect the land in issue. I have never got any correspondence about coming to inspect the land.

I got complaints from the plaintiffs about their land being surveyed and mark stones planted on them. I saw the mark stones. They enclosed the land of the plaintiffs. On this land, the plaintiffs have homes, cows which graze from here. The plaintiffs have owned this land for a long time. I can't tell for how long. The defendants (except for the late Hon. Mugarra) do not have land in the area. The late Hon. Mugarra has his home in the area. He also has cattle grazing on the same land. The late Mugarra had not identified his boundary with the others. The only area I know, from our land usage, where the late Hon. Mugarra was where his home is.

Cross-examination-by-State Counsel:-

I know the disputed land. It is in my area. I cannot estimate the size since I have never surveyed land. The disputed land is occupied by the plaintiffs. In our area land is acquired by one liaising with the Local people who identify the land, determine the boundary and boundary marks are put using natural phenomena such as ant-hills, big trees and other peculiar plants. As for the plaintiffs, I do not know how they acquired their respective lands.

I became L.C.I Chairperson in 2005 when the area was curved out of a bigger area. The Chairperson for the bigger area from where ours was curved was called Ndolelire Elmos. I took over in 2005 in the month I do not know. It is not true that by the time this dispute arose in my area there was another L.C.I Chairperson who was not me. There are boundary marks on the plaintiff's lands. There are natural marks (trees), sisal, valleys and gullies. There are Congolese working as herdsmen for Ugandans on the disputed land. In our area we have sub County Land Committees. At the parish, there is no land Committee. At the time the dispute arose, there were no Land Committee around. At that time if one applied for land then the Parish (L.C.2) Chairperson would handle the matter in the place of the Parish Land Committee. I do not know of any instance where this actually took place.

The Land Board never came to the area to inspect the land in dispute. I never saw the surveyors who surveyed the land in dispute.

Cross-examination-by-Bwiruka:-

- I was elected in 2005 towards the end. If the inspection of the land was done in 2005, at the beginning, I would not have known.

My predecessor is still Chairperson L.C.I, but of Kajura village which neighbours ours. The disputed land covers area where mark stones are, which are in Kajura, Kimara, Rwenyana and Kacwankumu villages. These villages have respective LCs. If the Land Board contacted the LCs of those areas, I would not know. I learnt of the survey of the disputed lands when the plaintiffs complained to my office I never saw the surveyors on the ground.

I do not have land near the disputed area. Mine is a bit long distance from the disputed area. I know about the land because it falls within my jurisdiction as Chairperson L.C. of the area.

I did not know the area was a Controlled Hunting Area. I am aware that Wildlife Personnel were chasing people away from the area.

The LC.I has ever handled the dispute between the Uganda Wildlife Authority and the people. The dispute between the two was about cattle entering into the game reserve. We stopped people from grazing their cattle in the game reserve. The Uganda Wildlife Authority apologized when I was not yet the L.C.I Chairperson. I do not recall who the Chairperson was.

On the land the plaintiffs have mud and wattle roofed with grass (grass thatched) and some are iron sheets. I am talking about what I know is in my area.

The late Hon. Mugarra's houses were put there at a time I do not know. It has been there for a long time. One of the houses could have been there even before 2001. His boundary with neighbours was not yet clearly determined. He was grazing from his neighbours like Yoweri Bamuhiga, Kesi Kabona, and Jackson Hankuna.

Where the mark stones have been put encloses over 70 homes (families). Of these homesteads there are some belonging to Congolese. The areas which have Congolese are some of the villages I have mentioned. What I know is that during the war the Chairperson brought Congolese to our area but later they left.

Re-examination-Ngaruye Ruhindi:- The Congolese on the land in dispute, are not owners of the land. Some are there as herdsmen helping relatives and will go back. Others are there as herdsmen employees for Ugandans.

From my home to where the disputed land starts is close to a kilometer.

Court examines – The late Hon. Mugarra has like 200 head of cattle in the area.

Court: case adjourned to 3.00 p.m. since it is now 2.00p.m.

Sgd. (OWINY – DOLLO)

JUDGE

9/2/2009.

3.40 P.M. Court constituted as before.

PW8: Omuhereza Bamugonza "Faith of Unity" affirms and states:-

I am 52 years old Cattle keeper, resident of Rwenyana village, Rwangara parish, Kanara Sub-County, Ntoroko, Bundibugyo.

I know some of the plaintiffs in this suit. I know Yoweri Bamuhiga, Martin Kwonka, and Kesi Kabona. They are from my area, where I am Chairperson L.C.I of Rwenyana village. I was elected in 2003. Before that I was Secretary Finance when the village was bigger and called Kajwega. It was split then I became Chairperson where I am.

I know the Defendant humans. I know them as fellow Batuku but they are not from any area. The plaintiffs were already on the land by the time I was elected Chairperson. They have cattle on the land I have never seen Land Committee coming to inspect land in my area. There hasn't been any correspondence about land inspection in our area. The plaintiffs complained to us and we went and found mark stones on the land of Yoweri Bamuhiga, Kesi Kabona, Martin Kwonka who had complained to us. We forwarded the matter to LC3. The Chairperson LC.3 organised a meeting with the L.C. 2. That is all.

Cross-examination –by-State Counsel:-

The plaintiffs are not related to me. I can't tell the sizes of the plaintiffs' Lands as I have not measured them. I can point at the boundary between the plaintiffs if we are on the land. I know the size of land of the plaintiffs which was enclosed by the markstones and can point it out.

The plaintiffs were the very first people to acquire land in that area, where there were no people. I also have land there which I acquired by first occupation my house was never burnt by the Uganda Wildlife Authority.

When the Congolese came the L.C. III Chairperson told us to host these people as they are related to us and when things cool down they would go back. The Congolese set up grass thatched homesteads. Some went back. The Congolese came of two types. Those with their own cows and those who had none.

I have not applied to register my land. I do not know of any person who has applied. If someone applies to register the land he/she is occupying it is good, because every person has a right on his/her property. In our place, modern farming is not there so I can't say

whether its good or bad. No one has started it. Hon. Mugarra had not started modern farming in the area at least I know nothing about that.

Cross-examination-by-Bwiruka:

The original village I was Secretary of Finance was split into three villages: - Rwenyana, Kajweka, Kacwankumu. The split was due to its size, and there are many people there. The split made us get a parish. I myself acquired land in the area in 1998 and occupied land which was free.

This area was not a Controlled Hunting Area. The one Government Gazetted is a distance away from our area.

My area has never been gazetted so it is not true that it has just been de-gazetted. When the surveyors surveyed the land I never saw them. The Lands of the plaintiffs extends to Kimara and Kacwankumu village, Kangonzibwoha is within Kimara.

Court: Hon. Mugarra was my Member of Parliament. He had a home in the area, but not in my area, but at Kimara.

PW9: Charles Rwabuhinga Adyeeri, I am 46 years old, businessman, resident of Mukimba village, Rwebisengo Parish, Rwebisengo Sub-County, Ntoroko , Bundibugyo.

I was in 6th Parliament 1996 – 2001 for Ntoroko County. I know Kanara and Rwebisengo Sub-Counties of Ntoroko County.

I know the parties in this case on either side. I know their dispute. It is over land. I came to know of the land as an opinion leader, and as someone who struggled to trace the boundary of the Tooro Semuliki Wildlife reserve as there was conflict between my electorates and Uganda Wildlife Authority. The plaintiffs came to me complaining that mark stones had been planted on their land. I was also an interested party as I have land in the area, specifically in Kimara L.C.I. And my neighbours are:- East and West are

homesteads of Kesi Kabona, North and South – Yoweri Bamuhiga. They complained that it was late Hon. Mugarra who had planted the mark stone.

I know how the plaintiffs acquired their lands. They were first occupants of their respective land. I do not know if the Defendants have land in the area. I know the Semuliki Flats Controlled Hunting Area. It runs from Makoga survey pillar adjacent to the Tooro Semuliki Wildlife Reserve Northern direction up to L. Albert then Westwards to R. Semuliki, then South wards to the upper part of River Semuliki in line of the Ngeti Falls which is in the Democratic Republic of Congo – It runs Eastwards through Rwebisengo village, Eastwards to the Makoga Survey pillar. There is a difference between Controlled Hunting Area and Wildlife Reserve. A Controlled Hunting Area is a Community Land owned individually where there is concentration of Wildlife and Government controls the usage of the land, through gazetting.

A Wild Life Reserve is gazetted land to where there is no human settlement but only for animals, whereas in the Controlled Hunting Area humans can settle.

The land in dispute falls within the Semuliki Flats controlled Hunting Area. The plaintiff's lands have markstones in them. On 16/9/2008 I went together with a Surveyor called Kyamanywa working for MBK Surveyors Ltd. Who took me and others around the disputed land and I confirmed that the land was surveyed. I am a surveyor with a Diploma in Surveying. When this Controlled Hunting Area was created the population was small. Now the population was big and I tried to have it degazetted but due to a technicality it could not. I lost my place in Parliament before it could be done.

Cross-examination-by- State Counsel:-

People are free to settle in a Controlled Hunting Area I know this because in the Committee of Parliament where it was explained by the Commissioner and Permanent Secretary so that we would go and explain to people who had encroached into the lands.

