THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 135 OF 2005

1. EDWARD ACERO-GOLL
2. SHEIK HAJI NASSUR BIN AMIN
   T/A KIRULI MIXED FARM :: PLAINTIFFS

VERSUS

1. UGANDA LAND COMMISSION
2. ATTORNEY GENERAL
3. NATIONAL FORESTRY AUTHORITY :::::::::::::::::::::::::: DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

[1] In this suit filed way back in 2005, the Plaintiffs; **Edward Acero-Goll** (1st plaintiff) and **Sheik Haji Nasuru Bin Amin T/a Kiruli Mixed Farm** (2nd plaintiff) sued the Defendants, **Uganda Land Commission** (1st Defendant), **Attorney General** (2nd Defendant) and National Forestry Authority (3rd Defendant) jointly and severally for:

> "general, exemplary and punitive damages for breach of trust, breach of contract, fraud and trespass to land, breach of statutory duty and for restitution of their title deed and the suit premises."

[2] The Plaintiffs' case is that on or about 2nd July 1975, the 1st Defendant made a lease offer to the Plaintiffs of land now comprised in **Bunyangabu Block 94, Plot 10, situate at Kiruli, Hima Kasese District measuring approximately 449.9 hectares** (herein after referred to as the suit land/premises) for 5 years which was later in 1983 extended to 44 years.

[3] The Registrar of Titles prepared and registered the lease on or about the **2nd day of February 1976.** Pursuant to the building and development covenants of the lease, the Plaintiffs developed the said suit land, establishing thereon an ultra-modern mixed farm with several amenities, including but not limited to a permanent residential house, six workers' residential buildings, gravel road network, exotic and local cattle, goats and sheep farm with several grazing paddocks, a permanent valley dam and cattle dip, stores and extensive crop production.

[4] As a result of the developments on the said land, the Plaintiffs were granted a European Economic Community (EEC) line of credit for the further development of the said land through the then Uganda Commercial Bank in January 1988.

[5] That however, unknown to the Plaintiffs, at the time of the offer and acceptance of the lease in 1975-76, and its renewal for 44 years in 1983, part of the suit premises fell under the **Mubuku Forest Reserve**. On the 11/3/1976, the Commissioner for Lands wrote to the then Provincial Commissioner for lands and Surveys notifying him of a complaint from the Chief Forest Officer of the area which was to the effect that part of the suit land (450 acres) were surveyed out of Mubuku Forest Reserve for leasing to private developers, the Plaintiffs, which in his view was a mistake. As a result, the District Forest office staff proceeded on the suit land and removed demarcation stones which act the Plaintiffs referred to as trespass on the suit land.

[6] On or about the **18th day of April 1977**, the Plaintiffs wrote a complaint to the District Forest Officer about the District Forest Office Staff's trespass on the suit land. In spite of the above, in 1983, the 1st Defendant extended the lease of the suit premises to full term, following an inspection performed in October 1982 by the District Staff Surveyor which confirmed that the Plaintiffs had fully complied with the covenants of the lease.

[7] On or about **19th February, 1987**, the then District Officer wrote to the Plaintiffs alleging that they had an illegal lease which encroached on the Forest Reserve and ordered them to vacate the suit premises by 4th April, 1987, a position that was also adopted by the Permanent Secretaries of the

Ministries responsible for Lands and Environment, i.e, that the lease was illegal and the title deed ought to be cancelled.

[8] As a result, the Plaintiffs were evicted from the suit premises in 1988 and on 16th May, 1990, the Commissioner Land Registry directed them to produce the certificate of title to the suit premises for cancellation. However, to date, the title deed has never been cancelled.

[9] In August 1988, the Plaintiffs appealed to the President of the Republic of Uganda to intervene in their saga with the responsible ministries and on or about **14th February 1989**, the President directed the Permanent Secretary of Water, Lands and Environmental Protection to find an alternative piece of land for the Plaintiffs.

[10] The Plaintiffs followed up the offer of the alternative piece of land until January 2004 when in a correspondence with the Acting Director of Lands and Environment, the 1st Defendant advised that it was impossible to find alternative land for the Plaintiffs and that compensation be considered instead. Despite the follow up by the Plaintiffs, the Defendants failed to compensate the Plaintiffs.

[11] It is the contention of the Plaintiffs that they have since 1975 been the proprietors of the suit land/premises, the Defendants effectively compulsorily acquired the Plaintiffs' lease without following the statutory procedure, including compensation as required by law and as a result of the wrongful conduct of the Defendants, they have suffered:

a) Loss of quiet enjoyment of the premises;
b) Loss of the suit premises as collateral for credit facilities;
c) Loss of further development of the suit premises and profit therefrom;
d) Loss of their life's savings;
e) Extreme mental anguish and fatigue;
f) Total destruction and erosion of the developments on the suit premises.

[12] The Defendants on the other hand denied the Plaintiffs' allegations/claims. The 1st and 2nd Defendants contended that part of the land occupied by the

Plaintiffs is in a Forest Reserve and the Plaintiffs were informed of this position, a fact they acknowledge in their pleadings and that they have since been lawfully removed from the land. The 3rd Defendant contended that the Forest Reserves in Uganda have at all material times been properties and assets of the Forestry Department and were therefore vested in the 3rd Defendant by **Act No.8/2003.** That the Plaintiffs' leasehold encroached on the **Mubuku Central Forest Reserve** by approximately **355 Hectares**.

