

OBJECTION MY LORD!



LAND TRANSACTIONS



Isaac Christopher Lubogo

Revised And Updated Second Edition

LAND TRANSACTIONS

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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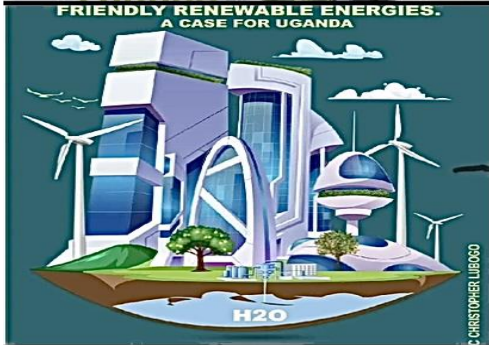
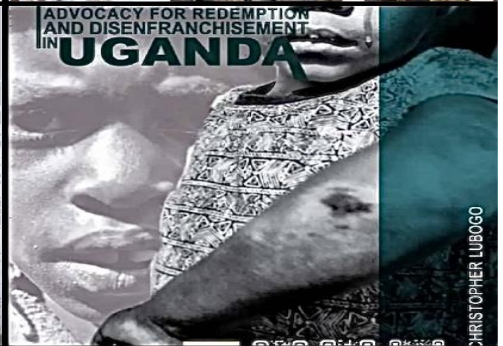
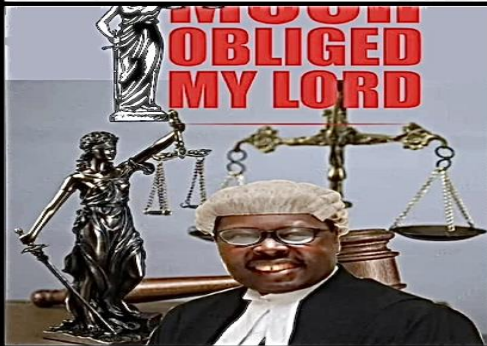
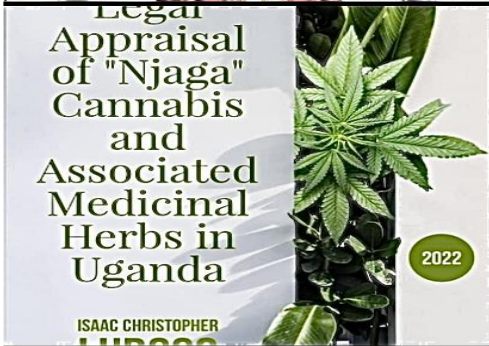
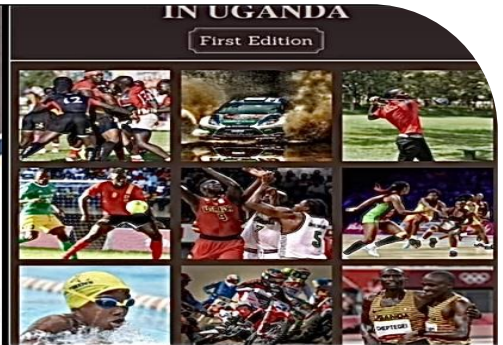
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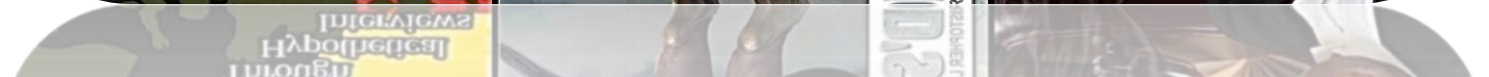
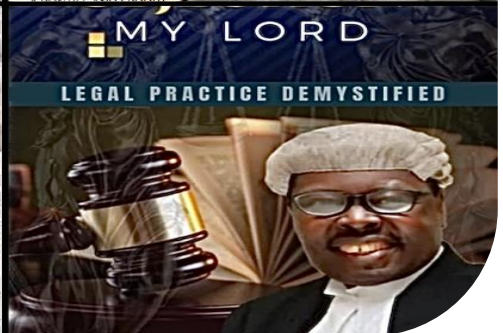
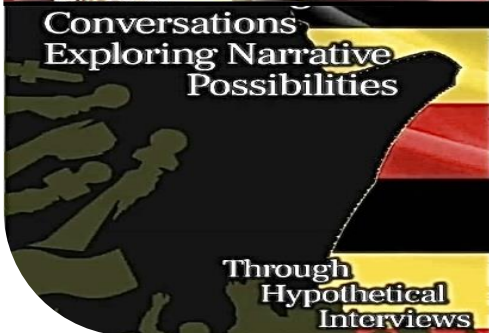
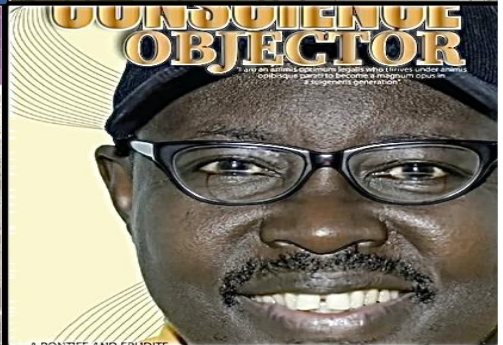
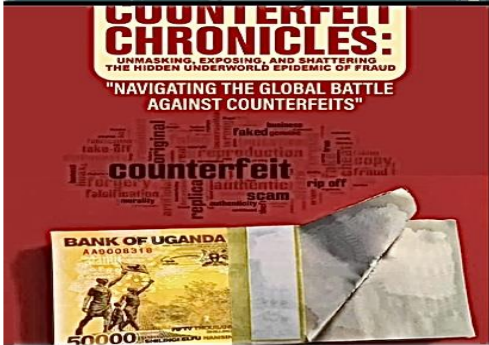
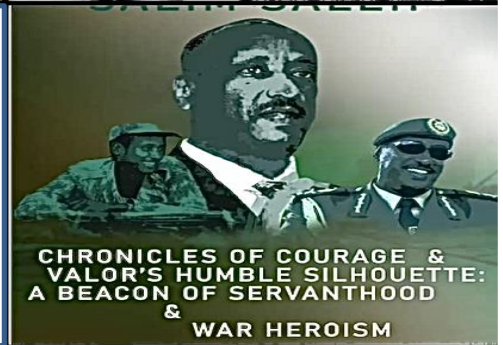
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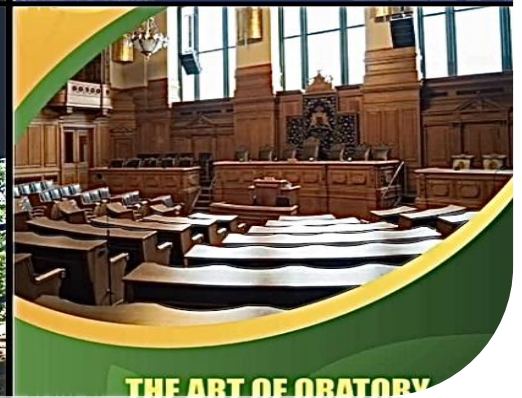
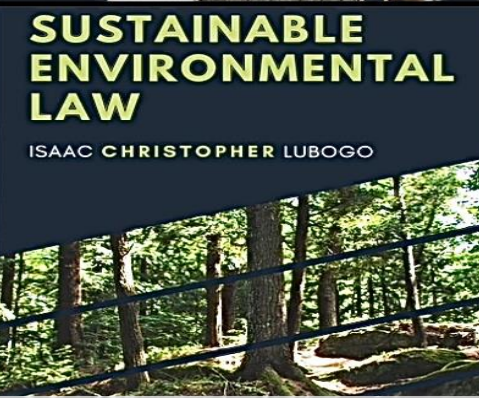
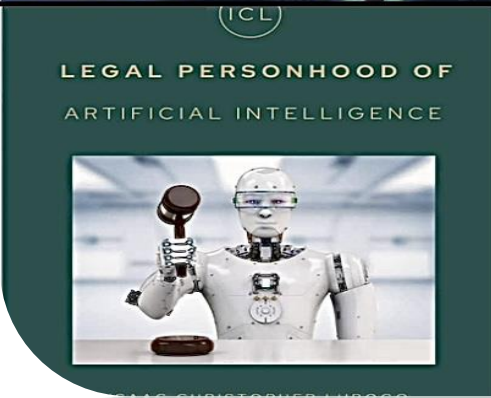
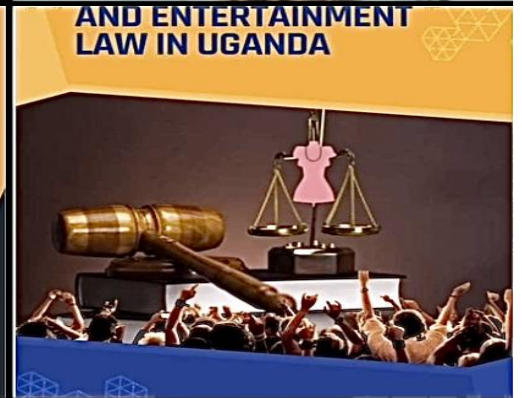
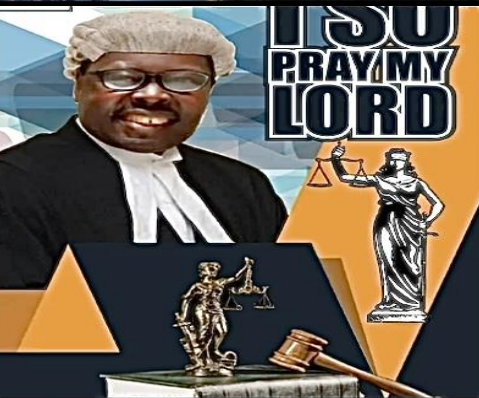
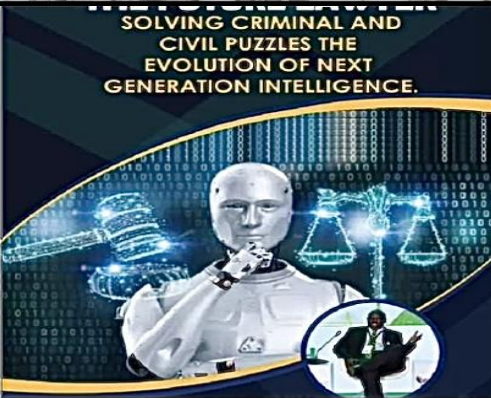
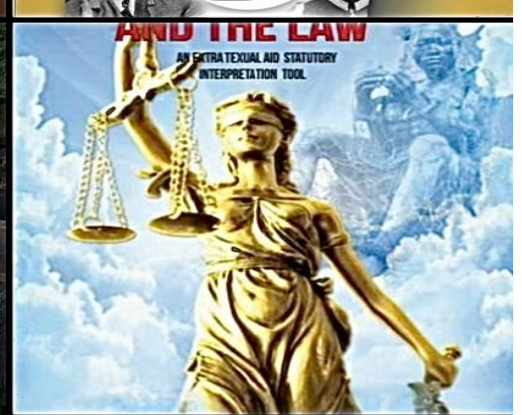
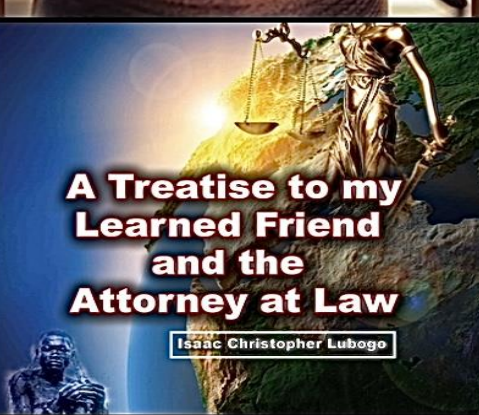
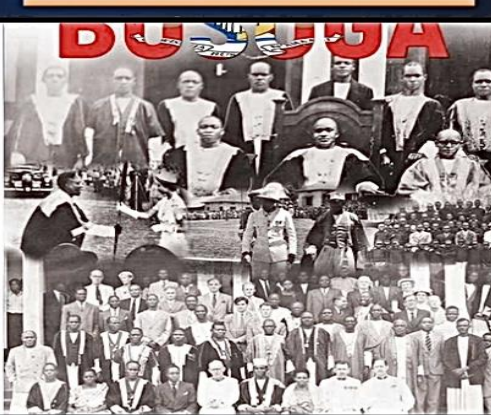
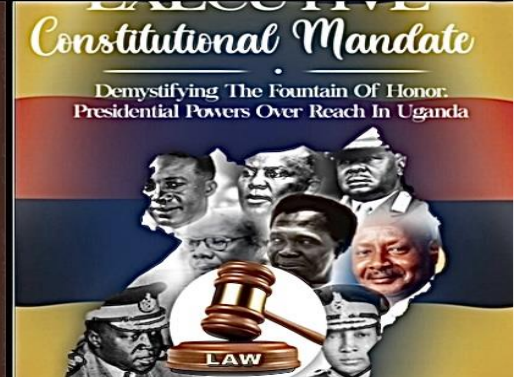
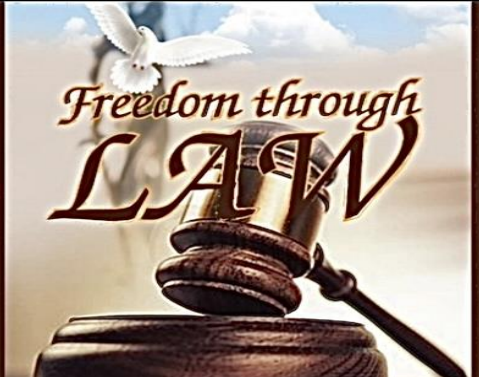
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ACCORDING
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THE HORIZON OF Knowledge Embracing the Non-Linearity of Human Understanding



LUBOGO'S LAW THE POWER OF ADAPTIVE RESILIENCE

MYTHOLOGY DEMYSTIFIED

In the mythology of classical antiquity, a kind of ill omen, the
subject of metamorphosis, that fed on human flesh and blood. It was
referred to witches and related. Malevolent folkloric beings.



HUMANITY

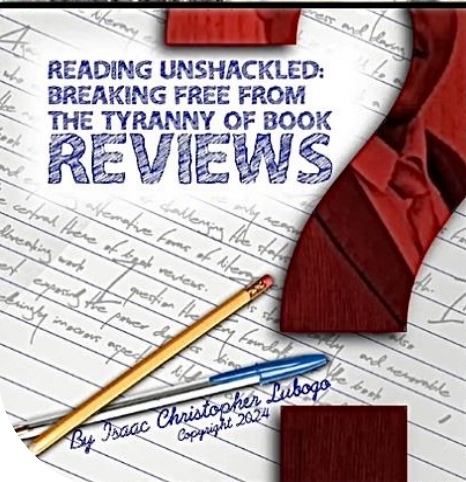


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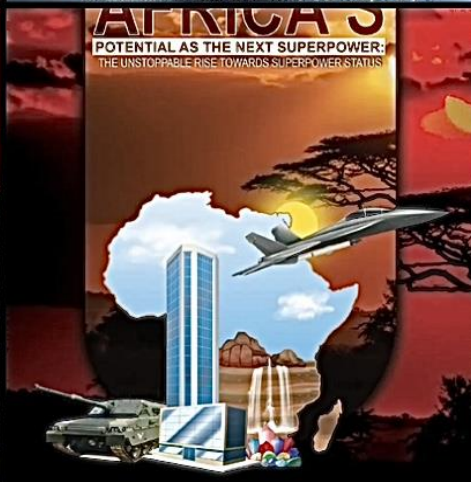


READING UNSHACKLED: BREAKING FREE FROM THE TYRANNY OF BOOK REVIEWS



By Isaac Christopher Lubogo
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AFRICA'S POTENTIAL AS THE NEXT SUPERPOWER: THE UNSTOPPABLE RISE TOWARDS SUPERPOWER STATUS



THE PhD PROCESS: A Critical Examination and Innovation Reforms.

ISAAC CHRISTOPHER LUBOGO





DEDICATION

To The Lord Who Breathes Life And Spirit On Me ...
Be My Guide Oh Lord Of The Entire Universe.



“... daniel was preferred above the presidents and princes, because an excellent spirit was in him, and the kingthought to set him over the whole realm” _

Daniel Chapter six verse three

Vox Populi, Vox Dei (Latin, 'the voice of the people is the voice of God')

Salus populi suprema lex esto (Latin: "The health (welfare, good, salvation, felicity) of the people should be the supreme law", "Let the good (or safety) of the people be the supreme (or highest) law", or "The welfare of the people shall be the supreme law") is a maxim or principle found in Cicero's De Legibus (book III, part III, sub. VIII).

ACKNOWLEDGEMENT



Great thanks to learned colleagues, **Mulungi Agatha** and **Ahimbisibwe Innocent Benjamin** whose enormous turpitude and stamina have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript.

Blessings upon you.



REVIEW

"Objection My Lord" by Isaac Christopher Lubogo (Second Edition)

It is with profound admiration that I pen this review for the second edition of *Objection My Lord*, an extraordinary legal tome by the distinguished scholar Isaac Christopher Lubogo. Having made a resounding impact with its inaugural edition, this magnum opus has not only solidified its place in the annals of legal literature but has now ascended to even greater heights in its revised form. Lubogo has meticulously expanded the boundaries of legal discourse, presenting a work that is not merely an analysis but an intellectual journey through the complex architecture of trial advocacy.

The first edition of *Objection My Lord* already heralded the arrival of a formidable legal mind, one whose treatment of objections and courtroom dynamics was incisive and authoritative. However, this second edition exemplifies what can only be described as a tour de force in legal writing. With refined precision, the author delves into the intricacies of evidentiary objections, the art of courtroom persuasion, and the strategies that define masterful advocacy.

Isaac Christopher Lubogo has, with this edition, set an even higher bar for legal scholarship. His mastery of procedural and substantive law is evident as he navigates through both theoretical frameworks and practical applications with unparalleled fluency. His discourse on the law of evidence is especially noteworthy, as it demonstrates a rare combination of academic rigor and pragmatic insight—qualities that are essential for any advocate seeking to excel in litigation.

The author's treatment of objections in this edition goes beyond mere technicalities; it explores the psychological and rhetorical dimensions of legal practice, elevating the subject from a simple procedural necessity to a formidable weapon in the arsenal of courtroom strategy. Lubogo dissects the art of objecting with clinical precision, revealing the subtleties that differentiate the ordinary advocate from the truly exceptional.

Moreover, this edition benefits from a deepened engagement with comparative jurisprudence. Lubogo draws from not only Ugandan and East African legal systems but also traverses global legal landscapes, enriching the text with international perspectives that offer fresh insights and broaden the scope of applicability for both budding and seasoned practitioners.

The author's style is replete with eloquence, yet never at the expense of clarity. His ability to marry dense legal principles with accessible explanations makes this book an invaluable resource for law students, practitioners, and even judges. The second edition is undeniably a magnum opus—an academic feast of legal wisdom served with eloquence, precision, and a deep understanding of the legal craft.

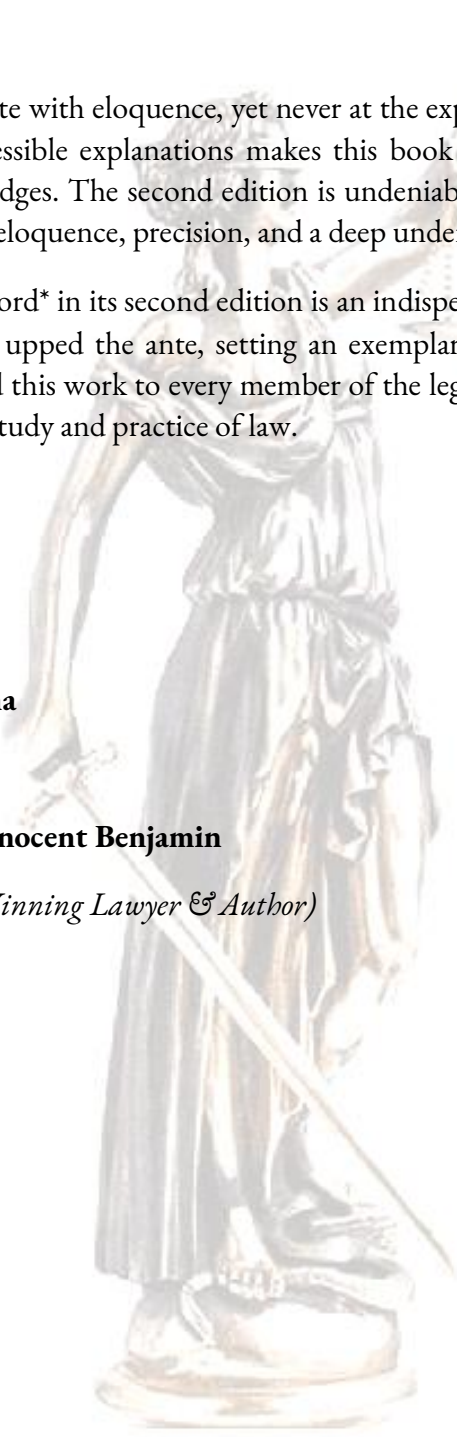
In sum, *Objection My Lord* in its second edition is an indispensable guide for the astute advocate. Isaac Christopher Lubogo has upped the ante, setting an exemplary standard for future legal scholarship. I wholeheartedly commend this work to every member of the legal fraternity, for it will undoubtedly leave an indelible mark on the study and practice of law.

Editors: **Mulungi Agatha**

(Advocate)

Ahimbisibwe Innocent Benjamin

(Africa Award Winning Lawyer & Author)



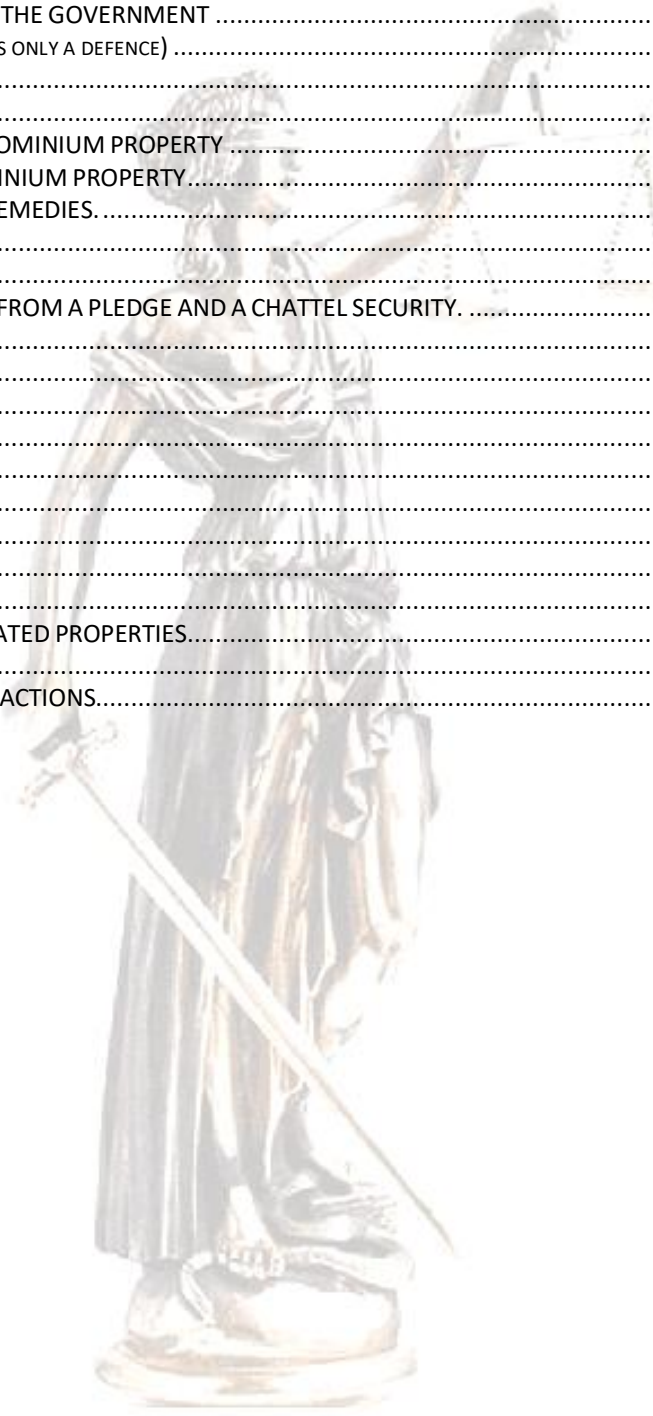


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INTERESTS IN LAND

INTERESTS IN LAND AND THE RIGHTS ACCRUING

There are various interests in land. They are classified into equitable and legal interests. Legal interests are the registered interests while equitable interests are not registered. Equitable interests: an equitable interest may be formally created by written agreement of the parties or by operation of law where of parties enter into a specifically enforceable contract to convey or create a legal interest. In **LYSAGHT V EDWARDS (1876) 2 CH D 499** the court held that, the moment you have a valid contract for sale, the vendor becomes in equity trustee for the purchaser of the estate sold and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money, a charge or lien on the estate for the security of the purchase money and the right to return possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession.

SSESAZI KULABIRAAWO V ROBINA NALUBEGA CACA 55/2022, Byamugisha J.A stated that there is a difference in law between having a right in land and an interest. The latter goes with ownership which might be legal or equitable and such interest is capable of being registered as a charge on land. On the other hand rights are associated with the use of land for activities such as playing games or use of foot path.

Legal interest refers to an interest held in land by a land owner who has registered under the RTA so as to give the world notice of his or her ownership e.g owners of land in the different tenures.

Section 54 of the registration of titles act cap 240, provides that no instrument until registered shall be effectual to pass any interest in land under the operation of this act.

Section 59 of the RTA cap 240, states that certificate of title is conclusive evidence that the person named is the registered proprietor.

PROTECTION OF INTERESTS IN LAND.

The registration of an interest provides the best security against the principle of indefeasibility (**Section 54 and 59 of the Registration of Titles Act cap 240**).

Section 54 provides that no interest unless registered in the prescribe Manner shall be said to pass or bind the law. However, the RTA makes provision for lodgement of caveats operates as a statutory injunction to the registrar to prevent registration of any dealings which might affect the interest, the subject of the caveat.

Therefore, the only way to protect on unregistered claims over registered land is either to lodge a caveat or seek a court injunction.

In **KATARIKAWA V KATWIREMU AND ANOR HCB NO.187 1977**, ssekandi J, held that taking possession of title deeds by a purchaser is insufficient to protect an unregistered interest unless a caveat is lodged.

Blacks law dictionary, defines a caveat to mean a formal notice or warning given by a party intrested against the performance of certain acts within his power and jurisdiction.

SENTONGO PRODUCE AND COFFEE FARMERS LTD V ROSE NAKAFUMA H.C.M.A 690/1999,Musoke J stated that for a caveat to be valid, it must have protectable intrest; legal or equitable to be protected by the caveat otherwise the caveat would be invalid.

TEJA SINGH V ISHER SINGH AND ORS (1957) E.A 654, it was held the section 123 of the registration of titles act cap 240 shows that caveats are of two classes that is

- a) Caveats lodged by or on behalf of a beneficiary claiming under a will or settlement or by the register of titles and
- b) All other caveats.

Caveats of class a) can only be removed by the caveator or by an order of court to be obtained on application inter-parties by a party having an intreser in shuch removal.

