

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT FORT PORTAL  
CIVIL SUIT No. 010 OF 2009**

**1. MRS. LOZIO MASIKA BEATRICE }}**

**2. MR. MWIGHA EZEKIEL            }}**

**3. MR. IBRAHIM KITALIMIRE            }} .....**

**PLAINTIFFS**

**4. MR. BYAKATONDA PAUL            }}**

**5. MR. THEMBO JOSEPH            }}**

**All suing in representative capacity on behalf of 284 others.**

**VERSUS**

**ATTORNEY GENERAL OF UGANDA ..... DEFENDANT**

**BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO**

**JUDGMENT**

The 5 Plaintiffs named herein, together with the 284 others they represent, (all of whom are hereinafter collectively referred to as the Plaintiffs), have jointly and severally brought this suit against the Defendant, for wrongful eviction by agents of the Defendants from lands comprised in LRV. LWFP/211 Folio 14, Volume 2238, Block 38 Bukonjo (measuring 82.4 hectares), LWFP Block 37 Bukonjo, Plot 1 (measuring 114 hectares), and unregistered customary landholdings measuring 1854 acres – in all, lands measuring 2050 acres – situated at Bukangara and Rwehingo villages of Bukonzo West, Kasese District (hereinafter otherwise referred to as the suit lands); which they claim they are the lawful proprietors and were in occupation of. They therefore seek declarations or orders of this Court as follows; that: –

- (i) The Plaintiffs are the respective lawful proprietors of the suit lands; and are entitled to possession and occupation thereof.
- (ii) The Defendant, its agents, servants or any person acting under its authority, give vacant possession of the suit lands to the Plaintiffs.
- (iii) A permanent injunction issues restraining the Defendant, its agents, servants, or any person acting under its authority, from trespassing on the suit lands.
- (iv) The Defendant pays to the Plaintiffs special damages of shs. 173,187,201/-; and as well, general and punitive damages.
- (v) The Defendant pays costs of the suit to the Plaintiffs.
- (vi) The Defendant pays interest on the damages and costs.
- (vii) Any other relief the Court may deem proper to grant.

The Defendant has, in its written statement of defence, denied the claim made by the Plaintiffs of lawful proprietorship of the suit land; and contends that the Plaintiffs' claims of ownership of the suit lands is a denial of the landlord's (Government) title thereto, which is illegal. It also contends that the Plaintiffs dishonestly acquired titles to the suit lands they claim ownership of. It has also denied that it forcefully occupied the suit lands. It therefore contends that the suit is misconceived and frivolous; hence the Plaintiffs are not entitled to any of the reliefs sought, and the Court should dismiss it with costs.

In their joint scheduling memorandum, the only fact the parties agreed on is that the suit lands are situated in Rwehingo and Bukangara found in Nyakiyumbu and Mukunyu Sub Counties, Bukonzo County, Kasese District. In the course of the hearing, Court was informed of some on-going discussions within Government Ministries with a view to reaching an amicable settlement. The settlement however did not come to pass; with the result that the case underwent a full trial. The issues the parties agreed on, and proposed to Court for determination are: –

1. Whether the suit lands belong to the Plaintiffs.
2. Whether the Defendant lawfully evicted the Plaintiffs from the suit lands.
3. What are the remedies available to the parties?

**Issue No. 1: Whether the suit lands belong to the Plaintiffs.**

The evidence adduced by and on behalf of all the Plaintiffs in this regard is that the Plaintiffs hold the suit lands severally either under leases in accordance with the Registration of Titles Act, or customary tenure under Bakonzo custom and practice of inheritance; and that other proprietary interests, like that of Lozio Masika Beatrice (PW1), Nyakatonzi Cooperative Union, Mohammed Issa, and Byakatonda Paul (PW10 – who had customary inheritance as well), were acquired by purchase either from customary or leasehold owners. Otherwise, the suit lands have their roots of title in or trace it customary tenure.