It was /is not illegal to settle in a Controlled Hunting Area. I wanted the instrument revoked so that the control goes and people own and use the land freely without any limitations as was the case here with many inconveniences. As a leader I do promote registration of land, but not on other people's land.

If someone whom I contested with comes to promote development and survey of land I would be comfortable because surveying began years ago. I have not started process of land in my County (represented in Parliament).

It is not true that I mobilized some 70 (seventy) people to institute the suit against the Defendants I am aware that there are more people than the present plaintiffs wanting to sue, but due to technicalities they were not allowed

My interest in this matter is that my land is also included in the surveyed area. I am aware that Hon. Mugarra owns land in the disputed area. It is about 4 to 5 acres. I am not aware how he acquired the land. The plaintiffs were the first occupants of the area so they acquired ownership in that manner.

Hon. Mugarra has mud and wattle roofed with palm tree. He has 2 of them, an old and new one. The old one is around 5 years old. The new one could be about 2 years old. Hon. Mugarra has cows which he was grazing on other people's land. I am not aware that the other Defendants also graze their cattle in the area.

Congolese were re-settled there by Local Leaders. This was in phases – 1983, 1997, 2001 or 2002. The disputed land was affected.

My home area is some ten kilometers from the disputed land. If the Inspectors came to see the land disputed I would not know. I do not know how the Defendants acquired the leases for the disputed land.

Cross-examination-by-Bwiruka: I am a cattle trader. The market is Butuku Cattle Marketing Co-operative Society. I am just a member. I have cattle. I graze them in Mukimba and Kajweka. On the disputed land I have nothing. I acquired it by first occupation – first claimant. This was 2003 around September. Due to harassment I have not put anything there. The harassments are: - Drought Scarcity of water, lack of personnel. There are no Congolese on my land. I refused to allow them.

The disputed area is sparsely populated but one can see the neighbouring homes. The L.C.I of my land is Kimara village. I learnt of this suit around December, 2006. I contested with late Hon. Mugarra in 2001 but a third party won. In 2006 I lost to Hon. Mugarra in Primaries. He was elected to Parliament. I am not here to get back at the late Mugarra for defeating me.

I was not among the 70 people who tried to join as I was not around. I seek to know what will happen in this suit then I decide what to do myself.

It is fine for people to settle in Controlled Hunting ground. The surveyor I went with showed me the land surveyed but did not separate the lands of the Defendants. He ran the perimeter of the land surveyed. I followed up with the lands Department to know the total acreage of the lands of the Defendants. The land was surveyed under one instructor to survey. I established that Hon. Mugarra's name was clear on one of the blocks. The boundaries between the blocks leased to defendants did not establish.

The total for the entire block of land surveyed by the 3 i.e. Hon. Mugarra, Kyomuhendo Gideon and Kabagambe Yofesi is 606.76 Hectares.

The fourth block for Mwamba David and Frank Bagonza is 700 hectares. My land is enclosed within the first 3 blocks. The first three blocks are separated from the last by about half a kilometer of land.

Court examination: Hon Mugarra has what I consider 20 acres in the area. Controlled Hunting is about the hunting. One is licensed, and the license determines what specie to kill and what quantity. And also the activity not allowed were to be those which scare or chase the animals away e.g. bush fire.

Re-examination: There were and are still Congolese on the disputed land. They graze cattle. Their own cattle and those of indigenous people. Many of the Congolese had relatives in Uganda and settled with them.

Mr. Ngaruye: This marks the close of our case, subject to calling the Chairperson L.C.II of Rwangara Parish should it become necessary due to the Defence case.

Court: Case adjourned to 27/02/2009 at 8.30 a.m. for Defence case.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

09. 02. 2009.

27/02/2009:

- Counsel representation as from the beginning.
- Parties in court.
- Clerk – Herbert Mwesigwa.

Mr. Bwiruka: We are ready to proceed. I have 7 witnesses in Court.

DW1: Jaremaih Mutooro I am 60 years, resident of Kajambura Cell, Bundibugyo Trading Centre, holder of Certificate in Co-operative from Uganda Co-op. College Bushenyi. I am peasant farmer. I was Co-operative Assistant at Bundibugyo, Kasese, and Fort Portal and then with Uganda Red Cross as Dissemination Field Officer for five

Districts and Branch Coordinator (Bundibugyo) I am Chairperson of Bundibugyo District Land Board. I have served in that capacity since 2001.

I know the defendants in this case. I know the plaintiffs too. The Land Board is being sued that we gave out land not in the authority of the Land Board. We gave out this land around 2005. The members of the Board at the time were:-

- 1- I was the Chairman
- 2- Agnes Sebujo – member
- 3- Magdalane Mbabazi – member
- 4- David Mwamba – Member
- 5- Yusuf Katwikirize – member

We had a Secretary as a Technical Officer . This was Frank Bagonza. As Chairperson I chair Board Meetings, carry out inspections of land applied for. We also set area compensation rates.

As a Board we coordinate with lower units. In the past the lower units were not there. The lower units are called Sub-County Area Land Committees. They are supposed to be at all the parish level but they are not yet formed.

As for the applications of the Defendants they filled application forms obtained from Land Office. This was how it was done then. Today one can get forms from the Sub-County Office and fill them then take to the area Sub-County Land Committee. Witness shown the application forms (Annexure 'A' to the plaint).

- (i) One by Kabagambe Yofesi applied for 500 acres.
- (ii) By Kyomuhendo Kabagambe Gideon – 500 acres.

These are samples of the applications by the other applicants as well. We received the applications in 2004 in a month I cannot remember. From receipt of the applications it

took us almost one year to inspect the lands. We invited the applicants from that area and made a programme with them to go and inspect their land. When the programme was made we informed them to inform other people like the Local leaders and neighbours to attend the inspection. The inspection took place on 14th January 2005. I was with other members of the Board such as:-

- (i) Agnes Sibunjo, (ii) Mbabazi, (iii) Yusufu Katwikirize, (iv) David Mwamba and Bagonza.

We went by Motor vehicle to Rwebisengo then used motor cycles to the land. We arrived at Rwebisengo at around 11.00 a.m. and reported to the office of the Sub-County Chief who shares an office with the L.C.3 Chairperson. They were not there. We met the applicants at the trading centre. The applicants were aware the Chairperson and Sub-County Chief were not around. They told us they had informed them of the visit. We then proceeded to the land. There we found some people at late Mugarra's place. We found small houses we were told belonged to Congolese. We saw some of the Congolese. We met around 5 Congolese. There were developments on the land. There were two grass thatched houses on late Mugarra's land with cows there. There were cows scattered in various places on his land.

I did not meet any of the plaintiff's there. I don't know the plaintiff's children or workers. I did not see any huts said to belong to the plaintiffs. On that land, there was no dispute, and apart from the applicants there was no other persons to ask about dispute.

After inspection we went back to our office and made an inspection report. We then convened a meeting of the Board to discuss the applications as per our report. We met on 17/3/2005 at our District office. All members of the Board attended. The minutes of the meeting were made. We also discussed area compensation rates for the District.

We discussed the applications one by one and when we reached those of Mwamba, and Bagonza, I ordered them to get out of the meeting. They had told us of their interests and

their names were on the application forms. After considering their applications we allowed them back.

The land in issue is no longer a controlled hunting area. As Chairman Land Board, I went to Uganda Wildlife Authority to seek clarification on status of the land. They told me the area had been degazetted. I had also written to the Minister of Lands. The Minister confirmed that the area had been degazetted and attached the Parliamentary Hansard. I have not received an application from the plaintiffs. There is still plenty of lands available.

In our meeting we granted the applications through lease offer forms. It was now the duty of the applicants to get their own surveyors.

Cross-examination-by-Ngaruye:-

I read the applications of the applicants. If an application is not signed, it is not a valid application. [Witness shown application by Francis Mugarra]

This application is neither signed by the applicant nor I. The writing on the last page endorsing the application is by the Secretary. This is unfortunate and improper as the application was unsigned.

Yusufu Katwikirize was a member of the Board at the time. He was present at the inspection. I was not at Kampala on the date of the inspection above. I have stated the truth. Mr. Bagonza and Mr. Mwamba signed their own inspection reports on 14/1/2005. This was before the Land Board meeting of 17/3/2005. They had been in the inspection as applicants too. Mr. Bagonza continued to record the minutes when he came back upon being asked to leave the room when his application was being considered.

When we went to the Sub-County, there was no one there. The offices were open. We did not communicate to the officials. We used the applicants to notify them. We never saw any L.C officials of L.C.I or L.C.II as the area was a degazetted area it was not easy to

get the L.C. officials. The applicants told us they had communicated to the people of the neighbouring villages. This the late Mugarra told us. When we went for the inspection we only talked to the applicants.

I am aware there was an instrument of 1964 gazetting the area. I have seen drafts for degazetting and letter from the Minister. I have not seen an instrument degazetting the area. I wrote to the Minister seeking clarifications on the matter. This was 20th September 2008, after the lands had been allocated. The letter I wrote after the allocations because there was dispute on the status and I sought clarification. On all the application forms I did not sign. My Secretary also did not sign.