Scheduling Conference

[13] Parties filed several schedule memos but the latest scheduling conference memorandum being of 7/8/2017 which was modified during trial proceedings of 1/3/3023 as follows;

a) Agreed upon facts

1. The Plaintiffs have since 1975 been the proprietors of the suit land comprised in **Buyangabo Block 94, plot 10 at Kiruli, Hima, Kasese District measuring approximately 449.9 hectares.**
2. The plaintiffs were offered a lease by the Uganda Land Commission (ULC) in July 1975 for the initial period of 5 years and in 1983, it was extended to 44 years.
3. Part of the suit property measuring about **398 hectares** of the **450 hectares** fell in or forms parts of the **Mobuku Forest Reserve** and the balance of approximately **52 hectares** fell outside the Forest Reserve.
4. On or about 19/2/1987, the then District Officer of Kasese wrote to the plaintiffs claiming that the plaintiffs had an illegal lease which encroached on the Forest Reserve and ordered them to vacate the suit property.
5. The leasehold title of the suit property has never been cancelled for the Ministry of lands called for the title but it was never handed over.

b) Issues

1. **Whether the suit is time barred**
2. **Whether the Uganda Land Commission (ULC) had powers to grant a lease over the suit land**
3. **Whether there are remedies available to the parties**

Preliminary findings of court

[14] During the trial, on **26/2/2009**, it was reported by the Plaintiffs that the 2nd plaintiff had since deceased. As per the record, by **13/12/2017,** the 1st plaintiff had also passed on. Court directed as follows:

> *".... counsel should also amend the pleadings to reflect the substitution of the deceased plaintiffs with the Administrator of the estate only. Mention on 12/1/2018."*

[15] Instead of amending the pleadings to reflect the substitution of the deceased Plaintiffs as directed by court, counsel for the Plaintiffs instead on **15/12/2017** filed **Misc. Application No.1862 of 2017** which was not contested for orders that;

1.Nelson David Kilama
2.Acan Florence } **Administrators of the estate of the late Edward Acer -Goll**

and

3.Asuman Majid
4.Apangu Hassan Turabi } **Administrators of the estate of the late Sheik Nassur Amin**
5.Makkah Nassur

be made parties to the proceedings and substitute the deceased plaintiffs accordingly.

[16] Other than the court record of **4/10/2011** disclosing that the 2nd Defendant Attorney General was served a copy of an amended claim from the plaintiffs, such "amended claim" appear to had been a mere claim letter addressed to the Solicitor General for consideration of a settlement. I have not been able to find any amended pleadings that were filed, indeed, as I have already noted, on **13/12/2017**, court had to order for filing of amended pleadings to reflect the substitution of the deceased Plaintiffs with their administrators of the estate. It is apparent that the counsel for the Plaintiffs failed and or omitted to file the required amended pleadings.

[17] As a result of the failure and or omission by the Plaintiffs to file amended pleadings to reflect the substitution of the deceased Plaintiffs, this court under **O.24 r.1 CPR** is to proceed on the basis of the initial, only plaint on record since the cause of action is surviving and continuing.

Resolution of issues

Issue No.1: Whether the suit is time barred

[18] Counsel for the Defendants **Ms. Nabaasa Charity** of the **Attorney General's Chambers, Kampala** and **Moses Muhumuza** of the **Legal Department, National Forestry Authority, Kampala** jointly submitted that the Plaintiffs' cause of action in paragraph 5 of the plaintiff against the defendants jointly and severally is for general damages, exemplary and punitive damages for breach of trust, breach of contract, fraud and trespass to land, breach of statutory duty and for restitution of their title deed and the suit premises. That under **S.3 of the Civil Procedure** and **Limitation (Misc. Provisions) Act Cap 72**;

> *"1. No action founded on tort shall be brought against: -*
> *(a) the Government,*
> *(b) a local authority or*
> *(c) a scheduled corporation after the expiration of two years from the date which the cause of action arose.*
> *2. No action founded on contract shall be brought against the Government or against the local authority after the expiration of three years from the date on which the cause of action arose."*

[19] Both counsel argued that the Plaintiffs have brought several causes of action under tort and contract. That as per the above actions founded on tort cannot be brought after 2 years and actions founded on contract cannot be brought after 3 years. That in this case, **first**, that the Plaintiffs contend that the Commissioner Land Registration ordered them to produce the certificate of title on **16th May 1990** for cancellation and therefore the cause of action arose **16th May 1990.** Secondly, that as regards trespass, under **paragraph 6(1) of the plaint**, on the **19th February, 1987**, the then District Forest Officer wrote to the plaintiffs alleging that they had an illegal lease which encroached on the Forest Reserve and ordered them to vacate the suit premises by 4th April 1987. Both counsel submitted that limitation not only cuts off the owner's right to bring an action for recovery of the suit land that has been in adverse possession for over 12 years but

also, the fact that the Plaintiffs were not in physical possession, they are not entitled to bring a cause of action in trespass to land.

[20] The Defendants' counsel relied on the following authorities, among others;

1. **Mathias Lwanga Kaganda Vs UEB, HCCS No.124 of 2003 and Sayikwo Murome Vs Kuko & Anor [1985] HCB 68** at **p.65** for the proposition that a suit which is time barred by statute must be rejected because in such a suit a court is barred from granting a relief.
2. **Amin Aroga Vs Haji Mohammad Yokonani & 4 Ors, HCCA No.09 of 2017** for the proposition that the gist of an action for trespass is violation of possession not challenge to the title. That to sustain an action for trespass, the plaintiff must be in actual physical possession.

[21] Both counsel concluded in their joint submissions that in this case, the plaint was filed on **12th July 2005,** 15 years after the cause of action had arisen and after the statutory period within which the suit ought to have been filed, had lapsed and expired when also, the plaintiffs had lost physical possession of the suit land to entitle them to bring an action in trespass. They prayed for dismissal of the claim with costs.

[22] Counsel for the Plaintiffs **Mr. Kituuma Magala** of **Kituuma-Magala & Co. Advocates, Kampala** submitted on the other hand thus;

a) **It is not in dispute that under paragraph 5 of the plaint, the plaintiffs' cause of action against the defendants jointly and severally is inter alia, premised on trespass.**

Relying on the authority of **Justine E.M Lutaaya Vs Sterling Civil Engineering Co. Ltd, SCCA No.11 of 2002,** that the tort of trespass to land is committed against the person who is in actual or constructive possession of the land and that the Plaintiffs being registered owners of the suit land are in constructive possession of the land and 2ndly, that as lessees, whose lease is still running till 2024, have capacity to sue in that capacity for trespass to land, a continuing tort.

b) **That the Defendants jointly and or severally are estopped to allege that the plaintiffs' suit is barred by the law of limitation.**