To show that the suit lands do not belong to Government, Yosiah Kireru (PW3) testified that the 1993 Task Force for settlement of land disputes in Kasese, headed by Hon Kisamba Mugerwa, and of which he was a member, in its report of 5<sup>th</sup> January 1993 (exhibit **PEI(3)**), never mention the suit lands on the list of Government land for resettlement of the landless. Equally, Cabinet Minutes 179 of 1994 (exhibit **PEI(1)**), and 254 of August 24<sup>th</sup> 1994 (exhibit **PEI(2)**), which both list Government land identified for resettlement of the landless, make no mention of Rwehingo or Bukangara. It was instead on the 19<sup>th</sup> September 2007 when Hon Hillary Onek, Minister of Agriculture, made a statement (exhibit **PE2**) that the suit lands belong to Government and should be given to the Basongora pastoralists; but the Bakonjo objected to this.

Habib Hamadi Hamisi (PW5), testified that he owns up to 150 acres of land in Rwehingo, whose root of title he traced to his grandfather. He stated that around 1989 the youth were resettled in the area on land given by one Salambongo. His further testimony was that in 2007, Dr. Wesonga requested the community of Rwehingo to offer land to Government; but the community refused. In the same year, a Ministerial team headed by Hon Al Haji Kirunda Kivejinja also requested that part of the land be given to Government for allocation to the cattle keepers; but the community refused. He maintained that Government had, otherwise, never shown interest in these lands; and certainly had never made any claim of ownership over them before.

Sinowa Gabriel (PW7), an Agricultural Extension worker with 30 years experience, testified that he served as an extension worker in the area of the suit lands from 1989; and that the farms therein belong to several people, including the youth, who grew cotton and ground nuts thereon. Ezekiel Mwigha (PW8) testified that in 1989, Government resettled them together with the youth at Muruti; and he got 3 acres of land from Salambongo the village elder. He explained that the 750 acres of land distributed among the youth became each individual youth's property. He stated that when Hon Minister Kivejinja requested the community sell the land to Government, they refused.

The contention by these witnesses that Government has no ownership rights over the suit lands was corroborated by the testimony in Court by Hon. Minister Crispus Kiyonga (PW11), the Member of Parliament for Bukonzo West, and himself a Government Cabinet Minister, who has personal knowledge of the various governmental actions taken with regard to the land conflicts in Kasese. He stated that he knows as a fact that the Plaintiffs have land in the suit area. He gave a very sober, cogent, and balanced account of the genesis of and crux of the endemic land conflicts in Kasese District that has culminated in this Court action by the Plaintiffs.

He stated that with a view of resolving the problem, Government adopted the recommendation made by two of its Ministerial Committees which was that Government should divest itself of some of the institutional lands in Kasese District; and a decision was also made that:-

*“Government went to negotiate with the land owners of Nyakatonzi, Rwehingo, Bukangara, and Muruti, on the willing seller willing buyer basis as here there was no Government institutional land ... The suit area had three forms of land ownership: customary, leasehold, youth scheme which started in 1988-1989 during NALO insurgency, and had 750 acres. The youth parcelled the land amongst themselves. This was not Government land.”*

With regard to the evacuation of the cultivators from the suit land, he testified further that: –

*“It was hoped that within a short time owners of the land evacuated would sell land to the Government. ... The owners of the land have however shown their unwillingness to sell. They seek to go back to the land. ... In my view, the owners of the land who do not wish to sell should be allowed to go back to their land. As for the Youth Scheme, the land has relieved problem of unemployment; and due to long stay they should be recognised as owners as they were settled on public land.”*

The sole defence witness, Dr. Wesonga Wanderema (DW1,) testified that an Inter-Ministerial Committee made recommendations to Cabinet; and Cabinet decided in an **Action Extract Paper Min. No. 387 (CT 2007)** recommending settlement of affected pastoralists and cultivators and:-

*“directed that mechanisms be put in place to negotiate with those having land titles in Rwehingo, Bukangara, Nyakatonzi, for settling other people on their land. On the ground, it was found that both cultivators and pastoralists were at Nyakatonzi with a dividing line. Same with Bukangara. Some people had land titles. As for Rwehingo, some youth had*