CLASSES OR TYPES OF CAVEATS

Section 123 of the registration of titles act cap 240, any beneficiary or other person claiming any estate or interest in land under the operation of the RTA may lodge a caveat with the register in the FORM in the 13th Schedule to the Act forbidding the registration of any person as transferee or proprietor and of any instrument affecting that estate or intrest until after the notice of the intended registration or dealing is given to the cavetor consents in writing to the registration. Section 123(2), the caveat shall state the name and addition of the person by whom or on whose behalf the caveat is lodged by order of the highcourt or registrar, shall be signed by the caveator or by his or her agent.

Section 123(3), the person lodging such caveat shall if required support the caveat by an affidavit stating the nature under which the claim is made and may withdraw the caveat.

Section 123(4), a caveat shall not be received unless some address or place in which a post office is situated is appointed in the caveat as place at which notices and proceedings relating to the caveat maybe served.

Section 124(2) caveats lodged against the proprietor except beneficiary caveats or those lodged by the registrar shall be deemed to have lapsed upon expiration of 60 days after notice given to the caveator that the proprietor has applied for the removal of the caveat.

BENEFICIARY CAVEATS.

Lodged under section 123(1) of the registration of titles act cap 240 in the form 13th schedule. Section 128 of the registration of titles act cap 240, a beneficiary caveat does not lapse as any dealing or transfer with such land is presented for registration without caveat being withdrawn, provided that the registrar is of the opinion that such transaction is authorised by the will or settlement and the caveator either consents to the registration.

CAVEAT PROHIBITING BRINGING LAND UNDER THE RTA.

Section 20 of the RTA cap 240, a person claiming any estate or interest in the land described in any notice issued by the Registrar under this Act may, before the registration of the certificate, lodge a caveat with the Registrar in the form in Schedule 3 to this Act forbidding the bringing of that land under this Act.

Section 21(1) of the RTA cap 240, The Registrar upon receipt of a caveat lodged under section 20 shall notify the applicant of the caveat, and shall suspend

proceedings in the matter until the caveat has been withdrawn or has lapsed as provided in section 22 or 24 or until an order in the matter has been obtained from the High Court.

CAVEAT FORBIDDING GRANT OF APPLICATION FOR VESTING ORDER MADE ON CLAIMS OF ADVERSE POSSESSION.

Section 77 of the RTA CAP 240, Person claiming title by possession, A person who claims that he or she has acquired a title by possession to land registered under this Act may apply to the Registrar for order vesting the land in him or her for an estate in fee simple or the other estate claimed.

Section 85(1) of the RTA cap 240, a person claiming any estate or interest in the land in respect of which any such application is made may, before the granting of the application, lodge a caveat with the Registrar forbidding the granting of the application. S.85(2) of the R.T.A, The caveat shall in all other respects be in the same form and be subject to the same provisions and have the same effect with respect to the application against which it is lodged as a caveat against bringing land under the operation of this Act. Therefore section 20, 21, 22 of the RTA cap 240 apply.

CAVEAT FORBIDDING GRANT OF APPLICATION TO AMEND CERTIFICATE OF TITLE.

Section 141 of the RTA cap 140, a proprietor may apply for the rectification of the original and duplicate certificate of title of any other proprietor or proprietors, in any case in which the land described in the applicant's certificate of title and actually and bona fide occupied by him or her comprises land which by reason of any error in a survey or other misdescription is included in the land described in any other certificate or certificates of title.

Section 145 of the RTA cap 240 A person claiming any estate or interest in the land in respect of which any such application is made as hereinbefore provided may, before the granting of the application, lodge a caveat with the Registrar forbidding the granting of the application; and every such caveat shall in all other respects be in the same form, shall be subject to the same provisions, and shall have the same effect with respect to the application against which it is lodged as an ordinary caveat against bringing land under the operation of this Act.

a) SPOUSAL CONSENT IN RESPECT OF FAMILY LAND.

Section 39 of the land act cap 236 , every spouse shall enjoy security of land on family land.

Section 39(3) of the land act cap 236, spouse shall have a right to give or withhold his or her consent to any transaction.

Section 40(7) of the land act cap 236.

Lapse of Caveat

Under **Section 22(1) of the registration of titles act cap 240** upon expiration of one month from the receipt of a caveat, it shall be deemed to have expired unless the caveator has taken proceedings in a court of competent jurisdiction to establish his/her title to the estate or interest specified in the caveat.

The following caveat doesn't lapse; (1) caveats by the Registrar, (2) caveats by beneficiaries, (3) caveats by spouses.

in the case of lukoma v kizito and 3 others (miscellaneous cause 115 of 2024);the court stated that parties should take note thatcaveats are temporary in nature. one cannot lodge acaveat over land and then fail to take any action tojustify it, as a caveat acts as a statutory injunctionpreventing the registered proprietor from dealing withthe land. in light of this, and in the interest of justice,the court ordered that the 1st, 2nd, and 3rdrespondents must bring an action within 40 days from the date of this ruling to justify the caveat. Failure to doso will result in the court proceeding to vacate the caveat.

caveat

REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP.230

Caveat forbidding registration of change in proprietor or dealing with estate comprised inBLOCK 217 Plot 19BUSOLOSOLO.

TO THE COMMISSIONER FOR

LAND REGISTRATION.

TAKE NOTICE that I, PANTALEO OFWONO OF KAMPALA DISTRICT claim an EQUITABLE INTEREST ARISING FROM LANDSALE AGREEMENT in the land comprised in the above folio, and I forbid the registration of any person as transferee or proprietor of land of any instrument affecting the estate or interest until after notice of such registration given to me as the address hereafter mentioned or unless the instrument is expressed to be subject to my claim or unless I consent in uniting thereto.

I appoint SUI GENERIS, LAW DEVELOPMENT CENTER, P.O. BOOX 7117, KAMPALA, UGANDA as the place at which notices and proceeding relating to this caveat may be served.

Dated this 20th day of October,2022

PANTALEO OFWONO

CAVEATOR

Signed in the presence of

SUI GENERIS

ADVOCATE.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP. 230.

Affidavit in support of the caveat forbidding registration of cahnge in proprietor or dealing with the estate COMPRISED IN BLOCK 217

PLOT 19 BUSOLOSULO

I PANTALEO OFWONO, C/O, SUI GENERIS, P.O.BOX 7117, KAMPALA UGANDA, do hereby take solemn oath and state as follow: -

1. THAT I AM an adult Ugandan of sound in mind.

2. THAT on the 18th day of October, 2022, I executed an agreement for the sale and transfer of land comprised in BLOCK 217 Plot 19 BUSOLOSOLO with the registered proprietor STEVEN BINOSEBEDDE for valuable consideration of UGX 250,000,000 (two hundred fifty million).
3. THAT in the agreement, it was agreed that I pay the said sum of UGX 1250,000,000 (one hundred twenty-five million) being payable on execution of the agreement and the balance within two months from the date of execution of the agreement.
4. THAT on the 18th day of October 2022, Mr. Steven Binosebedde and I in the presence of our lawyers executed the agreement and I paid to him UGX 125,000,000 in cash being the first instalment of the purchase price for the land comprised in BLOCK 217 Plot 19 Busolosolo.
5. THAT I have been advised by my lawyer's which advise I believe to be true that upon execution of the agreement for the sale and transfer of the land comprised in Block 217Plot 19 Busolosolo, I obtained an equitable interest in the land which is a caveatable interest.
6. THAT I swear this affidavit as proof of the existence of an equitable interest in the land comprised in BLOCK217 Plot 19 Busolosolo acquiring to me. (Attached to this affidavit as a nexture "A" is the agreement for sale and transfer of the land).
7. THAT whatever is stated herein is true and correct to the best of my knowledge and belief.

SWORN at Mbarara by the said PANTALEO OFWONO on this 20th day of October 2022.

PANTALEO OFWONO

DEPONENT

Before me

COMMISSIONER FOR OATHS

Drawn and filed by:

SUI GENERIS,

P.O.BOX 7117, KAMPALA, UGANDA.

GIFTS IN LAND MATTERS

NORAH NASSOZI AND ANOTHER V GEORGE WILLIAM KALULE H.C.C.A 5/2012, Percy Night T, stated that, the law is that a gift *intervivos* takes effect when three situations are fulfilled that is

- a) There is an intention to give the gift

- b) The donor must deliver the property
- c) The donee must accept the gift. In determining whether a gift *intervivos* in respect of land has been created, court has to ascertain the intention of the donor and then examine the formal requirements of the method of disposition have been satisfied.

Mellows in the Law of Succession 5th edition Butterworth 1977 at page 9-10, states as follows regarding gifts *intervivos*: “ Various formalities are necessary for gift *intervivos*. Thus a gift of land must be by deed, a gift of land where the title is registered at the land registry must be effected by an instrument of transfer which is registered.

In Uganda, the law as embodied in section 91 of the registration of titles cap 240 , provides for the form of transfer. It is upon registration of the transfer that the interests of the registered proprietor pass on to the transferee. The law does not recognize a verbal gift of land and regarding registered land, a gift *intervivos* of the same is completed when the donor signs the transfer forms in favor of the donee.

A gift is a gratuitous grant or transfer of property. For a gift of “Kibanja” to be valid, there must be an intention to give followed by change in possession. The “Kibanja” owner can donate it or part of it as a gift to any person, subject to the consent of the Mailo owner. Just like acquisition by purchase, the recipient of a gift must make a search and ascertain the ownership of the Mailo land, must investigate ownership of the “Kibanja”, and must require that the “Kibanja” owner has obtained written consent of the Mailo owner. It is good practice for the donation to be confirmed in writing and witnessed.

If the gift is for only part of the “Kibanja”, the giver, called donor and the recipient of the gift, called donee, should demarcate the portion by planting boundary marks in the presence of neighbors, LC’s and other witnesses.

SUCCESSION TO RIGHTS OF LANDLORDS AND OCCUPANTS.

Succession and inheritance to property is governed by the Succession Act, Cap 268 of the laws of Uganda.

In Uganda, land and “Kibanja” are the commonest form of property to the majority of people, especially the common person. In most cultures in Uganda, any person who passes away when he or she is an adult and has property and or children must be succeeded to. For property must move to the successor and the children should have a “mother” or “father.”. It is always advisable for every person with property to make a will. A will is a document made by a person during his/her lifetime, directing how his or her estate (assets and liabilities which may include money, properties, shares, debts owing and debts due) should be dealt with after his or her death. A person who makes a will is called a testator. When a person dies when he or she made a will, the situation is called testate. Intestate refers to a situation where a person dies without making a will. When you write a will, you are making an important decision concerning the disposal of your assets. This does not only help your friends and family, but also helps to promote justice in society. A person

has a right to dispose of his or her assets to whoever he or she wishes and in whatever proportions he or she considers appropriate. Caution should however be taken to make provision for one's dependants to avoid the will being challenged in a court of law by any of them. The shares need not be equal but reasonable provision must be made for every dependant. Please note that household properties such as cups, jerry cans, beddings and other utensils are not property to be administered.

A format of a will is attached hereto below, For information and emphasis, it is important to know the particulars that should be in a will.

Contents of A Will

These are: D Full names of the testator, D The postal, physical and residential address, D Full names of his or her spouse, place and date of marriage, D Full name of children and their ages, D Full description of properties, for example land, "Kibanja", vehicle, shares in a company, insurance policies, D Distribution of properties, D Names of executors and their addresses, D Names of guardians of minor children, D Signature or thumb mark of the testator, D Date when the will is made, D At least two witnesses D A will should be written or typed. The testator should sign on all pages, After making a will, the testator can make a codicil. This is an instrument/ document, made after writing a will, explaining, altering or adding to a will. It is considered to be part of the will.

Under the law, a residential holding occupied by a spouse and children under the age of eighteen if male and twenty-one years if female and unmarried shall remain their residence and they are entitled to occupy it. A testator has an opportunity to give some of his property to persons of his or her choice in a will (bequeath). Such bequeath can even be to those who may not be legally entitled to it under intestacy for as long as he or she makes provision of all his or her dependant relatives. The dependant relatives in law are the spouse(s), children and the dependants.

Beneficiaries Spouse

Spouse means a husband or wife of any person. Succession law only recognizes valid marriages, and that is customary which is polygamous in nature (where a man is allowed more than one wife), licensed [under the Marriage Act and is monogamous (where man is allowed only one wife)], or Registrar of Marriages (also monogamous) or Muslim (maximum of four wives) or Hindu marriage.

Cohabitation is not recognised

Most people in Uganda stay in relationships which are not legally recognized, they are cohabiting. Recognised marriages comprise of only 22% of relationships while cohabitation comprise 65%. Parties in cohabitation relationships are not protected at the time of death. It is therefore important for such parties to formalise their relationships and enter into marriages.

Children

This includes biological and adopted children. The law of succession does not discriminate against any child, whether born by the legitimate wife or born outside marriage; whether girl or boy; whether dis-abled or not.

Dependants

Means a wife or husband, a son or daughter or a parent, brother or sister, a grandparent or grandchild or any other person who was wholly or substantially dependent on the deceased for provision of the ordinary necessities of life.

1. My husband has nally agreed to come to our home for introduction.
2. Now you will enjoy rights as those married in church or Islamic faith
3. Even those celebrated by registrar of marriages
4. You are lucky because you will be recognised as a wife who has rights to family property. Succession law recognises only valid marriages.

A customary heir is also among the beneficiaries to a deceased persons' estate. A customary heir can be a child, brother or sister, cousin, uncle or aunt. Roles of the Clan and Family.

Once somebody dies leaving property in Uganda, a report of death must be made to the Administrator General. If the person died in a hospital, a medical certificate of cause of death is always given by the hospital. Where a person dies elsewhere, the family members or closed relatives are obliged to report the death to the sub – county chief where a short death certificate is given.

If the deceased left a will, normally the will is read at or soon after burial. The deceased could have appointed an heir. If he or she did not, it is the role of the family and clan members to appoint an heir according to the norms and customs of the family.

Processes of Succession to Landlords Rights Testate Succession

When a person dies leaving a will, the practice is that the will may be read at the burial or at the funeral. If the will makes provision of how one wishes to be buried, the same is implemented.

On the demise of the testator, the executor(s) named in the will proceeds and obtains a death certificate from the hospital or from the Sub county chief. The Executor presents this to the Registrar of Births and Deaths in Uganda at the National Identification Registration Authority (NIRA) or their agents at the district or sub-county.

The executor(s) makes an application for probate to a competent court within the jurisdiction where the deceased, at the time of death had property. The petition is written in English language. The will is annexed to the petition. If the will was not written in English, a translation thereof is attached to the original will in local language. The petition should state the time of the testator's death and attach proof of death. The petition should state that; the writing or document annexed is the testator's last will, it was duly executed, the amount of assets likely to come to the petitioner's hands, and that the petitioner is the executor named in the will. After verifying the will, the court will make a grant of probate to the executor(s)

After grant of probate, the executor(s) apply to the registrar of titles to have his or her or their name(s) entered on the register. They accompany the application with a certified copy of the grant of probate, the passport photos and copies of the national identity card of the applicant, and the deceased's certificate of title. The application attracts a registration fee of ten thousand shillings only (10,000=) per title. After entering on the title, the executor(s) can then distribute it to the beneficiaries by way of transfers.

Intestate Succession

When a person dies without leaving a will, it is a legal requirement to report the death of any person who dies leaving property in Uganda to the Administrator General. The practice is that at or after the burial ceremony, the family and clan members meet and appoint an heir. The heir and/or close family member(s) proceeds and obtains a death certificate from the hospital or from the Sub county chief. The heir or close family members presents this to the Registrar of Births and Deaths in Uganda at the Uganda Registration Services Bureau (URSB) or their agents at the district or sub-county.

The heir or close family member(s) makes an application to the Administrator General for assistance and the following steps are then followed:

- i. Buying a file cover/death report form costing 2,000=at the cash office of the Administrator General
- ii. Filling the death report form with the required information and attaching a death certificate or a letter of the relevant local council 1 confirming the death of the deceased, the will of the deceased if any, a written application/petition/complaint regarding how you want to be assisted by the Office of the Administrator General.
- iii. Thereafter, a file is opened and allocated to a legal officer who initiates investigations.
- iv. The legal officer calls for a meeting of close relatives and friends. This meeting with the administrator general or its agents must take place despite the fact that the family could have conducted an earlier meeting.
- v. The legal officer also conducts a meeting of all beneficiaries' close relatives and friends. The administrator general may by letter request that this meeting be held at the Chief Administrative Officer(CAO) or the sub-county chief. Minutes of the meeting are extracted.
- vi. After the legal officer has satisfied himself or herself of the authenticity of the applicants and /or beneficiaries, and establish that they are in total agreement, the legal officer may recommend that a certificate of no objection to be issued to enable the person/ people they have agreed on to apply for letters of administration of the estate of the deceased. Alternatively, the Administrator general may apply for the letters of Administration in cases where there are some disagreements within the family. Application for letters of administration is done to court of competent with jurisdiction where the deceased had property.

After grant of the letters of administration, the administrator(s) apply to the registrar of titles to have his or her or their name(s) entered on the register. They accompany the application with a certified copy of the letters of administration, the passport photos and copies of the national identity card of the applicant, and the deceased's certificate of title. The application attracts a registration fee of ten thousand shillings only (10,000=) per title. After entering on the title, the administrator(s) can then distribute it to the beneficiaries

by way of transfers. The distribution may involve the administrators sub-dividing the land and separate titles are issued. This then enables each beneficiary to get a separate title.

Processes of Succession to Occupants Rights

The initial process of succession to a “Kibanja” is basically the same as for testate or intestate succession. If the “Kibanja” owner left a will, then his or her wishes are followed, provided the wishes do not disadvantage the women, children or persons with disabilities. If the “Kibanja” owner dies without making a will, then the family and clan members meet and appoint the heir according to the customs and culture of the deceased. An heir to “Kibanja” can only succeed to the “Kibanja” rights. Many times however, many of these cases do not end up in court since the land is not registered. Any person aggrieved by the distribution of the clan members can petition the office of the Administrator General for assistance.

MANAGING DISPUTES ON PRIVATE MAILO LAND

Introduction to various disputes

Land like any other property has historically been the source and subject of disputes and sometimes wars between nations, tribes, clans, families and individuals. In the case of mailo land, the disputes have multiplied because of the population pressure on the land, the increase in the value of land, the existence of multiple interests in land and the weaknesses in the legal system and dispute resolutions mechanisms. There are several disputes between mailo owners themselves; between mailo owners and occupants; between occupants themselves and disputes with Government. This chapter focusses on the common disputes on Mailo land and provides methods of resolving them.

Several disputes can exist between claimants to mailo land including:

- a. Disputes over boundaries between neighbouring mailo owners.
- b. Disputes over ownership over a mailo piece of land as a result of purchase or other transaction, including fraudulent transactions.
- c. Disputes over succession to mailo land between family members.

Disputes between mailo owner and occupant.

As between a mailo owner and an occupant the following disputes can arise:

- a. Whether the Claimant is actually a lawful or bonafide occupant.
- b. What is the exact size of land that the tenant is entitled to.
- c. What are the boundaries of the tenant’s “Kibanja”.
- d. Whether the tenant bought or sold his or her “Kibanja” with the mailo owner’s consent.

- e. Whether the tenant has been paying the annual nominal rent.
- f. Whether the mailo owner has refused to accept the nominal yearly ground rent.
- g. Whether the mailo owner has sold the mailo without giving opportunity to the tenant to purchase.
- h. Whether or not to compensate for the “Kibanja” on top of compensation for the developments on the “Kibanja”.

Disputes between occupants

As between persons who claim to be lawful or bonafide occupants, the disputes may be over:

- a. Who is the actual owner of the disputed “Kibanja”.
- b. Boundaries of the different bibanja holdings.
- c. Succession to a deceased’s “Kibanja” including the share of each beneficiary and exact location of the share. For example, the owner of a “Kibanja” dies and the heir (who is not a family member) claims to be owner of such “Kibanja” as against the claims of the children of the former owner
- d. Payments over a sold “Kibanja”.
- e. Rights of widows to their deceased husbands’ “Kibanja” as opposed to claims of other family members like the heir and in-laws.

Outline of various Dispute Resolution Mechanisms

In case of the various disputes on mailo land, the parties have to resort to the various dispute resolution mechanisms if they are to avoid violent confrontations. The parties may resort to Courts of law, administrative mechanisms or to alternative dispute resolution mechanisms. Unless there are mechanisms for peacefully resolving disputes, the cases of violent evicts will increase leading to destruction of property and in some instances injury to persons and death.

PROTECTING RIGHTS OF WOMEN AND OTHER MARGINALISED GROUPS ON MAILO LAND

Constitutional Protection of Marginalized groups.

Under article 21(1) of the Constitution of the Republic of Uganda, “all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law”. Accordingly, women (especially the rural poor and widows), children (particularly the girl child), and the disabled should be accorded equal rights to mailo land or the bibanja holdings.

Under article 21(2), the Constitution guarantees that there is no discrimination on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religious, social or economic standing, political opinion or

disability. Given this protection, nobody should be treated with discrimination as regards his or her rights to mailo land or a “Kibanja” simply because of his or her gender, age, social standing or any other disability.

As between men and women, article 31(1)(a) of the Constitution guarantees them equal rights at and in marriage, during marriage and at its dissolution. In view of this article, women should not lose rights to mailo land or a “Kibanja” merely because of loss of their husbands or dissolution of the marriage. They should be accorded full and equal dignity of the person with men (Article 33).

Articles 33, 34 and 35 of the Constitution provides for protection of women, children and persons with disabilities. Accordingly, women, children/orphans and other person with disabilities have rights to mailo land or to a “Kibanja”, for example in cases of purchase and inheritance should be protected by all concerned persons.

The Constitution also protects minorities so that they too participate in decision making and their views are heard (Article 36). With regard to mailo land and “Kibanja” holdings, minority ethnic groups may be very vulnerable and subject to oppression by members of the ethnic majority in an area. This should be avoided. For example, an area could be composed of majority Baganda who may attempt to grab the land of the minority Bakonzho.

State actors like LC’s, RDC’s, Police, Land Committees, Land Boards, CAO’s and others should ensure that marginalized people, for example persons with disabilities just like women, children and minorities are given special care and protection as required by the Constitution. Protection under the Land Act.

The Land Act has specific provisions for the protection of these vulnerable groups. Section 27 provides for rights of women, children and persons with a disability regarding customary land. It refers to articles 33,34 and 35 of the Constitution. Under this section, any decision which denies women, children and person with disabilities ownership, occupation or use of land or imposes conditions which violates the three quoted articles of the constitution is illegal and null and void.

Section 40 of the land act cap 236, provides for security of occupancy of a spouse (a husband or wife) on family land. This means the right for a husband or wife a right to have access and live on family land. Such a husband or wife must be married in a ceremony recognized by the law. The issues of marriage and their validity are discussed in chapter five above.

Spouses must give consent to transactions regarding family land under section 40 of the land act cap 236. These include sale, exchange, pledge, mortgage or lease family land. This means that if the land or “Kibanja” is registered in the names of the husband, as is family land, then any transaction of sale, exchange, pledge, mortgage of lease must be with the consent of the wife. If registered in the names of the wife, then consent of the husband must be got.

In all their processes under the Land Act, LC’s, Committee Members, the Land Boards and other actors should ensure that the rights of the marginalized groups including women, children and the disabled are

specifically taken care of and are protected. In the course of resolution of disputes, rights of women and other vulnerable groups may be ignored. For example, where there is a dispute over ownership of a “Kibanja” where the family stays and cultivates, the husband may agree to a settlement under which he is paid money and agrees to vacate the land. He may then use some of the money to “settle” the family in a rented room (muzigo). He then uses the rest of the money for his own needs leaving the wife and the children abandoned. Accordingly, care should be taken to ensure that in any settlement, the interests of the vulnerable persons are factored into.

Where the vulnerable persons are direct parties to a dispute, there must be an effort to ensure that the dispute resolution mechanism employed offers them an opportunity to be heard and for their interests to be fairly determined upon. In negotiation, mediation or conciliation, a friend of the vulnerable woman or child or person with a disability may be appointed to assist such vulnerable person in the negotiation or mediation process.

There must be effort to sensitize all persons involved in the dispute resolution efforts to appreciate the need to take special care to protect the rights of vulnerable people.

● **Land Ownership in Uganda**

- Article 237 of the Constitution provides that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided in the constitution. This is also provided for under section 2 of the Land Act.
- Article 237(2)(c) of the Constitution provides that non-citizens may acquire leases in land in accordance with the laws prescribed by Parliament, and the laws so prescribed shall define a non-citizen for purposes of this paragraph. Section 40(4) of the Land Act provides that “subject to other provisions of this section, a non-citizen shall not acquire or hold mailo or freehold land”. In the case of a company, the company should satisfy the requirements of a citizen company under the Land Act, specifically under section 40(7).
- Non-citizens can only acquire leases on land for a maximum period of 99 years until renewed under section 40(3) of the Land Act.

● **Meaning of a Non-Citizen Company**

- Section 40(7) of the Land Act defines a non-Citizen as:
 - (a) A person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship Act;
 - (b) In the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens;

- (c) In the case of bodies where shares are not applicable, where the body's decision-making lies with noncitizens;
- (d) A company in which the shares are held in trust for noncitizens;
- (e) A company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens.
- Therefore, any company that falls within the ambit of (b) and (e) of section 40(7) is deemed to be a non-citizen company and thus cannot own mailo or freehold land. However, it is pertinent to note that in *Biyinzika Enterprises Ltd* case, Court held that the 1st respondent was a non-citizen company from the very beginning because its articles did not contain a provision restricting the transfer of shares to non-citizens and, under Article 237(1) of the Constitution and section 40(4) of the Land Act, it was immaterial the controlling interest was with Ugandans.
- **Consequences of illegal land ownership to security interests**
- Where a non-citizen company purchased and registered a tenure other than lease-hold, in the *Biyinzika Enterprises Ltd* case, the Court held that such transaction was illegal hence null and void. Therefore, it followed that the 1st Respondent in the case could not recover the land which had been fraudulently sold because their purchase of such land was void ab initio. It also follows that all other transactions whose strength/security is the illegal title, for instance, mortgages are void.
- In *Formula Feeds & 3 Others v KCB Bank Uganda Limited*, CA No76/2016, the appellants entered a credit facility with the Respondent Bank secured with mailo titles registered in names on non-citizens who were Kenyan nationals. Upholding the judgment of the trial court, the Court of Appeal stated that:
- "We agree with the finding of the trial Judge. The only challenge remains the mortgage which was illegal because the underlying Mailo land Titles are held in the names of non-Ugandans which is prohibited by the law. Such a non-Ugandan can only hold a lease under the said titles. So a lease not MAILO TITLE should have been issued to the first Appellant since it paid valuable consideration for land. This would avoid an absurdity in this transaction. This is clearly an error /illegality made at the time of registration. There can therefore be no enforcement under the mortgage as it stands ..."
- The court added a recommendation of rectification of the certificates of title to cater for the Respondents' interest in the said property.
- However, KCB Bank Uganda Limited filed HCEMA No. 390/2016 for execution of the decree in High Court (Commercial Division) in HCSS No. 289/2014 whereupon the said application was

only allowed in part on condition that the 1st Respondent (KCB) disposes off only part of the suit land to realize the equivalent of UGX. 2,159,000,000/= and the Court further ordered that no execution should be made beyond the stated sum.