On Kabagambe Yofesi's application – questionnaire 7 (a) not answered, but (c) was. On part B – regarding decision of the Land Board is blank. On Bagonza Frank and Mwamba David's application – Questionnaire 7 (a) and (b) not answered, but in (c) it was answered. In the inspection report we (the Board) indicated the location of the land (village, Sub-County, County). We approved what was applied for.

Part J of the inspection form provides that if the land applied for exceeds 202 hectares then a technical report is required. In this case we did not seek a technical advice because earlier the Ministry had allowed us without technical advice to allocate 1000 acres which an applicant had sought.

Frank Bagonza and Mwamba David had applied for 1000 acres but they were given 700 hectares. Then according to this document. We allocated 1000 acres. The 700 hectares on this document (lease offer) I have just seen in Court for the first time. As for Kabagambe Yofesi's document:- He applied for 500 acres. We approved 250 acres. The Secretary was acting as the land agent of the Land Board. His mistakes the Board takes responsibility for. The information on the lease offer must come from the decision of the Board. During inspection I never saw any iron-roofed house on the land. On Bagonza and Mwamba's land there were huts, 2 of them. For Kyomuhendo, Kabagambe, I don't remember seeing a hut. On Kabagambe Yofesi's land there was unroofed house. Grass

was scattered around. On all the inspection reports – questionnaire (i) on developments on the land, there is no endorsement by us.

Re-examination: The practice in the past was for the applicants to inform the Local leaders. The practice now is for the Sub-County Committees to inspect the lands then forward to us their reports and we act. When we inspected the land there were no villages around there. The villages were there by name but people had left when the land was gazetted in 1964.

In our minute we record the resolutions not the procedures or discussions details.

If I forget to sign a document the minutes will protect the document. If I see an instrument I will recognise it as such. When the Minister writes, it is as good as an instrument as he is the final person. When we allocated/granted the land I was satisfied from several meetings including with Uganda Wildlife Authority who had demarcated the land that the land was available.

I wrote to the Minister due to the complaints from the plaintiffs. They are the only ones who have complained. The issue of Technical report for land exceeding 202 hectares is not mandatory.

On the 700 hectares, we gave 1000 acres, not 700 hectares. The change to 700 hectares was not by us but by the technical people. The 250 acres given to Kabagambe are not contested. The Board is not involved in determining who surveys the land.

When we inspected the land I saw the huts of Francis Mugarra, 2- Bagonza and Mwamba 1 each. There was an incomplete hut structure on Kabagambe's land.

Cross-examination – by- Bwiruka:- We inspected each applicant's land, not as a chunk of land. The lands applied are next to each other except the one of Bagonza and Mwamba

which are apart. The Late Mugarra applied for 1000 acres but got 500 acres for ranching and the other one who applied for 500 got 250 each.

The lease agreement for Bagonza and Mwamba signed by the Chairperson and names 665 hectares after the survey. When the surveyor finds land exceeding the one applied for then the applicant must apply afresh for the excess land. I do not remember the two applying for the land in excess of the 1000 acres. We gave them.

Court:- I am going for a burial so this case is adjourned to Thursday 5th March, 2009 at 8.30 a.m. and subject to the result of the day's proceedings, to Friday 6th /3/2009 at 2.00 p.m. Counsel are invited to my chambers immediately after here to discuss the issue of possible visit to the locus in quo.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

27/02/ 2009.

5th March, 2009.

- Counsel representation as before.
- Plaintiff 1 and 3 in Court.
- Defendants Frank Bagonza, David Mwamba, Kyomuhendo Kabagambe, Chairman and 2 members of the Land Board, in Court.
- Clerk – Irumba Atwooki.

DW2: Agnes Sibugyo, sworn states:-

I am 50 years old, resident of Bundibugyo Town Council, Mutiti L.C.I, Hamutiti L.C.II. I am a peasant, widow, and District Councilor representing Women of Bubukwanga Sub-County and Town Council. I know the parties in this Suit. I have worked with the

District Land Board. This was from 2001 to 2005 as a member. Other members were: Mutooro Jeremiah, Mwamba David, Mbabazi Magdalene, Katwikirize Yusuf.

The Secretary of the Board was Frank Bagonza. He was an ex-officio as he was the District Land Officer. Our duties were to protect Government Land, and also inspect and where necessary, where people had applied, to enable them get leases.

I recall that the Defendants – other than the Land Board, applied for land. When we received the application from them, we told the applicants to notify their local people of the area of our inspection day. This was January 2005. By that time there were no village or Sub-County Committees as they had not yet been instituted. As of now, Sub-County Committees are in place, but not the Parish Committees.

We went for the inspection of the lands. All the Board members went, including the Secretary. We went in a vehicle to Rwebisengo. The land is deep in the village from Rwebisengo we used motor cycles to the land. We reached the Sub-County offices to report to the local authorities. We found none of them in the offices. This was around 11.00a.m. we had gone to the Sub-County Chief and the Chairman L.C.III. Both of them were not there. We then proceeded to the Trading Centre and got the applicants.

We sought to know from them whether they had told the Local Leaders of our coming. They confirmed having told them. We then proceeded to the field, thinking we would meet them there.

We never saw the officials there. On the way to the land we met people moving but we did not know them. At the lands for inspection, the local leaders and neighbours were not there.

On the lands there were homesteads. They were about six of them. 2 of the homes were for Hon. Mugarra, 2 were for Frank Bagonza and Mwamba David, others were for

Kabagambe and another applicant (Gidieon) These houses were huts. There was a hut out of the six not yet thatched.

There were Congolese there. The Chairperson of the Board reached one of them. The place was not close to where people were living. It was not heavily inhabited. This place we knew bordered the park and still does. We did not travel with a technical person to take measurements, so we only estimated the land areas. In our estimation, the land applied for was available and leaving even more still available. After inspection we held a meeting at our office in March. In the meeting we allowed the applications. We never rejected any.

In the meeting when we read the agenda we found out that one of the applicants was our member of the Board. The ex-officio (Secretary) had also applied. The Chairman of the Board asked the two to move out as their applications were being discussed. They both moved out. The Board considered and approved the applications. After this it was the Chairman and the applicants to follow up the subsequent stages.

Cross-examination-by-Ngaruye: When the applicants were being told to notify the local leaders of the date of inspection I was present. It was the Chairman in the presence of the Secretary of the Board. This was early January 2005, and nine days before the date of inspection. The Chairman told the applicants to notify the local people. This land was such that one could proceed through the applications as it was not land occupied by people. [Put to her that she never received payments for such work]. We were facilitated by the Districts and vouchers issued and signed. We were paid as we were going to inspect the land.

We went to Rwebisengo Sub-County Headquarters. There we found nobody. We did not go to any other Sub-County. We were aware that the land applied for by Bagonza Frank and Mwamba David was in Kanara Sub-County which is different from Rwebisengo Sub-County.

At the time of inspection, we were aware that a member and ex-officio official had applied. (were also applicants).

The inspection forms were signed from the field.

Cross-examination-by-Bwiruka: The lands applied for were together bordering one another. All the lands were together. Even the one of Kanara Sub-County was together with the ones of Rwebisengo. The applicants had no boundaries between them.

Re-examination: For the inspection trip we were facilitated. We were given a vehicle by the District, and also our allowances. Both Kanara and Rwebisengo sides of the lands were not heavily inhabited.

DW3: David Mwamba sworn states:-

I am 52 years old, resident of Makondo L.C.I, Rwebisengo Parish, Rwebisengo Sub-County. I am a cattle – keeper. I know the parties to this Suit. I know why the Land Board has been sued. I was a member of the Land Board from 1995 to 2005.

Almost all the parties are related to me by blood or by marriage. As for the plaintiffs Yoweri Bamuhiga is my brother in law, Kesi Kabona is my uncle, Tinkansiimire is married to my sister, Kwonka Martin, my brother maries his sister, Asiimwe Gideon is not related to me, Jackson Kaggwa, my brother married his maternal auntie, Frank Bagonza is a friend. Hon. Mugarra’s grandmother is my paternal aunt.

When this Suit was instituted in 2006 the disputed land was being occupied by the Defendants. Late Mugarra 2 homesteads, myself, 1 homestead and Bagonza Frank 1 homestead, Yofesi Kabagambe, 1 homestead and Gideon Kabagambe 1 homestead. The homesteads of Mugarra and Kabagambe Yofesi are still there. The others (three) were

demolished. I do not know who demolished them. This was in 2006, after the institution of the suit.

The plaintiffs do not own land near the disputed land. On this land now are new homes being constructed, and I even took police there. The Police wrote to them stopping them and gave me a copy of the letter.

Each of the plaintiffs have big chunks of land in Rwebisengo outside the disputed land, and each can graze between 5000 to 8000 cattle, and yet they still want more. The two parties (sides) can own land in the area and there is still more left.

I applied for land with Bagonza as we wanted to set up a ranch. I am aware that the land I was allocated is bigger than the one I had applied for. I found out that this was so when the surveyor had done his work. On finding out we filled forms (agreement forms) with Mr. Bagonza.

We paid fees for the land allocated to us.

Cross-examination – by- Ngaruye: I put my house on the land after applying for the land. This was in January 2005, before the inspection which took place in January 2005. I did not build for the inspection. When the inspection took place the construction was still going on and the workers would come for the construction and go back. Unlike the plaintiffs I have a small piece of land.