*occupied part of the land. Fighting erupted in the area; so Government intervened and removed both sides from the area to pacify it. A survey was made and established that there was 1648.433 acres of land contested. The survey established that the land was largely in blocks. The question is who to negotiate with so as to settle the remaining pastoralists and any cultivators on the land. Government showed willingness to compensate the users of the land for loss of profitability. This can be established professionally through a technical committee as this is a cotton growing area.”*

He tendered two sets of document; one showing meetings held on 26<sup>th</sup> May 1989 between cattle keepers and cultivators of Rwehingo, Nyakatonzi, and Batokema groups, and the District team (exhibit **CD2(a)**). The second is brief notes on meetings held on 8<sup>th</sup> August 1990 in Nyakatonzi and Kabirizi over the land disputes between cultivators and pastoralists (exhibit **CD2(b)**). Although he admitted not knowing who settled the youth on the land claimed by the youth, he nevertheless contended that the land the youth were on is Government land; and the Government is still interested in. He also stated that the defining boundary between the cultivators and the pastoralist in an area of the suit land was the Lokeris Line.

Although in its written statement of defence, the Defendant denies the claim of lawful proprietorship of the suit land made by the Plaintiffs; and contends that the Plaintiffs’ claims of ownership of the suit lands is a denial of the landlord’s (Government) title thereto, which is illegal, and further that the Plaintiffs dishonestly acquired titles to the suit lands they claim ownership of, no evidence was adduced whatever to prove ownership of the land by Government or anyone other than the claimants herein. Worse still, neither did the Defendant disclose the particulars or nature of dishonesty (which is fraud) it alleged the Plaintiffs were guilty of, nor did it adduce evidence in proof thereof; contrary to the stringent requirement of the law.

To the contrary, there is ample evidence on record that the suit lands do not belong to Government. The Report of the Hon. Kisamba Mugerwa Task Force, dated 5<sup>th</sup> January 1993 (exhibit **PEI(3)**), as well as Cabinet Minutes 179 of 1994 (exhibit **PEI (1)**) and 254 of August 24<sup>th</sup> 1994 (exhibit **PEI (2)**), arising there from, which all list Government lands available for resettlement of the landless pastoralists, do not include the suit lands. Furthermore, the recommendations by Governmental committees and officials that Government negotiates with the owners of the suit lands for purchase of their interests, which was in fact taken up by high profile Government officials but was frustrated by the refusal of the owners of the suit lands to sell, firmly establishes Government’s recognition that it has no claim on the suit lands.

The contention by Dr. Wesonga (DW1) that the land on which the youth were resettled belongs to Government is not borne out by the evidence, and cannot controvert the Plaintiffs' assertion – bolstered by the evidence of Hon. Dr Kiyonga who was involved in the resettlement of the youth – that the Youth Settlement Scheme initiated by Government in 1989 was implemented on land donated by Salambongo; after which the youth parcelled the land out amongst themselves and became individual private owners thereof. As for Hon. Kiyonga's belief that the youth were resettled on public land, the evidence I find credible is that the 750 acres were availed to the youth by Salambongo who was the customary owner.

True, the 1967 Constitution and the Public Lands Act of 1969 which were the legal regime in force when the youth were resettled on the 750 acres in 1989 provided that all unregistered land was public land. However, even under these laws, any public land occupied by anyone could not be acquired by Government arbitrarily, but only in accordance with the law; and this made specific provisions for prompt and full compensation for developments made on the land. The youths' land was not acquired from Salambongo through this legal process; so Government never acquired any proprietary interest in it. The individual youth members settled on Salambongo's 750 acres of land acquired no other person's but his interest in that land.

Court visited the locus and noted that the lands in the Rwehingo area, which is on one side of the Bwera/Katwe road, do not seem to have any conflict over them. However, in the Bukangara/Nyakatonzi area, the Court established that the cultivators and pastoralists are in agreement that the boundary between the two communities is the 'Lokeris Line'. This is a line established by Peter Lokeris, who was then District Administrator Kasese. The pastoralists and cultivators were however not in agreement as to where exactly this line passes on the ground; with each community contending that the line is located at a position which is adverse to the claim by the other community.