- When the appeal of this decision failed in CA No 76/2016, KCB Bank relied on the High Court decision and, through a bailiff in an execution process, sold the said properties to the 3rd Respondent (Southgate Properties (U) Limited) purportedly to fulfil a decree against the Applicants.
- In a subsequent application *Formula Feeds Limited & Another v KCB Bank Uganda Limited & 2 Others*, Civil Misc. App In No 208/2020 the Applicants prayed for orders that 1st and 2nd Respondents' purported sale of the 1st Applicant's lands to the 3rd Respondent was illegal and that the same ought to be set aside. The Court held that:
 - "It cannot therefore be argued that the Applicants lost the appeal and therefore execution by attaching the questioned suit land was lawful. Both parties to this case did not consider this important issue of illegality yet they all concede that the mortgages and debenture are unenforceable.
 - "The finding of the Court of Appeal shows that the Applicants in this case are indebted but the debt cannot be realized by attachment and sale of the illegally obtained securities which are the subject of this application ... Both the High Court and the Appellate Court, found that the executed mortgages were null and void ab initio having accrued from an unlawful/illegal registration right from the certificates of title and could not therefore be the basis of a successful execution in the current state."
- It is therefore surprising that despite court's outright decline to order any enforcement accruing from the void certificates of title, Defendant's counsel went ahead to initiate execution proceedings vide EMA No.390 of 2016 wherein they sought to attach and sale the properties vested in the void certificates of title.
- The Court therefore held the registrar of court erred in law and in fact when he issued execution of attachment and sale of the securities whose registration was illegal and mortgages over them declared null.
- Further, the Court gave orders that the execution of the decree was illegal and set it aside and made orders for rectification. The Court derived guidance from the judgment of the Court of Appeal which recommended the remedy of rectification of the certificates of title, and held that:
 - The 3rd Respondent is directed to deliver up all the certificates of title from the impugned sale to this Court for safe custody and submission to the Registrar of Titles to cancel the illegal registration of the 3rd Respondent's entry on the certificate of titles and Register Book and return the same to the Applicants for rectification as their current registration as Mailo Owners is illegal under the law.

- **PLAUSIBLE PROGRESS**

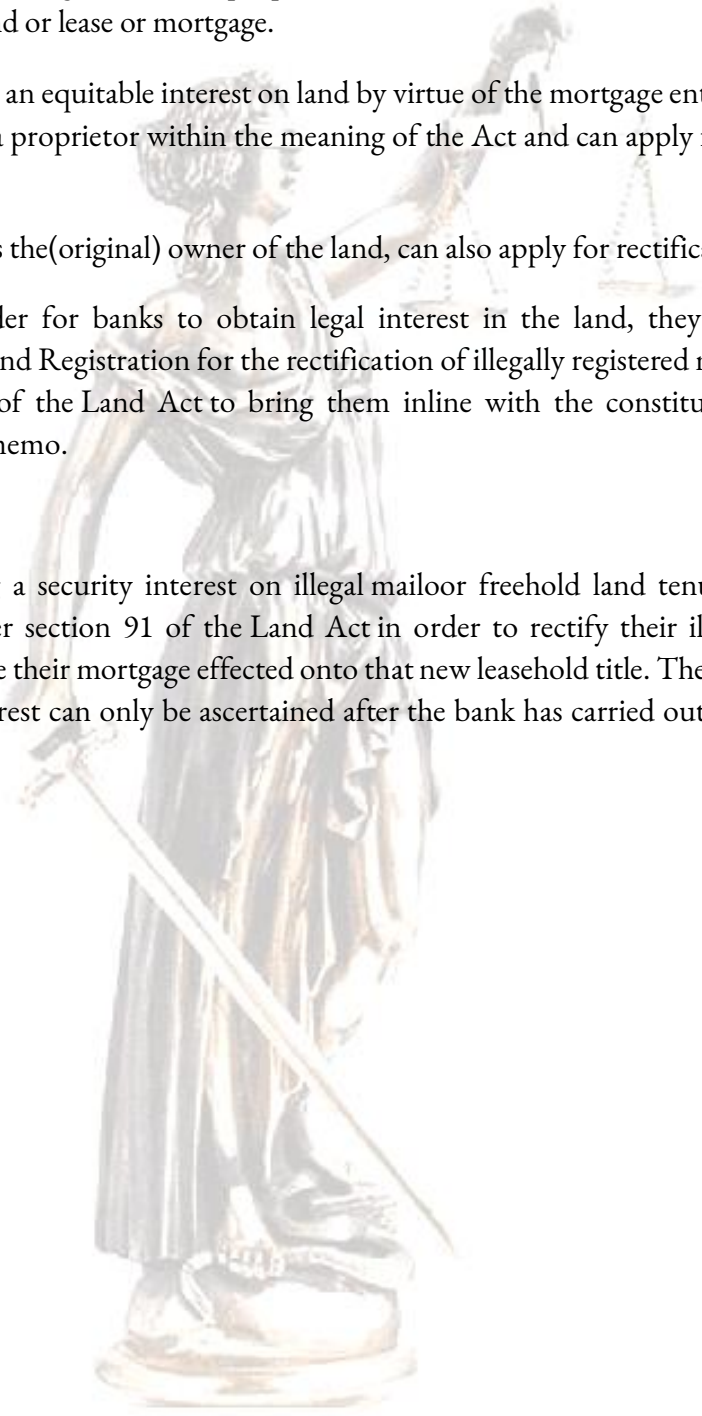
- **(i) Revision of the bank's security interests**

- Several companies have been non-compliant with the requirement to have a clause in their articles restricting transfer of shares to non-Ugandans and in turn most of these companies own mailo and freehold titles illegally.
- It is therefore upon the bank to conduct searches on the companies that they have entered credit facilities with to ensure that their titles are legally owned by confirming that the companies are indeed citizen companies within the meaning of section 40(7) of the Land Act.

- **(ii) Applying for rectification**

- Where the bank discovers that the titles are registered illegally on the basis of the companies being non-citizen companies, the bank's remedy having obtained an equitable interest on illegally owned tenure, is to apply for rectification before the Commissioner Land Registration, to invoke the registrar's power to call for the surrender of the company's illegal interest and obtain a leasehold interest.
- In *Formula Feeds & 3 Others v KCB Bank Uganda Limited*, CACA No0076/2016, the Court of Appeal, while maintaining the illegality and unenforceability of the mortgage because the Appellants owned a mailo interest and yet they were non-citizens, observed that though the mortgage could not be enforced because of the illegality, the remedy available to the Appellants was to invoke the special powers of the Commissioner Land Registration under section 91 of the Land Act and apply for the rectification of their title on grounds that it was issued in error and the rectification would be by way of obtaining a leasehold.
- This recommendation was later affected in **FORMULA FEEDS LIMITED & ANOTHER V KCB BANK UGANDA LIMITED & 2 OTHERS** (above), in which Court directed delivery of "the certificates of title from the impugned sale" to the Registrar of Titles to "cancel the illegal registration ... [and] entry on the certificate of titles and Register Book and return the same to the Applicants for rectification" given their illegal registration as mailo owners.
- In terms of who can apply for rectification, this is governed by the Registration of Titles Act, Cap 230. Section 156 of the Act provides:
- "A proprietor may apply to have his or her certificate of title amended in any case in which the boundaries, area or position of the land described in it differ from the boundaries, area or position of the land actually and bona fide occupied by him or her and purporting to be so occupied under the title in respect of which the certificate of title was issued, or **in any case in which the description in the certificate of title is erroneous or imperfect on the face of it.**"

- Section 1(l) of the Act defines proprietor as:
- “proprietor” means the owner whether in possession, remainder, reversion or otherwise of land or of a lease or **mortgage** whose name appears or is entered as the proprietor of that land or lease or **mortgage** in the Register Book; “proprietor” also includes the donee of a power to appoint or dispose of that land or lease or mortgage.
- Therefore, having an equitable interest on land by virtue of the mortgage entered on the certificate of title, a Bank is a proprietor within the meaning of the Act and can apply for the rectification of the titles.
- The mortgagor, as the(original) owner of the land, can also apply for rectification.
- Therefore, in order for banks to obtain legal interest in the land, they should apply to the Commissioner Land Registration for the rectification of illegally registered mailo or freehold titles under section91 of the Land Act to bring them inline with the constitution and land law as discussed in this memo.
-
- Any bank having a security interest on illegal mailoor freehold land tenures should apply for rectification under section 91 of the Land Act in order to rectify their illegal registration into leasehold and have their mortgage effected onto that new leasehold title. The illegality or otherwise of the bank’s interest can only be ascertained after the bank has carried out a thorough securities review.





LAND TENURE SYSTEMS

LAND TENURE SYSTEMS

Article 26(1) of the 1995 constitution of Uganda as amended, every person has a right to own property either individually or in association with others.

Under Article 237(3) of the 1995 constitution of Uganda as amended and Section 2 of the Land Act cap 236, there are four types of land tenure in Uganda.

1. Freehold tenure
2. Leasehold tenure
3. Mailo tenure
4. Customary tenure

Freehold

Free hold tenure system is the way of owning land in perpetuity or time without end and was setup between the kingdoms and the British Government. Grants of land in free hold were made by the Crown and later by Uganda Land Commission, the grantee of certificate of title. Most of this land was issued to church missionaries and academic institutions and some individuals. Free hold is the premier mode of land ownership under English Law.

Section 2 of the Land Act cap 236 provides for the different forms of land tenure”

Free hold **Section 3(2) of the Land Act cap 236** defines free hold as a tenure that denies its legality from the constitution and its incidents from written law. Incidents are rights that accrue to a holder of freehold land. The incidental forms of tenure are perpetual existence and full ownership.

In the case of **JUSTICE ANUP SINGH CHOUDRY V WAKISO DISTRICT LAND BOARD & 2 OTHERS (MISCELLANEOUS CAUSE 129 OF 2019) [2019] UGHCCD 223 (20 DECEMBER**

2019), Where it was held that the respondent was compelled to convert customary tenure into free hold tenure system of land holding as applied for by the applicant and issue a free hold title thereto.

Section 10 of the land act cap 236 , a person who wishes to be granted a freehold shall apply in the prescribed form to the board.

Section 10(2) of the land act cap 236, the application shall be lodged with the committee.

Section 11(1), upon receipt of an application made under section 10 the committee shall exercise in respect to the application all its functions under section 5.

Mailo Tenure.

The Mail Land Tenure System is where land is registered and owned in eanternity or perpetuity with its holder having a land title for it. This land tenure in Uganda has its basis from the allocation of land pursuant to the 1900 Uganda Agreement; subject to legislative qualifications.its occupancy is guided by the provisions of the Land Act. Mailo Land tenure is mainly in Buganda, with some few portions of it parts of Ankole, tooro sub-regions and Bunyoro among others.

Section 3(4) of the Land Act cap 236 , describe Mailo tenure as a form of tenure which derives its legality from the construction and its incidents from written law.Under **Section 3(4)(c)** enables the holder, subject to the customary and statutory rights of those persons lawful or bona fide in occupation of the land at the time that the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held of a freehold title set out in **subsections (2) and (3)** and subject to the same possibility of conditions, restrictions and limitations, positive or negative in their application, as are referred to in those subsections.

RIGHTS OF MAILO OWNER

A registered owner has the following rights:

- a. He or she owns the land forever.
- b. Can lease, mortgage, pledge or sell the land.
- c. Can sub-divide the land for purpose of sale or any other lawful purpose.
- d. May pass on the land to any person by will, gift or sale.
- e. A right to yearly payment of rent from tenant(s) who are legally on his/her land.
- f. A right to demand for the rent from the tenant by occupancy where there is delay exceeding two years or more in payment.
- g. A right to apply to court and get an order of eviction where the tenant is in breach of payment of the yearly rent.
- h. A right of first option to purchase the interest of a tenant by occupancy.

Duties and Obligations of Mailo Owner

A registered owner has an obligation to take all steps necessary to know and document the tenants on his/her land. Prior to the promulgation of the 1975 Land Reform Decree, mailo owners, particularly having bug chunks of land, had agents or caretakers (omusigire) who used to help them in this.

A registered owner has a duty to receive the yearly rent from the tenant and give him/her a receipt of payment. A registered owner has a duty to leave the tenant peacefully enjoy his/her occupancy provided the tenant meets all his/her obligations. This means that the registered owner should allow the tenant by occupancy peace and time to live on the “Kibanja”, build a home, cultivate crops and trees, grow crops, hold ceremonies in his or her home which include marriage and funerals.

Customary Tenure

Section 3(1) of the Land Act cap 236 defines customary land tenure as a system of land ownership governed and regulated by customary principles and usually some timed by customary authority. The customs must however not be repugnant to nature justice equity and good conscience in contravention with any written law. **Section 27 of the Land Act cap 236**, expressly venders void any customary rule of practice that denies women, children and disabled persons access to ownership use or occupation of land.

YOWERI BAMUHIGA AND 5 ORS V CHRISTINE MUGARA C.S 78/2006, Owiny Dollo explained that customary tenure is a matter of evidence and is by no means uniform. Each community has its mode of customary land claim of ownership.

Section 6 of the land act cap 236 provides for the procedure for application of certificate of customary ownership, as such application is made to the land committee.

Under section 8(1), a certificate of customary ownership shall be conclusive evidence of the customary rights and interests specified in it.

Under section 8(2), the certificate confers on the holder right subject to conditions and limitations in the certificate to lease, mortgage it, subdivide, create alter or discharge any easement, transfer, etc.

CONVERSION OF CUSTOMARY TENURE TO FREEHOLD.

Article 327(4)(b) of the 1995 constitution of Uganda as amended, land under customary tenure maybe converted to freehold land ownership by registration.

Section 9(1) of the land act cap 236, any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure in accordance with the act.

Section 9(3), an application for conversion from customary to freehold shall be in the prescribed form and shall be submitted together with the prescribed fee to the committee of the area in which the land, the subject of the application is situated.

Section 9(4), on receipt of the report and recommendations of the committee, the board shall cause the land in respect of which the application is made to be surveyed before approving the application.

Section 9(5) when the board approves an application for conversion, the board may attach conditions to the conversion.

LEASEHOLD TENURE.

Is a form of tenure where by one party grants to another a right to exclusive possession of land for a specified period usually, though not necessarily in return for a periodic payment of money called rent.

Section 3(5) of the land Act Leasehold tenure is a form of tenure:

- (a) Created either by contract or by operation of law;
- (b) The terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between the parties;
- (c) under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending;
- (d) usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for services or may be free of any required return;
- (e) under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of a freehold owner as are appropriate and possible given the specific nature of a leasehold tenure.

A lease can be granted for any duration except in case of a lease to a non-Ugandan citizen. **Section 41 of the land act cap 236 provides for acquisition of land by non-citizens. Section 41(3) of the land Act** limits the maximum period for which a lease can be granted to a person who is not a citizen of Uganda to 99years.

IN THE CASE OF BAGULA JOSEPH, KATO ROBERT AND NALONGO KASULE V LUBEGA GEORGE WILLIAM CIVIL APPEAL NO.139 OF 2014, ARISING FROM HIGHCOURT CIVL APPEAL NO.31 OF 2008, it was led that for a party to claim an interest in land under a leasehold tenure, which is premised ona contractual arrangement, that party must provide evidence of how they acquired that interest.

CONVERSION OF LAND FROM LEASEHOLD TO FREEHOLD.

Article 237 (5) of the 1995 constitution of Uganda as amended, any lease which was granted to a Ugandan citizen out of public land may be converted into freehold in accordance with a law which shall be made by parliament.

Under Section 28(1) of the Land Act CAP 236, any lease granted to a Ugandan citizen out of public land before 1998 may be converted into freehold if the board is satisfied that: -

- a) The leasehold is authentic and genuine.
- b) That there were no customary tenants on the land at the time of acquisition of the lease
- c) That if there were any customary tenants at the time of acquisition whose tenancy was disclosed, those tenants are duly compensated.
- d) All development conditions and covenants have been complied with.
- e) The conversion is limited to 100 hectares and an area in excess will only be converted if the board has verified and is satisfied that it is desirable in the public interest that it should be converted.

Procedure

- (1) The lease holder fills in form 5 in the first schedule to the land Regulation 2004.
- (2) The form must be commissioned by a commissioner of oaths.
- (3) The form is then delivered to the secretary of the district land board who forwards it to the senior land officer for perusal.
- (4) The senior land officer forwards the same to the board which analyses the application as guided by **Section 28(1) of the Land Act**.
- (5) Where the board grants the application, a minute is issued to it and endorsed on it and the same forwarded to the land Register office to effect the conversion.

Fees payable.

Rural area- UGX 40,000.

Urban area- UGX 100,000.

Post 1998

- (1) Execution of surrender deed between the lessee and the district land board.

- (2) The lessee on execution of the surrender deed hands over the duplicate certificate of the title of the lease.
- (3) He or she then fills in forms 10,19& 23 of the land Regulations 2004.
- (4) The person obtains the consent of the area land committee,
- (5) Proceeds to obtain the approval of the physical planning committees.
- (6) The forms are then forwarded to the secretary of the district land board who forwards them to the board.
- (7) The board approves and grants a minute number and forwards the same to the land office.

Fees payable.

Registration fees – UGX 10,000

Assurance – UGX 20,000

Issuance – UGX 20,000





LAND EVICTIONS

LAND EVICTIONS

The 1995 Constitution vests the land in the citizens of Uganda to hold under four tenure systems namely; Mailo, Freehold, Leasehold and Customary. The registered person or customary owner of that land which they hold is known as the Landlord. On registered land, there may be other people occupying and utilizing the land other than the Landlord. These people are known as Tenants. They too, are protected by the law from being illegally evicted.

WHAT CONSTITUTES AN ILLEGAL LAND EVICTION?

Illegal land eviction is taken seriously in Uganda. Community leaders need to know what land constitutes an illegal eviction. An illegal land eviction is any forcible removal of a tenant, directly or indirectly, without prior court approval. Illegal eviction involves the threat or use of violence; a landlord's attempt to make a land unlivable in the hope that the tenants will leave. No matter what the issue is between the tenant and landlord, as long as the Landlord does not obtain a court order, then his/her actions constitute an illegal land eviction.

WHAT THE LAND LAW SAYS REGARDING EVICTIONS

Annual nominal ground rent will be paid to the land owner. The amount is no longer 1,000/= as most people still believe, but the amount is determined by the District Land Boards (DLBs). If DLBs delay or fail to determine the nominal ground rent, then the Minister responsible for Lands may determine the rent. In November, 2011 the Minister responsible for Lands approved rent for all Districts in the Country. (see the statutory instrument appended) 2. Nonpayment of annual nominal ground rent is the only ground for evicting tenants.

Landlords have to serve eviction notices to tenants who default on payment after a period of one year to show cause why the tenancy should not be terminated. If the tenant disputes the notice, he or she may refer the matter to the court within a period of six months after the date of service of the notice by the registered owner. Where the tenant does not challenge the notice within the prescribed period or pay the outstanding rent within a period of one year from the date of the notice, the registered owner applies to Court for an order to terminate the tenancy for non-payment of rent.

When Courts of law are making eviction orders, they shall give the date, being not less than six months after the date of the order, by which the person to be evicted shall leave the land. The Courts may also grant any other order on expenses, damages, compensation or any other matter as they deem fit.

A person who attempts to evict, evicts or participates in the eviction of a lawful or bonafide occupant from registered land without an order of eviction commits an offence and is liable on conviction to imprisonment not exceeding seven years.

Any tenant who sells his/her “Kibanja” without giving the first option of buying the “Kibanja” and taking the assignment of the tenancy to the land owner commits an offence and will be liable to imprisonment not exceeding 4 years or a fine of UShs.1,920,000/= or both, and will forfeit his/her rights to the land owner. Where the registered owner gives consent to the tenant by occupancy to sell his or her rights of occupancy to a third party, the tenant by occupancy shall introduce the third party to the landlord.

A change in ownership of title effected by the land owner through sale, donation or as a result of succession does not in any way affect the existing lawful interests of the lawful or bonafide occupants and the new land owner is obliged to respect the existing interests he/she finds on the land. This means that the registered land owner is free to sell his/her land with or without offering the first option to the tenant by occupancy. But the new Landlord cannot evict the existing tenants he/she finds on the land.

District Land Boards have no powers to allocate any land which is owned by any person or authority which is either under Customary, freehold or Mailo. District Land Boards which will allocate land, which is owned by any person or authority, under any of the four tenure systems, in contravention of their function which requires them to hold and allocate land in the district which is not owned by any person or authority, will have such transactions cancelled.

THE RIGHTS AND OBLIGATIONS OF LAND OWNERS

- A Customary, Mailo and Freehold proprietor owns the land forever. The Leasehold proprietor owns the land for a given period of time under terms and conditions stipulated in the lease agreement;
- May sub-lease, mortgage, pledge or sell the land; • May sub-divide the land for purpose of sale or any other lawful purpose;
- May pass on the land to anybody by will or gift;
- Is entitled to be given the first option to buy out the interests from tenants by occupancy who may be on that land and willing to sell; • Must recognize the rights of the lawful and the bonafide occupants if they exist on his/ her land and their developments on the land;
- Must recognize the rights of the successors of the Lawful and Bonafide Occupants; and • Uses land in accordance with other policies and laws governing land use.

THE RIGHTS AND OBLIGATIONS OF TENANTS

- Enjoys security of occupancy on the land he/she occupies;
- Must pay annual nominal ground rent to the Land owner;
- May acquire a certificate of occupancy by applying through the Land owner;
- With permission of the Land owner, a tenant may sublet and /or subdivide the kibanja;
- May assign, pledge and create 3rd party rights in the land with consent of the Land owner; and
- May end the occupancy and return the Kibanja to the Land owner.

The law has provided a social protection intervention that seeks to enhance the security of occupancy of tenants on registered land. It also protects customary land owners from unlawful evictions, hence eradicating untold suffering and landlessness. What should law enforcement agencies do to protect lawful/bonafide tenants? They should: 1. Establish who the registered owner is; the block and plot number; how many occupants are on the land; what their status is - whether they are lawful or bonafide occupants?

- Establish whether proper valuation assessments were done and whether a valuation report showing computed compensations was made for both the properties and the Kibanja.
- Establish if payments have been made to the occupants. In case the purchaser wants the occupants to move immediately, establish if the occupants have been paid a realistic disturbance fee to facilitate their moving away. If not, request for documentary evidence showing the grace period (six months) given to the occupants to move away, after full payments have been effected, should be made.
- Ensure that before any demolitions take place, compensations must have been made.
- Ensure that adequate notice must be given to the occupants to relocate.
- Where possible tenants should be given a chance to acquire the pieces of land. In case occupants buy themselves out, establish whether transfer forms for those who have paid are signed and transactions effected and occupants receive their land titles.
- The property should not be damaged before compensation and/or disturbance fee is paid to the tenants;
- Compensation must be adequate, based on comprehensive valuation assessments and not just cover-ups.

- Communication and interaction between the registered 9 owner and the occupants is important and should be as open and frequent as possible in the presence of the LCs members and other recognized stakeholders

DEALINGS IN LAND AND DUE DILIGENCE.

In the case of NASIMIYU SARAH AND NALYANYA PROTAS VERSUIS WADIBO JOSEPH AND WADIBO BARASA, CIVL APPEAL NO.005 OF 2021, ARISING OUT OF BULAMBULI CIVIL SUIT NO.23 OF 2017, it was held that customary land holding can be substantiated through credible oral testimonies from individuals with firsthand knowledge of the lands historical occupancy and utilization.

To lawfully purchase land and acquire a good title to the same, the following will be taken into consideration.

Regulation 2(2) Advocates professional conduct regulations S.I 295/2, is to the effect that an advocate shall exercise diligence at all times when handling a clients matter

In miscellaneous application no.0156 of 2023, arising fom civil suit no. 016 of 2019, opiyo Nicholas and Charles bob odong versus ayugi norah, apiyo Margaret and okanga moses; Advocates have a professional duty to provide competent advice and representation to their clients. Failure to do so, resulting in adverse consequences for the client, may lead to legal recourse against the advocate for professional negligence or misconduct

Reg. 12 provides that an advocate shall advise his or her clients in their best interest and no advocate shall knowing or recklessly encourage a clienient toe nter into a matter or othger transcation in respect of which a reasonable advocate would advise that to do so wouldnot be in the best interest of the client.

1. Apply for a search at the land registry.

Section 185(1) of the registration of titles act cap 240, a person may, on payment of the fee for the time being payable in that behalf, inspect the Register Book during the hours and upon the days of business. GIBBS V MESSARS (1891) AC249, held that a search is to be carried out at the land office upon application and payment of prescribed fees.

Section 185(2) of the RTA cap 240, The Registrar, on payment of the fee for the time being payable for a certified copy, shall furnish to any person applying for it a certified copy of any certificate of title, caveat or registered instrument affecting land under the operation of this Act; and every such certified copy

signed by the Registrar and authenticated by the seal of the office of titles shall be received in evidence in any court or before any person having by law or by consent of the parties authority to receive evidence as prima facie proof of the original certificate of title, caveat or instrument and of all the matters contained or recited in or endorsed thereon respectively.

FATHER NASENSION BEGUMISA AND ANOTHER V ERICK TIBEBAGA S.C.C.A NO.17/2002, the purchaser must carry all due diligence by cross checking the title at hand and examine

features of a valid certificate of title, confirms existence of land, actual size, current and previous owners, registered incumbrances, inspect seal for authenticity, require vendor to provide his or her identification documents and these must correspond with details on the certificate, any incumbrance on the land should be communicated to client and vendor to be dealt with.

2. Physical visit to the land.

Having obtained the search results, the purchaser's lawyer should proceed and conduct a physical search on the land. This is to ascertain the existence or not of any encumbrances or interests not reflected on the register. Whereas under s.59 of the RTA cap 240, title is conclusive proof of ownership and a reflection of the interest on the land, courts have held that there is a requirement for the purchaser to conduct a physical search. In **UGANDA POSTS AND TELECOMMUNICATION V KITUMBA LUTAAYA SCCA 36/1995**, the court held that mere search on the register is not enough, the person ought to inquire beyond the register.

Lands are not vegetables that are bought from unknown sellers. They are very valuable properties and buyers are expected to make thorough investigations not only of the land but also of the seller before purchase is concluded as per the case of **SIR JOHN BAGEIRE V AUSSI MATOVU C.A.C.A 7/1996**

Therefore, it is important to carry out a physical search and in the case of Listed what should be done during a physical search and this entails talking to the local leaders to establish whether the vendor is the actual owner of the land and whether any other person has an interest in the land.

3. Land Survey and Boundary Opening.

Having conducted a physical search and established the interests and ownership of the land, it is imperative that the boundaries are opened up. This is intended to ascertain whether the land actually is of the measure reflected on the title or states by the vendor. It is also important in carrying up with a deed plan for the parcel. A surveyor must be employed to open the boundaries of the land.

Check with the urban planning authority to ascertain what use the land is in and if it is not a road reserve and to ascertain the area development plan of the area prepared by the District Urban planning authority. Where the land is in wetland, the consent of NEMA must be sought for the intended activity and only upon its grant should the purchaser buy otherwise he/she may not be able to use land.

4. Obtain Spousal Consent

Section 39 of the land act cap 236, provides for security of occupancy of a spouse. Section 40 of the land act cap 236, provides for restrictions on family land.

ALICE OKIROR AND ANOTHER V GLOBAL CAPITAL SAVE 2004 AND BEN KAVUYA H.C.C.S 149/2010, on rationale for spousal consent and voidability of transaction where it is not obtained.

INID TUMWEBAZE V MPWEIRE AND ANOTHER H.C.C.A 0039/2010, Justice Bashaija stated that transactions on family land require spousal consent and the provisions for the requirement are mandatory and cannot be circumvented.

5. Dealing with tenants in occupancy.

Section 31(1) of the land act cap 236, a tenant by occupancy on registered land shall enjoy security of occupancy on the land.