Relying on **Sections 22 & 23(1) of the Limitation Act** and on the authority of **Charles Lubowa & 4 Ors Vs Makerere University, SCCA No. 2 of 2011**

for the proposition that the Defendant will be debarred from setting up the statute of limitation if during the negotiations he/she has represented that he/she desires that the plaintiff should delay proceedings and that the plaintiff will not be prejudiced by faith of his/her representation. That in this case, the conduct of the 1st and 2nd Defendants presupposed that they wanted the Plaintiffs to delay legal action after promising them alternative land following the directive of H.E the President in his letter of February 1989 and that therefore, limitation time started running from the 14th January 2004 when the Ag. Secretary of ULC wrote to the Ag. Director of lands and Environment recommending that the Plaintiffs be compensated since the role of the commission had since changed from that of controlling public land to managing Government land on their behalf.

c) **That the 1st and 2nd Defendants waived their rights to present the defence of limitation by their conduct.**

Relied on the authority of **NIC Vs Span International [1997-2002], Uganda Commercial Law (UCL) Reports at page 105** for the proposition that "if one party by his conduct leads another to believe that the strict rights arising under the contract will not be insisted on, intending that the other should act on that belief, and he does not act on it, then the first party will not afterwards be allowed to insist on the strict legal rights when it would be equitable to do so."

[23] In the first instance, I find that the plaintiffs' cause of action is not founded on cancellation of the plaintiffs' certificate of title by the Commissioner Land Registration. As per the agreed facts at scheduling conference, the certificate of title of the suit property is still in the names of the Plaintiffs. The plaintiffs cause of action in **paragraph 5 of the plaint** is for **general, exemplary and punitive damages for breach of trust, breach of contract, breach of statutory duty and for restitution of their title deed and the suit premises.** Restitution of the title deed does not imply that the title was cancelled and therefore the Plaintiffs seek for its restoration. It implies that the Plaintiffs require either the title back or be compensated for its being taken away. However, as rightly submitted by counsel for the Defendants, the Plaintiffs brought several causes of action under tort and contract and therefore, the suit is subject to **S.3 of the Civil Procedure & Limitation (Misc. provisions) Act Cap 72** which limits actions founded on

tort against Government to be brought before **2 years** and actions founded on contract, before **3 years** and **S.3 of the Limitation Act** which limits actions founded on contract or on tort to be brought before **6 years** as regards the 3rd Defendant.

[24] In **FX Miramago Vs A.G [1979] HCB 24,** the period of Limitation begins to run as against a Plaintiff from the time the cause of action accrued until when the suit is actually filed. According to the Defendants in this case, the right of action accrued on the **16th May 1990** when the Commissioner Land Registration ordered the Plaintiffs to produce the certificate of title to the suit premises for cancellation.

[25] It is however apparently pleaded by the Plaintiff that when they were evicted from the suit land in 1988 and later the Commissioner Land Registration ordered them to produce the certificate of title to the suit premises for cancellation, as per the directives of H.E the President of Uganda, the Plaintiffs were to be offered an alternative piece of land. The Plaintiffs followed up the offer of the alternative piece of land until January 2004 when the 1st Defendant through its **Ag. Secretary ULC** wrote to the **Ag. Director of Lands and Environment, Ministry of Water, Lands and Environment** on 14/1/2004, about the unavailability of the alternative land and recommending for payment of compensation to the plaintiffs instead. **The Permanent Secretary, Ministry of Water, Lands and Environment** in turn wrote to the 2nd Defendant that in view of the absence of an alternative land to allocate to the Plaintiffs, compensation be considered (see bundle of **P.Exh.22).**

[26] The above was a culmination of negotiations that started in 1987 following a complaint by the Chief Forest Officer to the Commissioner of Lands and Surveys that the lease offered to the plaintiffs encroached on the Mobuku Forest Reserve **(P.Exh.6).**

[27] In **Charles Lubowa & 4 Ors Vs Makerere University, (supra)** Katureebe JSC, citing the case of **NIC Vs Span - International Ltd NCLR [1997-2000] 100** held that,

> *"It would appear therefore that it is possible, on the peculiar circumstances of a given case to hold that the conduct of a party*

or representations by the party to the other may preclude that party from raising the defence of time-bar."

He also quoted **Halsbury Laws of England, 4th Edition Vol.28 paragraph 608** for the proposition that indeed, representations made by a party to another or conduct on the part of that party which make the other party to believe that proceedings may be delayed, can act to defeat that party's defence of the action being time barred;

*"**608. Effect of negotiations between parties.***

The mere fact that negotiations have taken place between the claimant and a person against whom a claim is made does not debar the defendant from pleading a statute of limitation, even though the negotiations may have led to delay and caused the claimant not to bring his action until the statutory period has passed. It seems however, that the defendant will be debarred from setting up the statute if during the negotiations.....he has represented that he desires that the plaintiff should delay proceedings and that the plaintiff will be prejudiced by the faith of his representation."

[28] In this case, the long period of protracted negotiations and consultations among the officials of the 1st and 2nd Defendant coupled with the petition to H.E the President of Uganda, the fountain of honour and the further consultations that proceeded thereafter up to when a decision was reached that instead of the plaintiffs being allocated an alternative land to the suit land as directed by H.E the President of Uganda, they be paid compensation, the Plaintiffs had a legitimate expectation that the 1st and 2nd Defendants would live up to their commitment and pay them the compensation. With the involvement of the Fountain of Honour, the Plaintiffs had an assurance of either the allocation of an alternative land or compensation as later decided by the 1st Defendant and recommended to the 2nd Defendant. It is when the Plaintiffs followed this up to nil that they filed the present suit.

[29] The cause of action therefore in the premises, accrued when the Plaintiff unsuccessfully followed up the payment of compensation as contained in the set of correspondences, **P.Exh.22,** the last one being dated **16/1/2004.** The plaint was filed on **12/7/2005**. The 1st and 2nd Defendants had misled

the Plaintiffs into not taking legal proceedings and it is therefore, the position of this court that the defendants cannot use the statute of Limitation to defeat the plaintiffs' claims. The Defendants are estopped from alleging that the plaintiffs' suit is barred by law because their conduct as well as by their representation, had waived the right to rely on the defence of limitation of time.