Fortunately, by consent, the parties tendered in evidence minutes of the meeting chaired by Peter Lokeris on 26<sup>th</sup> May 1989, (exhibit **CD 2(a)**) in which he made the demarcating line – the famous 'Lokeris Line' – to keep the feuding cultivators and cattle keepers apart. Also tendered in evidence by consent is a letter (exhibit **CD1(a)**), written by surveyor David H. Langoya to the Minister of State, Water, Lands & Environment dated 7<sup>th</sup> August 2005; to which are attached certified copies of cadastral maps of the area (exhibits **CD1(b)** and **CD1(c)**), showing the 'Lokeris Line' as surveyed and mapped by Mr Langoya in 1989 immediately after the demarcation by Peter Lokeris.

In his letter to the Minister, exhibit **CD1(a)**, Mr. Langoya explains that the ‘Lokeris Line’ runs as follows:-

*“The survey started from a point between milestone 21 and 20 on Katwe – Bwera Road, aligning with an anthill up to a house. The line then turns at 116° 01 Eastward and 125° 01 Northeast. It then makes another turn of 80° 01 up to a water trough. At the trough it turns 133° 301 to East Northeast direction leaving the Catholic Church North. At the straight of the road it turns 93° 01 Eastward. This straight meets the Sospeter northerly boundary line at 162° 01; it then runs along the boundary up to river Nyamugasani.”*

I can only add here that the two maps attached to the letter clearly show the ‘Lokeris Line’ as described by Mr. Langoya. I need to point out here also that from the Minutes (exhibit **CD2(a)**), Peter Lokeris had, in demarcating the boundary between the cultivators and pastoralists, directed that each side would leave space of 50 (fifty) metres from the ‘Lokeris Line’ as a corridor to avoid livestock straying onto crops.

It is therefore quite clear that in the Bukangara/Nyakatonzi area, subject to the Lokeris Line which separates the cultivators and pastoralists, the Plaintiffs have proved their ownership of the suit lands. With regard to the Rwehingo area, the evidence on record shows that the suit lands belong to the Plaintiffs. Government’s move contained in the Hon Onek Ministerial Statement seeking to parcel off a huge chunk of the land in the area to the pastoralists is not based on any evidence. Therefore, I find that on a balance of probabilities, the Plaintiffs have proved their exclusive and respective ownership of the suit lands; and accordingly, I resolve issue No. 1 in the affirmative.

**Issue No. 2:                    Whether the Defendant lawfully evicted the Plaintiffs from the suit lands.**

Hon Kiyonga (PW11) testified that land shortage in Kasese District, giving rise to conflict in the area, was caused mainly due to large chunks of land in the district having been appropriated by Government for use by various governmental institutions as national parks, farms, and refugee resettlement scheme. His further testimony was that the recent influx of Basongora pastoralists who were expelled from the Democratic Republic of Congo where they had settled on the Virunga National Park precipitated bloody clashes in some areas of the suit lands; and to resolve

these bloody land conflicts in the area, Government divested itself of large chunks of institutional lands in order to settle the landless Basongora pastoralists.

Regarding the suit lands, both Hon Kiyonga (PW11) and Dr. Wesonga (DW1) explained that Government's desire was to acquire land from the respective owners, on the basis of a willing seller, willing buyer; and that Government evacuated the cultivators from the suit lands only for pacification of the area owing to the bloody clashes between them and the pastoralists; and in the hope that the cultivators may then dispose of their lands. However, Yosiah Kireru (PW3) stated that the eviction of the Plaintiffs was preceded by a clear statement made by Hon Hillary Onek, Minister of Agriculture, demanding that the cultivators vacate the suit lands to pave way for resettlement of the Basongora pastoralists; to which the cultivators objected.