I applied for unoccupied land, not anybody's land. We applied with Bagonza for 1000 acres which the Board approved. I am aware that the lease offer to us is for 700 hectares. I became aware after the surveyor brought it to my attention. I saw and read the lease offer.

[shown the lease offer and read out to him]

It is dated 2nd August 2005 I don't remember when I got it, but it was the same year. I did not inform anyone that I received more land than what the Board had approved. The lease offer came before the survey. I signed a lease agreement in which the land is described as 665 hectares. I was aware of this when I signed and also that this was more than 1000 acres.

I know the Chairman L.C.III Kanara Sub-County. He is called Habib. He was not present during the inspection. On the day of the inspection we went to Kanara Sub-County but not to the Sub-County Headquarters. The land we applied for is in Rwangara parish. The L.C.II Chairman then (2005) was called Omuhereza. He was not present during the inspection. The land is in Kacwankumu village. The Chairman of the village then was Mujungu. He was not present during inspection. There was no member of the L.C. Committee during the inspection.

I had informed the Chairman L.C.3 Rwebisengo called Hasan Wamara that January on a date I could not recall. When I went there he was with Komunjara Edson a Committee member. He told me that the District Land Board did not have powers to allocate land which was degazetted.

I was there at the inspection of my land. I showed the Board around, and signed the inspection report. I had also informed the Chairperson L.C.I of the area. He told me if he was around he would attend. I never went to inform any other authority or person.

When my home on the land was destroyed I reported to police. We failed to establish who caused the destruction. Bagonza and I had built at the same time.

Apart from the two houses being built then I had nothing else on the land.

Re-examination: I think the L.C. did not come because they were not mindful of the land because the land was not occupied.

Court examination: - On the land the other applicants had the following activities:-

- **Hon. Mugarra:**- Grazing cattle around 300 in number.
- **Yofesi Kabagambe:**- Has about 150 head of cattle.
- **Gideon Kabagambe** had only a house

Court: Case stood over to 12.15 p.m.

Sgd. (A. C. OWINY – DOLLO)

JUDGE

5/3/2009.

12. 47 P.M.

Representations as before.

Mr. Bwiruka: We are ready to proceed. Mrs. Mugarra is now in Court and as well Jackson Tinkansiimire.

DW4: Christine Mugarra sworn states:-

I am 45 years a farmer and resident of Mukimba village, Rwebisengo parish, Rwebisengo Sub-County, Ntoroko County. I am widow of the late Hon. Mugarra. I know Yoweri Bamuhiga. He is a resident of Rwebisengo, and my neighbour in another place where I have another home. This is in Kimara village.

I know Jackson Tinkansiimire. He is a son to Yoweri Bamuhiga. I know Kesi Kabona as a resident of Rwebisengo in the same Sub-County. We are not neighbours. I know Martin

Kwonka as a resident of Rwebisengo. I know Asiimwe Gideon as resident of Rwebisengo. I know Jackson Kaggwa as son to Martin Kwonka. I know why the above have sued my late husband. They claim that the land that we applied for is theirs. I (my late husband) applied for the land we had already occupied. The land is in Kimara. We started occupying this land in 2002 when it was a bushy area unoccupied. We took our cattle and grazed them there. We did nothing else apart from constructing houses for our herdsmen. There are two homesteads.

Yoweri Bamuhiga is our neighbour in Kimara in another area which is also a Court case. He is not a neighbour in the disputed land. In that other case the suit is between Yoweri Bamuhiga and Gideon Kabagambe (brother in law). My late husband applied for this land in 2004, to the District Land Board. I never looked at the application. The application was granted. The land Board members came to inspect the land. I saw them at Rwebisengo. They went to the land with my late husband. The Board members who came were:- Jeremiah Mutooro, Agnes Sibugyo and another lady whose name I do not know save for the face, there was also David Mwamba and many other people. I saw the offer made to my husband. It was 500 acres. The land was surveyed. I was not present when it was surveyed.

This land does not belong to the plaintiffs. They have nothing on the land. I am using the 500 acres allocated to us. The plaintiffs have put in their structures, not one month old, on the land. We reported to the Police. This was the second time we reported. In 2007 they constructed a house on our land and my husband reported to police at Rwebisengo. This is also where we reported the recent construction. The police visited the area and stopped them from constructing. They however went ahead with the construction.

I know Kabagambe Yofesi. He is my brother in law. We have land in the same area. David Mwamba is my Cousin Frank Bagonza is a resident of Rwebisengo. He is not related to me. I would like this court to dismiss the suit with costs.

Cross-examination-by-Ngaruye: I know the boundary of my land in dispute. There are mark stones. Before the surveyors went we knew the general area of our land but not the specific borders.

I do not know who built the house in 2007. As for the recent construction, I saw children of Bamuhiga putting up one of the houses.

When my husband submitted the application to the Land Board I was not there. During the survey I was not there. I do not live on the disputed land. I have about 300 head of cattle on the disputed land.

On the disputed land I have two homesteads. They are less than half a kilometer from each other. The plaintiffs do not have cattle or homes on the disputed land.

Re-examination: I visit the disputed land once a month or in two months. It is the herdsmen who keep the homesteads in the disputed land. We have a manager who visits the herdsmen.

Court examination:- I have roofed my two houses with iron sheets. This was a month ago.

Court: The case shall resume at 2.30 p.m. today for further hearing.

Sgd. (A.C. OWINY – DOLLO)

JUDGE

5. 03. 2009.

3.00P.M.

Appearances as before.

DW5: Frank Bagonza sworn states:-

I am 40 years old farmer, resident of Ngeege L.C. I, Haibale Parish, Rwebisengo Sub-County.

In 2005 I was Secretary Land Board Bundibugyo. I was Secretary from 2000 to 2005. I left when I was retrenched.

I know all the plaintiffs in this case. We all come from the same Sub-County. I knew the late Mugara. He also came from the same Sub-County. The other Defendants are known to me too.

The plaintiffs have sued me in court over land we applied for in 2005. I applied jointly with David Mwamba. The land is at Kacwankumu village, Kanara Sub-County. I knew the land first when in 2002 the Chairman of the Land Board got information from the Ministry that this was once a protected hunting area but that people could utilise the land which had been degazetted.

We applied for 1000 acres of the land. We went there to inspect the land. We went in January 2005; we went to the Chairman L.C.III of Rwebisengo Sub-County. There was no one at the Station. We proceeded and inspected the land.

At the land we found two homesteads on the land for Hon. Mugarra. We had also started constructing houses there. One was thatched but the other not yet. Kabagambe Yofesi had one house. He had cattle on the land of about 150. Gideon Kyomuhendo also had a house under construction. Only the houses of Hon. Mugarra were close to each other. We saw some Congolese on the land.

After the inspection we filled the inspection form for each applicant. I did not see any other house apart from the ones I mentioned. The Board sat on 17th March 2005 and

approved the application. During the consideration of the application Mwamba David and I were asked to leave the meeting.

After this we took a surveyor for preliminary survey and he told us the land was 665 hectares. It was an error to take a surveyor there. After this a lease offer was prepared for approximately 700 hectares. I wanted to apply for the extra land. The Board had allocated us 1000 acres which is what we paid for though the lease we signed read 665 hectares. We did not process the title as the court process stopped us.

Our two houses were demolished and we reported to Rwebisengo in 2007. On this land people have put up new structures; and where my house was there is an iron roofed house which we were told belongs to Kesi Kabona. The house was constructed only last month.

There are still Congolese on parts of the land. The other plaintiffs have no structures on the land. Our prayer is that the 1000 acres allocated to us be approved by Court. The Suit be dismissed and costs awarded to us.

Cross-examination-by-State Counsel: I applied for this land because it was unoccupied. I would be satisfied with the 1000 which the Board approved.

Cross-examination-by-Ngaruye: I am the one who issued the lease offers to the approved applicants. I am the one who prepared them and signed them. The source of the figures (acreage) put in the lease documents was the Land Board.

Mugara applied for 1000 acres but only 500 acres was approved. Yofesi Kabagambe applied for 500 acres but the Board gave him 250 acres. The minutes do not mention these acreage approved. Gideon Kyomuhendo applied for 500 acres but the Board approved only 250. This is also not recorded down anywhere.

My application with Mwamba was for 1000 acres. This is not recorded anywhere. I caused a preliminary survey on the land I applied for before the lease offer. There was no

official instruction. The acreage of 700 hectares in my lease was more than the 665 hectares established by the Surveyor. We did not intend to cheat so there was no abuse. I know that the lease offer was to reflect what the Board had approved. This was 1000 acres which we had paid for. I notified my colleague [Here he says he has a Diploma in Law from the Law Development Centre] Mwamba David of the anomaly in the acreage reflected. We agreed that we would apply for the excess land, but the Court case stopped us.

The Chairman signed the lease agreement for 665 hectares. I informed him of the anomaly and he told me to apply later for the excess land. I realize now that it is wrong that I signed as Secretary of the Land Board, and as lessee. At that time I did not realize it was wrong.

At the time of the inspection I and Mwamba had no cattle on the land. We had only the houses I talked about.

The inspection forms were filled by me. In the inspection report I filled the form that there were cattle on the land and two Semi- permanent houses on the land, because we had intended to bring cattle there.