[30] As regards whether the Plaintiffs could sue in trespass upon parting with possession of the suit premises, in **Justine E.M Lutaaya Vs Sterling Civil Engineering Co.Ltd (supra),** Justice Mulenga JSC (RIP) held,

> *"Trespass to land occurs when a person makes an un authorised entry upon land, and thereby interferes or portends to interfere, with another person's lawful possession of land, Needless to say the tort of trespass to land is committed not against the land but against the person who is in actual or constructive possession of the land. At common law the cardinal rule is that a person in possession of the land has capacity to sue in trespass..... a land owner who grants a lease of his land does not have that capacity to sue, because he parts with possession of the land. During the subsistence of the lease, it is the lessee in possession, who has that capacity to sue in respect of trespass to that land..... where trespass is continuous, the person with the right to sue may, subject to the law of limitation of actions, exercise the right immediately after trespass commences or any time during its continuance or after it has ended. Similarly, subject to the law of limitation of actions, a person who acquires a cause of action in respect to trespass to land, may prosecute that cause of action after parting with possession of land."*

[31] In the instant case, in the first instance, by virtue of the fact that the Plaintiffs are still the registered proprietors of the suit land, on the authority of **Adrabo Vs Madira, HCCS No.24/2013 [2017] UGHCLD 102 (22 December 2017],** they are and still enjoy constructive possession of the land from the time of the entry by the 3rd Defendant onto the suit land.

[32] Secondly, as registered owners of the suit land lease hold, the Plaintiffs have capacity to sue in trespass as lessees even after parting with actual

physical possession of the suit land given the fact that their lease is still running up to 2024.

[33] In conclusion, I find that in this case, the Plaintiffs have capacity to sue the defendants and the present suit is not time barred. The issue is therefore found in the negative.

Issue No.2: Whether Uganda Land Commission had powers to grant a lease over the suit land.

[34] Counsel for the Plaintiffs submitted that as to whether ULC had the powers to grant a lease to the Plaintiffs on the suit land is a matter of law and mixed facts topped up with evidence. That in this case, the plaintiffs were offered the lease in **1975** extended to full term following an inspection report dated **22-10-1982**. That at the time the Plaintiffs applied for the land, the law in place was **"The Land Reform Decree, 1975"** and the **"Public Lands Act 1969."** Counsel contended that the law at the time empowered the commission to allocate land as the controlling authority of public land in Uganda then. That as per **S.1(i) of the Land Reform Decree, 1975**, all land in Uganda was public land to be administered by the commissioner in accordance with the **Public Lands Act, 1969** subject to such modifications as may be necessary to bring that Act into conformity with the Decree. That this position of the law is harmonised by **S.10(2) of the Forest Act Cap 146** which states that;

> *"If any dispute should arise as to whether or not any area is included in a forest reserve or village forest, the decision of the commissioner of lands and surveys shall be final and a certificate under his or her hand recording the decision shall be admissible in evidence in any court of law."*

[35] Counsel submitted that in this case, the portion of the suit land claimed by **NFA**, the 3rd Defendant as being part of **Mubuku Central Reserve** was not accompanied by any survey report. This was conceded to by **Mudini Albert** (DW2). It is his contention that the Defendants thus failed to prove to court the actual size or acreage allegedly occupied by the Plaintiffs in their title and size of the **Mubuku Forest Reserve** and as a result, they

failed to cancel the Plaintiffs' title and or curve off the alleged piece of land forming part of **Mubuku Central Forest Reserve** or otherwise.

[36] Counsel concluded that since according to **DW2,** as per the **1967 S.I No.73,** the size of **Mubuku Forest Reserve** is shown as **1660 ha** and the **1998 S.I No.63 (D.Exh.6)** gives the area as **662 ha.** this contradiction goes to show that there is no evidence that the suit land is part of **Mubuku Central Reserve** and therefore ULC had powers to grant a lease on the suit land.

[37] Counsel for the Defendants jointly submitted that according to the **Land Reform Decree 1975,** all land in Uganda was declared public land to be administered by the ULC in accordance with the **Public Lands Act, 1969.** That however, according to **S.48 of Public Lands Act, 1969,** the operation of the law applicable to forest, minerals, or national parks is not affected by that Act. Both counsel concluded that while all land in Uganda is public land held and administered by the **ULC** with authority to grant estates, rights, interest thereon, the land commission cannot legally grant leases over land gazetted to be a forest reserve as was done in the instant case.

[38] It is my view that once it has been ascertained that any land is a gazetted forest land or is owned and managed by any other entity or person, ULC would have no powers to grant a lease on such land because, first of all, such land would not be available for leasing since it would have already been owned and managed by another entity or person. In **Adan Abdirahani Hassan & 2 Ors Vs Registrar of titles, Ministry of Lands & 2 Ors [2013] eKLR,** it was held that ***the commissioner of lands could only alienate un alienated government land and not land already set aside for public purpose.*** In **Funzi Island Development Ltd & 2 Ors Vs County Council of Kwale & 2 Ors [2014] eKLR,** the Kenyan court of Appeal held that ***the land in question was forest land as per the legal Notice No.174 of 1964 and proclamation No.44 of 1932 and that the land having been declared a forest area was not available for alienation.*** I think, this was also my position in **M/s Bahesco Ltd Vs NFA & Anor, HCCS No.16/2009** being relied on by the 3rd Defendant in this case.

[39] The issue now is whether there is evidence to prove that a portion of the land formed part of **Mubuku Central Forest Reserve.**

[40] The genesis of the conflict is linked to a complaint by the Chief Forest Officer which was to the effect that out of the **approximately 450 acres** of land leased out to the Plaintiffs, **398 ha.** are of **Mubuku Forest Reserve (P.Exhs.6 & 16).** This complaint was brought to the attention of the Provincial commissioner, Lands & Survey Department by the Commissioner of Lands & Surveys by letter dated 11/3/1976 **(P.Exh.6)** where the Provincial commissioner was asked to ascertain the truth or otherwise of this complaint. By letter dated 30/3/1976 **(P.Exh.7),** the Provincial commissioner of lands and surveys (W) confirmed that indeed, the Plaintiffs' plot encroached on the **Mubuku Forest Reserve** and that a title had already been issued out to the Plaintiffs. This was also the position of Permanent Secretary, Ministry of Lands & Surveys as per letter dated 18/12/1987 **(P.Exh.15)** wherein he attributed the illegal leasing to mistakes by the previous government regime.