This clearly raises the question of the lawfulness of the evacuation of the cultivators from the suit lands. In this regard, the Ministerial Statement made by Hon Hillary Onek on the 19<sup>th</sup> September 2007, headed 'MINISTERIAL STATEMENT ON RESETTLEMENT OF BASONGORA OUT OF QUEEN ELIZABETH NATIONAL PARK' (exhibit ***PEII***) is quite insightful and instructive as to the intention of the Government in evacuating the cultivators from the suit lands. The Ministerial Statement makes no mention of the findings by the earlier committees which Government had instituted regarding the land conflicts in Kasese District. It purports to be voicing a recommendation of an Inter Ministerial Committee which it states cabinet approved; but does not cite the minutes of the alleged Cabinet decision. The salient part of the statement is that Cabinet decided that:-

- "1) Government had an obligation to address the historical injustices and post independence marginalization of the Basongora.*
  
- 5) The Basongora ancestral lands of Bukangara and Rwehingo totalling to about 25,000 acres be freed and shared between the cultivators and pastoralists on a 1:3 ratio as earlier agreed on in 1994. Meaning cultivators get 8,000 acres while pastoralists get 17,000 acres. Government to institute a mechanism for compensation of any title holders."*

This Ministerial Statement in fact raises more problems than that which it purports to address. First, in stating that the Basongora lost land in Rwehingo and Bukangara to the cultivators, the Ministerial Statement contrasts sharply with the Kisamba Mugerwa Task Force's findings, contained in their Report of 1993 (exhibit ***PEI(2)***), which was that the Basongora lost their



ancestral lands way back during colonial times when they were forced to migrate away from the Nyakatonzi area owing to outbreak of cattle disease. Upon their departure, Government appropriated huge chunks of their lands and converted them into institutional use like farms, national parks, and forest reserves. The Bakonzo were then encouraged to come to the plains and engage in cotton production which Government was promoting.

The Kisamba Mugerwa Report, which Cabinet adopted and implemented, recommended the divestiture of parts of certain specific Government institutional lands in Kasese District which it identified; none of which – for the obvious reason that they were settled on by cultivators – included the suit lands. Second, the 25,000 acres of land the Statement claims is in contention in the Rwehingo and Bukangara area does not match the survey findings conducted by the Defendant and testified to by Dr. Wesonga (DW1) that the land belonging to the cultivators in Rwehingo is 1,648.433 acres.

Since the Plaintiffs' claim is that their combined land area for Rwehingo and Bukangara, which they have been evicted from, is 2,050 acres, it is reasonable to conclude that had a survey been carried out in the Bukangara area, the Government survey would have come up with a figure that matches the claim by the Plaintiffs. But this raises a serious matter with regard to the evictions. The Hillary Onek Ministerial Statement is that the cultivators in the Rwehingo and Bukangara areas would be entitled to a total of 8,000 acres in the resettlement arrangement it proposes.

It does not make sense for Government to evict cultivators from 2,050 acres of land which is manifestly far less than the land area they would be entitled to under the arrangement proposed in the Hillary Onek Ministerial Statement. Considered in the light of the Hon Kisamba Mugerwa Report, which Government adopted and implemented, and the account given by Hon Kiyonga (PW11) and Dr Wesonga (DW1) who are themselves Government officials actively involved in the issue of the land conflicts in Kasese District, The Hillary Onek Ministerial Statement portrays Government as utterly ambivalent and inconsistent in its treatment of the problem.

Indeed, it is in the Hon Onek Ministerial Statement that Government categorically declares its decision to displace the cultivator communities from the Rwehingo and Bukangara areas to create space for the pastoralists. It is therefore clear that Government had without any evident justification, abandoned its earlier position, informed by the Hon Kisamba Mugerwa Report, to divest itself of institutional lands to address the Basongora pastoralists' issue. Furthermore, while the Hon Onek Ministerial Statement promised a harmonious and peaceful resettlement process,

the very converse took place; and this, to the detriment of the cultivators who were forcefully evicted from lands they claim as their ancestral inheritance.

I cannot understand why Government chose to act in such a high handed, arm twisting and partisan manner against its own citizens who have not been shown to be the cause of any bloody conflicts that may have taken place in the area. Admittedly, Kasese District has been bedevilled by endemic land conflicts, some of whose root-causes, as explicitly presented in the Hon Kisamba Mugerwa Report and the testimony of Hon. Kiyonga (PW11), are historical injustices dating back to colonial times. It is clear that the bloody conflicts are in parts of the suit lands only; and are fairly recent. Had this not been so, Government would not have resettled the youth in the area in 1989.