On 3rd January 2005 I made the application for the land. I am aware the Board is supposed to publicise our going to inspect the land. We did not do so with regard to this inspection. We used the oral notice for this land. And with regard to our land my colleague Mwamba was assigned the task to inform the people.

We had no intention to cheat anyone.

Cross-examination-by-Bwiruka: If the lease was reading 1000 acres we would still have paid the same. When I filled cattle grazing in the inspection report I meant the intended activity. The only cattle I saw on the disputed land was that of Hon. Mugarra.

DW6: Gideon Kyomuhendo Kabagambe, sworn states:- I am 47 years, cattle keeper, resident of Majumba village, Rwebisengo Parish, Rwebisengo Sub-County. I know all the plaintiffs. They are residents of Rwebisengo Sub-County. I am brother to the late Hon. Mugarra. I know Kabagambe Yofesi as my young brother. Mwamba is closely related to me. Frank Bagonza is resident of Rwebisengo Sub-County. The plaintiffs have sued me over land we applied for and was allocated to us. I applied for the land in September 2004, to the District Land Board. The land at this time was not occupied. There were no neighbours except there was the home of Hon. Mugarra which was far from the land I applied for.

The plaintiffs were not occupying this land. They have land in other areas. I knew about availability of this land when the District Land Board, Councilors and Member of Parliaments that the land had been degazetted for people to use.

When I applied for 500 acres I was told I was offered only 250 acres. We were informed that the Board was coming to inspect the land. This was beginning of January. They came and inspected the land. Those present were the Board members and Bagonza Frank who filled the forms after the inspection. I had constructed a house on the land in August 2004. After the allocation the land was surveyed in my presence, the late Hon.Mugara, Bagonza Frank, Mwamba David and Kabagambe Yofesi. We used the same surveyor but on different days.

We never told anyone that the surveyors were looking for water points. I first heard of this from Court here. My title was now at the registration stage when we were stopped.

I pray that this Court dismisses the suit and allows me to continue with the registration process and costs.

Cross-examination-by-Ngaruye:

My land has no neighbors. On inspection date I invited the Local leaders who never turned up. I informed the Chairperson L.C.III who looked not bothered. The Chairperson

L.C.I of Kyabukunguru village, Tinkansiimire Christopher who also did not come. The Land Board had informed us to notify the Local leaders. In my application the village I showed was Nyakera/Kimara villages and I gave notice to the Chairman of Kyabukunguru village who had overall authority over the villages. And the Chairperson of Kimara was a new person so I went to the other Chairperson. At the time of the inspection I had the telephone contact of the Chairperson L.C.III. I had notified the Sub-County Chief whose telephone contact I had.

On day of inspection I went to Sub-County Headquarters to see if they were ready and we go. I called the Sub-County Chief who told me he was at Bundibugyo Town. I had six days before notified him of the inspection.

On the application forms I wrote as my neighbors – Kabagambe Yofesi, Mugarra Francis, Game Reserve. This is the same land I told Court I have no neighbours for.

Amongst the Board members who came for inspection was Katwikirize Yusuf. At this time I had not yet taken cattle there. The cattle that were there were for Hon. Mugarra [But inspection report reads cattle for Congolese]. I did not inform the Uganda Wildlife Authority of the inspection of my land. At the time of survey the local leaders were not there.

Re-examination: When filling form I understood adjacent land to mean land of neighbours. The Congolese were put on this land by resolution of Sub-County Council. I am a Sub-County security officer.

Cross-examination-by-State Counsel:- I do not have cows on the disputed land. At the time of inspection I had a small house (hut) for herdsmen. The hut was demolished by unknown people. The Local leaders refused to turn up because the area was not being occupied by anybody as it had just been degazetted.

DW7 Yofesi Kabagambe sworn states:-

I am 39 years old, cattle keeper resident of Ngeege L.C.I, Haibale Parish, Rwebisengo Sub-County. I know the Plaintiffs as people from Rwebisengo Sub-County. I know the Defendants. They are also residents of Rwebisengo. I know Kabagambe Gideon is my brother. Hon. Mugarra (late) was my brother. I was sued because of the land I built on in 2003, in Nyakeera , Kimara. I acquired the land by the construction of a house when I learnt the land had been degazetted. I put there cattle to graze on the land. The other people on this land were late Mugarra, Kabagambe, Kyomuhendo Gideon, came later after I had occupied the land.

The plaintiffs were not on the land. I applied for the land on 16th August 2004, to the District Land Board. It was inspected by the District Land Board. I got a lease offer on 1st of April 2005. I accepted and paid for the land. It was surveyed. While processing the title I was sued and stopped the process through a caveat.

On that land I have cattle and my people and a home. The plaintiffs have constructed houses there and I have reported to Rwebisengo Police. This was in the month of February, 2009.

I pray that this Court dismisses this Suit, with costs and I be allowed to process my title.

Cross-examination-by-Ngaruye: I applied for the land on 16th/8/2004 and for 500 acres. I was offered 250 acres. The land is Plot No. 21 Ntoroko Block 163.

I know that my allocation was 250 acres. I had not seen a print of my survey before.

[The one shown to witness reads 202 .80 hectares.] Plot 20, 201.95 hectare. My surveyor told me he had surveyed 250 acres. [Counsel abandons the issue of acreage on the print]

I informed Chairperson L.C.3 of the inspection date. This was some 5 days before the inspection. I also informed Amos Ndolerire Chairperson of Nakeera/Kimara L.C.I. Both

did not attend the inspection. On survey, I did not inform the Local authorities since they had failed to turn up for the inspection earlier.

Cross-examination- State Counsel:

Even if the District Land Board had written letters notifying of inspection date, may be the local leaders would not have come.

No examination.

DW8: Samaria Ibrahim affirms states:-

I am 53 years old, a game ranger with Uganda Wildlife Authority, resident of Karugutu, Ibanda II, Karugutu Parish, Karugutu Sub-County, Ntoroko.

I have been a Game Ranger since 1973. I have been at Karugutu since, except for one year. I am attached to Karugutu Game Reserve and Semuliki National Park (SNP) I know the dispute in this Court. Some people applied for land near the Game Reserve. Before their application the land was a Hunting Controlled Area Game Reserve. The area was for licenced hunters. There was no body in the area. The area in dispute was part of my area of operation. The people of Rwebisengo asked for this land and Uganda Wildlife Authority gave it to them. Uganda Wildlife Authority handed over the land to the District Land Board. Uganda Wildlife Authority brought surveyors who cut off the land from the Land of Uganda Wildlife Authority. Poles were put on the boundary. I was present. I do not know the size of the land that was released as it is the Game Wardens who know. The land was released in 2005 when poles were put from Nyarusenzi to Kacwankumu on L. Albert. In 2006 they put more poles to close gaps in between.

Before this releasing of the land, there were no people on the land. There were no people grazing in that area as anyone doing so would be arrested. Some people were arrested. I heard about Yoweri Bamuhiga and later came to know him as I have worked in that area for a long time. He is a cattle keeper. I know Martin Kwonka. He is a cattle keeper in

Rwebisengo. I only hear about Kesi Kabona . I have never seen him. The rest of the plaintiffs I do not know them by face.

Before the year 2005 the land in issue was not occupied by any person. I have not been on this land since it was released in 2005.

Cross-examination-by-Ngaruye: [Witness shows I.D] My station is about 20 kilometers from the land in dispute. I am ranger of Karugutu Game Reserve. The land in dispute towards Rwebisengo touches Karugutu Game Reserve. I know Controlled Hunting Area. It is a Hunting area for only licensed hunters.

I know Moses Mapesa. He works in Uganda Wildlife Authority and stays in Kampala. He is the Executive Director Uganda Wildlife Authority. I know Tooro Semuliki Wildlife Reserve. Earlier it was Tooro Wildlife Reserve. Then when a new District was created, it became Semuliki Wild Life Reserve. Karugutu Game Reserve is the same as Semuliki Wild Life Reserve.

I know Rwebisengo Trading Centre. I did not know that the Trading Centre was in the Semuliki Flats Controlled Hunting Area, because by the time I joined the town was already there.

I did not participate in the burning of houses because it happened when I was on leave. If anybody grazed in the area I would have arrested them.

I know Mwamba. He had no land in the Controlled Hunting Area. I am educated formally in P.4.

Re-examination: None.

DW9: Tinkansiimire Christopher sworn states:-

I am 49 years old, a cattle keeper, resident of Kyabukunguru L.C.I, Kasunga Parish, Rwebisengo. I am the Chairperson L.C.I of the village. The neighboring L.C.I's are:- Nyakasenyi, Kajweka and Kimara. These are not in the same parish.

Nyakasenyi is in Masaka parish while Kajweka in Wangara parish, and Kimara in Kasungu parish.

I know Yoweri Bamuhiga. He is resident of many homes. One home is at Kanyamukura where he stays, another home at Kimara. I know Kesi Kabona. He is a resident of Kiranga in Rwebisengo Sub-County. I know Martin Kwonka. He is a resident of Nyakasenyi. I know Jackson Tinkasimire. He is a resident of Harukoba. I know Gideon Asiimwe, a resident of Kajura. I know Jackson Kaggwa, a resident of Kasungu. I know why the above have sued the Defendants whom I know too. I do not know why they have sued the Defendants. None of the Defendants stays in my village. I knew the boundary of Tooro Semuliki Wild Life Reserve. It came and stopped at Kimara (bordering it). At present it is very far, behind Kigugu. This change took place, and I realized it in 2003. This was when the Congolese fled from war and were settled there by the office of the LC3. The Congolese left but some are still on the land.