[41] Proof of the extent of the encroachment of the Plaintiffs on **Mubuku Forest Reserve** was provided by the 3rd Defendant in the **Cadastral sheet 66/1** with its interpretation i.e, the map of Mubuku Forest Reserve (BP/1100) against the Deed plan of the suit land **(D.Exh.4).** The interpretation conclusion is that **355 hectares** of the Plaintiffs' land is within the **Mubuku Forest Reserve**. There is however no concrete evidence as regards how the extent of the encroachment i.e, the **355 hectares** was at arrived at. In my view, the cadastral map sheet without a survey Report cannot be conclusive. It is noted that **Mubuku Forest Reserve** like most if not all forest reserves in Uganda has no title as none was presented in this case. In the absence of a survey Report of the suit land vis a vis the **Mubuku Forest** Mapping and or a title either under the defunct/repealed **S.1 No. 176/1968** which indicates the size of the Forest Reserve as approximately **6.42 square miles (≃1662 ha/P.Exh.16)** or the operative **S.I No.63/1998** which indicate the size as approximately **662 hectares,** it becomes apparently clear that the extent of the encroachment is not ascertained. The foregoing explains why there is a contradiction on the alleged acreage of the encroachment, **P.Exh.16** gives the acreage as **398 ha.** while the Cadastral sheet 66/1 **(D.Exh.4)** gives the acreage as **355 ha.** yet both exhibits originate from the defendant's officials.

[42] Whereas **Mudini Albert** (DW2), an official of the 3rd Defendant refers to the extent of encroachment on the forest as approximately **355 ha**. the earlier letters of the complaint against the plaintiffs regarding the extent of the encroachment had referred to **397.83 ha. (Approx. 398 ha.)**, see **P.Exhs.7,15** and **16** authored by the provincial commissioner of lands and surveys(w), Permanent Secretary of lands and surveys and the Ag. Chief Forest Officer respectively. It is not clear through evidence whether the discrepancy of the acreages i.e, reference to **355 ha.** as the extent of the encroachment was based on **S.I No.63/1998** which reduced the size of the forest to **662 ha.** (D.Exh.6) or on the earlier correspondences based on **S.I No.176 of 1968** that maintained the size of the forest as approximately **6.42 square** miles (≃ 1665.3 ha).

[43] The above notwithstanding, it is apparent to me that the reduction of the size of the forest which is approximately by more than **1,000 ha.** as per **S.I No.63/98,** may have had an effect on the status of the Plaintiffs' suit land in terms of the extent of the alleged encroachment into the forest land. The burden of proof is on the Plaintiffs to show by way of evidence that the suit portion of the land formed part of the excised/the "degazetted" over **1000 ha**. as reflected in **S.I No.63/98** and it was therefore not in the **Mubuku Forest Reserve.** The Plaintiffs did not adduce such evidence.

[44] Instead, the available evidence i.e, correspondences from Forestry officials, the Ministry of Lands and Surveys and the Ministry of Environmental Protection **(P.Exhs.13,15-21)** appear to had adopted as a general consensus that the Plaintiffs' approximately **398 ha.** of their lease fell in the **Mubuku Forest Reserve**.

[45] **Nelson David Kilama** (PW1) in his evidence appeared to admit that when the 1st Defendant made a lease offer to the deceased Plaintiffs and granted them a title, the validity of the lease was affected by the fact that part of the said land fell under **Mubuku Forest Reserve**. The Plaintiffs were evicted from the suit land in **1988.** The Commissioner Land Registration upon considering the lease to be illegal for its encroachment on the **Mubuku Forest Reserve,** called for the Plaintiffs' title for cancellation. Indeed, it is an agreed fact from the court conferencing notes of the

to the plaintiffs, 398 ha fell in or forms part of the Mubuku Forest Reserve. **PW1** testified in court on **13/3/2023,** with the help of his counsel, he had the opportunity to adduce further evidence and clarify if the reduction of the **Mubuku Forest Reserve** as per **S.I 63/1998** placed the alleged **398 ha.** fell outside the gazetted forest. No evidence was adduced by the Plaintiffs to prove that the agreed upon area of **398 ha.** as the portion of encroachment into Mubuku Forest Reserve in 1975 when the Plaintiffs were offered the suit land, now fell outside the forest reserve by virtue of **S.I No.63/98** which reduced the forest reserve by **1,000 ha**.

[46] The foregoing distinguishes the present case from **NFA Vs Sam Kiwanuka, SCCA No.17/2010** because in that case, it was established that the suit land was indeed that same piece which was excised from the forest Reserve by virtue of the reduction of its size thus the suit land ceased to be a forest reserve. In the instant case, the plaintiffs fell short of adducing evidence to prove that the suit portion of land measuring **398 ha.** was excised from the forest reserve by virtue of the reduction of **Mubuku forest reserve** as per **S.I 63/1998.**

[47] The foregoing being the true position of the matter, i.e, that the portion of the Plaintiffs' lease measuring approximately **398 ha.** fell in or forms part of the gazetted **Mubuku Forest Reserve**, it follows that though the law at the time in 1975 empowered ULC to allocate land as the controlling authority of public land in Uganda, it had no powers to grant the lease over the suit land to the Plaintiffs because the said portion of the land was not available for leasing. Besides, the law, **S.48 of the Public Lands Act 1968** forbid such leases to any other authority, entity or private persons. Section 10(2) of the Forest Act is therefore not applicable to the instant case.

[48] Before I take leave of this issue, I note that it is urgently vital that the management of the 3rd Defendant (NFA) does resurvey of all forest reserves and secure their respective titles for better future management of forestry land and conflicts arising therefrom. The available relied upon cadastral map sheets do not provide the necessary precise demarcations of the forestry reserves' land. Therefore, with forestry land titles and mappings in place based on survey, forestry land would be easily ascertained and encroachers properly managed which as of now is a big challenge. The 2nd issue is nevertheless in the premises found in the negative.