Further, if indeed the Basongora pastoralists were the occupants of the suit land around 1989, as Hon Onek's Ministerial Statement implies, it would have been with them that Government would have negotiated for the resettlement of the youth. Finally, if indeed the evacuation of the cultivators from the suit land was a consequence of bloody clashes in the area, then it should not have been done in a sectarian manner that left the pastoralists to utilise the lands as shown by evidence. The evidence adduced by both Hon Dr Kiyonga (PW11), and Dr Wesonga (DW1) is that it was hoped that the evicted owners of the suit lands would be prepared to sell their respective entitlements.

This has betrayed the real intentions behind Government's eviction of the cultivators; which is plainly wrong and unacceptable. It went contrary to Government's expressed policy of engaging the cultivators with a view to persuade them to dispose of their lands by sale to Government. It also contradicted the stated reason of the eviction as being for purposes of pacification of the area. The suit lands were neither taken over from the Plaintiffs in accordance with the 1967 Constitution or Public Lands Act 1969, nor in accordance with the 1995 Constitution which provides in Article 237(2)(a) for the acquisition of land by Government in the public interest; but this, subject to the provisions of Article 26 of the same Constitution.

The alleged bloody clashes were no justification for such partisan and high handed action. It is not gainsaid that Uganda is by no means a failed State. It has the wherewithal to contain anyone seeking to disturb the societal peace and order obtaining in any part of the country. It is therefore inexplicable that the Basongora pastoralists or any other person should force the hand of the State to act against the interest of others who are peaceful residents of an area. Instead of

deploying the police and the military to forcefully evict the cultivators from their own lands, Government, which has the duty of protecting the life and property of anyone under its jurisdiction, should have used these members of the disciplined force to contain the situation and restore peace.

The landlessness of the Basongora pastoralists is, admittedly, a national problem; and it is incumbent on the Government to address that predicament. Nonetheless, it would be most strange for a road overseer to dig murrum from a section of the road, as it were, in order to fill up an existing dangerous pot-hole on the same road. This would not address the problem as it would only shift it elsewhere on the same road where it would still remain a burdensome encumbrance. The action taken by Government against the cultivators that has given rise to this Court action offended several provisions of the law.

First, the claim made out in the Hon Hillary Onek Statement that the Basongora came back to their lands, which the evidence on record shows they evacuated long before 1995 (when the new Constitution came into force) is contrary to the provisions of the law. Prior to the 1995 Constitution, all that was called customary land was in fact public land vested in the Uganda Land Commission. The occupants of such land were in a most precarious position, and could be displaced by any person in accordance with the provisions of the laws then in force such as the 1967 Constitution and the 1969 Public Lands Act.

The evidence before me is that the cultivators have been in occupation of the suit land for well over 60 years. PW3, who was 74 years of age when he testified, remembered his grandfather and Asians utilising the suit lands way back in the 1940s when he was about 12 years of age. The Hon Kisamba Mugerwa Report confirms presence of cotton stores dating back to colonial times. Then as recently as 1989, Government obtained land from Salambongo on which it resettled the youth of Kasese District out of fears that they might be tempted to join NALU insurgents, if left idle. Therefore, save for those who had registered titles to their respective lands, the rest of the occupants in the suit lands were occupants of public land.

This was the position until the promulgation of the 1995 Constitution. The 1995 Constitution however ushered in a radical revolution in land tenure that transformed customary occupancy of public land into private customary landholding. From the evidence, the persons who the 1995 Constitution found in the suit lands were cultivators who either had valid leasehold titles which continued after the promulgation of the Constitution, or customary occupants whose occupancy

automatically became private customary tenure. Article 237 (3) of the 1995 Constitution recognises the four forms of land tenure: freehold, mailo, leasehold, and customary holdings; and the Constitution affords them equal protection.

By this, the vulnerability that hitherto characterised customary land tenure was effectively extinguished. Hence, upon the customary landowners in the suit lands making it categorically clear that they were not willing to sell their lands to Government, any move to acquire the lands should have been in accordance with the law. Otherwise the protection accorded property rights, and well entrenched in the Constitution, would be to no avail. Article 20 (2) of the 1995 Constitution, on fundamental and other human rights and freedom, provides that Government and all its organs and agencies shall respect, uphold, and promote the rights of the individual enshrined in the Constitution.