Between the old and new boundaries of the Controlled Hunting Ground, the late Hon. Mugarra was staying on a piece of land where he was grazing his cattle. The others were Kabagambe Gideon and Kabagambe Yofesi who followed Hon. Mugarra. Those are the only ones I knew.

I have been Chairman L.C.I since 1997. The village used to be very big. Kimara L.C.I was carved out of our village in 2004. The Chairman of Kimara became Amos Ndolerire. He is now Chairman of Kajura L.C.I curved out of Kimara. Kimara L.C.I's Chairman is Kitembo Swizen. The land of Hon. Mugarra and the two Kabagambe used to be in my land. When it was Sub-divided they now fall in Kimara L.C.I. Kimara was split to create Kajura in 2005 at the beginning of the year.

I know the District Land Board exists. They have ever come to our area. They came on 14th January 2005, to inspect land of late Hon. Mugarra, Gideon Kabagambe and Yofesi Kabagambe. The late Hon. Mugarra informed me. Kabagambe Gideon also informed me. When the inspection took place I did not attend as I had some other official activity. There was no dispute over this land to my knowledge because it belonged to the Game.

Nobody was grazing on this land as it belonged to the Game.

Cross-examination-by-Mr. Ngaruye: At the time of inspection I was not Chairman of Kimara. Late Mugarra and Kabagambe notified me of the inspection on the 10th October 2004. [Then witness changes and states he does not remember when they did so].

When they notified me of the inspection I was no longer Chairman of Kimara. It was not my duty to tell them to go to the other L.C.I. I had agreed to attend but got caught up by official duty. When the new Uganda Wildlife Authority boundary was created I was not present but there are some marks from which one can tell. Gideon Kabagambe has cattle there.

Yofesi Kabagambe has cattle on the land. I am not lying to court about these cattle being there.

Re-examination: I see cattle but I can't say this belongs to Gideon or Yofesi. The two are brothers.

Cross-examination –by-state: It can be difficult to differentiate between cattle in the area.

Mr. Bwiruka: That is the close of the Defendants' case. We consent to going to the locus on Saturday 7th March, 2009.

Court: The Court will visit the locus in quo on Saturday 7th March 2009. The proceedings there will begin at 9.00a.m.

Sgd. (A.C. OWINY- DOLLO)

JUDGE

6- 3- 2009.

7/3/2009:

Court:-The Court visited the locus in quo in the Sub-Counties of Rwebisengo and Kanara. The Court, in the presence of the Plaintiffs and the Defendants and their Counsel moved throughout the suit land from 9.30 a.m. to 5.00p.m. seeing some of the landmarks witnesses named in their testimonies.

The Court started from the homestead of Christine Mugarra at Kimara village, Kasungu Parish, Rwebisengo Sub-County, up to Kacwankumu village, Rwenyana Parish, Kanara Sub- County.

The Counsel representations remained the same. The witnesses are in court. The Chairperson L.C. III Rwebisengo Wamala Hassan in Court and the L.C.I Chairperson Kacwankumu (Mujungu K. Byandema) and the Chief Administrative Officer Rwebisengo District, Byamungu Elias are in Court.

Ngaruye calls the plaintiffs:-

PWI Yoweri Bamuhiga (warned still on oath).

I showed Court today 10 (ten) homes. I have cattle and people taking care of my cattle. The oldest home is an old one. I can't say because I am illiterate. I was the first person here, long before the Defendants had applied for the lands. The mark stones are on my land.

Cross-examination-by-State Counsel: The surveyed land covers my land. Court saw the mark stones on my land so it should help me to secure my land. It would be good if court sent surveyors to verify this.

I know that the District Land Board can allocate a limited acreage of land. I wanted to apply but found out that someone has applied for it and I went to Court.

Cross-examination-by- Bwiruka: I do not know the boundaries of my ten homes as I am illiterate. What I said I do not know are the boundaries of the surveyed land. Otherwise my own boundaries I know. The new homes seen I did so after the old ones had collapsed. I built four new homes.

I first came here many years ago, before Museveni came to power. I never told Court I had a mabati house.

Re-examination:- I built the new houses where the old houses had collapsed.

Court: I do not know the number of cattle I have. My children do. I share a boundary with Christine Mugarra. She surveyed land beyond where she has houses.

PW2: Jackson Tinkansiimire Ankuna (warned still on oath). 4 of my homes are enclosed in the survey. There I have cattle. I established those homes before the defendants applied for the suit land.

Cross-examination-by-State Counsel:-

I have not constructed new homes in the last one to two months. I have only carried out repairs.

We know our boundaries using trees, sisal which were removed. We did not show the boundaries because court did not ask for them.

Cross-examination-by-Bwiruka: The homes I showed as mine do not belong to Congolese. My land does not border Christine Mugarra. I have a complaint against her because she put mark stones which circled my land. I have one iron-roofed house. I repaired the mud falling off only. I only graze where my land is I do not graze in another person's land.

Court: PWI is my father. He has around 2000 cows I have around 300 cattle.

PW3: Kesi Kabona (warned still on oath). My homesteads affected by the survey which I have shown Court are mine. I built them before the Defendants applied for the suit land. I have cattle in them. I graze them where my homes are.

Cross-examination-by-State Counsel:- I never applied for land. Bagonza brought me forms twice, I filled them but they never came back. The forms were for other lands not in dispute. I know the Land Board has powers to grant land. For my nine homes I do not know the exact acres so I cannot say how many acres I would apply for.

Cross-examination-by-Bwiruka: Some of the homes I constructed three months ago. They were two homes which had collapsed and the mabati ones are four in number. I never took over Congolese homes. I can't do such a thing. The Congolese whose homes were there were brought by the LCs but we accepted them and gave them land. Although the Congolese have settled on our land I know my boundary with my neighbours.

Court examination: I have more than 2000 head of cattle.

PW4: Martin Kwonka (warned about oath).

I have shown Court 3 of my 5 homesteads. I put up these homes before the Defendants applied for the suit land. In my homesteads and land I have my houses and cattle.

Cross-examination-by-State Counsel:- When the Defendant applied for the suit land only Mrs. Mugarra was on the land. None of the others had any home on the land. I have never applied for the land from the District Land Board. I have blocked the Defendants from applying for the land some Congolese are on parts of the land. I blocked the Defendants because I am the one to apply for the land. The time to do so has not yet come.

Cross-examination-by-Bwiruka: The five homes I have talked of do not include those of my son Kagwa. The Wildlife Authority burnt only one of my homes.

I am not occupying any home belonging to Congolese. I first came to this place and constructed my first home in 1985. I have iron roofed houses and three grass thatched ones. There is one home which I put up in the last six months or so.

My village where I stay most of the time is Nyakasenyi is on the road from Rwebisengo to Rwangara. This is about 3 to 4 miles to the land in dispute.

Re-examination: The house I built six months ago was because the old one had collapsed.

Court examination: I have 4000 head of cattle.

PW5: Kagwa Jackson (reminded of oath) I showed court one home but I have three. There was no time to show all. I put up my first home in 2003, and the last one in 2006. In my homes and lands. I have cows and people who look after the cows. I have some small gardens too. I know Asimwe Gideon. He has one home we saw. 2 are for his father. I cannot recall when he put up the homes. When my father gave me my land Asimwe had already put up those homes.

Cross-examination-by-State Counsel: I did not construct the home after the dispute. I do not share a boundary with any defendant. We have sued them because they came and

surveyed our land. I do not share border with Congolese. My father does. The Congolese is called Pereza. The land I own I do not know the acreage. It is big land.

Cross-examination-by-Bwiruka: I have land in Kanara where Mwamba and Bagonza have leased the land enclosing mine. I have no iron roofed house. I am a resident of Kasunga in Rwebisengo Sub-County. This is about 7 to 8 kilometers from the disputed land. I settled on the land before the Congolese came. The mark stones shown by Mrs. Mugarra are within my land.

Court examination:- I have 200 head of cattle.

PW9: Charles Rwabuhinga:- The borders of the Controlled Hunting Area runs from the Makoga Hill through Rwebisengo Trading Centre. The disputed land falls within the Controlled Hunting Area as created by Statutory Instrument (S.I) 226 – 15 of 1964 (L.N. 353 of 1963).

The map showing the Controlled Hunting Area is tendered in as Consent Exh. N0. 18, I have some of the survey prints of the land in dispute. I got them from the land office Fort Portal on 6/3/2009 (yesterday from the Senior Cartographer (Senior Supervisor of Drawings) Kabarole.

They are certified . It is one print containing three plots.

- Plot No. 19 in the name of Yofesi Kabagambe.
- Plot No. 20 is Gideon Kabagambe
- Plot No. 21 Mugarra K. Francis.

They are on Ntoroko Block 163. The instruction to survey (I.S.) is D/4/0008.

Plot 19 is 202.01 hectares.

Plot 20 us 201.95 hectares.

Plot 21 is 202 .80 hectares.