Issue No.3: Whether there are remedies available to the parties.

[49] Considering that the 1st Defendant allocated and leased the suit portion to the Plaintiffs which forms part of a gazetted forest reserve as generally admitted by both parties, it was important that before the eviction of the plaintiffs, a survey of the plaintiffs' lease land vis a vis the forestry land, is carried out for purposes of ascertaining the acreage of the actual encroachment. As of the present, there is discrepancy as regards the extent of the encroachment as reflected in **P.Exhs.7,15 & 16** and **DW2's** evidence. The Plaintiffs were evicted from the entire land and their lease certificate of title is subject of cancellation where the Plaintiffs are losing the whole land as opposed to rectification where the Plaintiffs would retain that area that would be found outside the forest reserve.

[50] In the absence of a survey report streamlining the interests of the Plaintiffs and the 3rd Defendant, this court is entitled to find that the Defendants have compulsorily acquired the Plaintiffs' entire land and therefore, they are entitled to compensation and or damages for the land and improvements made thereon. This is further fortified by the principle or doctrine of legitimate expectation.

[51] In **Atwongyeire Robert Vs Board of Governors Kyambogo College School, HCMC No.216/2016,** the principle of legitimate expectation may arise from:

> *"A promise and conduct or representation ....*
> *The principle ... is concerned with the relationship between the public administration and the individual. It seeks to resolve the basic conflict between the desire to protect the individual's confidence in expectation raised by administrative conduct and the need for administrators to pursue changing policy objectives. The principle means that expectations raised as a result of the administrative conduct may have legal consequences. Either the administration must respect those expectations or provide compelling reasons why the public interest must take priority."*

[52] The application of the doctrine of legitimate expectation was explained in the case of **Council of Civil Service Unions Vs Minister for the Civil Service [1984] 3 All ER 935** at 943-944 thus;

> *"But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege and if so, the courts will protect his expectation by judicial review as a matter of public law. This subject has been fully explained by Lord Diplock in* ***O'Relly Vs Mackman [1982] 3 All ER 1124, (1983) 2 AC 237****....legitimate, or reasonable expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."*

As I observed in **Kafu Sugar Ltd & Anor Vs The Attorney General & 5 Ors, C.S No.55 of 2017 [2022] UGHCCD 106 (17 June 2022),** the total effect of the above authorities is that the principle of legitimate expectation is based on the proposition that where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should in the absence of good reasons be entitled to rely on the statement and enforce it through the courts of law.

[53] The Plaintiffs in this case are partly seeking a judicial review of the 1st and 2nd defendants' decision not to consider compensating the Plaintiffs for the lost land, farm and other developments thereon. The plaintiffs are relying on promises and representations contained in the following correspondences;

a) A set of letters dated **9/12/2003** by the plaintiffs to the chairman ULC, **12/1/2004** addressed to the secretary ULC, **14/1/2004** addressed to the Ag. Director of lands and Environment, Ministry of water, lands and Environment and **16/1/2004** addressed to the Attorney, admitted in evidence and collectively as **P.Exh.22.** These correspondences had a report about the intervention of H.E The President who directed for the provision of an alternative land to the Plaintiffs in lieu of the suit land.

b) Letter dated **26/6/2006** by the Solicitor General to the Chief Government Valuer for valuation of the suit land and its developments with the view to settle the Plaintiffs (Part of P.Exh.23).
c) Letter dated **8/11/2011** by the Ag. Chief Government Valuer (P.Exh.24).
d) Chief Government Valuer's Report of the suit land (P.Exh.27).

[54] All the correspondences are express and unambiguous promises and unqualified guarantee/representations as per the conduct of the 1st and 2nd Defendant officials that the plaintiffs would be offered an alternative land for the alienated suit land or compensation for the loss of the land, farm and other developments thereon.

[55] The 1st and 2nd Defendant officials settled for compensation of the plaintiffs' lost land and the developments thereon. The plaintiffs under the doctrine of legitimate expectation, relying on the promise and conduct or representation of the 1st & 2nd defendants' officials, especially with the intervention of the fountain of honour, H.E The president of Uganda **(P.Exh.22)** expected to ultimately be paid the compensation. The courts have the duty to protect the plaintiffs' expectation. Legitimate expectation is neither a claim nor defence but a legal principle that parties need not to plead for its application as counsel for the Defendants argued in their submissions. In this case, the facts and evidence for its application are contained in the admitted correspondences; the Inspection report for the purpose of lease extension **(P.Exh.10),** correspondences in regard to the alleged encroachment and need for allocation of alternative land farm and compensation of the plaintiffs **(P.Exhs.22,23 & 27).**

[56] Lastly, as admitted by the parties in this case, the 1st Defendant allocated and leased the suit land to the plaintiffs and went ahead to give full term of 44 years after the Inspection Report by the Senior Staff Surveyor **(P.Exhs.1&10).** The officials of the Ministry of Lands who are agents/servants of the 2nd Defendant and who are at the same time the official custodian of all land documents in Uganda, i.e, titles, public land gazettes, cadastral map survey sheets, and are vested with the tools, instruments, machinery and access to information regarding all land in Uganda failed to alert/ notify and or advise the 1st Defendant about the

status of the suit land and proceeded to process and issue the Plaintiffs with the lease for the land in question thus one is entitled to regard them as being responsible for the present predicament affecting the land and the parties. The 1st and 2nd Defendants are faulted for their dereliction of their statutory and constitutional duties in not taking the trouble to know the true status of the suit land before its lease to the plaintiffs. The 3rd defendant ought to have first ascertained the actual position regarding the extent of the alleged encroachment into its land before it swung into the action of evicting the plaintiffs from the suit land. As per **Mudini Albert** (DW2) an official of the 3rd Defendant, the Plaintiffs were by and large evicted from the suit land. The locals are planting on the suit land trees on behalf of the 3rd Defendant. The submissions of counsel for the Defendants therefore that the Plaintiffs are still on the land is not true and correct.