Article 26(2) of the 1995 constitution of Uganda as amended, a person shall be compulsorily deprived of property or any interest in or right over property except with prior prompt compensation.

Section 36(1) of the RTA CAP 240, the owner of land who wishes to sell the reversionary interest in land shall give the first option of buying that interest to the tenant in occupancy.

UPTC V KITUMBA LUTAAYA S.C.C.A 36/1995, court observed that if a person purchases an estate which he knows to be in occupation of another, then the vendor, he is bound by all the equities which parties in such occupation may have.

6. Execution of an agreement for sale.

It is not a mandatory requirement under the RTA. It is governed by the contracts act cap 284. It must be signed by the parties and witnessed by at least a witness. Where the parties to the agreement or any of them is an illiterate, it is mandatory under the illiterate protection act to include a certificate of translation certifying that the contents were read and translated to the parties before they appended their respective signatures thereto.

Nabiito Nakato v Lukanga (Civil Appeal 618 of 2018) The court observed that although the law does not explicitly require a **certificate of translation**, it is implied that in situations where a document is prepared for an illiterate person in a foreign language, such a certificate should be included to confirm that the individual understands the content prior to signing.

7. Executing a transfer instrument.

An interest in registered land can only pass upon execution and registration of a proper instrument. Section 54 of the RTA, no instrument until registered in a manner provided by the act shall be effectual to pass any estate or interest in any land. **KRISTOPHA ZIMBE V TOKANA KARRANZA (1954) ULR 68**, it was held that title does not pass until a transfer is registered under the RTA. That no man can become the owner of land until statutory transfer of land to him has been registered. **LUMU V LINDO MUSOKE [1974] HCB 19**, Musoke J observed that a mere agreement for sale of land did not transfer any interest in the disputed land to the defendant. It merely gave him a contractual right entitling him to bring an action against the plaintiff for damages or specific performance if the plaintiff refused to execute in his favour the statutory transfer.

MUSTAFA NDIGEJERAWA V KIZITO AND KUBULWAMWANA (1953) ULR 31, Ainley j, stated that an instrument cannot be registered unless it fulfils the requirements and such instrument I not effectual to transfer interest in land unless itrs registered

Section 131 of the RTA CAP 240, instruments under the act shall be held to be duly executed when they are signed by any person and attested by one witness.

Section 132 of the RTA, the instrument must be signed in latin character. In **FREDRICK ZAABWE v ORIENT BANK AND 5 ORS H.C.C.S No.175/1999** ; the court held that the rationale behind **Section 148 (NOW SECTION 132)** requiring the signature to be in Latin character is to make it clear to everybody receiving that document as to who signatory is so that it can also be ascertained whether he/she had the authority or capacity or capacity to SPM.

8. Valuation and payment of stamp duty.

Valuation is for purposes of stamp duty and its done by the chief governemt valuer who certifies the amount payable by the transfer and the value is subjected to 1.5% of the whole consideration.

9. Filing the documents.

Upon payment of fees, the transferee has to submit the duplicate certificate of title, signed transfer forms, photograph and valid identification as well as evidence of payments (receipts) to the relevant land registry. The land office checks such documents and allocates an instrument number in the register book where after , its effected in the name of the transferee.

HOW TO CARRYOUT A PHYSICAL LAND SEARCH ON A LAND TITLE.

Step 1

Make a written Request for a search addressed to the Commissioner, Land Registration giving the description of the Land:

For Mailo For Leasehold For Freehold

County, Block & Plot no Leasehold Register Volume Freehold Register

& Folio No Volume & Folio No

Step 2

The application is presented to the Office of Commissioner Land Registration and stamped “received’ in Room 2 (Second floor) by the Commissioner’s Secretary and approved by a Registrar of Titles on behalf of the Commissioner. The application is forwarded to the Records Section to retrieve the file’s availability,

then the bearer is sent to the Ministry's Cashier (1st Floor) to pick a pay slip and pay Ushs 10,000/= . The Cashier informs the bearer which bank to make the payment.

Step 3

The bearer pays that amount in the bank and obtains a receipt that is presented to the Land Office. On verification of the receipt, the registry copy is retrieved and a search letter signed by a Registrar of Titles is issued to the bearer within three days after presenting the Bank receipt.

Documents required: Application letter for a Search

Fees paid at the Ministry through the bank: 10,000/= (Search fee)

HOW TO CARRYOUT A SEARCH ONLINE.

Please note, if you don't already have an account, [create one to access all available information](#), including checking the status of your transactions, searching for details about your land title, and more. You need to pay the search fee of 10,000 shillings. Be sure to keep the receipt, as you will need the PIN number from it.

1. Title Search: Enter the title details such as the volume and folio numbers or the county, block, and plot numbers as indicated by the system.
2. Parcel Search: Enter the plot details, including the county or municipality or town council, block, road, and plot number where the parcel is located.
3. Transaction Status: To search the status of a transaction, enter the transaction number included in the receipt provided after submitting documents to the MZO.

Benefits of Using the National Land Information System Portal.

The National Land Information System portal provides a user-friendly interface that facilitates seamless land transactions, ensuring users have reliable access to land information. This transparency is crucial in reducing land-related disputes and fostering trust in the land administration system.

Each search in the Public Portal requires a payment of UGX 10,000. Registered users can credit their accounts with search fees paid to the Uganda Revenue Authority (URA). A scanned copy of the receipt and the Payment Receipt Number (PRN) will be used to upload the payments, which will be verified from Monday to Friday, 8 am to 5 pm.

Contested land transactions.

Contracts of sale of land are peculiar in nature and must be handled as such.

Effects of a contract of sale of land.

1. The purchaser at once becomes owner in equity on execution of the contract of sale; the purchaser obtains an immediate equitable interest in the property sold. The purchaser is in a position to call for it specifically as under equity, it looks upon things agreed to be done as actually performed. In the eyes of equity; the purchaser becomes the owner from the date of execution of the contract. **LYSAGHT V EDWARDS (1876) 2 CH D 499**

It is irrelevant that the date for completion ie, when the purchaser may pay the price and take possession of the land, has not arrived, **LYSAGHT V EDWARDS (1876) 2 CH D 499**

The above quotation from Megarry's law of real property was cited with approval by the supreme court in **ISMAIL JAFFER ALLIBHAI AND 2ORS V NANDAL HARJIVAN KARIA AND ANOR, SCCA NO.53 OF 1995.**

In **KATARIKAWA V KATWIREMU & ANOR (1977) HCB 210** court held that before transfer of land a buyer under contract acquires only an equitable interest.

1. Risk.

In **ISMAIL JAFFER ALLIBHAI & 2 ORS V NANDLAL HARJIVAN KARIA & ANOR, SCCA NO. 53 OF 1995**, the supreme court stated that since in equity property at once belongs to the purchaser, the risk also passes to him/her at once. Thus, if a house has been sold and is, without fault of the vendor destroyed by fire before completion the purchaser must nevertheless pay the full purchase money and take the land as is.

2. The vender as trustee.

As between the parties to it, the contract creates a relationship of trustee and beneficiary though its one which does not have all the incidents normally associated with a trust.

In **LYSAGHT V EDWARDS (1876) 2 CH D 499** court stated that the vender is said to be a trustee for the purchaser and the purchaser is regarded as the beneficial owner at least for the purpose of disposition. **ISMAIL JAFFER ALLIBHAI AND 2 ORS V NANDLAL HARJIVAN KARIA AND ANOR SCCA NO 53 OF 1995.**

In **SHARIF OSMAN V HAJI HARUNA MULANGWA, SCCA NO.38 OF 1995**, the appellant was the registered proprietor of the suit property, he entered into a sale agreement by which he sold to the respondent the suit property at an agreed price of US\$ 12,000. The respondent paid US\$ 3,000 on execution and the balance was payable before 15th april 1990. The respondent failed to pay the whole balance before the stipulated time. In relation to the vender being a trustee, the court stated that 'it is that the moment you have a valid contract for sale, the vender becomes in equity a trustee for the purchaser of the Estate sold, and the beneficial ownership passes to the purchaser, the vender having a right to the

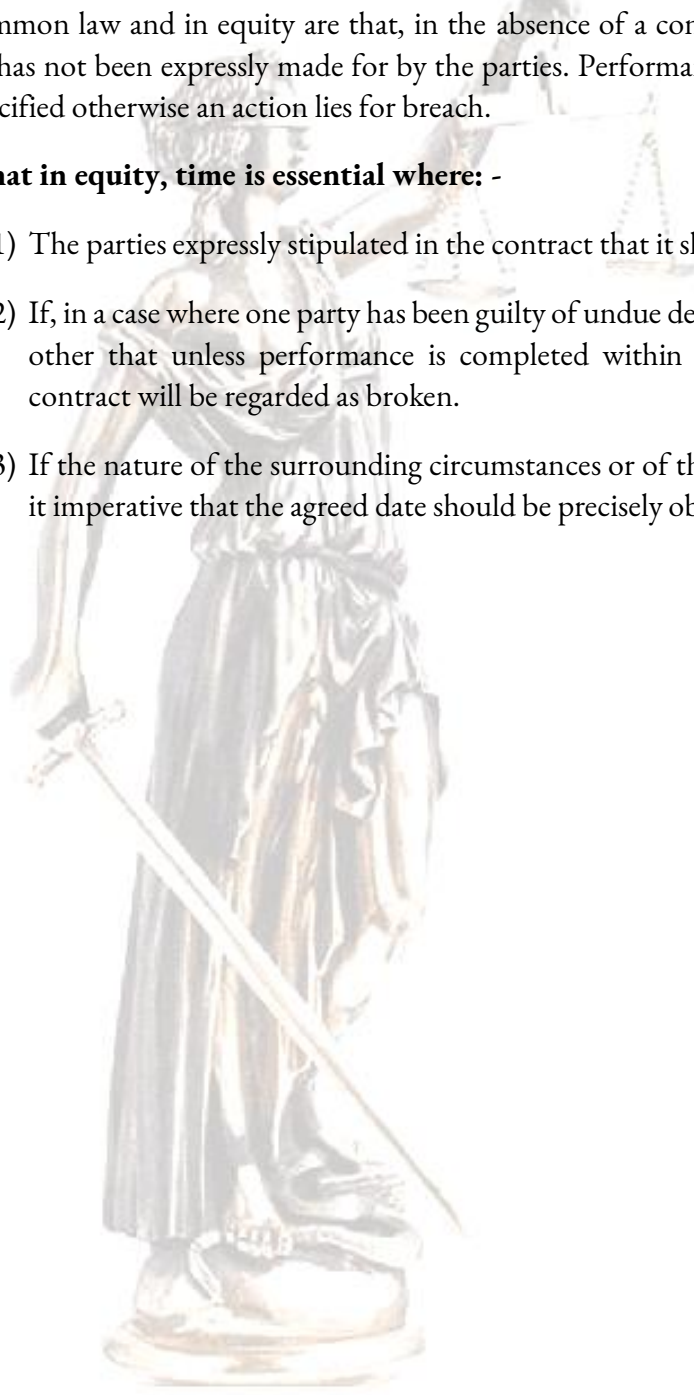
purchaser money a charge or lien on the Estate for the security of the purchaser – money paid, in the absence of express act as to the time of delivering possession.

Where time is of the essence.

In **SHARIF OSMAN V HAJI HARUNA MULANGWA, SCCS NO. 38 OF1995**, the court stated that the principles at common law and in equity are that, in the absence of a contrary intention, time is essential, even though it has not been expressly made for by the parties. Performance must be completed upon the precise date specified otherwise an action lies for breach.

Court further stated that in equity, time is essential where: -

- (1) The parties expressly stipulated in the contract that it shall be so.
- (2) If, in a case where one party has been guilty of undue delay, he is notified by the other that unless performance is completed within a reasonable time, the contract will be regarded as broken.
- (3) If the nature of the surrounding circumstances or of the subject matter makes it imperative that the agreed date should be precisely observed.



THE REPUBLIC OF UGANDA
IN THE MATTER OF THE REGISTRATION OF TITLES ACT

CAP. 240

AND

IN THE MATTER OF THE LANDACT, CAP 236

AND

IN THE MATTER OF THE CONTRACT ACT CAP 284

AND

**IN THE MATTER OF SALE OF LAND COMPRISED IN LRV 2694 FOLIO 24 PLOT 22,
BUGONGA ROAD, ENTEBBE (hereinafter referred to as the land)**

An Agreement for The Sale and Transfer of Land

THIS LAND SALE AGREEMENT is made this 20th day of October 2022.

Between

JOHN ROYAL BYENKYA, C/O SUI GENERIS & CO. ADVOCATES, P.O BOX 7117, KAMPALA herein after referred to as the “VENDOR” which expression shall unless context so admits include his duty authorised agents, heirs’ successors in title executors and legal representatives on one hand

And

KOMUHANGI ACHENG MYA, C/O, M/S KENGERERE AND CO. ADVOCATES hereinafter referred to as the “purchaser” which expression shall unless context so admits include her duly authorized agents, heir successor in title. Executors and legal representative.

Whereas the vender is the rightful owner of the land comprised in LRV 2694 folio 24plot 22, Bugoga road, Entebbe and measuring approximately 0231 of an hectare owing to a 49 years lease between the vender and Uganda land commission, the lessee

Whereas the lease is still running for 29 years and value data UGX 750,000,000 (seven hundred fifty million) the vender is desirous of assigning the lease to the purchaser for a valuable consideration as agreed upon in this sales agreement.

This agreement is witnessed as follows;

1. CONSIDERATION

In consideration of the sum of UGX 556,000,000 (five hundred and fifty-six million) the vendor agrees to sell and hereby sells and the purchaser agree to buy and here by purchase the land from the vendor

2. TERMS OF PAYMENT.

The purchaser has paid to the vendor a sun of UGX 556,000,000 (five hundred and fifty-six million) being the full consideration of the land and the vendor acknowledgment receipt of said sum upon execution of his agreement

3. DUTIES OF THE VENDOR

By this agreement, the vendor undertakes as follows: -

- a) That he has sought the express consent of the lessor, Uganda land commission to sell the land and will adduce the written consent from the lessor on execution of this agreement.
- b) That he has sought the consent of his wife Marianne to sell the land and such consent shall be adduced at execution of this agreement in a form prescribe by law.
- c) That the land herein is sold as is free from any encumbrances and third-party rights or claims whatsoever PROVIDED that if there shall arise any claim or anything that shall prevent the purchase from acquiring good title to the land herein sold, the vendor shall fully identify the purchase against any loss and damage suffered by refunding the fall purchase price therein paid plus other movies spent under this agreement.
- d) To deliver vacant possession of the land upon evacuation of this agreement.
- e) To finish the duplicate certificate of title of the land and copy of the lease agreement between the vendor and Uganda land commission.
- f) To sign transfer forms in favour of the purchase upon execution of this agreement.

4. DUTIES OF THE PURCHASER

By this agreement the purchaser undertakes to pay the purchase price stipulated in clause of this agreement.

5. DISPUTE RESOLUTION.

- 5.1. All dispute arising under this agreement shall be resolved through mediation within seven remaining days from the date when the dispute arose
- 5.2. The mediator shall be any mediator recommended by the LADER at the request of one of the parties.
- 5.3. Where the parties fail to successfully resolve the dispute through mediation, the matter maybe brought before the high court of Uganda for resolution.

6. PAYMENT OF FEES RELATING TO THIS AGREEMENT.

- 6.1. The purchase shall pay all legal and other incidental fees incurred in the execution of this agreement in so far as those fees relate to her duties.
- 6.2. The vendor shall pay all legal and other incidental fees incurred in the execution of this agreement and conclusion of the transaction.
- 6.3. For avoidance of doubt, the vendor shall on top of other fees arising from the execution of this duties pay the stamp duty amounting to UGX 7,500,000 or as shall be determined at the point of registration.

7. LAW APPLICABLE.

This agreement shall be governed by the law of Uganda.

IN WITNESSES WHEREOF, the parties here to have appended their signatures hereunder on the day and year first above written.

Signed and delivered by:

JOHN ROYAL BYENKYA

(VENDOR)

In the presence of:

SIGNED AND RECEIVED BY.

KOMUHANGI ACHENG MYA.

(PURCHASER)

In the presence of:

Spousal Consent. Regulation 64 Form 41

THE REPUBLIC OF UGANDA

THE LAND ACT CAP. 236

Consent by Spouse to Transaction in Land

1. Location of the land subject of consent:

- a) Village/zone:
- b) Parish/ward:
- c) Sub county /town: Entebbe
- d) County/division:
- e) District: Mpigi

2. Approximate area: 0.231 hectare.

3. Land comprised in: LRV 2694 folio 24 plot 22,
Bugonga ROAD, Entebbe.

4. Use or occupation of land: residential housing.

5. Nature of transaction: sell of the land.

6. I, being the spouse of the owner of the above land and land forming part of family land under the provision of section 39 of the land act, grant consent (not grant consent) to the transaction.

7. Reasons for refusal (if only)

NAME:

DATE:

SIGNATURE:

restrictions to dealings in land

a) Citizenship

Article 237(1) of the Constitution provides that all land in Uganda belongs to the citizens of Uganda. Article 9 of the 1995 constitution as amended, every person who at the commencement of the constitution is a citizen of Uganda shall continue to be such.

Under **Article 237(2) (c)**, non-citizens may acquire lease in land in accordance with the prescribed law.

Section 41 of the Land Act cap 236, provides for acquisition of land by non citizens.

Section 41(7) of the land act defines a non-citizen.

In SUDHIRU R. & MEERA INVESTMENT CRANE BANK (IN RECEIVERSHIP)

The court held that the law on transfer of mailo land hold land is clear. Non-citizen cannot hold land under those two tenures and any purported such transfer is null and void. Court further held that in a company where the majority shareholders are non-citizens, that vender a company a non-citizen.

Terms of Lease Granted to A Non-Citizen

Under **Section 41(2)**, where the lease is in the excess of five years, it must be registered in accordance with the **Registration of Titles Act**. The lease granted to a non-citizen cannot be in the excess of 99 years. (s.41(3) of the land act)

Acquisition and holding of mailo and freehold land **Section 41(4)** bars non-citizen from acquiring or holding mailo or freehold. Under **Section 41(6)** where a citizen loses his/her citizenship and they were holding mailo or freehold land, the tenure is converted into lease hold for a period of 99 years.

In the case of **HAJJI YOSUF BAGALYA AND ANOTHER V. DARMONICO PROPERTIES LTD AND ATTORNEY GENERAL**. The constitution court held that, if a person holding mailo or freehold was found to be a non-citizen, they don't lose ownership of the land but rather the tenure changes to lease hold under **Section 41(6) of the Land Act**.

b) MINORITY.

Article 257 of the 1995 amended constitution defines a child to mean a person under the age of eighteen years. Article 26 of the constitution, every person has right to own property either individually or in association with others as such as children can own property. To deal with property of a child, one has to be in possession of a guardianship order granted by a competent court.

Article 257(c) of the Constitution of the Republic of Uganda 1995 as amended defines a child to mean a person under the age of eighteen years. Under **Article 26** of the constitution of the republic of Uganda 1995 as amended every person has the right to own property either individually or in association with others. This imputes that a minor has the right to own property and has thus can own land as such. **Under Section 59 of the Registration of Titles Act Cap 230** it provides that a certificate is conclusive evidence of title.

In this regard Brenda Komugabe cannot sell the land in Kyadondo block 83 because she has no title in that land and thus no right to dispose of it. However, since the land is registered in the names of her children she will have to apply for legal guardianship and an order authorizing her to sell off that property. The application is brought ex-parte **under Section 3, of the Children Act as amended and Sections 43A, 43B and 43F of the Children (Amendment) Act 2016**.

The procedure for application for legal guardianship is provided for under **Section 43B of the Children Act as amended**. The application shall be made to the High Court by way of petition in Form 1 of the Third Schedule and shall be accompanied by a report of the probation and social welfare officer.

However, since the procedure to get legal guardianship for purposes of dealing with a minor's property is not provided for under the Children Act as amended, the application should be brought by way of notice of motion. The application is brought ex parte by way of notice of motion pursuant to **Article 139(1) of the Constitution of the Republic of Uganda, 1995, Sections 3, 4, and 5 of the Children Act; Section 98 of the Civil Procedure Act and Order 52 rules 1 and 2 of the Civil Procedure Rules.** The application must be supported by an affidavit in support.

Before making the guardianship order Court has to satisfy itself the order is in the best interests of the child and where the child is above 12 years, his or her consent must be obtained. **Section 43F (1) (f) of the Children Act as amended.**

In the case of **AJIDIRU LULUA JENIFER V NDERA JUSTINE ANGUZU AND ASIANZO JOVIA ANGUZU MISCELLANEOUS CIVIL APPLICATION NO. 0031 OF 2016 HON. JUSTICE STEPHEN MUBIRU** held that "In matters of this nature, where the legal property rights of children are involved, yet by virtue of their status as legal incompetents, the children do not have the capacity to safeguard those rights on their own, courts are expected to exercise a parens patriae authority.

In the matter of an application for guardianship of Valeria Nakyonyi Gozaga by Walakira George (father of the above-named minor) family cause 199 of 2013

In this case court granted a guardianship order to the child's biological father authorizing him to sell and/or dispose of land comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe registered in the names of Valeria Nakyonyi Gozaga (a minor) for the benefit of the minor. **It was stated that the best interests of the child must be considered while granting legal guardianship to sale of land owned by a minor.**

In RE MAVIN KAKOOZA (INFANT) FAMILY CAUSE 236 OF 2013, court held that where the applicant who is the child's biological mother seeks an order that will enable her sell land jointly owned by her and her child and where the child who is of understanding age is not opposed to the sell such order would not be denied if it is in the best interest of the child that is to pay school fees and build a residential house.

Therefore, Brenda should apply for a guardianship order to allow him sell the property in the names of her children if such a sale is within the children's best interests. The application should be accompanied by a supporting affidavit. She should also attach the duplicate certificate of title and the birth certificates of the minors.

Since one of the children, Fillian Mpako is above 12 years, Brenda should procure his consent as required under **Section 43F(1)(f) of the Children Act as amended.**

After the above procedure is followed and Brenda is appointed legal guardian of the minors then she can go ahead to draft and execute a land sale agreement between her and Major Nkusi.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA FAMILY DIVISION

**FAMILY AND CHILDREN CAUSE NO..... OF 2018
IN THE MATTER OF THE CHILDREN ACT CAP 59**

AND

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF PHYLLIS KOKU AND
FILLIAN**

**MPAKO BY BRENDA KOMUGABE ARIKO (MOTHER YOU OF THE ABOVE-NAMED
MINORS)**

Notice of motion

Application for legal guardianship brought by notice of motion exparte under Article139 (1) the children Act, section 98 of the civil procedure act cap 71 and order 52 of the civil procedure rules

The applicant is seeking the following orders;

This honourable court does grant legal guardianship over Phyllis Koku and Fillian Mpako (minors) to the applicant herein biological mother Brenda Komugabe

This honourable court grants authority to Brenda Komugabe to sell and/dispose of land comprised in Kyadondo Block 83 Plot no.818 Bubale registered in the names of Phyllis Koku and Fillian Mpako (minors) for the benefit of the minor.

Costs of this application provided for.

The grounds of the application are that:

That Phyllis Koku and Fillian Mpako are biological children of the applicant Brenda Komugabe Ariko

That the applicant has been in custody of the minors since they were born

That the applicant is the sole provider of the minors

That it is in the best interests and welfare of the minor that the applicant who is the biological mother of the minors be appointed legal guardian and is authorized to sell or dispose of the property comprised in Kyadondo Block 83 Plot No. 818 land situate in Bubale.

That it is the applicant's legal duty as a biological mother to offer good upbringing of the minors, administer property and apply any income that comes out of the property to the welfare of the minor.

That the applicant is a fit and proper person to pursue the minors' interests.

Dated at Kampala thisday of2018

.....

Counsel for the applicant

SUI GENERIS &Co. Advocates

Given under my hand and seal of this court this.....day of2018

.....

REGISTRAR

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA FAMILY DIVISION

FAMILY AND CHILDREN CAUSE NO..... OF 2018

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF PHILYS KOKU AND
FILLIAN MPAKO BY BRENDA KOMUGABE (MOTHER OF THE ABOVE-MENTIONED
MINORS)**

Affidavit In Support

I Brenda Komugabe of do solemnly swear and state as follows;

That I am a female adult Ugandan of sound mind and a mother to the minors I which capacity I swear this affidavit.

That the land I bought comprised in Kyadondo Block No.83 Plot No. 818 was bought by me and registered in the names of my children Phylis Koku and Filiian Mpako who are minors .

That I would like to sell the said land and the sale will be in the best interests of the children.

That I am the sole provider of the minors and they have been in my custody since they were born.

That it is from this background that I apply for legal guardianship since the land is registered in the names of the minors.

That it is just and equitable and it is in the best interests of the afore said minors that I be granted the guardianship.

That what I have stated herein is true to the best of my knowledge and belief.

Sworn at Kampala thisday of2018

DEPONENT
BEFORE ME

..... COMMISSIONER FOR OATHS

DRAWN AND FILED BY
SUI GENERIS & CO. ADVOCATES
P.O BOX 7117 KAMPALA

- c) INSANITY
- d) FAMILY AND MATRIMONIAL LAND
- e) TENANCY BY OCCUPANCY

BREACH OF CONTRACT FOR SALE OF LAND.

RONALD KASIBANTE V SHELL UGANDA LTD H.C.C.S 542/2006 defines a contract as the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. A contract is agreement made with the free consent of the parties with capacity to contract for a lawful consideration and with a lawful object with the intention to be legally binding.

WILLIAM KASOZI V DFCU BANK LTD H.C.C.S N0.1326 OF 2000 L.J Justic byamuhisha stated that once a contract is valid, it creates reciprocal rights and obligations between the parties.

REMEDIES FOR BREACH OF CONTRACT

a) PURCHASER

- 1) Instituting a suit against the vendor.

As a general rule when dealing with immovable properties, upon payment of a deposit by the purchaser, the property passes to the purchaser who acquires an equitable interest in the property and the vendor becomes the trustee who holds the property in trust for the purchaser as was stated in the case of ISMAIL JAFFER AKKUBHAI AND ORS V NANDABA HARJIRA AND ANOR S.C.C.A 53/1995. LYSAGHT V EDWARDS (1876) 2 CH D 499 AT 506, where it stated, “ the moment you have a valid contract of sale, the vendor become in equity a trustee for the purchase of the estate sold and the beneficial ownership passes to the purchaser, the vendor having a right to purchase money, a charge or lien on the estate for the security of the purchase money and a right to retain possession of the estate until the purchase money is paid in the absence of express contract as to the time of delievery of possession.

A valid contract was defined to mean in every case, a contract sufficient in form and in substance so that theres no ground for setting it aside as between the vendor and purchaser. If theres a valid contract for sale the court willnot permit the vendor afterwards to transfer the legal estate to a third person.

JOHN KATARIKAWA V WILLIAM KATWEIREMU AND ANOTER (1977) HCB 787, that although in a contract of sale of land an unregistered instrument of transfer is not effective to transfer title, the purchaser acquires an equitable interest in the land which is enforceable against the vendor.

File an ordinary suit by way of a plaint with prayers for declaration that the purchaser has an equitable interest in the subject land.

- 2) Specific performance
- 3) Damages

When the buyer breaches the contract, the seller is entitled to damages in the amount of the injury sustained by reason of the breach. Failure to pay the purchase price amounts to breach of contract. The vendor can therefore sue for damages arising from breach of the contract.