Second, Article 21 (1) of the Constitution provides for equality of all persons before and under the law; and their entitlement to equal protection of the law. Article 26 provides for protection from deprivation of property. Clause (2) of the Article provides as follows:-

*“(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied –*

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and*
- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for –*
  - (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property;*

*...”*

It is therefore quite clear from the evidence adduced that the high handed execution, that has deprived the cultivators of land which is theirs by ancestral inheritance, or purchase, gravely offends the provisions of the law regarding protection of property rights entrenched in the Constitution and the 1998 Land Act; and sadly contravenes what is acceptable and demonstrably justifiable in a free and democratic society. In deviating from its earlier recommendation and position, which was the pursuit of negotiations for possible purchase of the lands from the

cultivators, the Government's action is most objectionable; and must not be allowed to stand. The eviction of the cultivators from the suit land was, and certainly remains unlawful.

**Issue No. 3: What are the remedies available to the parties?**

Owing to my finding that the Plaintiffs are the rightful owners of the suit lands, and since I have found that their eviction from the suit lands was an unlawful high handed act by the State, it follows that they are entitled to redress. Accordingly, I direct that the 'Lokeris Line' in the terms settled by Peter Lokeris must be located on the ground in accordance with the survey reports of Mr David Langoya, tendered in evidence. As for the special damages pleaded, although the Plaintiffs particularised it, I am unable to make any order in that regard; because no attempt was made to prove it, contrary to the strict requirement of the law for such proof.

However, because the Plaintiffs have been unlawfully deprived of the use of their own lands which is their mainstay as cultivators, and which has resulted in many of them failing to meet family obligations such as paying their children's school fees, or their defaulting in servicing their loan obligation with financial institutions, I find that each of the Plaintiffs is entitled to an award of general damages which I hereby grant. The Defendant had ulterior motive in carrying out the eviction of the Plaintiffs. Furthermore, the eviction was executed in a most inhuman and inhumane manner. This was a grave abuse of the Plaintiffs' human and property rights, by the very Government whose cardinal Constitutional mandate is to zealously protect those rights.

As a clear manifestation of Court's utter displeasure with, and disapproval of the aforesaid acts of the State, that have caused so much suffering to the Plaintiffs, and given rise to this suit; and an assurance that the rule of law we all cherish and wish to be governed under has no place for impunity, and further that the Courts of law shall at all times rise up to the occasion in the protection of such rights, I find that each of the Plaintiffs is entitled to an award of exemplary damages. In the result then, I make the following findings and or orders: –

- (i) The Plaintiffs are the respective lawful proprietors of the suit lands; and entitled to immediate possession and occupation thereof.

- (ii) The Defendant, its agents, servants or any person acting under its authority, must immediately give vacant possession of the suit lands to the Plaintiffs; subject to the 'Lokeris Line'.
- (iii) The Commissioner of Surveys is hereby directed to locate and open up the Lokeris Line; and put in place distinct landmarks in accordance with the survey and mapping made by Mr David H. Langoya, and detailed in his letter (exhibit CD1(a)), and the cadastral maps (exhibits CD1(b) and CD1(c)).
- (iv) A permanent injunction hereby issues restraining the Defendant, its agents, servants, or any person acting under its authority, from trespassing onto or in any way interfering with the Plaintiffs' quiet enjoyments of the suit lands.
- (v) The Defendant shall pay each of the Plaintiffs, general damages in the sum of U. Shs 10,000,000/=.
- (vi) The Defendant shall pay each of the Plaintiffs, punitive damages in the sum of U. Shs 2,000,000/=.
- (vii) The Defendant shall pay each of the Plaintiffs, costs of the suit.
- (viii) The damages and costs awarded herein shall attract interest at Court rate from the date of the suit.



**Alfonse Chigamoy Owiny – Dollo**

**JUDGE**

**25 – 04 – 2012**