[57] In conclusion, I find that as a result of the errors and mistakes of the 1st Defendant Land Commission and the omissions of the officials of the 2nd Defendant, the Plaintiffs innocently and in good faith took up the lease offered by the 1st Defendant, developed it extensively as revealed by the Inspection report, 1982 **(P.Exh.10)** and the Chief Government Valuer's Report, 2011 **(P.Exh.27).** Then, the 3rd Defendant emerged out without consideration of the Plaintiffs' entire interest in the suit land and evicted them therefrom, and as of now, the Plaintiffs are suffering the consequences of the actions and conduct of the Defendants. The Plaintiffs did not know and did not have the capacity to know that the suit portion of land was comprised in the **Mubuku Forest Reserve,** but for the 1st and 2nd Defendants, they knew or ought to know the full status of the suit land. Surely, in the circumstances of this case, the Plaintiffs would deserve and they are entitled to compensation for the loss they occasioned as a result of the Defendants' actions.

[58] For the reasons above, I find the Defendants liable for payment of compensatory damages to the plaintiffs for their alienated/loss of the land and the developments thereon.

a) Compensatory damages

[59] Compensatory damages, also known as actual damages are damages awarded by court equivalent to the loss a party suffered; **Birdsall Vs Coolidge 93 US.64 [1876].** The amount is based on the proven harm, loss or injury suffered by the plaintiff. In **Esso Standard (U) Ltd Vs Semu Amanu Opio, SCCA No.3/1993,** court held thus:

> *".....compensation to the plaintiff. He must not only be compensated for proved actual loss but also for any injury to his feelings and for having to suffer insults, indignities and the like....."*

Compensatory damages are both economic and non-economic. Economic damages are considered as objectively "verifiable" and therefore "actual" because they are quantifiable and the non-economic ones are subjective and are not quantifiable and therefore "general".

[60] Generally, damages are distinguishable from compensation. Compensation is a broader concept which encompasses payments made to a person in respect of some kind of loss or damage suffered due to reasons like acquisition of property by another, statutory violations, termination of employment etc, requiring the aggrieved party to be compensated; while for damages, they emanate from actionable wrongs; **(Halsbury's laws of England, Damages, vol. 12 (4th edn) para. 815).** In common parlance however, compensation is often used to refer to damages. It follows therefore, that once a party is awarded compensatory damages, he or she cannot again qualify for separate general damages because damages generally are compensatory in nature, See **Livingstone Vs Rawyards Coal Co. [1880] 5 App.Cas. 25 at 59** where it was held that compensatory damages' objective is to put a party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he is now seeking his compensation or reparation, see also **Dharamshi Vs Karsam [1974] EA 41.**

[61] In the instant case, counsel for the Plaintiffs submitted that the Plaintiff were deprived of their land and the developments thereon when their lease was still running to 2024 **(P.Exh.1).** As per the inspection report of the suit property made in **1982** for the purpose of the lease extension **(P.Exh.10)**

the land had been extensively cleared; 50 acres had been cleared for growing of food and cash crops, there was a Grade A residual house, 6 semi-permanent houses for the workers, 33 heads of cattle (cross and exotic breeds), sheep and goats, a permanent Cattle Dip, a dam etc. That by 1988, when the plaintiffs were apparently evicted, they had improved the suit land 20 times better as later found by the Valuation expert **(PW5)** and the Valuation report that assessed it at **Ugx 15,060,682,770/=** as at December 2011 **(P.Exh.27).**

[62] In addition to the above, the perusal of the **1982 Inspection Report (P.Exh.10)** show that the suit land had other infrastructure; the grazing field divided into 25 paddocks with extensive supply of water from Hima cement factory, and a 5km network of road. I find that the entirety of the above was neither denied nor challenged by the Defendants. The Inspection Report **(P.Exh.10)** was a report from the Principal Staff Supervisor Kabarole, addressed to the secretary ULC for purposes of the lease extension in 1982 while the Valuation of the suit property was at the instance of the Solicitor General who as per letter dated 26/6/2006 (part of **P.Exh.23**) asked the Chief Government Valuer, Ministry of water, lands and Environment to inspect the locus and compile a report on the value of the land and its developments. As per the Chief Government Valuer's report, the land and the developments thereon were valued at **Ugx 15,060,682,770/=** as of **13/12/2011 (P.Exh.27)**.

[63] However, counsel for the Plaintiffs argued that the Plaintiffs are entitled to a current value of the property and the developments for the projected crops yield, livestock production and net income in addition to the value of the land and the developments thereon. Upon his tabulation as per **P.Exhs.23,24,25,26** and **27,** he concluded that the Plaintiffs are entitled to be paid total compensation of **Ugx 35,736,655,037.**

[64] In addition, counsel for the Plaintiffs sought for general damages for loss of livelihood, loss of business and prospects return on investments, inconveniences, mental anguish, anxiety and uncertainty which contributed to the demise of the original 1st and 2nd Plaintiffs and affected the social economic welfare of the Plaintiffs(deceased) and those living,

their children, family and dependants negatively and proposed **Ugx 10,000,000/=.**

[65] Lastly, counsel for the Plaintiffs sought for a total of **Ugx 5,000,000,000/=** as exemplary damages for the distress and injured feelings the Plaintiffs were subjected to by the actions of the Defendants arising from the oppressive, arbitrary and unconstitutional decisions of the Defendants jointly and or severally. He prayed that the sought for compensation, general damages, aggravated and exemplary damages carry interest at the rate of **24% p.a**.

[66] Counsel for the Defendants jointly submitted that the Plaintiffs' claim of compensation of projected crop yields, livestock production and income projections are speculative because they were based on mere research to arrive at figures thus they are too excessive.

[67] As regards the Valuation Report **(P.Exh.27)** which put the value of the land and the developments thereon at **Ugx 15,060,682,770/=,** both counsel for the Defendants submitted that the Plaintiffs cannot be compensated for an illegal dealing as ULC did not have powers at the time to give a lease on a forest reserve. 2ndly, that the report is also speculative because the Government Valuer **(PW5)** did not personally visit the site. As regards the claim for general damages, aggravated and exemplary damages, both counsel submitted that they were without proof. They urged this court to use its discretion judiciously and decline to grant the prayer for the above damages.