The **procedure** for an action on the price and damages is by issuing a demand notice first requesting for the remaining sum. If the purchaser does not honour the demand, then the vendor can institute a suit to recover the balance and damages arising out of the breach of contract

b) VENDOR

1) Institution of a suit against the purchaser for breach of contract as the cause of action by way of ordinary palint. The following prayers will be made:

a) Specific performance: LIVINGSTONE MPIMA V ELIZABETH NANTEZA H.C.C.S 853/1989 [2003], Justice Kibuka Musoke before issuing an order for specific performance, they must consider the following three principles;

- Court has to be satisfied that the exact performance of the contract is possible in the circumstances.
- It will be ordered where in the opinion of court monetary damages would not accord the innocent party adequate protection
- It willnot be ordered where it appears to court that it maybe unable to effectively enforce the order for specific performamce

b) Damages.

2. Rescission of the contract

Barber v Wolfe [1945] ch 187, party breaks a term of a contract, which is a condition precedent to the liability of the other party mayas an alternative to suing for damage rescind the contract.

Rescission of contract.

The failure of the purchaser to pay the purchase price is breach of contract. **Black's Law Dictionary** defines breach of contract as failure without legal excuse to perform any promise which forms the whole or part of a contract.

Where the contract is breached, the vendor can treat the contract as repudiated and elect to either refuse to accept the repudiation or continue to require performance or accept the repudiation and bring the contract to an end.

In **HOLLAND VS WILTSHIRE (1954) 90 CLR 409,420** also approved in **KAGUMYA GODFREY VS NTALE DEO HCCS 298 OF 2004 LORD KIT'TO** stated as follows:-

The contract. Presented with the repudiatory conduct of the guilty party, the innocent party has an election to either refuse to accept the repudiation or continue to require performance or accept the repudiation and bring the contract to an end”.

The principles governing rescission were articulated in **BUCKLAND VS FARMER & MOODY (1978) 3 ALLER 929 AT 938. Halsbury laws of England, Vol. 9 (1)**. Re-issue, paragraph 989 cited in **SIHIRA SINGH SANTOH VS FALULU UGANDA LTD HCCS NO. 517 OF 2004 AS** follows:

“Where one party (A) to a contract has committed a serious breach of contract by defective has a right to elect to treat the contract as continuing or to terminate the contract by rescission. In case where it is alleged that B has a right to rescind for breach, it must be determined (1) whether there has been a breach by A of the term of the contract or a mere representation: (2) Whether the breach is sufficiently serious to justify rescission de futuro of the contract by B as well as claim for damages, and (3) Whether B has instead elected to affirm the contract” The High Court further explained in **SIHRA SINGH ASANTOKH VS FAULU UGANDA LTD HCCS NO. 517 OF 2004** that:-

“Where a wronged party such as the Defendant, elect to rescind a contract de future following a breach by the other party all the primary obligations of the parties under the contract which have not yet performed are terminated.”

In **NKEMBA ELIZABETH v KABAHENDA JOYHCT-01-LD-CA-0024 OF 2017**

Court held that the Appellant’s breach of contract was a continuing breach such that for each day that the purchase price remained due, the purchaser continued to be in breach of the contract giving rise to daily right to rescind in favour of the vendor.

, in order to rescind the contract, the vendor must do it within a reasonable time by giving notice of rescission to the purchaser immediately after the expiry of the deadline.

In **KAGUMYA GODFREY VS NTALE DEO HCCS 298 OF 2004** court emphasized the importance of communicating the decision to rescind the contract. It was held that the Defendant failed to prove to court during the hearing how far he had tried to contact the Plaintiff/purchaser for the balance due and owed him. Instead, the Plaintiff did prove how he tried to contact the Defendant in order to pay the balance of the purchase price. In fact, it would have been different if the Defendant had done what the Plaintiff did in moving all corners tracing for the Defendant for his payment. As it is evident, it is apparent that the Defendant was playing monkey tricks to ensure that the deadline for payment of the balance was over to enable him reclaim the property on the basis of breach of terms and conditions of sale.

The procedure for rescinding a contract is therefore by issuing a notice of rescission to the purchaser. The vendor, upon rescission, has a right to resell the property and retain any excess of price obtained beyond the amount fixed by the contract.

Demand Notice

Our Ref:

Date: 18th October 2018

TO: MAJOR ALLAN NKUSI

P.O. BOX 495

KAMPALA

Dear Sir,

RE: Demand Notice/Notice Of Intention To Sue

We act for and on behalf of Brenda KomugabeAriko (herein after referred to as Our Client) on whose instructions we address you as hereunder;

On theday of.....2018 at....., our client the registered proprietor of land comprised in Kyandondo Block 83 Plot 818, BubaleWakiso District entered into a land sale agreement with you as the willing buyer at and agreed price of UGX. 80,000,000 (Eighty million Uganda Shillings) to be paid in four equal installments.

Upon conclusion of the said contract, you paid a sum of UGX. 20,000,000 (Twenty million Uganda Shillings) in respect of the first monthly installment with the remaining balance of UGX.

60,000,000(Sixty Million Uganda Shillings) that was to be paid on theday of.....2018.

Our client is aggrieved by the fact that you have since failed to honour your debt obligation despite the various reminders.

The purpose of this letter therefore is to inform you that you pay the outstanding balance within fourteen days upon receipt of this letter failure of which we shall have no other recourse other than filing the matter in court without further notice.

Yours Sincerely,

For: M/s SUI GENERIS ADVOCATES

c.c Our Client

Tenants by Occupancy

Section 31 of the land act cap 236 provides that a tenant by occupancy on registered land shall enjoy security of occupancy on the land.

Article 237(8) of the 1995 constitution as amended, the lawful or bonafide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.

Section 31(2) of the land act cap 236, the tenant by occupancy shall be deemed to be a tenant of the registered owner and under subsection 3, such tenant shall pay to the registered owner an annual nominal ground rent as determined by the board.

Musoke v Kavuma Nakate (Civil Appeal 88 of 2017) The court determined that the plaintiffs' late father was merely a bare licensee on the kibanja, under the condition that he was only permitted to use one room to operate his bar, which did not confer any proprietary interest in the land. The court referred to **Sunday Christopher Kyakana & ors v Florence Nyakana Kabahenda B & anor**, citing **Justice Wagona's** ruling that a license operates only during the lifetime of the licensee and cannot be passed to successors, as it does not confer any property rights. Therefore, the suit premises did not form part of the late plaintiffs' father's estate, meaning the plaintiffs had no interest in the land as beneficiaries of their late father's estate. The also court interpreted **Section 29** of the Land Act to mean that, for there to be a tenant by occupancy, whether a lawful or bonafide occupant, there must be a registered proprietor. This implies that the land in question must fall under the operation of the Registration of Titles Act. Furthermore, **Section 31(3)** of the Land Act states that a tenant by occupancy is required to pay an annual nominal ground rent to the registered owner, as determined by the Board with the Minister's approval. Therefore, to qualify as a lawful occupant, one must provide evidence of having paid rent to the registered proprietor or prove that they were a customary tenant whose interests had not been compensated by the registered owner. Court further established that the plaintiff did not present any evidence to evidence to establish any of the above circumstances. This further confirmed that neither the plaintiff nor the plaintiff's late father qualified as lawful occupants on the suit land, as it was unregistered.

Types of tenants by Occupancy: a Lawful occupant and a bona fide occupant.

“Lawful Occupant” means: a person occupying land by virtue of:

a) The repealed laws;

(i) Busuulu and Envujjo Law of 1928;

(ii) Toro Landlord and Tenant Law of 1937;

(iii) Ankole Landlord and Tenant Law of 1937.

(b) A person who entered the land with the consent of the registered owner, and includes a purchaser; or

(c) A person who had occupied land as customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring a registrable interest. as per section 29 of the land act cap 236.

MUGERWA MULIISA AND ANOTHER V TWAHA KIGANDA H.C.C.A 09/2012, Mugyenji J stated that the occupation of land with the alleged knowledge but not the consent of the registered owner would not prescribe a claimant as a lawful occupant within the meaning of legal provision.

Rights of a Lawful Occupant

A lawful occupant ...

- Enjoys security of occupancy;
- Has priority to buy the land if the registered owner wants to sell the land;
- May acquire a certificate of occupancy by applying to the registered owner;
- May sub-let, sub-divide and give away by will the interest in the land with the permission of the registered owner;
- May assign, pledge and creates 3rd party rights in the land with the consent of the registered owner;
- May end the occupancy by leaving the land or by removing developments on the land; and
- May change occupancy into freehold, mailo, lease or sublease.

“Bona fide Occupant” means a person who before the coming into force of the Constitution-

- (a) Had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more before coming into force of the 1995 Constitution.
- (b) Had been settled on land by the Government or an agent of the Government which may include a local authority. For avoidance of any doubt, the law only protects lawful and bonafide occupants on registered land. The Squatter is not protected by the law.

To qualify to be a bonafide occupant, one must have settled and utilized the land unchallenged by the registered owner for twelve years or more before the coming into force of the 1995 Constitution, This is a person who settled and used the land before 8th October 1983. Any person who settled on the land after that date does not qualify to be a bonafide occupant. The following categories of people are not protected by the law:

- (i) Unlawful occupants;
- (ii) Illegal tenants;
- (iii) Trespassers;
- (iv) Licensees (these are persons temporarily brought in by the land owners to utilize the land);
- (v) Lessees (these are persons with oral or written agreements with the land owners to temporarily occupy or use the land) for specific period of time on given terms and conditions; (vi) People renting agricultural land; and

- (vi) People renting premises. Where someone does not qualify as Bonafide Occupant, the law provides that the person takes reasonable steps to look for the land owner and undertake negotiations with the owner concerning his or her occupancy on the land. They can seek the help of a mediator agreed upon by both parties.

Restriction On Assignment Of Tenancy By Occupancy

Under **Section 33 of the Land Act cap 236**, lawful or bonafide occupants can only be evicted for non-payment of ground rent and this must be with an order of court.

Under **Section 36 of the land act cap 236**, a land owner who wishes to sell the reversionary interest in land must give the first option of buying that interest to the tenant by occupancy. Failure to do so, the tenant commits on offence .The transaction to assign to another person without first option to the landlord is invalid and the tenant forfeits the right over the land and the land shall revert to the registered owner. As per section 36(3) of the land act cap 236.

Rights of an Occupant

A tenant by occupancy on registered land shall enjoy security of occupancy on the land. This means that he will not be sent away by the registered owner except when he/she fails to pay rent for one year or more and on orders of court.

A tenant by occupancy may apply and acquire a certificate of occupancy for the land that he occupies. The certificate of occupancy once issued is registered on the certificate of title of the registered owner by the registrar of titles. This registration informs the whole world of the fact of occupation by the tenant, and the approximate area and size of occupation, thereby protecting all parties.

The procedure for application to get this certificate of occupancy is laid out in section 34 of the Land Actcap 236. The steps are as follows: -

- i. The application is made, in a prescribed form, to the registered owner of the land.
- ii. The owner notifies the area land committee.
- iii. The land committee sets a date for meeting all parties and the neighbours.
- iv. The land committee's decision is sent to tenant and owner.
- v. Thereafter, the owner, without undue delay, as long as tenant has paid rent, give his or her consent for acquisition of a certificate of occupancy.
- vi. The land committee then sends this form to the district land board, for onward transmission to the recorder for issuance of a certificate of occupancy.

If the registered owner refuses to give consent to the application for a certificate of occupancy within six months, the tenant may appeal to the land tribunal for consent. After hearing the matter, the land tribunal may grant the required consent to the tenant. When consent is granted by the land tribunal, the application is forwarded to the district land board which also forwards it to the recorder for issuance of a certificate of occupancy. The recorder shall notify the registrar of the issuance of a certificate of occupancy, such that it is noted as an incumbrance on the certificate of title. Possession of a certificate of occupancy provides documentary evidence that the named person has a right of occupancy. More over since a certificate of occupancy is granted after verification and determination of the boundaries, it is likely to reduce future disputes over land ownership and or boundaries. A certificate of occupancy can also be used to access agricultural credit from financial institutions like SACCOs, Banks and Micro Finance Institutions. A right to abandon his/her occupation of a “Kibanja”. Such abandonment occurs where the tenant and all members of his or her family or agent leave the whole of the “Kibanja” unattended to for three years or more. Where a tenant abandons his or her “Kibanja”, they are free to remove any structures, buildings and other things they put on the land except trees and dams. Where the tenant abandons, he or she is not entitled to compensation.

An occupant may assign, pledge and create third party rights on his or her “Kibanja” with the consent of the land owner. Such assignment and creating third party rights may include a sale of the “Kibanja”, mortgaging of the “Kibanja”, renting out the “Kibanja” to another person for a period of time, say to grow potatoes for two seasons. This right is also subject to the rights of the spouse of the tenant giving consent.

Duties and Obligations of an Occupant

A tenant by occupancy has the following duties or obligations

- a. To know the registered owner of the land.
- b. To apply to the registered owner for a certificate of occupancy.
- c. To pay to the registered owner the yearly nominal ground rent as set by the boards and approved by the Minister in charge of Lands.
- d. To use the land in a good husbandry manner. Examples are: not to excessively cut trees, not to cultivate on slopes without putting terraces, not to destroy wetlands. Landlord and Tenants right to negotiate:

IN THE CASE OF DR.ZAHARA NAMPEWO AND BRIAN KIBIRANGO V ATTORNEY GENERAL CONSTITUTIONAL PETITION NO.10 OF 2010; The Constitutional Court upheld the constitutionality of **Section 35(1)(a)** of the Land (Amendment) Act, 2010, which penalizes tenants by occupancy for assigning their tenancies without offering them to landowners. The court emphasized the hierarchical nature of land rights, where registered landowners hold superior interests. It emphasized that while tenants by occupancy enjoy security of occupancy, this right is not absolute and is subject to legal

regulations. The court concluded that the provision does not discriminate against tenants by occupancy by treating them differently than it does registered land owners

Plausible solutions for Landlords and Tenants

The above sections have highlighted the rights and obligations of both the landlords and the tenants as provided in the law. This does not however restrict a landlord and tenant to mutually negotiate any terms. The law provides for who qualifies as an occupant on a landlord's land and how much rent is payable by a tenant to a landlord. The law is silent on how much land should be held by an occupant. This can be freely negotiated upon by the landlord and tenant. Depending on the development on the land, the parties may also freely and amicably agree on payment of the annual rent in kind, above or below the threshold set up in the law.

Traditionally, land had no intrinsic value. The landlord, who was a chief, induced peasants (bakopi) to settle upon his land upon payment of a token premium, known as kanzu, and subsequently paying tribute and a tithe which was a percentage of his produce. The services and tribute due from the bakopi were a series of mutual obligations between a chief and his people, which if observed, left the mukopi undisturbed in the possession of his "Kibanja". A mukopi's garden usually occupied one or two acres. With the introduction of cash crops, some bakopi had extended their gardens to eight to nine acres, depending on the ability of the peasant to utilise the land, the consent of the landlord and the availability of the land.

The introduction of cash crops made the landlords impose a rent on cultivators, which was a simple evolution arising from the commutation into money of the services traditionally due by a peasant to his overlord. The Busuullu and Envujjo law of 1928 was enacted and put rental conditions and also gave statutory protection of right of occupancy to the tenants.

There is no restriction for a landlord and tenant to negotiate and live harmoniously on terms other than those specified in the law. Such terms could be say subdividing the "Kibanja" and each becomes a registered owner of a specific part, payment of more yearly ground rent especially for those utilising the "Kibanja" for commercial purposes. Some landlords have negotiated with tenants on sharing. The tenant agrees to surrender part of a "Kibanja" in exchange for a finished title, already surveyed and transferred in the names of the tenant. Such negotiation should be encouraged and is not forbidden.

The NLP presents options for the landlords and tenants that can be reached only after negotiations and these include: - buy-out, land sharing, lease arrangements and acquisition of certificates of occupancy.

Land Sharing

In land sharing agreements, tenants can agree to let go a percentage of their acreage in lieu of registerable rights in title. The tenant and landlord could choose a mediator for purposes of the sharing-the mediator helps in the negotiations. During the negotiations land is demarcated/surveyed in accordance with the law. Negotiation/Land sharing agreement is drawn and attested to by both parties in the presence of a witness. The agreement can also be witnessed by a neutral party knowledgeable about land issues to rule out the issue of lack of adequate knowledge of the law on the rights and obligations after the agreement has been executed.

Land sharing could only be fairly implemented through a fact-based negotiation. The facts (acreage, location, developments) can only be determined through data capture that does not involve prohibitive costs to the parties involved.

Buy-out

Tenants who are able can be facilitated to buy-out the registrable interest in the “Kibanja” from the landlord. The government can also purchase the interest of the registered land owner in the land occupied by the lawful/bonafide occupants using the Land Fund and sell the interest to the said occupants based on social justice and equity consideration. A tenant who wishes to acquire a registered interest from the landlord should seek advise on how to negotiate with the landlord on the price of the landlord and other terms of the buy- out. Buy-out of the Mailo right over the tenanted portion requires a prior determination of the acreage, location, value of land on the tenanted portion. Where the buy-out is for part of the Mailo land and not the whole, the tenants should go to the land office to have the land surveyed.

After the terms of the buy-out are negotiated and the survey, if any, is done, the parties should enter into a written agreement sales agreement with the landlord, duly signed in the presence of witnesses. The Mailo owner should sign transfer and mutation forms to facilitate the acquisition of title by the tenant.

Ground rent/Busuulu payment.

There is a need for increased transparency on Mailo land use rights. Landlords have titles and yet some do not use or use a very small portion of the land on the title. The Mailo land is heavily tenanted, some of which tenants do not know the landlord. The landlord on the other hand does not know the extent and size of each tenants’ occupation.

A tenant is obligated to pay a yearly ground rent (busuulu) to the landlord for the use and occupation of the “Kibanja”. The landlord is in turn supposed to acknowledge this payment by issuing a receipt. It is after these that a tenant can apply for a certificate of occupancy for the “Kibanja” that he or she owns. The certificate of occupancy can then be registered on the Mailo title as an incumbrance.

Lease to a “Kibanja” holder

A “Kibanja” holder may negotiate with the Mailo owner to obtain a lease over the area covered by the “Kibanja”. The process includes demarcating the “Kibanja” by survey, negotiating the premium and annual ground rent payable, preparing and signing before witnesses’ lease agreement in duplicate, paying stamp duty and registration fees on the lease, registering the lease at the titles office and obtaining a leasehold certificate of title. Proportionate lease premiums and market rate ground rent also require a determination of the tenancy attributes (acreage, location). Procedure in case of a squatter.

Squatters /trespassers are not protected in the law

If one therefore sees that he or she does not fit in the description of a lawful or bona fide occupant, then the likelihood of one being a squatter or trespasser is very high. However, the law provides that such a person should take reasonable steps to seek and identify the registered owner of the land for purposes of negotiating and agreeing to their stay on that land.

TRANSMISSION OF LAND

Section 3 of the succession act cap 268, succession to the immovable property to the deceased is regulated by the law in Uganda wherever such person had his death

When a person dies, they can no longer deal with the land and ownership will be shifted to his/her legal representatives. A person can become a legal representative by way of probate or letters of administration.

Section 118(1) of the RTA CAP 240, Upon the receipt of an office copy of the probate of any will or of any letters of administration or of any order by which it appears that any person has been appointed the executor or administrator of any deceased person, the Registrar shall, on an application of the executor or administrator to be registered as proprietor in respect of any land, lease or mortgage therein described, enter in the Register Book and on the duplicate instrument, if any, when produced for any purpose, a memorandum notifying the appointment of the executor or administrator and the day of the death of the proprietor when the day can be ascertained, and upon that entry being made that executor or administrator shall become the transferee and be deemed to be the proprietor of such land, lease or mortgage, or of such part of it as then remains unadministered, and shall hold it subject to the equities upon

which the deceased held it, but for the purpose of any dealings therewith the executor or administrator shall be deemed to be the absolute proprietor thereof.

According to NABANOOPA DOSIRANTA AND ANOTHER V KAYIWA JOSEPH AND ANOTHER H.C.C.S NO.497/2005, the above section provides as follows:

- a) The applicant must first obtain an office copy of the probate of the will or of letters of administration. That means that the applicant must have petitioned a competent court for the grant of probate or letters of administration and the same must have been granted before he goes to the land registry to have the deceased's land transferred to his or her name. section 176 of the succession act cap 268.
- b) The applicant must present the probate or letters of administration together with an application to change the current ownership of the land from the deceased into his or her names.
- c) The registrar enters in the register book and on the duplicate certificate a memorandum notifying the appointment of the executor or administrator.

- d) Upon that entry being made, the executor or administrator becomes the transferee and is deemed the proprietor of such land or such part as remained administered.

NOTE: JONAH SENTEZA KANYEREZI AND ANOTHER V CHIEF REGISTRAR OF TITLES H.C.M.A NO. 919/1997 (UNREPORTED), transfer into the executor or administrator's name does not mean that the land devolves upon the personal estate of the executor or the administrator such that he can do whatever he wishes with the land without recourse to the interest of other beneficiaries. His/her duty is to hold the land in trust for these beneficiaries.

S.118(2) RTA CAP 240 The title of every executor or administrator becoming a transferee under this section shall, upon such entry being made, relate back to and be deemed to have arisen upon the death of the proprietor of any land, lease or mortgage as if there had been no interval of time between such death and entry.

S.118(3) RTA CAP 240 If in any case probate or administration is granted to more persons than one, all of them for the time being shall join and concur in every instrument, surrender or discharge relating to the land, lease or mortgage.

S.118(4) RTA CAP 240, No fee in respect of the assurance of title under this Act shall be payable on the registration of such executor or administrator.

STEPS

Formal letter to the registrar of title in relevant regional office.

Attach a copy of letters of administration or probate

Receipts of registration fees

Attach passport photos of the person applying and a copy of their national ID

Attach duplicate certificate of title.

TRANSFER OF LAND

SECTION 91(1) OF THE RTA CAP 240, a proprietor of land may transfer the same in one of the forms in the 8th schedule to the act.

Section 91(2), upon registration of the transfer, the estate or interest of the proprietor shall pass to the transferee and the transferee shall become the proprietor thereof.

Section 94 of the RTA cap 240, Every transfer or other instrument shall be deemed of the same efficacy as if under seal, and when signed by the proprietor and

registered shall be as valid and effectual to all intents and purposes for conveying, passing or conferring the estates, interests or rights expressed to be thereby transferred, leased or created respectively, as a deed duly executed and acknowledged by the same person would have been under any law heretofore or now in force, or as any other form of document would have been either at law or in equity

transfer form must be signed by transferee and the transferee must be attested to. (section 131 of the RTA) and signed in latin character. Where the transfer is part of land, subdivision will be necessary.

STEPS FOR SUBDIVISION

Registered proprietor signs a mutation form; its witnessed by a registered surveyor, registered proprietor should attach passport photo and photocopy of ID, proprietor should have signed a transfer form which should be signed by buyer and attested in accordance with section 131 RTA, registered proprietor must also sign consent to transfer, the government valuer states the value of the land on this form.

Surveyor submits the form to the registrar of title in the relevant land office/EMZOL that the registrar can verify the identity, name and signature of registered proprietor. Once verification is done, the registrar approves and endorses on the form SSS (senior staff surveyor) and DSS proceed. SSS/DSS permits the surveyor to commence the job.

Surveyor visits the land for preliminary or location survey to locate the land, mark stones etc. RP (registered proprietor) should give reasonable notice to all adjoining land owners and L.C officials before commencing survey.

The surveyor submits a field report , JRJ- Job Record Jacket of the location survey to the district or municipal physical planner checks for access roads, their size provided for, shape of land to be parceled off, etc as against the district or municipal plan. Physical planner makes his remarks on the report and rejects or approves the report. If he /she approves, he will forward the file to the DSS/SSS

Surveyor ensures that the file is received at the reception in the land registry and records should clearly show this. The receiving clerk will enter all the information on the file in the computer information system and a file number will be assigned to the file. Thereafter, all the pages will be scanned, the SSS/DSS will further check the file and if he approves , he will instruct the surveyor to subdivide the land. This instruction includes instruction on access roads and their size and shape of the land.

Survey returns to the land to subdivide it

Mark stones will be planted clearly demarcating the piece of land parceled off.

Surveyor submits report to the SSS/DSS and if he approves the subdivision, he will sign, stamp submit the file to the senior Cartographer who instructs a cartographer to draw a deed plan. A plot number will be assigned after checking the karamazo at the land registry or EMZOL in which block numbers and plot

numbers are recorded. The original plot number is crossed and under it , a new pot number is written. An area schedule must be produced showing the subdivision and residue of the land. It must be signed and stamped by the SSS/DSS

After SSS/DSS has verified, a senior catographer signs the deed if he or she is satisfied as to the correction.

Stamp duty

The duplicate certificate to be submitted for registering the subdivision. The certificate of title for the new parcel of land will ne issued. Then the mother title will be returned to the transferor.

NOTE: Surveyors throughout the procedures by visiting the land only once because their clients cannot afford to pay or because they use their clients money and thereof fail to follow the above procedures.

Section 95 RTA, If the transfer purports to transfer part of the land mentioned in any certificate of title, the transferor shall deliver up the duplicate certificate of title; and the Registrar shall endorse on the original and duplicate certificate a memorandum of the transfer; and the duplicate certificate

of title shall be returned endorsed as aforesaid to the transferor; and the Registrar shall make out to the transferee a certificate of title to the land mentioned in the transfer, and whenever required by the proprietor of the untransferred portion shall, upon delivery up for total cancellation of the partially cancelled certificate of title, make out to such proprietor a certificate of title to the untransferred portion; but the Registrar may at his or her discretion instead of returning a partially cancelled certificate to the transferor require the transferor to take out a new certificate for the land still comprised in the partially cancelled certificate.

AGENCY IN LAND TRANSACTIONS.

Agency in land transcatons is created by a power of attorney.

power of attorney was defined in FREDRICK ZAABWE V ORIENT BANK SCCA NO.4/2006, as an instrument in writing whereby one person, as principal appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of the principal, an instrument authorising another to act as one's agent or attorney, such power may be either general (full) or special (limited).

The Supreme Court held that a donee of a power of attorney acts as an agent of the donor and for the donor's benefit. The donee cannot use the power of attorney for his own benefit. The execution of the mortgage to secure the borrowing of the Company thus exceeded the authority given by the power of attorney.

The Court upheld the principle that where an agent, who has been given a power of attorney to do certain things, uses the power to do something for a proper purpose, but the act done is for the agent's own purpose to the exclusion and detriment of the principal, the actions of the agent will be outside the scope of the power of attorney and are not even capable of ratification by the principal.

The Company and the Bank were found to be liable to the Appellant for the loss he incurred.

The Bank's liability

The Supreme Court also found the Bank liable for the loss of the Appellant raising the duty of care owed by a banker to a person whose property is mortgaged through a power of attorney.

The Supreme Court held that the Company was a customer of the Bank and the Bank considered and evaluated the business proposal of the Company and agreed to finance it. The Bank must have known that the Appellant, as owner of the mortgaged property, was not part of the Company be it as a shareholder or director. The money was put on the loan account of the Company which used it to the full knowledge of the Bank. The Supreme Court held that a fiduciary relationship exists between a bank and owner of property that is being used to secure a loan facility, which requires the bank to make a full disclosure to the owner of property in so far as the loan is concerned. Since the Bank did not make this disclosure, the Bank was jointly and severally liable to the Appellant for his loss.