Plot 19 is on the West and Plots 20 and 21 are East of Plot 19 in that order.

I participated in opening boundaries of these three plots put together. Quite a number of the homesteads we saw today fall within the three plots above. I have a job history of the survey of the plots above. The land surveyed for Mwamba and Bagonza has no job history or prints where I got the ones for the three plots above.

The job history referring to the three plots tendered in for identification as PI DI and the print is PI D2.

Cross-examination-by-State Counsel:- Those documents when I first brought them in Court they were not yet certified. Now they are. They are public documents and one has to pay a fee to obtain them. I applied to the officer and he availed me. I never paid.

Hon. Mugarra got approximately what he was allocated.

- Gideon Kabagambe got twice what he was allocated. So was Yofesi Kabagambe. I do not know if the land as originally allocated would still encroach on the plaintiff's land.

I am amazed that I am accused of instigation when we have seen so many homes of the complainants. I have not instigated.

Cross-examination-by-Bwiruka: I have my land enclosed too. I was not permitted to show court. The land is in Kimara in the easterly direction from the Southern point of Christine Mugarra. It lies between Kesi Kabona (East – West) and North and South Yoweri Bamuhiga. I have nothing there. The neighbors and Chairman of the area know about this land. I got the land around 2000 to 2001. I am active in this matter at my own expense. The land holding by the plaintiffs i.e. customary as it will be inherited from

family member to family member. This is not public land vested in the District land Board.

- Rwebisengo Trading Centre is within the Controlled Hunting Area. I do not know if Hon. Mugarra's land holding is customary or not. My occupation of 2002 is customary.

Re-examination (Ngaruye):-

- My involvement is not out of politics.
- The land I have in the disputed land I had my cattle on it but they ran back to where I had brought them from.

Ngaruye: This is the close of the plaintiff's case for locus proceedings. Since some vital documents have been put for identification, and since it is in the interest of justice to have certain important facts affecting the case in material particular brought in. I pray that Court issues summons to call the Drawing Supervisor who issued PI D-I and II to appear and testify in this Court regarding these documents.

Bwiruka: We apply for adjournment of the proceedings of today we seek also to call the O.C. Police Rwebisengo and the surveyor who carried out the survey of the suit land.

Court: This case is adjourned to Wednesday 11th March 2009 at 8.30 a.m. for the continuation of these proceedings at Fort Portal High Court. Witness Summons to issue to the Cartographer (Drawing Supervisor) Fort Portal, and the surveyor who carried out the survey of the suit land (Moses Kyamanywa) for that day. The O.C Police Station Rwebisengo in Court is warned to attend the said proceedings as a witness.

Sgd. (A. C. OWINY – DOLLO)

JUDGE

7/3/2009.

11/3/2009:

- Ruhindi Ngaruye for the plaintiffs.
- Ndibarema for the Defendants (District Land Board).
- All the parties in Court.
- Clerk – Irumba Atwooki.

Ngaruye: The technical witness summoned by Court is present. We are ready to proceed.

PW10: John Agaba sworn states:-

I am 53 years, a Civil servant working in Lands Department, Kabarole District Local Government as a Cartographer. I have been Cartographer Fort Portal for 28 years. My schedule includes plotting jobs done by surveyors in the field.

I am resident of East Division, Njara, Fort Portal Municipality. I am the Drawing Officer, Supervisor, and Kabarole District. From my records I have come across the names Mugarra K. Francis, Yofesi Kabagambe and Gideon Kabagambe. I came to know those names when a file was presented to my office for plotting. There was an instruction to survey the land in respect of Mugarra K. Francis. There were no instructions to survey the other 2 persons' lands.

The instruction to survey was in respect of 202 hectares of land. I am the one who did the plotting.

[Witness shown document PI D2].

This is a print for plots 19, 20 and 21 Ntoroko Block 163 Bundibugyo District. I am the one who assigned the plot numbers, on the basis of how the job came to me. We have a book called "Kalamazoo" which is a register where surveyed land is recorded.

[Witness shows Court a photocopy of a page of the Kalamazoo]

It shows the County, the block number, Plot number, the instruction survey number, then the area, then the name of the area, then the name of the owner of the land, then the number of the correspondence file for the land and then the sheet number where the land is found. When I got the survey documents, I allocated the next plot as No. 19 because No. 18 had already been allocated to someone else. The allocation was as follows.

Plot 19 – Yofesi Kabagambe (2002. 01 hectares) under Instruction No. D/4/0008. The correspondence file No. is LWB/57.

Plot 20 – Gideon Kabagambe (201. 95 hectares) same instruction No. as for Plot 19, same for correspondence file No.

Plot 21 – Mugarra K. Francis (202.80 hectares). The other particulars the same as with the first two plots.

It is not proper for different applicants to have the same instruction and correspondence numbers.

The acreage is determined by the surveyor after computing the area. I then plot (put the information on the map). So what is in the Kalamazoo is what I got from the surveyor.

My signature is on this document PI D2.

[Witness shown PI D1]. This is a job history. It has my signature. It shows how the job is done by the surveyor. The document (job history) formerly PID2 is tendered in and marked Exhibit PEI.

The print formerly PID2 is tendered in and marked Exhibit PE2. The photocopy of the Kalamazoo has the official stamp of my office and my signature. The page copy of the Kalamazoo is tendered in and marked exhibit PE3.

I do not know Mwamba or Bagonza. I have not come across their names in the course of my work. Lease agreements come after the plotting (by us) has already been done. No one can have a lease agreement when his name is not on the Kalamazoo.

Cross-examination-by-Ndibarema:- I am Cartographer by profession and Drawing Office Supervisor by administration assignment. I have the custody of prints in my office. I do not know Francis K. Mugarra. I have never met him.

When one wants the documents from my office they pay for it at the cash office. Mr. Rwabuhinga came for these documents. I gave him the documents because he came on behalf of Yoweri Bamuhiga. He paid the fees and showed me the receipt. It was 20,000/= fee. It is not recorded in the Kalamazoo. I have never seen the column of fees in the Kalamazoo filled with any entry.

Instruments to survey land outside the Municipality is given by the District Staff Surveyor. When it is in the Municipality then it is issued by the Commissioner Surveys and Mapping.

It is wrong to issue one survey instruction for several applicants. I blame the surveyor who surveyed more land than what the survey instruction stated. I know this is normal procedure. I don't know where it comes from.

Cross-examination-by-Bwiruka: I saw the instruction to survey. It referred to 202 hectares in favour of Mugarra K. Francis when I look at the print it suggests that the surveyor surveyed the land as a block and then partitioned them into three plots. From the print one cannot tell the direction of the plots from one another – whether East, or West.

One would have to go to the site (a technical person) with the print and then determine the direction. Before entering the information on the Kalamazoo I first get the job history.

In this case the first paragraph of PE I shows that the work was for three instructions to survey three pieces of land of approx. 202 hectares each. When I entered the particulars without the instructions it was an oversight. I would not have entered them. I should not have plotted for the two plots of the Kabagambe because the instructions to survey were not there. One instruction may serve for more than one person as long as all the names of the people concerned are stated. I hold a Diploma in Cartography from the Survey Training School Entebbe 1980.

I am a good Christian. I am telling the truth. I saw the receipt being handed over to Mr. Rwabuhinga by Katushabe George. I did not read the receipt. This was yesterday. I certified the document last week on 6th March 2009. This was an oversight. I know Rwabuhinga. He is my colleague from school.

Re-examination: There is no instruction to survey against the names of the Kabagambe's. Their names come first (see the Kalamazoo exhibit). There is also no correspondence file reference against their names (the Kabagambe's). Only one instruction was presented to me not three (though the job history mentions 3). The one presented was in the name of Mugarra K. Francis. Although the instructions for the two were not there I did the plotting for their land as well because it was contained in one large survey then Sub-divided.

A surveyor is not permitted to carry out any activity outside the instruction to survey. I am supposed to reject what the surveyor has done improperly. End of block survey in this matter is in the record of the surveyor. The column of fees in the Kalamazoo is not about search fees.

Defence Witnesses (on the visit to the locus proceedings)

DWI Mr. Mutooro

On Saturday I went with court to the land. I found more homesteads than what I saw in 2005 when I went for inspections. The population has increased. There are more cattle. The people I saw this time are different from the ones I saw in 2005. In 2005 I saw Congolese. This time around some Congolese were there.

In 2005 I never saw any homesteads of the plaintiffs when I went there in 2005. In 2005 I saw the homesteads of Mugarra, the two Kabagambes and those of Mwamba and Bagonza. I never saw any houses of the plaintiffs in 2005. If in 2005 I had found the situation as I saw it in 2009, I would not have allocated all that big chunk of land as there are neighbours. If the plaintiffs had applied, I would have considered their interest.

If the complainants had come to the Board instead of the Court, the Board would have sat and looked at their complaints and taken a decision either to reduce the land granted, or ask them to apply for land since there is more land. The Land Board has no side. If the two sides can come together to solve this problem we as the Board would welcome it and promote it.

I saw huts and cattle belonging to the applicants on the lands they applied for. L.C.S of the area came to court and the visit to the locus in quo. They did not come for the inspection in 2005 because I think some of the LCs have taken sides supporting the plaintiffs. The area was part of the Game and had just been degazetted from the Game, it had no people.