[68] The principle of assessment of damages is generally in *"restitutio in inter grum"* that is the Plaintiffs should be restored as far as money can do it, to the current position that they would have been had the injury or damage not occurred, **Kitgum District Local Government & Anor Vs Ayella, HCCA No.08/2015 [2018] UGACCD 118 (6 December 2018).** This explains why as I have already stated in the foregoing, the Plaintiffs cannot claim compensatory damages and at the same time claim general damages separately. The Plaintiff can nevertheless claim special damages, punitive and or aggravated damages separate from compensatory damages if they are properly pleaded and proved.

[69] The court has discretion as to the quantum of damages it would award in a claim of damages. The assessment does not depend on any legal rules but the discretion of the court is however limited by the usual caution or prudence and remoteness of damage when considering the award of damages, **Nasif Mujib & Anor Vs A.G, HCCS No. 160/2014.** In awarding general damages, the court would simply be guided by the opinion and judgment of a reasonable man in determining what sum of money will be reasonably awarded in the circumstances of the case. The essence of damages is compensatory, **Mugambe Vs Kayita & Anor, HCCS No.339 of 2020.**

[70] In this case, whereas the Defendants appeared to down play the Chief Government Valuer's Report **(P.Exh.27),** it is a statement of **Ag. Chief Government Valuer** as per his letter dated 6/11/2011, the **Director Crop Resources** as per his letter dated 24/11/2011 and the **Ag. Director Animal Resources** dated 25/11/2011 (collectively admitted and marked **P.Exh.24)** that ***"the basis of the Chief Government Valuer's Report reflected the fair compensation the plaintiffs were entitled to."*** These are Reports of technical persons from Government departments in the areas of assessment of land value, crop production and animal resources. Besides, the Valuation Report, 2011, appear consistent in material aspects with the inspection Report that was issued about 3 decades ago when the suit land was inspected for purposes of extension of the lease. The report was based on the market value of the suit property at the time the valuation exercise was conducted. The report is neither speculative nor hypothetical because it is backed by other technical reports on record (see also correspondences marked P.Exh.24).

[71] In view of the fact that none of the above documentary evidence was challenged by the Defendants, I find the Chief Government Valuer's Report **(P.Exh.27)** a representation of the fair value of the suit land, loss of profit from crop production, loss of profit from livestock production and disturbance allowance at 30% all totalling to **Ugx 15,060,682,770/=** it is the best available evidence on record to guide court in the assessment of the fair compensatory damages for the plaintiffs. The available evidence is to the effect that the Plaintiffs were evicted from the entire suit land and the valuation report covered the entire land i.e, 444.9 hectares. The

implication is that upon payment of the compensation, the entire land is forfeited to the 3rd Defendant.

[72] The Plaintiffs' claims of damages beyond and above that based on the Government Valuer's Report on the ground that compensation has been enhanced by the passage of time from when the Report was made is untenable. The enhanced claim for crop and livestock production totalling to **Ugx 35,736,655,037/=** is speculative for its basis is not ascertained because the enhanced claims are not based on the actual loss; they are hypothetical in nature, for example, the reports relied on by counsel for the Plaintiff did not take into account weather or climate changes which may lead to droughts that affect both crops and livestock (there is no evidence that the water dams and the sprinkling irrigation facilities on the land would secure and cater for the entire suit land measuring approximately 444.9 hectares), animal disease break outs (vaccinations do not guarantee curb of disease break outs) or change of user of the land and investments which the owner would have been susceptible to during the period in question. Besides, the Plaintiffs did not address court as to what happened to the livestock upon eviction from the land. As to what became the fate of the livestock, I believe the Plaintiffs maintained the stock elsewhere since there is no evidence that was adduced by the Plaintiffs that the animals were either destroyed and or killed during the eviction from the suit land. The issue of the projected current crop yields, livestock production and income projections does not therefore arise in the circumstances of this case. Such damages were nevertheless covered by the compensatory valuation of the property and in any case, they are covered by interest where it would be awarded and the "disturbance allowance of **30%** that was in this case considered and awarded during the valuation of the suit property.

[73] As already observed, once the compensatory damage is allowed and awarded, the Plaintiffs would not be entitled to claim separately for general damages. The general damages therefore claimed in this case are untenable.

[74] As regards the claim for aggravated and exemplary damages, no evidence was adduced by the plaintiffs in support of such i.e, that the defendants' actions were malicious, high handed, oppressive, arbitrary, harsh and

unconstitutional conduct or where there was desire to a profit; **Rookes Vs Bernard (1964) All ER 367.** The defendants' conduct appear to had been a result of an error or mistake for which the stakeholder Ministries of Environmental protection, lands and surveys, Solicitor General and Attorney General, found regrettable. The 3rd Defendant's actions were merely a fulfilment of its mandate to protect and preserve forest reserves. The misfortune of the Plaintiffs and the mistakes of the 1st Defendant were attributed to the previous regime Government which was characterised by mal administration of state activities, See **P.Exh.15**.

[75] In the premises, I find that there is no evidence that would warrant award of aggravated damages or later on, exemplary damages. I do not therefore find that the Plaintiffs suffered any compensatable loss/damages over and above the compensation that is obtained in the Government Valuer's Report **(P.Exh.27)** which included **30%** disturbance allowance.

[76] In conclusion, judgment is given in favour of the Plaintiffs with the following orders;

a) A declaration that the 1st & 2nd Defendants breached their statutory duties and trust to the Plaintiffs which led to the wrongful eviction of the Plaintiffs from the suit premises by the 3rd Defendant.

b) A declaration that the Plaintiffs are entitled from the Defendants jointly and severally to compensation of the loss of the suit property and the developments thereon, they are awarded compensatory damages amounting to **Ugx 15,060,682,770/=** as assessed by the Chief Government Valuer.

c) The compensation to carry interest at court rate from the date of filing the suit until payment in full.

d) The Plaintiffs as the successful litigants are awarded costs of the suit.

Dated this **28th** day of **March, 2024.**

.....

Byaruhanga Jesse Rugyema
JUDGE.