In addition, the Court held that the Bank had, at the very least, constructive notice of the fraud that the Company was committing but chose to ignore it. According to the Court, a prudent bank should have asked itself why a person would give away his property to secure the borrowing of another for a transaction in which he had no interest at all. On account of that fraud, the mortgage was declared null and void

1. A power of attorney must be construed strictly. The authority conferred by a power of attorney is that which is within the four corners of the instrument either in express terms or by necessary implication”.
2. **Section 132 of Registration of Titles Actcap 240**, requires that all parties to the power of attorney sign to it in latin character or has a transliteration into latin character of the signature of any party whose signature is not in latin character and the name of any party who has affined a mark instead of signing.
3. In **FREDRICK ZAABWE**; the court held that the rationale behind **Section 148** (now section 132) requiring the signature to be in Latin character is to make it clear to everybody receiving that document as to who signatory is so that it can also be ascertained whether he/she had the authority or capacity or capacity to SPM. It is important to note that Death of donor nullifies a power of attorney.
4. On the 10th July 2007, the Supreme Court of Uganda delivered a ground breaking judgment regarding the nature and effect of powers of attorney especially as regards mortgages, the duty of a mortgagee to a donor of a power of attorney and on a purchaser for value without notice. On account of some of the findings in the case, we recommend it be kept confidential.

5. Below is summary of the case.

6. The Appellant, an Advocate indebted to the Law Council, in the sum of Ug. Shs. 1,000,000/=, gave a power of attorney over his property (comprising his home and office) to a company called Mars Trading Co. Limited (the “Company”), part owned by one of his friends and clients, to enable the Company to borrow money from a bank. In exchange of the power of attorney, the client gave the Appellant a personal cheque to pay to the Law Council. The cheque was dishonoured.
7. The Company used the power of attorney to mortgage the Appellant’s property to Orient Bank (the “Bank”) to secure a loan of Ug. Shs. 15,000,000/=, which loan was used exclusively for the business of the Company. The Company defaulted on the loan and the Bank sold the Appellant’s property to a third party (the “Purchaser”) who evicted the Appellant.
8. The Appellant filed a suit against the Bank, the Company, the Bank’s lawyer, who also acted for the Purchaser, and the auctioneers challenging the mortgaging and sale of his property and alleging fraud on the part of the Respondents. He was unsuccessful in the High Court and in the Court of Appeal.
9. The Supreme Court reversed the decisions of the lower courts and found that the mortgage and sale of the property were illegal, null and void for the several reasons that we discuss below.

GENERAL PARTS (U) LTD V NPART CIVIL APPEAL NO.5/1999, an instrument would be invalid where there is a requirement to have the signatures to be in latin character and they are not.

Interpretation and enforcement

SIDPORA V UGANDA REHABILITATION DEVELOPMENT ASSOCIATION H.C.C.S 1991/1993, where court observed that P.O.A have to be strictly interpreted and where theres, no suthority given to the holders of powers of attorney then he caannot purport to do so.

POWIS AND BRYANT LTD V BANQUE D PEOPLE (1893) AC 170, Lord McN noted that powers of attorney are to be construed strictly. Yhat where an act purporting to be done under the POA is challenged as being in excess of authority conferred by the power, its necessary TO SHOW ON A FAIR CONSTRUCTION OF THE WHOLE INSTRUMENT the authority in question is to be found in the four corners of the instrument, either in express terms or any necessary implication.

If its instituting a suit, AYIGIYIGU AND CO ADVOCATES V MUNFAKINDI MARY (1993-1990) HCB 161, Tsekoko stated thst the holder of a POA ought to take proceedings in the name of the owner of the property, the owner of the power of attorney.

Power Of Attorney 16th Schedule

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP.240

POWER OF ATTORNEY

I, MUGARURA VICENT OF KIRA VILLAGE NAMUNGONGO PARISH KIRA SUB COUNTY WAKISODISTRICT being the registered proprietor of land comprised in BLOCK 217 plot 19, BUSOLOSULO appoint MARIA BUSINGYE OF KIRA VILLAGE, NAMUGONGO PARISH, KIRA SUB COUNTY WAKISO DISTRICT ,my attorney to sell to Pantaleo Ofwono of Kampala district land comprised in BLOCK 217 plot 19, BUSOLOSULO which belongs to me under the registration of title Act , Cap 230 upon payments of UGX 125,000,000 (one hundred twenty five million) being the balance on the balance on the purchase price of UGX 250,000,000, AND for me and in my name sign transfer forms in favour of Pantale Ofwono and to carry out any other thing incidental or arising out of the transfer

Dated this 22nd day of October, 2022.

Signed by:

STEVEN BINSOBEDDE

**REGISTERED PROPRIETOR OF LAND COMPRISED IN
BLOCK 217 PLOT 19 BUSOLOSULO**

In the presence of:

.....

ADVOCATE.





CO-OWNERSHIP

CO-OWNERSHIP

Article 26 (1) of the 1995 constitution of Uganda as amended, provides for the right to own property either individually or in association with others.

Mugambwa; Principles of land law in Uganda at Page 259, Co-ownership of land is where 2 or more persons concurrently own an interest in land. Each co-owner is entitled to the simultaneous enjoyment or use of the land claiming not a separate portion but a mutual right in the whole. Megary and Wade, The law of Real Property at page 417, English law recognizes the form of Co-ownership maybe in joint tenancy or tenancy common.

Section 56 of the RTA cap 240, Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares.

Joint Tenancy

Where two or more persons together as a group own the entire interest in the property, the co-owner here does not have distinct shares in the land. In law, they hold the whole jointly and nothing separately. Two key things distinguish a joint tenancy from a tenancy is common: - (1) Presence of the four unities and (2) The Right of survivorship. Unless the two exist, there is no joint tenancy.

Where co-ownership exists in the form of a joint tenancy, the owners are regarded as being wholly entailed to hold all the property that is co-owned. In respect to land, this means that each of the joint tenants is regarded as simultaneously owning the whole of the land concerned and that they cannot be regarded as holding specific shares of the property.

HAMMER SMITH LBC V MONK [1992]1 AC 47 AT 492, court stated that in property law, a transfer of land to the two or more persons jointly operates as to make them vizaviz the outside world one single owner.

Four unities

Megary and Wade; The Law of Real Property 15th Edition (1984) pg 419-422, sets out the four unities of possession, title, time and interest.

AG SECURITIES V VAUGHAN AND ORS [1988] 2 ALL ER 173 at 184, Sir George Waller observed that a joint tenancy is one where the tenancy commences on the same day for all, where the term is the same for all, where the rent should not be altered without also notice of all and possibly where all are jointly liable for the rent.

1. **Unity of possession:** - Means that each co-owner is entitled to an undivided possession of the whole of the co-owned land and none holds any part separately to the interest of each joint. **WISEMAN V SIMPSON [1988] 1 ALL ER 245**, it was held that as joint tenants each has the right to occupy the property and neither can lawfully exclude the other.
2. **Unity of interest:** - Means that the interest of each joint tenancy must be identical in nature and duration. e.g there cannot be a joint tenancy where one co-owner has a leasehold interest in the land and the other a freehold or where one co-owner is entitled to a greater share of the rent from the land than the other.
3. **Unity of time:** - Means that the interest of each joint owner must vest at the same time. e.g if A and B together purchase the land and the land title is conveyed to them, there is unity of time because the title vests in them at the same time.
4. **Unity of title:** - Means that the co-owner title must derive from the same act or document. If they acquired the land by inheritance, it will have been under the same will.

Right of survivorship: -

Upon the death of one joint tenant his/her interest in the land is extinguished and does not form part of his/her estate. **WIGHT V GIBBONS (1949) 78 CLR 313. Common calamity.** This arises in the instance where the joint tenant dies in circumstances which render it impossible to determine who survives the other. In **WILCOX V MEHEROTH 1933) CLR 82**, a husband and wife executed identical wills each appointing the other sole heir and executor of my estate and effects. They died in a common calamity. The court held that according to the common law the estate of each of the deceased must be administered as in intestacy it being presumed that they both died at the same time.

Section 57(1) of the RTA cap 240, Upon the transfer of any land and upon the lease of any freehold land to two or more persons as joint proprietors with the

words "no survivorship" endorsed on the transfer or lease, the Registrar shall enter those words in the memorial of that transfer or lease and also upon any certificate of title issued to the joint proprietors pursuant to the transfer and sign his or her name thereto.

Upon the death of one of joint tenants.

Section 176 of the RTA cap 240 , Upon the death of any person registered with any other person as joint proprietor of any land or of any lease or as joint proprietor of any mortgage owned on a joint account in equity, the Registrar, on the application of the person entitled and proof to his or her satisfaction of

the death, may register the applicant as the proprietor thereof; and the applicant shall, upon being registered in the manner herein prescribed for the registration of a like estate or interest, become the transferee of the land, lease or mortgage and be deemed its proprietor.

Tenancy in common.

Tenants in common hold land in individual shares. Each tenant in common has a distinct share in the property. what makes the co-owner is that they all have shares in a single piece of land though the land is not yet physically divided amongst them.” Per Ntagoba in *East Africa General Insurance V Ntende and sons* (1979) HCB 227. **Doctrine of survivorship doesn’t apply here.**

RIGHTS OF CO-OWNERS.

Co-owners of land enjoy certain rights and owe each other certain obligations in their dealings with their land. The most important right of a co-owner is a right to possession. In law, each co-owner is entitled to possession and enjoyment of the entire co-owned land irrespective of the size of his/her share. Nor can co-owners be held liable for trespass to the land.

1. No liability for trespass or occupation rent.

Because each co-owner has an equal right to occupy the land, neither can sue the other for trespass to the common land nor can a co-owner demand occupation rent from the other occupier.

- a) However, where a co-owner is in a sole occupation of the common property in the understanding with the other co-owner that he/she will pay rent then he/she will pay rent as promised. *UGANDA THRIFT V NNAMBALE* [1971] HCB 326, Wambuzi J stated that the partners bought the land for commercial purposes and could have been rented to any person other than the defendant. When the defendant occupied one of the houses he did so on the understanding that he was renting it just like a stranger. Therefore he was bound to pay for his occupation and if he failed he could be evicted. He was not immune to eviction merely because he was a tenant in common, a relationship which did not exist between him and his acknowledged landlord, in this case, the company. Judgement was entered in favour of the plaintiff.
- b) A co-owner may be liable for occupation rent if he/she ousts or evicts another co-owner from occupation of the common property. The ousted co-owner from occupation by another co-owner is entitled to sue the person responsible in trespass and to claim occupation rent, from him/her for the period he/she was excluded from occupation.

DENIS V MCDONALD (1981) 2 ALL ER 633, it was held that a co-owner is liable for occupation rent if he/she is responsible for the other being out of occupation. In this case, though the defendant did not oust the plaintiff for all practical purposes his violence towards her was tantamount to eviction because it could have been unreasonable to expect her to occupy the house in such circumstances.

2. No compensations for improvement or repair.

A co-owner who of his/her own accord expends money on improvement or repairs of the common property cannot demand compensation from other co-owners. LEIGH V DICKSON (1884) 15 QBD 60 Brett MR, tenants in common are not partners and it has been so held, one of them is not an agent for another. The refusal of a tenant in common to bear any part of the costs of proper repair may be unreasonable but never the less, the law allows him to refuse and no action will lie against him.

DEALINGS IN CO-OWNED LAND.

A tenant in common has a distinct though undivided share in the land. A joint tenant on the other hand has no distinctive share.

1. A tenant in common has no right to lease without the authority of the other co-owners.

MUTUAL BENEFITS LTD V PATEL AND ANOTHER (1972) E.A 496, the respondents owned the land as tenants in common with J.C. PATEL. Without knowledge of the other co-owners, patel entered into a contract to lease the land to the appellant, the latter lodged a caveat against the land to protect the lease. Trial judge ordered the caveat be removed on ground that patel had no right to lease the land without consent of other co-owners. On appeal, was dismissed.

2. The other co-owners may sue for trespass.

A person who enters into possession of the land with consent of only one of the co-owners, may be sued by the other co-owners for trespass. JAMES KATUKU V KALIMBAGIZA (1987) HCB 75, A and B, were joint tenants of a leasehold, they invited the defendant to join them as a co-owners and agreed that on payment of a specified amount, the defendant's name would be added to the lease and register. After paying the agreed sum, the defendant entered into possession and started using the land before his name was registered as co-owner, meanwhile A and B without defendant's knowledge sold the land to the plaintiff who entered into possession and commenced proceedings for defendant's eviction and of the defendant's counterclaimed for trespass. Okello J stated that: As the defendant was admitted as a joint tenant, his right of possession, interest, title and time over the land was the same as those A and B. it followed that entry into the land which was in his possession by any other person without his consent amounted to trespass even if the other co-tenants permitted the entry. Defendant was entitled to damages and an eviction order.

TERMINATION OF TENANCY IN COMMON.

A tenancy in common is determined by partition of the land or by physical division of the land amongst the co-owners in accordance with their shares.

Partition may be by mutual agreement of the co-owners or by court orders under its inherent powers. The process is completed by registration of the former co-owners of their individual shares.

Termination of joint tenancy.

It can be terminated by operation of the doctrine of survivorship when all but one of the joint tenants die. Apart from that, it can be terminated during the lifetime of the joint tenants by:

- a) Partition
- b) Severance.

Partition: this is the physical division of the land amongst the co-owners. The process is completed by registration of the former co-owners of their respective share. It can be voluntary or by court order.

Severance means converting a joint tenancy into tenancy in common by dividing in the land. It can be done in three ways.

- a) A joint tenancy may unilaterally sever the joint tenancy by doing an act that operates upon his/her share e.g he or she may sell or donate *inter vivos* his/her interest to a third party
- b) By mutual agreement where all the joint tenants agree to sever the joint tenancy.

By course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common, even in absence of an actual agreement between the parties.

LEASES ON PRIVATE MAILO LAND

Definition of a Lease

A Lease is an interest in land defined in S. 3(5) of the Land Act, where the mailo owner (called a “Lessor”) grants to another (called a “Lessee”) exclusive possession of land for a defined period commencing on a specific date usually upon payment of a capital sum known as premium and payment of an annual sum known as ground rent or some other consideration. It is a contract between the lessor and lessee which is freely negotiated.

Leases are created by private mailo land owners and this does not cover land renting by tenants. However, a tenant is free, with the consent of the landlord, to rent out his or her “Kibanja” for an agreed time, sometimes measured in seasons. The terms of such renting are freely negotiated.

Manner of creation of a Lease

A lease is created either by operation of law or by contract. For purposes of creation of a lease out of mailo land, the mailo owner has, in accordance with Section 100 of the RTA cap 240 provides for leases. This is a contract which sets out the particulars of the land, the subject matter of the lease and the terms and conditions of the lease.

To ensure that the whole world is aware and bond by the lease it has to be registered with the Registrar of Titles. Upon registration, a leasehold certificate of title is issued to the lessee. Such a lease can be transferred, mortgaged or otherwise dealt into by the lessee although the lease may sometimes require the lessor's consent for certain transactions.

Rights and Obligations under a Lease Express or Implied Terms

Since a lease is a contract between a lessor and a lessee, the parties are at liberty to agree on the terms of the lease provided that they are not contrary to any law or public policy. However, there are instances where parties may not expressly agree on certain matters. In such cases, the lease will be governed by the terms implied by law. If the lease does not specifically state that the implied terms do not apply, then they will be binding to the parties.

Covenants implied by the RTA Cap 240

Under S.101 of the Registration of Titles Act, the following covenants are implied against the lessee in favor of the lessor namely:

- i. That the lessee will pay the rent reserved by the lease at the times mentioned in the lease.
- ii. That the lessee will keep the leased property in good and tenable repair throughout the term of the lease except if the disrepair is due to earthquake, storm, tempest or reasonable wear and tear.
- iii. There are also other covenants implied by S.102 of the RTA cap 240, in favor of the lessor, namely: that once every year, he or she may at a reasonable time of the day, enter upon the leased land with or without surveyors and workmen to view the state of repair of the property, that in case rent is in arrears for a period of thirty days whether formally demanded or not, or if there are other breaches of the terms of the lease for a period of thirty days, then the lessor can reenter upon and take possession of the leased land, in case of a transfer of a lease, the terms and conditions of the lease will be binding on the purchaser of the lease as an implied term of the transfer under S.104 of the RTA. Covenants implied at Common Law.

Under the English Common Law, which applies in Uganda, unless there is a written law to the contrary the following covenants are implied in favor of a lessee, namely:

- a. That the lessee who is performing his or her obligations in the lease will enjoy peaceful possession, use and enjoyment of the property.
- b. That the lessor will not derogate from his grant of the lease by engaging in activities that make it difficult or impossible for the lessee to enjoy the leased land.
- c. That in case of a lease of developed land, that the premises are habitable and suitable for the leased purposes.

As against the lessee and in favor of the Lessor, the common law implies the following covenants:

- a. That the lessee shall pay rent.
- b. That the lessor shall pay rates and taxes.
- c. That the lessee shall not commit waste by using the leased land in such a way as to diminish its value.

LEASES

Article 237 (3) of the 1995 constitution of Uganda as amended, together with section 2(d) of the land act cap 236 provides that land in Uganda shall be owned in accordance with the following land tenure systems; leasehold

INCIDENTS OF TENURE.

Section 3(5) of the land act

- a) It created either by contract or by operation of the law
- b) The terms and conditions of which maybe regulated by law to the exclusion of any contractual agreement reached between the parties.
- c) Under which one person, namely the landlord or lessor, grantor is deemed to have granted another person,namely the tenant or lessee, exclusive possession of land usually but not necessa for a period defined, directly or indirectly by reference to the specific date of commencement and a specific date of ending.
- d) Usually but not necessarily in return for a rent which maybe for a capital sum known as premium or for both a rent and a premium but maybe in return for goods or services or both maybe free of any required return.
- e) Under which both the landlord and tenant may subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of a freehold owner as are appropriate and possible given the specific nature of a leasehold tenure.

According to Meggary; Manual on the law of real property, 8th edition sweet and Maxwell 2012 a lease is a bilateral contract which as a general rule confers an estate in land capable of bindin the parties, the contract is one for the exclusive possession and profit of alnd for some determinate period.

Section 1 of the land act cap 236, defines leasehold tenure to mean the holding of land for a given period from a specified date of commencement on such terms and conditions as maybe agreed upon by the lessor and lessee, the incidents of which are described in section 3 and includes a sublease

STREET V MOUNTFORD (1985) 2 ALL ER 289, lord Templeman, appeared to suggest that rent was an essential element for there to be a valid lease. However the court of appeal in; ASHBURN ANSTALT V ARNOLD (1989) CH 1at pg 9, held that there can be a valid lease even though no rent is payable. Meggery on the other hand states that as a lease is a contract, there must be consideration and its acceptance by the tenant of the obligation to pay rent that usually furnishes the consideration.

ESSENTIAL FEATURES OF A LEASE.

At common law, a lease has 2 essential features i.e

1. Exclusive possession
2. Certainty of duration

NB: Though a lease is normally granted for monetary consideration, this is not an essential feature. S.3(5)(d) land act cap 236, states that a lease maybe created even where there is no req for rent payment.

1. EXCLUSIVE POSSESSION.

SEC.3(5) of the land act cap 236, a leasehold tenure is a form of tenure under which one person namely the landlord or lessor grants or is deemed to have granted another person namely the tenant or lessee exclusive possession of land. Thus exclusive possession is the linch pin of a lease and this is what distinguishes a lease from a mere licence.

According to Meggery, it has always been of the essence of a lease that the tenant should be given the right to exclusive possession i.e the right to exclude all other persons including the landlord from the premises.

STREET V MOUNT FORD (1985) 2 ALL ER, 289, court noted that as a matter of fact, a person who was granted exclusive possession of land for a term at a rent, that grant created a lease. Court further noted that grant of exclusive possession was determinant whether an occupant was a licensor or a lease. A tenant who has exclusive possession can exercise the rights of a land owner. He can exclude both strangers and a landlord save where the landlord is entitled under the terms of the lease to inspect the premises and foreexample carryout repairs.

Whether an occupier has exclusive possession depends on the intentions of the parties, objectively determined from all the terms of their agreement and the surrounding circumstances.

In DESAI V COOPER (1950) KLR 32, it was noted that the extent of the control over the land retained by the land owner, determines whether the occupier has exclusive possession. If the landowner retains general control over the premises, it's a strong indication that the occupier has no exclusive possession and therefore he/she is a mere licensee.

Meggery further states that exclusive possession must be distinguished from exclusive occupation. Even if the grantee is exclusively entitled to occupy the premises in the sense that no one else is entitled to live there, he may not have exclusive possession because the grantor may retain control of the premises.

Alternatively, a grantee may have exclusive possession although he does not occupy the property himself but is in receipt of rent and profits as a result of subletting it.

It's important to note that the fact that the owner retains a right of access for certain purposes or occasion does not necessarily mean that the occupier does not have exclusive possession e.g. it's common practice for landlords to retain a right to enter at certain times for purposes of inspection of the premises.

Section 102(a) of the RTA CAP 240, in every lease made under the act, there shall be implied in the lessor and his or her transferee powers that he or she or they may with or without surveyors, workers or others once in every year during the term at a reasonable time of the day enter upon the leased property and view the state of repair of the property.

There are three exceptional circumstances where an occupier who has exclusive possession of premises will not be a tenant or lessee under a lease;

Where the parties do not intend to create legal relations, no tenancy or lease will arise. *ERRINGTON V ERRINGTON WOODS* [1952] ALL ER 149, it was held that although a person who is let into exclusive possession is prima facie to be considered to be a tenant, never the less, he will not be held in circumstances negative any intention to create a tenancy.

No tenancy or lease will be created if an occupant's exclusive possession is referable to some other legal relationship for example; where a person occupied property because of her appointment as an alms person there was no tenancy granted, as she was a beneficiary of a charitable trust.

There will be no lease where the lessor lacks the legal powers or capacity.

CERTAINTY OF DURATION

Section 3(5)(c) of the land act cap 236, the lessor grants the lessee exclusive possession of land usually but not necessarily for a period, directly or indirectly by reference to a specific date of commencement and a specific date of ending. At common law, a lease can be of any duration but it must have a certain or ascertainable beginning and ending before it takes effect otherwise it's void as a lease.

According to Megarry, a lease may fail because the estate is not clearly demanded e.g. if it purports to be a lease for an indefinite period of time.

LACE V CHANTLER [1944] 1 ALL ER 305, the plaintiffs during the world war 2 sublet a house to the defendant for the duration of the war, it was held that the lease was void for uncertainty of duration because at the time the purported lease took effect, it was neither certain nor ascertain when the war would end.

CREATION OF A LEASE.

Under Section 3(5) (a) of the land act cap 236, it's created by contract or by operation of the law. It can either be in writing or it can be oral or inferred from the conduct of parties.

Section 100 of the RTA cap 240, The proprietor of any freehold or mailo land under the operation of this act may, subject to any law or agreement for th e time being in force, lease that land for any term exceeding three years by signing a lease of it in the form in schedule 9 to this act; but no lease subject to a mortgage shall be valid or binding against the mortgagee unless he or she has consented in writing to the lease prior to it being registered.

Section 54 of the RTA CAP 240, a lease is not effective until its registered under the act.

Section 49 of the RTA cap 240, a lease presented for registration maybe in triplicate and upon the registration of that lease, the parts not retained shall be delivered to the person presenting the lease for registration.

EFFECT OF NON-REGISTRATION

SOUZA FIGUENDO CO LTD V MOORING HOTEL LTD (1960) E.A 926, court held that an unregistered lease agreement operates a s a contract, which is enforceable between the parties where the extended lessee enters into possession pursuant to the agreement , a enancy at will be created.

Types of leases.

Private

Equitable

Legal/formal

Public.

PRIVATE LEASE: these are leases between individuals on an agreement to pay rent where one is garnted exclusive possession for a certain period of time

EQUITABLE LEEASE: these are leases whereby the lessee has exclusive possession but the lease is not registred. In equity, failure to follow legal formalities to create a lease doesnt necessarilty render the lease void. Because equity treats as done what ought to be done , anagreement for a lease capable of enforcement by specific performance creates a lease. Such a lease is referred to as an equitable or informal lease. WALSH V LONSDALE (1882) 21 CH 9 the defendants, Lonsdale agreed to grant the claimant Walsh, the lease of a mill for 7 years, the rent to be paid. Parties did not execute a deed for the grant of the tenancy but the claimant moved in and paid rent quarterly in arrears.

- a) LEGAL/FORMAL LEASE: Where a lease is registered under section 54 of the rta it becomes a legal or formal lease. Section 100 of the RTA cap 240, respectively provide that a proprietor wishing to lease or sub-lease his or her land for a term in excess of 3 years should execute the prescribed forms.
- b) PUBLIC LEASES: acquiring a lease in Uganda can also be through a government authority and these leases are known as public leases. Uganda land commission and district land boards

are the land controlling authorities responsible for leasing public land in Uganda. Before the promulgation of the 1995 constitution, there were statutory leases but these were abolished by the constitution.

NYUMBA YA CHUMA LTD V UGANDA LAND COMMISSION AND A.G CONST.PETITION NO.13/2010, the petitioner was granted a lease on the land by Kampala district land board. The lease expired and an application for extension was granted by the board. However by the time, Uganda land commission had created a freehold title over the same plot as the owner and registered proprietor Kavuma

“Article 239 of the constitution lays down the functions of the Uganda land commission. It provides that ULC shall hold and manage any land in Uganda vested in or acquired by the government of Uganda in accordance with the provision of the constitution and may have such other functions as may be prescribed by parliament. Under section 50 of the land act cap 236, provides for the functions of the Uganda land commission to include acquire by purchase or exchange or otherwise hold land rights, easements or interest in land, sale, lease or otherwise deal with land held by it.

On the other hand Article 241 of the 1995 constitution of Uganda as amended lays down the functions of the district land board. It provides that the functions of the district land board are:

- 1) To hold and allocate land in the district which is not owned by any person or authority
- 2) To facilitate the registration and transfer interests in land.

The above article should be read together with section 60 of the land act cap 236 in the performance of its functions, a district land board shall be independent of the Uganda land commission and shall not be subject to the direction and control of any person or authority but shall take into account the national and district council policy on the land and the particular circumstances of different systems of customary land tenure within the district. Court further observed that as far as Article 26 is concerned, the petitioner has to prove that there was a statutory lease granted by the ULC to Kampala City Council as the controlling Authority.

Apart from stating that the petitioner got registered as proprietor and owner of the suit property, there's no evidence from Kampala district land board (successor to KCC then a controlling authority) that the land belonged to them. In the premise, it cannot be justifiably said that the dealing by the ULC were in contravention of the impugned provision. That the purported extension of the lease to the petitioner by the Kampala District Land Board in October 2009 was invalid and without legal basis.

Whereas the mandate functions and powers of the ULC are in respect of land owned by the government of Uganda, those of the district land boards including that of the former KCC are in respect of land within such boards territorial jurisdiction which is not owned by any person or authority. The two bodies act independently of each other in the execution or exercise of their respective mandates, functions and powers. In this case the subject land was and is that of ULC and not the Kampala district land board's.

COVENANTS AND CONDITIONS.

Terms of a lease may be expressed as conditions or covenants.

A condition is a term which is the essence of the lease agreement and its breach entitles the innocent party to terminate the lease as stated in LUGOGO COFFEE COMPANY 9U) LTD V SINGO COMBINED COFFEE GROWERS LTD CIVIL SUIT NO.554/1973

A covenant is a term of a lease agreement whose breach does not warrant the innocent party terminating the lease unless the agreement expressly gives that right e.g a landlord cannot terminate the lease for breach of covenant to pay rent unless the right to terminate is expressly reserved in the lease agreement.