Cross-examination-by-Bwiruka: The houses of Yoweri Bamuhiga and Martin Kwonka are Semi-permanent. I believe they were left behind by Congolese. The house of Yoweri Bamuhiga which we saw was built before we inspected the land. As for Martin Kwonka, I cannot recall its age. The land in the area belongs in the hands of the Board. I say this because the Uganda Wildlife Authority has planted the pillars to show the boundary of land. This was two years before our inspection.

Cross-examination-by-Ngaruye: In 2005 we moved on the land according to how the applicants showed us. We did not move in a detailed manner the court did at the visit to the locus in quo.

Each of the applicants showed us their cattle and their huts. We got the Statutory notice and passed it over to our lawyer. I did not read it. The complaint from the LC.3 of Rwebisengo was to the Resident District Commissioner and Chief Administrative Officer. I only accompanied them to the area. I read the report of the Resident District Commissioner which stated that the leases should be cancelled. We did not cancel the leases because the matter was already in Court.

If there had been any complaint say from the LCs we would not have allocated the land.

Court examination:- I did notice that of the applicants on Saturday 7th/3/2009, only Christine Mugarra showed her homestead, and the plaintiff's named her as their neighbour. I also noted that where we saw the first markstone the Congolese there said he was on land given to him by Yoweri Bamuhiga.

In 2005 when we inspected the land it was not overgrazed. There were areas with tall grass still. [See surveyors job history]. If in 2005, the Board had seen the houses (homesteads of Yoweri Bamuhiga, Martin Kwonka and Kesi Kabona which we saw on 7/3/2009 we would not have given the land to the Defendant.

DW10: No. 18118 D/CPL. Twasinga Steven sworn, states:-

I am 46 years old, and a Police Officer attached to Rwebisengo Police Post, where I stay. I have been a Police Officer for the last 23 years. I have been at Rwebisengo Police Post for the last two months. I am in C.I.D. Of the plaintiffs, I do not know Kaggwa and Tinkansiimire. The other plaintiffs I know. When I reported in the area I interacted with the people and came to know Kabagambe Gideon as the GISO (Gomborora Internal Security Officer).

Before that I had known Mwamba with whom I had interacted at Fort Portal. I came to know Christine Mugarra on account of her prominence in the area as the widow of the late Member of Parliament Mugarra. As for Kabagambe Yofesi now I know him. Same for Bagonza Frank.

I know what the parties are disputing over. On 12th February 2009 at around 11.00a.m. Kabagambe Gideon and Mwamba came up to the post and reported that they had a long standing land dispute and people were putting up new structures on the disputed land. They said they had earlier reported incidents before I came to the police post. I checked for references in our Station Diary. I found that in 2007, the date Hon. Mugarra had reported criminal trespass on his land. This was in SD 03/11/04/2007. The complainant was against one Ibeya whose second name I don't remember, Martin, and others.

There was another SD of the same year where Mwamba had reported – SD 04/11/3/2007. The complainant was criminal trespass against the same people. Another was by Kabagambe Gideon – SD 13/28/10/2007 and criminal trespass against the same people.

On 12th February this year (2009) when they complained and told me the matter was already in Court, I did not enter it in the Station Diary. We advised them Kabagambe and Mwamba not to put up structures due to the fear that this would cause problems. I moved with the O.C. Corporal Ddembe, to the disputed land not in Uniform. We found structures under construction. Amongst the people complained against there was none. Only the workers were there constructing. We did not seek to know the identities of the people constructing.

Back at the police post we decided to write informing those in the disputed land namely – Yoweri Bamuhiga and Kesi Kabona – warning them about the construction of the new buildings. I signed the letter.

- Police letter dated 13/2/2009 tendered in and marked as exhibit DE1. [Behind are the SD records]

Kesi Kabona came to our Post after a week, and I explained to him. Bamuhiga did not come.

Cross-examination- Ngaruye:

I did not know of any injunction over the land. No one was prosecuted over this land. We also found old structures on the land. We saw cows grazing on the land. I saw places where cattle would stay over night. I never demanded for money from them.

No re-examination:

Court: Case adjourned to 2.30 p.m. today for further hearing.

Sgd. (A. C. OWINY – DOLLO)

JUDGE

11.03.2009.

2.45 P.M.

Court appearance as it was in the morning. Counsel Victor Businge is assisting Mr. Ngaruye.

DW4: I showed Court two homesteads I own, when it went to the locus in quo. In both homesteads I have no neighbours. I do not share a boundary with Yoweri Bamuhiga with regard to the land in dispute. We only share a boundary with him in the land in Kimara village where there is no dispute. The claim by the plaintiffs that I surveyed the land they were using is a lie. Even when Court went to the locus it saw this.

I have 350 and above, heads of cattle on the land in dispute.

Cross-examination-Ndibarema:

Yoweri Bamuhiga has land near the disputed land but outside it. I have a dispute with Bamuhiga even in the Kimara area.

- Apart from my own land I do not know of land owners in the other parts of the disputed land area. I did not know Kabagambe Yofesi's home in the disputed land till the visit at the locus in quo.

I know the old homestead of Kaggwa outside the disputed land and Kaggwa bought it from a Congolese.

I had never seen the old houses we saw at the visit to the locus in quo.

Cross-examination-Ngaruye: The land in dispute is in Kimara village. I do not know how many markstones planted on my land. I know of three only. I know where they start and where they end. I know the boundary of my land. My land does not reach the Wildlife reserve. At the time my husband applied for the land there was nobody between us and the Game.

- When the Court went there the houses on the land I had just reconstructed and I told court . The old houses on the land had collapsed.

DW7 – On the land allocated to me, there is my home, my people, and my cattle. There is one house there, with 150 head of cattle.

My land borders that of Gideon Kabagambe and then far off from my land is that of Frank Bagonza and Mwamba.

Cross-examination-Ndibarema:-

I constructed my home there in 2003.

Cross-examination-Ngaruye: I do not know my plot No. because I was stopped during the survey stage.

I know the positions of the mark stones on my land. I did not show Court because it was the plaintiffs showing Court their homes. There is no homestead on my land. I am the one who showed the surveyor the land to survey. My land does not touch the park.

My land does not border Mugarra's it borders Gideon Kabagambe who is between me and Christine Mugarra. When filling the application form I understood what was on the form.

Re-examination – Bwiruka: My understanding of adjacent was the people whose lands neared mine. There was nobody else save for Congolese who were very far. On my land there are now new structures by plaintiffs. These are by Yoweri Bamuhiga. Some of these homes were seen by Court some were not.

DW6: Kyomuhendo Kabagambe Gideon

I had a house on my land. I was planning to bring cattle but I was stopped and the house was demolished. The house was near Christine Mugarra. I had built next to my late brother.

Cross-examination-Ngaruye:

I do not know the plot No. of my land. We were stopped before I could reach the stage, I am the one who showed the surveyor the extent of the land.

I did not show Court the place where my house had been. I share a boundary with Christine Mugarra and Yofesi Kabagambe.

Re-examination: The Congolese Bodwe and Ephraim Kwonka had each over 2000 heads of cattle on the land. They sold their homes to the plaintiff.

DW5: Frank Bagonza:- Our land with Mwamba is triangular. We found Bodwe has home on the land and he said when he came around 2000 he found there Yoweri Bamuhiga. I border game reserve. On our Western side there are no people. Congolese who were there left.

Cross-examination-Ndibarema: The surveyor told us that the land he surveyed for us is 665 hectares. There are no homes on our land apart from once homestead constructed by one Kesi Kabona there is no one on my land. When we applied for the land it was bushy. At this time the land was not occupied by any person. The Board had jurisdiction to allocate the land.

Cross-examination-Ngaruye:- It was an error to sign a lease of the land without the block and plot No. The lease was in respect of the land seen by Court in the visit to the locus in quo. I do not know its plot No. Our two house on the land were demolished. I did not show court the homestead as there was no time. When I applied for the land I had the house.

Court – examination:- Where Bodwe said there are other homes, falls within our land. There is the cattle settlement belonging to Kabona Kesi which he built after the inspection.

Bwiruka: We are abandoning calling the Surveyor. This marks the close of the Defendant's case.

Court: The Counsel have agreed to file written submissions. Therefore the Counsel for the plaintiff have up to Wednesday 25th March 2009 to file and serve the Defendants' Counsel with the written submissions. The Defence Counsel shall file their written submissions not later than 8th April 2009. The Counsel for the plaintiff may then if

necessary file a rejoinder not later than 15th April, 2009. The judgment in the case shall be delivered on notice.

14.08.2009:

- Ngaruye Ruhindi for the plaintiffs.
- Richard Bwiruka for the Defendants and holding brief for Mr. Ndibarema Counsel for the Corporate Defendant.

- All the plaintiffs in Court

- The Defendants, except the Corporate Defendant are in Court.

- Clerk – Irumba Atwooki

Court: Judgment delivered in open Court.

Sgd (A.C. OWNY – DOLLO)

JUDGE

14. 08. 2009.

18/8/2009: M/S Kaahwa, Kafuuzi, Bwiruka & Co. Advocates for the Appellant/Defendant herein files a Notice of Appeal and a Letter applying for a record of proceedings.

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REGISTRAR.