Section 101 of the RTA cap 240, in every lease made under the act there shall be implied the following covenants with the lessor and his or her transferee by the lessee binding the latter and his/her executors...

- (a) that he or she or they will pay the rent reserved by the lease at the times mentioned in the lease; and
- (b) that he or she or they will keep and yield up the leased property in good and tenantable repair, damage from earthquake, storm and tempest, and reasonable wear and tear excepted.

Section 102 of the RTA cap 240. In every lease made under this Act there shall be implied in the lessor and his or her transferees the following powers

- (a) that he or she or they may with or without surveyors, workers or others once in every year during the term, at a reasonable time of the day, enter upon the leased property and view the state of repair of the property; and
- (b) that in case the rent or any part of it is in arrear for the space of thirty days, although no legal or formal demand has been made for payment of that rent, or in case of any breach or non-observance of any of the covenants expressed in the lease or by law declared to be implied in the lease on the part of the lessee or his or her transferees, and the breach or non-observance continuing for the space of thirty days, the lessor or his or her transferees may reenter upon and take possession of the leased property.

Covenants implied in Common law.

1. Covenant of quiet possession.

There is an implied covenant against the landlord that he/she and persons claiming under him or her shall not interfere with the tenants use and enjoyment of the demised premises. *SHAH CHAMPS SHI TEJSHI AND ORS V A.G OF KENYA* [1959] E.A 650, government representative granted a lease to appellants. Plaintiff claimed that under the lease they had an implied right of access to a certain road. Later government leased the adjoining land to another person and the latter blocked the appellants alleged access to the road. The issue was whether the government breached the covenant of quiet enjoyment. Court held that a common or mutual lesser is not liable for breach of covenant of quiet possession or enjoyment or unlawful interference with a tenants possession caused by another tenant unless he/she permitted the act.

1. No derogation from grant.

The implied covenant not to derogate from the grant means that the landlord will not frustrate the use of the land for purposes that in the contemplation of all parties it was let. The effect of the covenant is that the landlord must desist from carrying on activities on the land retained that renders the land or part leased materially less fit for the purposes for which it was leased.

3. fitness for human habitation.

At common law, apart from express agreement, the landlord has no obligation to provide premises that are fit for human habitation. But where premises are rented fully furnished, the common law implies against the landlord that the premises are fit for human habitation. Even then, the covenant is only implied at the beginning of the lease and not throughout the term so if the premises are fit for human habitation at the commencement of a lease but become unfit during the term, the landlord is not liable.

Covenants against the tenants.

- a) Payment of rent. It is implied against the tenant that he/she will pay rent when it is due and at all rents and taxes except those for which the landlord is by law responsible.
- b) Deliver up vacant possession on termination: at the determination/termination of the lease, the tenant will deliver up vacant possession. This obligation not only entails the tenant vacating the entire premises but also removing all persons on the premises with his/her consent before handing over the premises to the landlord. Where the tenant fails to vacate, he will be held accountable to the landlord for rent, for use and occupation and will also be liable for the costs incurred by the landlord in ejecting whoever remains in possession.
- c) Use land in tenant-like manner. The tenant shall use the premises in a tenant-like manner. This obligation means that the tenant should take proper care of the premises by doing the little jobs around the premises which a reasonable tenant would do.

SUB-LEASES.

Section 108 of the RTA cap 240, The proprietor of any lease under this Act may, subject to any provisions in his or her lease affecting his or her right to do so, sublet for a term not less than three years by signing a sublease in the form in Schedule 11 to this Act; but no sublease of any land subject to a mortgage upon the lease of the land comprised in the sublease shall be valid or binding against the mortgagee of the lease unless he or she has consented in writing to the sublease previously to the sublease being registered.

Black's law dictionary 11th edition defines a sub-lease as a transaction whereby a lessee creates a lease that is less than the term that the lessee has. Under section 109 (1) of the RTA cap 240, the Registrar shall endorse on the sublease a certificate of registration containing the date and a reference to the lands affected,

and shall authenticate the certificate by signing his or her name to it; and such certificate shall be received in all courts as conclusive evidence that the sublease has been duly registered.

(2) Notwithstanding section 111, the Registrar shall not register any lease or sublease by a proprietor of a sublease registered in accordance with this section.

Section 111 of the RTA cap 240, The provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees with such

modifications and exceptions as the difference between a lease and sublease, and in the mode of registration of each require

Covenants implied in sub-lease.

Section 112 RTA cap 240, In addition to the covenants specified in section 101 to be implied in every lease, there shall be implied in every sublease the following covenant with the sublessee and his or her transferees by the sublessor binding the latter and his or her executors, administrators and transferees, that he or she or they will, during the term granted by the sublease, pay the rent reserved by and perform and observe the covenants and agreements contained in the original lease, and on his or her or their part to be paid, performed and observed.

CITY COUNCIL OF KAMPALA V MUKIIBI [1967] E.A 368, the plaintiff leased premises to the defendant without right to sublet unless without right to sublet unless without right to sublet unless consent from the plaintiff's consent. Defendant allowed third parties to use the premises. The plaintiff sought to terminate the lease agreement. Sir Udo Udoma stated that there is no law that prohibits the lessee to sublease the land and further held that the lessee should not violate the covenants of the lease agreement.

KAMPALA CITY COUNCIL V MUKUBIRA [1968] E.A 468, Where it was held that on subletting and parting with possession without consent of the lessor, the lease was in breach of the lease agreement.

TENANCIES

Street v Mountford (1985) 2 ALL ER 289, tenancy is a term for year absolute to constitute a tenancy, the occupier must be granted exclusive possession for a fixed or periodic term in consideration of a premium or periodical payments. The grant may be express or inferred where the owner accepts weekly or other periodic payments from the occupier.

FIXED TENANCY.

A lease may be granted at any period for a certain duration no matter how long or short. A fixed term lease/tenancy is a lease whose duration is fixed by the parties at the onset so that once the term expires the lease comes to an end.

PERIODIC TENANCY.

This is a lease which continuously renews from one term to another until terminated by proper notice served by either party, as per the case of PRUDENTIAL ASSURANCE CO LTD V LONDON RESIDARSARY (1992) 3 ALL ER 504.

BWEYA STEEL WORKS LTD V NATIONAL INSURANCE CO. (1986) HCB 58, a periodic tenant refers to a person who enters an agreement with a land owner to occupy his/her land or property, enjoy exclusive possession and pay rent on a regular periodic basis for instance weekly, monthly, quarterly annually. The type of periodic tenancy depends on the agreement of the parties. A periodic tenancy is renewable depending on the agreement between the parties. Where there are joint tenants, a periodic tenancy continues only as long as it's the will of both parties that it should.

Before a periodic tenancy is terminated either by the landlord or tenant, reasonable notice must be given depending on the terms of the agreement or the period of the tenancy if the agreement is silent on the notice period. Where there are joint tenants, a notice given to one of the tenants, is effective to terminate the lease. a

TENANCY AT WILL.

Its implied when a landowner allows another person to enter into possession as a tenant without specification of the terms of the tenancy agreement.

According to Meggery, a tenancy at will arises whenever a tenant with the consent of the owner occupies land as a tenant and not merely as a servant or agent on the terms that either party may determine the tenancy at any time. It can be created either expressly or by implication.

BWEYA STEEL WORKS V NATIONAL INSURANCE CORP (1985) HCB 58, a tenant at will is one who is in possession of the land with consent or permission of the land owner before the tenancy contract is finalized or continues to stay on the land after the tenancy has expired prior to its renewal. This tenant is not entitled to notice to leave the premises but its prudent to give them reasonable notice.

TENANCY AT SUFFERANCE.

According to Meggery a tenant at sufferance arises where a tenant having entered onto the land with a valid agreement holds over without landlords assent or dissent. A tenancy at sufferance is implied where a former tenant remains in possession after the expiration of a fixed term without the consent and without objection of the land owner. Such a tenant differs from a trespasser in that his original entry was lawful and from a tenant at will in that his tenancy exists without the landlords consent.

CHRISTOPHER SSEBULIBA V ATTORNEY GENERAL S.C.C.A No.13/1991, court noted that a tenant at sufferance is who remains in possession of the land after the expiry of the tenancy without consent or objection of the landowner. This tenant is not entitled to notice to leave the premises but it is prudent to give them reasonable notice.

TERMINATION OF A LEASE

A lease can be terminated in the following ways.

Expiry

Notice

Forfeiture

Surrender

Merger

Enlargement

Disclaimer

Frustration

By termination for breach.

EXPIRY/ EFFLUXION OF TIME

Expiry is the default method of termination of a fixed term tenancy. At common law, the tenancy ends when the fixed term expires. It is also possible that a fixed term tenancy may terminate before the date of expiry, first, it may have been made, determinable upon the happening of some event. However, this rule does not apply if the event is a death. When death occurs, the tenancy will not expire before it becomes terminable by either party giving written notice. When the period for a fixed term lease expires, there is no requirement for either party to give notice unless the lease agreement expressly says so. If the tenant remains in possession without consent or dissent of the landlord he or she becomes a tenant at sufferance and is liable for the costs incurred for his/her eviction and for mesne profits.

BY NOTICE

fixed term tenancy cannot be determined by notice unless this has been expressly agreed. Periodic tenancies however can be determined by notice by both landlord and tenant. In absence of any express agreement between the parties as to notice, notice will be determined by the period of the tenancy.

In BWEYA STEEL WORKS LTD V NIC (1985) HCB 58, odoki j , stated that a landlord has a right to terminate a periodic tenancy upon giving the tenant proper notice. In the absence of special stipulations as to the notice periods, such period should be equal in length to the period.

Notice to quit is a unilateral act determining a tenancy without the consent of the opposite party and as such must be strictly construed. A notice is therefore bad if it does not expire at a proper time.

In **QUEENS CLUB GARDENS ESTATE V BIGWELL(1942)1 KB 117**, a weekly tenancy notice of one week, a monthly tenancy requires notice of one month

in MUSUMBA V HAJI KASAKA (1971) 1 ULR 222, a Quarterly tenancy requires notice of three months.

by forfeiture.

This is the re-entry by the landlord for breach of covenant that entitles the landlord to terminate the lease. The landlord may become entitled to re-enter the premises and so prematurely end the lease. Forfeiture is the termination of a lease by the lessor before the term expires. This entitlement must arise under the terms of the lease. In the absence of an express provision for forfeiture, only breach of a condition entitles the landlord to enforce forfeiture of a lease.

Section 102(b) of the RTA cap 240, In every lease made under this Act there shall be implied in the lessor and his or her transferees the following powers(b) that in case the rent or any part of it is in arrear for the space of thirty days, although no legal or formal demand has been made for payment of that rent, or in case of any breach or non-observance of any of the covenants expressed in the lease or by law declared to be implied in the lease on the part of the lessee or his or her transferees, and the breach or non-observance continuing for the space of thirty days, the lessor or his or her transferees may reenter upon and take possession of the leased property.

On breach of a condition, the term created by the lease becomes liable to forfeiture even if a) there's no forfeiture clause or b) the lease is made in writing and not by deed.

On breach of a condition the lease becomes voidable at the landlord's option, it does not become void automatically even if the provision expressly declares that it shall be and so the tenant will not be allowed to set up his breach of condition as determining the lease unless the landlord chooses to determine it by re-entry or by claiming possession. Where the landlord waives the tenant's breach, he will be unable to proceed with the forfeiture of the lease. This waiver may be implied or express. It will be implied only if 2 conditions are satisfied.

Where the landlord has knowledge of the breach, the landlord must be aware of the acts, omission or the tenancy which make the lease liable for forfeiture.

An unequivocal act recognizing the existence of the lease. The landlord must do some unequivocal act which recognizes the continued existence of the lease.

CONDITIONS FOR FORFEITURE.

Forfeiture for non payment of rent.

A landlord who according to the lease has the right to re-enter for non-payment of rent may nevertheless be required to make a formal demand for the rent before he may re-enter, and on complying with certain conditions the tenant maybe able to have the proceedings for forfeiture terminated or to obtain relief against the forfeiture. The landlord of a dwelling must ensure that he provides an address for service and in the case of long leases, must serve statutory notice relating to the payment of rent. Failure to comply with those requirements will mean that the rent is not payable and therefore prevent forfeiture of the lease.

Forfeiture for breach of other.

Covenants or conditions.

The general rule is that the right to re-enter for breach of any covenant or condition other than payment of rent is subject to;

The landlords obligation to serve a statutory notice requiring the tenant to remedy the breach (if possible)

The tenants right to relief.

Before proceeding to enforce forfeiture either by action or by re-entry, the landlord must serve a notice on the tenant or else the forfeiture will be void.

The notice must;

Specify the particular breach complained of

Require the tenant to remedy the breach if its capable of remedy

Require tenant to make compensation in money for the breach if the landlord requires such compensation.

A Landlord who re-enters the premises without complying with the requirements is a trespasser and is liable in damages accordingly.

Section 111(2) RTA cap 240, if a lease is determined by forfeiture that determination shall determine the sub-lease.

Requirement for actual re-entry.

KASAJA V REGISTRAR OF TITLES HCMA 51/1993, court observed that reentry without undisturbed occupation of the demised premises by the lesser is not sufficient to determine the lease. Where the term in the lease is that the landlord may re-enter upon the breach of a covenant, he must actually re-

enter upon the breach of a covenant or must do in law what is equivalent to re-entry vis commence an action for the purpose of obtaining possession.

Entry of forfeiture in register book.

Section 105 of the RTA cap 240, The Registrar, upon proof to his or her satisfaction of recovery of possession by a lessor or his or her transferees by any legal

proceeding, may make an entry of the recovery of possession in the Register Book; and the term for which the land was leased shall upon that entry being made determine, but without prejudice to any action or cause of action which previously has been commenced or has accrued in respect of any breach or non-observance of any covenant expressed in the lease or by law declared to be implied in it.

Section 113 of the RTA cap 240 In the case of a lease or sublease of land under this Act, if it is proved to the satisfaction of the Registrar that the lessor or sublessor or his or her transferee has re-entered upon the premises in strict conformity with the provisions for re-entry contained in the lease or sublease, or

under the power of section 102(b), where the lease or sublease is under this Act, or that the lessee or sublessee has abandoned the leased premises and the lease, and that the lessor or sublessor or his or her transferee has thereupon re-entered upon and occupied the abandoned premises by himself or herself or tenants undisturbed by the lessee or sublessee, the Registrar may make an entry of that reentry in the Register Book or in the Sublease Register, as the case may be, and the term for which the land was leased or subleased shall, upon that entry being made, determine and may be removed as an encumbrance from a certificate, but without prejudice to any action or cause of action which previously has been commenced or has accrued in respect of any breach or non-observance of any covenant expressed in the lease or sublease or by law declared to be implied in the lease or sublease.

LUGOGO COFFEE CO (U) LTD V SINGO COMBINED GROWERS LTD C.S 554/1973, Nnyamchoncho j before the registrar makes a notice of re-entry in the register book in accordance with the provisions of the RTA, the lessee would seem to have an equitable title until the re-entry is made in the register book, the lessee can confer good title on a person who becomes duly registered without notice of the lesser's entry.

RELIEF AGAINST FORFEITURE.

Section 25 of the judicature act cap 16, where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture for non-payment of rent , the lessee his or her executors,a dministrators or assigns may in the lessor's action or in action brought by him or herself apply to the high court for relief.

Section 25(2) of the judoicature act cap 16, the highcourt may under subsection (1)-

Grant any relief it considers fit on such terms as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any future non payment of rent.

Refuse the relief sought as it thinks fit.

Section 25(3), where the relief is granted, the lessee his or her executors, shall hold the demised property according to the terms of the lease without the necessity of a new lease.

Section 25(4), the high court may after judgement in any action for a right of re-entry or forfeiture grant relief from forfeiture on application made in that behalf within 6 months from the date of execution of judgement by lessee, his/her executor on such terms and conditions as to payment of rent and costs or otherwise as it may impose.

IN THE MATTER OF CHRISTOPHER GEOFFREY KIWANUKA AND MUSISI AND ANOR (1973) HCB 167, it was observed that court has discretion to grant or refuse relief. If the landlord can be put in their original position and there is no injustice, then court may grant relief on payment of rent due and the expenses by the tenant.

FRANCIS BUTANGIRA V NAMUKASA (1992) KLR 176, court observed that relief against forfeiture is only available for non-payment of rent and no other covenant reiterated by Twinomujuni JA in KAMPALA DISTRICT LAND BOARD V NARANDAS RAJARAM CO LTD CACA 32/ 2005.

GOMBA MARINES AND CONTRACTORS LTD V MARGRET KIWANA M.A 13/1993, it was stated that courts have no jurisdiction to grant relief from forfeiture under Section 25 of the judicature act where application is made more than 6 months after delivery of judgement for re-entry.

Procedure

Application by way of notice of motion supported by an affidavit under O.52 r 1

Where the landlord did not go through court to enforce the forfeiture or re-entry then the tenant / lessee can file an ordinary suit by way of ordinary plaint under O.4 r 1 and order 7

4. BY SURRENDER

Section 107 of the RTA cap 240, A lease under this Act may be surrendered and determined, as well by operation of law or under any Act now or hereafter to be in force relating to bankrupts and their estates, as by the word "Surrendered" with the date being endorsed upon the lease or on the duplicate of the lease, if any, and signed by the lessee or his or her transferee and by the lessor or his or her transferee and attested by a witness.

Surrender occurs where before expiration of a lease, the lessee gives up possession of the land to the lessor. According to Meggery, if a tenant surrenders his lease to his immediate landlord who accepts the surrender the tenancy is absorbed by the landlords reversion and is extinguished by operation of law.

Surrender is a reflection of the principle that a person cannot at the same time be both a landlord and a tenant of the same premises. Surrender is a consensual transaction between a landlord and tenant and therefore dependant for its effect on the consent of both parties. Where before the surrender, the tenant has granted a sub-lease or created some other incumbrance, the landlord is bound by it for as long as it would have bound the tenant had the lease not have been surrendered. However, this principle does not apply where the head lease is terminated by a notice to quit in which case the sub-lease determines contemporaneously with the lease.

Surrender of a lease is effected by or under a deed of surrender or by the word “surrendered” with the date being endorsed upon the lease or its duplicate and this deed has to be signed by the lessee and the lessor and attested by the witness as stipulated under section 107(1).

This is because under section 107 (4) of the RTA cap 240, this is because under Section 107(4) RTA no lease shall be surrendered without the consent in writing of the proprietor of that lease. Under section 107 (2) RTA, the registrar shall enter in the Register Book a memorandum recording the date of such surrender, and shall likewise endorse upon the duplicate, if any, a memorandum recording the fact of the entry having been made.

(3) Upon such entry in the Register Book, the estate and interest of the lessee or his or her transferee shall vest in the lessor or in the proprietor for the time being of the reversion and inheritance in the land immediately expectant on the term; and production of such lease or duplicate, if any, bearing the endorsement and memorandum shall be sufficient evidence that the lease has been legally surrendered.

Upon registration of the surrender, the interest of the lessee is extinguished and the land is freed from the leasehold as was stated in *SHAH KARAMSHI PANACHAND AND CO LTD V VELJI* (1969) E.A 194.

Surrender by Operation of Law.

This requires some act by the parties that is inconsistent with the continuation of the lease in circumstances such that it would be inequitable for them to rely on that fact that there was no surrender by deed. A clear case of surrender by operation of law would arise where the tenant gives up possession and the landlord accepts it. The landlord's acceptance estoppes him from asserting that the lease continues even though the tenants acts maybe in breach of its terms.

DEED OF SURRENDER OF A LEASE.

To: The Registrar of Titles Wakiso

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP 240

RE: LEASEHOLD LAND COOMPISED IN VOL.WBU 186 FOLIO 17 PLOT 77 NAKAWA.

DEED OF SURRENDER OF LEASE

To:Registrar of titles wakiso

TAKE NOTICE that I M/S Simodex Logistics (u) ltd of P.o Box 2456 Kampala having been registered as a lessee for a period of 20 years over the above mentioned leasehold land on 13th August 202 and a lease agreement executed between the parties and an incubrance lodged Do surrender all interest in the above mentioned lease and any or all interest in the above mentioned property back to Eva Okello and Simon Okumu of P.O Box 233, the lessors and proprietors of the leasehold land interest relating to the property here in stated.

Dated and signed as a deed at Kampala thisday of2024.

Signed by the said

Lessee:.....

Lessor:.....

In the presence of :

I Eva Okello of P.O box Do hereby consent to and approve the said surrender in the terms as proposed

Signed by the Said :.....

Lessor

In the presence of :

Name.

Drawn and filed by

ABC AND CO ADVOCATES.

1. BY MERGER

Merger is the opposite of surrender. A surrender occurs where the landlord acquires the lease while a merger occurs where the tenant acquires the reversion. Where the lessee acquires the reversion from the lessor the

lease merges with the reversion and is thereby terminated. The lease is absorbed by the reversion and destroyed. For a merger to be effective the lease and the reversion must be vested in the same person in the same right with no vested estate intervening. The merger is completed by appropriate entry in the register book.

2. BY FRUSTRATION.

It's a common law doctrine that can be invoked to discharge a party from contractual liability where some unforeseen event has made performance impracticable. As a general rule this doctrine does not apply to executed leases. For a lease creates an estate which vests in the tenant and cannot be divested except in one or other ways discussed.

3. BY BREACH.

A party to a lease may terminate its following breach of its terms by the other party. A lease may be terminated for breach if a party to the lease intends to fulfill the contract in a manner substantially inconsistent with his obligations and not in any other way. The breach must be one which vitiates the central purpose of letting.

LICENCES

According to Meggery, a license is a mere permission which makes it lawful for a licensee to do what would otherwise be a trespass.

In the case of **RADAICH V SMITH (1959) 101 CLR 209**, a license is permission given to a licensee to enter the licensor's land for some specified purpose or purposes which otherwise would be trespass. In the case of **THOMAS V SORRELL (1673) VAUGH 330 @ 351**, Vaughan CJ propounded on the classic definition of a license and stated that a dispensation of a license property passes no interest nor alters or transfers property in anything but only makes an action lawful which without it had been unlawful.

IN **ERRINGTON V ERRINGTON (1952) 1 ALL ER 149**, court noted that the difference between a tenancy and a license is that in a tenancy an interest passes in the land whereas a license it does not. In distinguishing them, a crucial test has sometimes been supposed to be whether an occupier has exclusive possession or not. If he was let into exclusive possession he was said to be a tenant at will whereas if he had no exclusive possession he was only a licensee. This test has however given rise to misgivings because it may not correspond to realities. Therefore, although a person who is let into exclusive possession is prima facie to be considered to be a tenant never the less he will not be held to be so if the circumstances negative any intention to create a tenancy. If the circumstances and the conduct of the parties show that all that was intended was that the occupier be granted a personal privilege with no interest in the land, he/she will be held to be only a licensee.

KAMPALA CITY COUNCIL V MUKIIBI (1967) E.A 368, the existence of a licence is a question of a fact and not form i.e its determined by looking at the circumstances and not the form of the agreement between the parties. Under the general law, a licence binds only a party to the agreement but not a stranger even if he/she purchases the land with notice of the licence.

Types of licences.

1. Bare licences
2. Licenses coupled with an interest
3. Contractual license
4. License by estoppel.

1) **A bare licence.** Such a licence may be expressly given or implied is granted without valuable consideration, its not supported by any contract e.g., an imitation of a friend to stay on it may become in evocable where a proprietor estoppel has been created. The licence can be revoked anytime with reasonable damages. An action of trespass would lie against the licensee if he/she remains on the land after the licence is revoked.

2) A licence coupled with an interest.

This licence to enter upon a licensor's land for the specific purpose of taking something that forms part of the land or is upon the land. The licence is in evocable whilst the grant remains in existence and may be assigned provided it's disposed of with the interest of which it is annexed

The interest granted is a profit appendre which makes the licence in evocable. The licence has no independent existence merely as a licence.

3) A contractual licence.

This is a licence granted for a valuable consideration. This is granted often the terms of serve contract which restricts the licensor's right to revoke it. The contract according to the court in **TANNER V TANNER (1975) I WLR346**, the contract may be express or implied. A contractual licence maybe revoked for breach of contract either by the licensor or licensee.

In **KING V DAVID ALLEN AND SONS, BILL POSTING LTD (1916) 2 AC 54**, it was held that at common law , contractual license doesnt bind third parties even if they bought the land with notice of the licence. Known as a profit a prendre.

In **ERRINGTON V ERRINGTON (1952) I K B 290** **The Court** held that contractual licence for the occupation of a duelling house will bind a person to whom the licensor leaves the house by will and that a contractual licence creates an equitable interest in land which would bind all comers except a purchase without notice. Position thought not overturned has been criticised.

Such licence is irrevocable while the grant remains in existence and maybe assigned provided its disposed of with the interest to which the licence is “coupled” must have been validly created. A licence to take away goods on the licensor’s land doesnot constitute an interest in the land. The licensee has a right in the chattel which is on the land and a license to enter the land to take away the chattel.

5. licence by estoppel.

a licensor maybe estopped from revoking a licence in certain circumstances. For example in INWARDS V BAKER (1965) 2 QB 29. The plaintiff wanted to buy land on which to build his house but he couldnot afford to buy land, encouraged by his father, the plaintiff constructed a house on the fathers land and for several years, while his father was alive, he lived in that house, the father in his will, devised the subject land to his widow. The plaintiff instituted these proceedings for possession. It washeld that the plaintiffs father allowed.

LAND LORD AND TENANT LAW

The provisions in the Landlord and Tenant Act, CAP 238 legalize the ordinary day to day tenancy relationships between landlords and tenants. The Act streamlines the rights and duties of a landlord and a tenant in order to maintain a good tenancy relationship.

The **Landlord and Tenant Act, CAP 238** is a new addition to the laws of Uganda. It was assented to by H.E. the President on April 12, 2022 and it was passed into law in June 2022. The Act repeals the Rent Restrictions Act, Cap 231, and its objective is to consolidate the law relating to renting of premises and regulate the relationship between landlords and tenants by providing for the responsibilities of landlords and tenants when renting premises. This Compliance Memo looks at some key provisions of the Act as well as the obligations and compliances that landlords and tenants need to adhere to when renting premises in Uganda.

Key Provisions of the Act Landlord and Tenant

A landlord is a person who lets premises under a tenancy and includes his or her duly authorised agent or a person who is in lawful possession of the premises and has the right to let them. A tenant is any person to whom premises are let or rented to under a tenancy. A tenancy means a relationship created by a lease, agreement or assignment and includes a sub-tenancy but does not include a relationship between a mortgagor and mortgagee.

Making Tenancy Agreements

The Act restricts payment of more than three (3) months in rent in advance for one month unless the tenant opts to do so in writing. Landlords are prohibited from increasing rent at a rate of more than 10% annually. Landlords are required to give notice of 90 days in case of a rent increment.

The Act is intended to regulate the relationship between landlords and tenants, to reform and consolidate the law relating to letting of premises, to provide for the responsibilities of landlords and tenants in respect to the letting of premises and related matters.

Significant Highlights of the Act

- A tenancy agreement can be oral, written, in the form of a data message or implied by conduct. Where the consideration is more than 500,000 Uganda Shillings, it should be in writing or data message to be enforceable.
- Before executing a tenancy agreement, landlords should obtain a valid identification card from the tenant for purposes of identifying a legal person and improve data storage.
- Rent denominations should be in Uganda shillings unless there is a contrary agreement. This maintains the value of the Ugandan currency.
- The Act restricts payment of more than three (3) months in rent in advance for one month unless the tenant opts to do so in writing.
- Landlords are prohibited from increasing rent at a rate of more than 10% annually.
- Landlords are required to give notice of 90 days in case of a rent increment.
- Under fixed-term tenancies, rent stays the same until the term is finished unless there's a contrary agreement.
- The Landlord is permitted to charge a security deposit that doesn't exceed one month's rent.
- Taxes are to be paid by the Landlord.
- Distress for rent is abolished, and instead, the Landlord is encouraged to apply to the court to recover unpaid rent and reasonable costs.
- There's a restriction to the right of entry of premises which requires the Landlord to give 20 hours notice before visiting the premises.

Parliament overwhelmingly decided that the currency of transaction between Landlord and tenant shall be the Uganda Shilling. The justification given is to protect the Uganda Shilling that has continuously depreciated against the dollar. While a case can be made for consumer protection, there is a limit on how far the law can intervene in a market place.

The Act protects the tenants in so many ways;

- Tenants can sub-let the property to other tenants but with the knowledge of the Landlord.

- Tenants need to be informed before a visit from the Landlord and being protected from arbitrary rent increment.
- Tenants should be given six months' notice of termination of the tenancy by a landlord who wants to do something else with the rented property.

The Act provides that a tenancy agreement can be in writing, by word of mouth, partly in writing and partly by word of mouth. In form of a data message or implied from the conduct of the parties provided that where the parties execute a tenancy agreement, the landlord-tenant relationship between the parties shall be governed by the terms of the tenancy.

This means that tenancy agreements can be made by word of mouth provided that the terms of the tenancy are recorded and given to the tenant within 14 days of entering into the premises. Additionally, tenancy agreements of UGX 500,000/= or more should be in writing.

This means that verbal contracts of this value shall not be enforceable by law or in court. Identification of Tenants the Act makes it mandatory for a landlord to obtain identification from the tenant before entering into a tenancy agreement.

The identification is in the form of, for instance, national ID card, driving permit, passport, or student ID card. In the case of a company or any other legal entities, the landlord is required to obtain registration documents from the entity.

Terms and Conditions in a tenancy

(i) Implied term as to fitness for human habitation.

The Act provides that where a tenancy is for renting of residential premises, there is an implied condition that the premises must be fit for human habitation as regards stability, natural lighting, ventilation, water supply, drainage, sanitary conveniences, etc. in accordance with the Public Health Act or the Building Control Act.

Therefore, a landlord has an obligation to provide premises fit for human habitation and keep the exterior of the premises and the common areas in the same conditions during the tenancy.

(ii) Duty to keep premises in repair.

Under the Act, the landlord is required to keep the premises maintained in good repair with regard to the age, character and prospective life of the building and the locality in which the premises are situated. However, this provision does not apply where the damage is caused by the negligence of failure to take reasonable care by the tenant.

(iii) Taxes and rates to be paid by landlord.

The Act provides that the landlord is responsible for the payment of all taxes and rates imposed by law in respect of the premises. In the event that a tenant pays any taxes or rates in respect of the premises, the landlord shall indemnify the tenant for the amount paid by the tenant.

(iv) **Utility charges.**

A tenant is liable to pay for all their utility charges in respect of the supply or use of electricity, gas, oil and similar services in respect of the tenant's occupation of rented premises that are separately metered, except the installation costs and charges in respect of the initial connection of the service to the rented premises which shall be paid by the landlord. The landlord shall also be responsible to pay all charges in respect of utilities that are not separately metered. The landlord and tenant may agree on the contribution to be made by the tenant in respect of utilities paid by the landlord.

Duties and obligations of landlords and tenants

The Tenant shall

- (a) Not use the premises or permit the use of the rented premises for any unlawful purpose.
- (b) Not use the rented premises or permit the use of the rented premises in any manner that causes a nuisance by interference with the reasonable peace, comfort or privacy of any occupier of neighbouring premises.
- (c) Take care not to damage the rented premises or the common areas. A tenant who becomes aware of any damage to the rented premises or the common areas shall immediately give notice to the landlord specifying the nature of the damage
- (d) Keep the rented premises in a reasonably clean condition, except where the landlord is responsible under the tenancy agreement for keeping of the premises in that condition.
- (e) Not install any fixtures or make alteration to premises without the consent of the landlord.

The Landlord shall

- (a) Take all reasonable steps to ensure that the tenant has quiet enjoyment of the premises during the tenancy.
- (b) Not refuse to rent premises to a person on the grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Rent

(i) Rent in advance.

The Act provides that unless mutually agreed by landlord and tenant, the maximum amount of rent in advance paid by a tenant shall be 3 months.

(ii) Rent increments. A landlord shall not increase rent at a rate more than 10% annually unless agreed by both parties. Where the tenancy is for a fixed term, the landlord shall not increase the rent before the term ends unless mutually agreed in the agreement.

These provisions call for tenants to be keen on the agreements that they sign, to ensure that they do not enter into any mutual provisions that would affect them in the long run.

(iii) Recovery of rent arrears.

Where a tenant defaults in paying rent and is in arrears, the landlord may apply to a court of competent jurisdiction to recover the rent owed and where the default in rent continues for a period of more than thirty days, the landlord shall be entitled to re-enter the premises and take possession in the presence of an area local council official and the police.

Where the rent arrears do not exceed UGX 10m/=, the application shall be filed under small claim procedure in Court.

However, the Act does not provide an equal measure of protection to the landlords as shown below;

- The new Landlord will inherit the security deposit if the premise is sold out.
- The Landlord to secure a court order to evict a tenant who refuses to vacate a rented property after a notice of vacation expires. But this provision does not keep in mind the extra costs a landlord will have to incur to recover defaulted rent, and by the time a tenant fails to pay rent they probably will not be able to pay court costs.
- Tenant shall only reimburse the Landlord's costs for payment for anything he or she is liable to pay only with an issuance of a request with a receipt attached.
- There's a gap left by retaining both the oral and implied agreements, yet there's no proof to enforce them.
- There's no custodial sentence for a tenant who contravenes the Act.

A Lease Agreement.

THE REPUBLIC OF UGANDA
THE REGISTRATION OF TITLES ACT CAP. 240
LAWS OF UGANDA
KYADONDO BLOCK PLOTS& 212
LANDS AT BWEYOGERERE
MENGO, WAKISO DISTRICT AREA..... ACRES

LEASE

THIS LEASE made the 1st day of February, Two Thousand Twelve BETWEENof P.O. Box 35905, Kampala herein called the “LESSOR” of the one part, andof P.O. Box 35905, Kampala herein called “THE LESSEE” of the other part.

WITNESSETH as follows:

1. IN CONSIDERATION of the sum of Shs.10,000,000/= being the premium and Shs.200,000/= being the annual ground rent to be paid by the Lessee to the Lessor and also in consideration of the covenants and conditions hereinafter contained the Lessor hereby demises unto the Lessee all those pieces of land situate at Bweyogerere, Wakiso District comprised in Plots 2906 and 212 Kyadondo Block 236 measuring about 2.33 Acres TO HOLD the same on to the Lessee for a term of 99 (Ninety Nine) years with effect from the 1st day of February, 2012 subject to renewal;

2. THE LESSEE COVENANTS WITH THE LESSOR as follows:-

- (a) To develop and use the land for industrial/commercial purposes and/or other lawful purposes.
- (b) To pay for all electricity, water, telephone and any other utility or service that will be consumed on the land.
- (c) To pay all existing and future rates, taxes, assessments and outgoings now or hereafter imposed or charged upon the demised premises or part thereof or imposed or charged upon the lessor and to keep the lessor fully indemnified in respect thereof.
- (d) To obey, perform and comply with all local council regulations and those by any other lawful authority.

3. THE LESSOR COVENANTS WITH THE LESSEE as follows: -

(a) To let the lessee to peacefully hold the land without any interruption by the Lessor or any other person rightfully claiming under or in trust for him as long as the Lessee is performing and observing the several covenants on its part hereinbefore contained.

(b) In the event that the lessee wishes to renew the lease it shall, before expiry of this lease, pay US\$.1,000 (One Thousand United States Dollars only) to the Lessor or if the Lessor cannot be found, then to any registered charitable organization operating in the same locality or District and on production of such receipt of payment to the Land Registrar the lease shall be renewed for another period of 99 years (Ninety-Nine) years.

(c) All the notices (if any) under this lease shall be in writing, and all notices shall be sufficiently delivered if addressed to the parties and sent to their respective addresses as indicated herein (or as subsequently communicated in writing in case of change of address) by registered post or in case of the Lessor at the demised premises or by physical delivery to such party or its servant and/or agent, provided always that all physically served notices shall be acknowledged receipt of in writing by the addressee or its responsible servants and/or agents.

(d) The Lessor hereby irrevocably gives his consent to the Lessee to sell, transfer, sublet and/or deal with the demised land in any way it may deem fit.

4. Without prejudice to the foregoing and in further consideration of the rent for 99 years to be paid by the Lessee to the Lessor the Lessor hereby irrevocably undertakes to sell to the Lessee the Mailo interest in the land comprised in this lease for a sum of US\$ 1,000= (One Thousand only) in the event that the Law permits non-Ugandan Citizens to acquire mailo and/or freehold interest or in the event that the Lessee or its nominee acquires Ugandan Citizenship.

5. IT IS FURTHER MUTUALLY AGREED as follows:-

(a) The Lessee shall bear all costs of preparing and registering this lease.

(b) The terms “Lessor” and “Lessee” under this lease shall include their respective transferees, successors and assigns as the case may be.

IN WITNESS WHEREOF the Lessor and the Lessee have placed their respective signatures hereunto affixed the day and year first above written.

SIGNED, SEALED & DELIVERED BY }
..... } **LESSOR**

In the presence of:

SIGNED, SEALED & DELIVERED BY }
..... }

whose Common Seal was affixed hereto } **LESSEE**

In the presence of:

..... DIRECTOR

DRAWN & FILED BY:

SUI GENERIS Advocates

Plot 10 Clement Road,

P.O. Box 21161

Tel: 341295/6

Fax: 343168

KAMPALA

Termination of lease obligation

This Release Agreement (the "Agreement") is made and effective [DATE],

BETWEEN: [LESSOR NAME] (the "Lessor"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

AND: [LESSEE NAME] (the "Lessee"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

TERMS

On [date], a lease agreement was executed between Lessor and Lessee for the premises located at [address], a copy of which is attached hereto and made a part hereof.

[facts giving rise to this release]

The parties desire to settle all claims of Lessor with respect to said lease and to terminate all obligations of either party thereunder.

Therefore, in consideration of [amount], from Lessee, receipt of which is hereby acknowledged, Lessor does hereby release Lessee from all obligations and duties of Lessee set forth in the above referenced lease. Lessor, for himself, his heirs, his legal representatives and his assigns also releases Lessee, his heirs, his legal representatives and his assigns from all claims, demands and causes of action that lessor had, has or may have against lessee or against his heirs, legal representatives or assigns in regard to said lease.

In consideration of the release set forth above, Lessee hereby surrenders all rights in and to the subject leased premises. That possession of said premises shall be delivered up to Lessor immediately upon the execution of this instrument, and that Lessor is relieved of any responsibilities or obligations under the aforementioned lease.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR

LESSEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EVICTIONS.

December 15, 2024

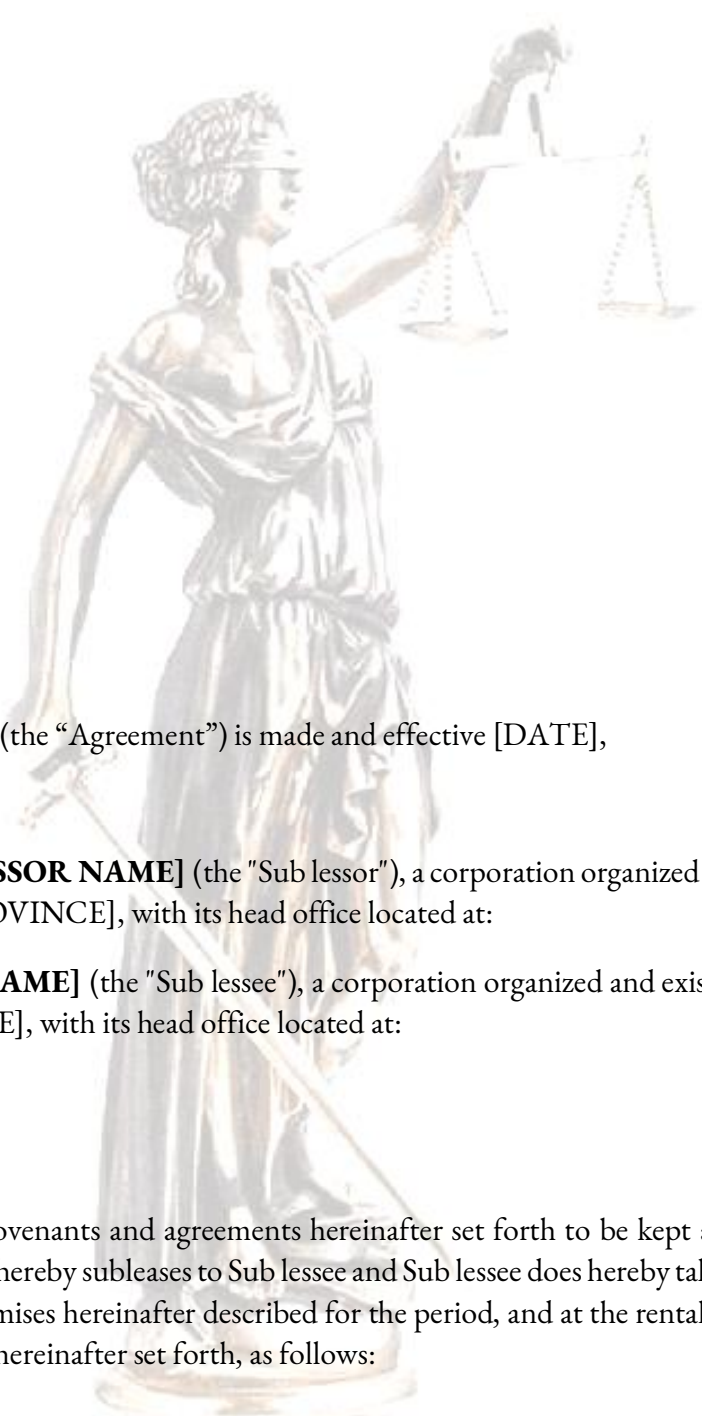
Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



Sublease agreement

This Sublease Agreement (the "Agreement") is made and effective [DATE],

BETWEEN: [SUB LESSOR NAME] (the "Sub lessor"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

AND: [SUB LESSEE NAME] (the "Sub lessee"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

RECITALS

In consideration of the covenants and agreements hereinafter set forth to be kept and performed by the parties hereto, Sub lessor, hereby subleases to Sub lessee and Sub lessee does hereby take, lease, and hire from Sub lessor the Leased Premises hereinafter described for the period, and at the rental, subject to, and upon the terms and conditions hereinafter set forth, as follows:

1. DESCRIPTION OF PREMISES

- a. Lessee has leased a building consisting of [number] floors and approximately [number] square feet of office space from [name], lessor, of [address], [city], [state].
- b. Lessee shall demise to sub lessee the [number] square feet of the building, all located on the [#] floor, as more fully described in Exhibit A, which is attached to and made a part of this sublease agreement.

2. TERM OF SUBLEASE

- a. The term of this sublease agreement shall be for an initial period of [number] years, commencing on [date], and terminating on [date], unless earlier terminated by breach of the terms and conditions of this Sublease Agreement.
- b. Lessor concurs that sub lessee may remain in possession of the demised premises for the full term of this sublease agreement, despite any change that may occur in the status of lessee or the lease agreement between lessee and lessor.

3. Acceptance of Leased Premises

Sub lessee's occupancy of the Leased Premises shall be conclusive evidence of Sub lessee's acceptance of all improvements constituting the Leased Premises, in good and satisfactory condition and repair. Sub lessee shall accept possession and use of the Leased Premises "as is" in their condition existing as of the date hereof with all faults. Sub lessee, at Sub lessee's sole cost and expense, shall promptly comply with all applicable laws, ordinances, codes, rules, orders, directions and regulations of governmental authority governing and regulating the use or occupancy of the Leased Premises as may now or hereafter be in effect during the Term hereof and shall if so required make any alterations, additions or changes to the Leased Premises as may be required by said laws, ordinances, codes, rules, directions and regulations.

4. Holding Over

Any holding over of the Leased Premises by Sub lessee after the expiration of the Term hereof shall only be with the written consent of Sub lessor first had and obtained and shall be construed to be a tenancy from month to month at a rental per month, or portion thereof, in an amount equal to [%] of the rent due Sub

lessor for the month immediately preceding such holding over, and shall otherwise be on the same terms, conditions and covenants herein specified.

5. Sublease Termination and Condition of Premises

Upon the termination of this Sublease for any reason whatsoever, Sub lessee shall return possession of the Leased Premises to Sub lessor or Sub lessor’s authorized agent in a good, clean and safe condition, reasonable wear and tear excepted. On or before, and in any event no later than [number] days following the date Sub lessee vacates the Leased Premises and returns possession of same to Sub lessor, Sub lessee and Sub lessor, or authorized agents thereof, shall conduct a joint inspection of the Leased Premises. Sub lessee at its cost shall thereafter promptly repair or correct any defects or deficiencies in the condition of the Leased Premises, reasonable wear and tear excepted.

6. RENT

Sub lessee shall pay to lessee as basic rent [amount] per month, on the [day] of each month, commencing on [date], and continuing each month thereafter during the term of this sublease agreement. Sub lessee shall pay all other sums due as additional rental under the provisions of this sublease agreement on the basic rental payment due date first occurring after the additional rental payment arises.

7. Payment of Rent

Sub lessee hereby covenants and agrees to pay rent to Sub lessor, without offset or deduction of any kind whatsoever, in the form and at the times as herein specified. All rent shall be paid to Sub lessor at the address specified in this Sublease unless and until Sub lessee is otherwise notified in writing. Base Minimum Rent payments in the monthly amount set forth below shall be payable monthly, in advance, due on the first (1st) day of each calendar month commencing on the Commencement Date hereof and delinquent if not paid on or before the third (3rd) day of the month throughout the Term of this Sublease. Rent for any period which is for less than one month shall be a pro rata portion of the monthly installment. The required payments under Article 6 and all other charges payable by Sub lessee shall be deemed to be additional rent.

8. Delinquent Payments

In the event Sub lessee shall fail to pay the rent or any installment thereof, or any other fees, costs, taxes or expenses payable under this Sublease within [number] days after the said payment has become due, Sub lessee agrees that Sub lessor will incur additional costs and expenses in the form of extra collection efforts, administrative time, handling costs, and potential impairment of credit on loans for which this Sublease may be a security. Both parties agree that in such event, Sub lessor, in addition to its other remedies shall be entitled to recover a late payment charge against Sub lessee equal to [%] of the amount not paid within said [number] day period. Additionally, any past due amounts under this Sublease shall bear interest at the rate of the lesser of [%] per month or the maximum rate permitted by applicable law. Sub lessee further agrees to pay Sub lessor any cost incurred by Sub lessor in effecting the collection of such past due amount, including but not limited to attorneys’ fees and/or collection agency fees. Sub lessor shall have the right to require Sub lessee to pay monies due in the form of a cashier’s check or money order. Nothing herein contained shall limit any other remedy of Sub lessor with respect to such payment delinquency.

9. Security Deposit

On execution of this Sublease, Sub lessee shall deposit with Sub lessor a sum equal to [amount] (the “Security Deposit”) in order to provide security for the performance by Sub lessee of the provisions of this Sublease. If Sub lessee is in default, Sub lessor may, but shall not be obligated to use the Security Deposit, or any portion of it, to cure the default or to compensate Sub lessor for damage sustained by Sub lessor resulting from Sub lessee’s default. Sub lessee shall immediately on demand pay to Sub lessor a sum equal to the portion of the Security Deposit expended or applied by Sub lessor as provided in this paragraph so as to maintain the Security Deposit in the sum initially deposited with Sub lessor. At the expiration or termination of this Sublease, Sub lessor shall return the Security Deposit to Sub lessee or its successor, less such amounts as are reasonably necessary to remedy Sub lessee’s defaults, to repair damages the Leased Premises caused by Sub lessee or to clean the Leased Premises upon such termination, as soon as practicable thereafter. In the event of the sale or other conveyance of the Leased Premises, the Security Deposit will be transferred to the purchaser or transferee and the Sub lessor will be relieved of any liability with reference to such Security Deposit. Sub lessor shall not be required to keep the Security Deposit separate from its other funds, and (unless otherwise required by law) Sub lessee shall not be entitled to interest on the Security Deposit.

10. USE OF PREMISES

- a. **Permitted Use:** The Leased Premises are to be used by Sub lessee for the sole purpose of [describe] and for no other purpose whatsoever. Sub lessee shall not use or occupy the Leased Premises or permit the same to be used or occupied for any use, purpose or business other than as provided in this Section a) during the Term of this Sublease or any extension thereof.
- b. **Prohibited Activities:** During the Term of Sublease or any extension thereof, Sub lessee shall not:
 - i. Use or permit the Leased Premises to be used for any purpose in violation of any statute, ordinance, rule, order, or regulation of any governmental authority regulating the use or occupancy of the Leased Premises.
 - ii. Cause or permit any waste in or on the Leased Premises.
 - iii. Use or permit the use of the Leased Premises in any manner that will tend to create a nuisance or tend to adversely affect or injure the reputation of Sub lessor or its affiliates.

- iv. Allow any activity to be conducted on the premises or store any material on the Leased Premises which will increase premiums for or violate the terms of any insurance policy(s) maintained by or for the benefit of Sub lessor.
 - v. Store any explosive, radioactive, dangerous, hazardous or toxic materials in or about the Leased Premises.
 - vi. Use or allow the Leased Premises to be used for sleeping quarters, dwelling rooms or for any unlawful purpose.
 - vii. Build any fences, walls, barricades or other obstructions; or, install any radio, television, phonograph, antennae, loud speakers, sound amplifiers, or similar devices on the roof, exterior walls or in the windows of the Leased Premises, or make any changes to the interior or exterior of the Leased Premises without Sub lessor's prior written consent.
- c. **Operational Permits:** Sub lessee, prior to the Commencement Date, shall obtain and thereafter continuously maintain in full force and effect for the Term of this Sublease or any extension thereof, at no cost or expense to Sub lessor, any and all approvals, licenses, or permits required by any lawful authority as of the Commencement Date or imposed thereafter, for the use of Leased Premises, including but not limited to business licenses.
- d. **Compliance With Laws:** Sub lessee shall comply with all federal, state, county, municipal, or other statutes, laws, ordinances, regulations, rules, or orders of any governmental or quasi-governmental entity, body, agency, commission, board, or official applicable to the Leased Premises and Sub lessee's business.

11. UTILITIES AND TAXES

- a. **Utility Charges:** Sub lessee shall be responsible for and shall pay, and indemnify and hold Sub lessor and the property of Sub lessor free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the Leased Premises during the Term of this Sublease or any extension thereof and for the removal of garbage and rubbish from the Leased Premises during the Term of this Sublease or any extension thereof. Sub lessor shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Leased Premises and no such failure or interruption shall entitle Sub lessee to terminate this Sublease.
- b. **Personal Property Taxes:** Sub lessee shall be responsible for and shall pay before they become delinquent all taxes, assessments, or other charges levied or imposed by any governmental entity

on the equipment, trade fixtures, appliances, merchandise and other personal property situated in, on, or about the Leased Premises including, without limiting the generality of the other terms of this Section, any shelves, counters, vault doors, wall safes, partitions, fixtures, machinery, or office equipment on the Leased Premises, whether put there prior to or after the Commencement Date of this Sublease.

- c. **Real Property Taxes and Assessments:** Sub lessee shall pay directly to the charging authority all taxes (as hereinafter defined) respecting the Leased Premises. Sub lessee shall pay all taxes on or before [number] days prior to delinquency thereof. Sub lessee shall promptly after payment of any taxes deliver to Sub lessor written receipts or other satisfactory evidence of the payment thereof. As used herein, “taxes” shall mean all taxes, assessments, fees, charges, levies, and penalties (if such penalties result from Sub lessee’s delinquency in paying all or any taxes), of any kind and nature, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including, without limitation, all installments of principal and interest required to pay any general or special assessments for public improvements) now or hereafter imposed by any authority having the direct or indirect power to tax, including, without limitation the federal government, and any state, county, city, or other governmental or quasi-governmental authority, and any improvement or assessment district or other agency or division thereof, whether such tax is:
- i. levied or assessed against or with respect to the value, occupancy, or use of all or any portion of the Leased Premises (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed), or any legal or equitable interest of Sub lessor in the Leased Premises or any part thereof; or
 - ii. levied or assessed against or with respect to Sub lessor’s business of leasing the Leased Premises, or with respect to the operation of the Leased Premises; or
 - iii. determined by the area of the Leased Premises or any part thereof, or by the gross receipts, income, or rent and other sums payable hereunder by Sub lessee (including, without limitation, any gross income or excise tax levied with respect to receipt of such rent and/or other sums due under this Sublease); or
 - iv. imposed upon this transaction or any document to which Sub lessee is a party creating or transferring any interest in the Leased Premises; or

- v. imposed during the term of this Sublease or any extension thereof because of a change in ownership of the Leased Premises which results in an increase of real property taxes; or
- vi. any tax or excise, however described, imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) in addition to, in substitution partially or totally of, or as an alternate to, any tax previously included within the definition of taxes, or any tax the nature of which was previously included in the definition of taxes, whether or not now customary or within the contemplation of the parties.

Taxes shall also include all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the Leased Premises, and all costs and expenses and reasonable attorneys' fees paid or incurred by Sub lessor in connection with:

- (1) any proceeding to contest in whole or in part the imposition or collection of any taxes;
- (2) negotiation with public authorities as to any taxes.

- d. **Proration of Taxes:** Sub lessee's liability to pay taxes shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the lease Term and its commencement and expiration.
- e. **Tax Delinquency:** Failure of Sub lessee to pay promptly when due any of the charges required to be paid under this Article shall constitute a default under the terms hereof in like manner as a failure to pay rental when due, and if Sub lessor shall elect to pursue an unlawful detainer action upon said default, then Sub lessor shall be entitled to claim as an amount of additional rent owed for purposes of said unlawful detainer the amount of such taxes due and payable by Sub lessee.
- f. **All Other Charges:** Sub lessee shall pay to Sub lessor any and all charges, fees, taxes, and other amounts due from Sub lessor to the master lessor of the Leased Premises prior to its due date, for sums due or owing on or after the date of this Sublease.
- g. **Common Area Maintenance Charges:** Sub lessee shall be responsible for, and shall pay to Sub lessor on demand, any and all costs, fees, charges, assessments, expenses or payments for which Sub lessor is obligated or liable under the Master Lease with respect to the operation, maintenance and repair of common area of the Leased Premises. "Common area" shall include, without limitation, those areas in or about the property of which the Leased Premises are a part, which have been set aside for the general use, convenience and benefit of the occupants of the property and their customers and employees, including, without limitation, the automobile parking areas, sidewalks, landscaped areas and other areas for pedestrian and vehicular use.

To the extent Sub lessor pays estimated amounts for such common area expenses, Sub lessee shall pay such amounts to Sub lessor on demand from Sub lessor and shall be entitled to reimbursements and/or offsets against future common area expenses as such reimbursements or offsets are received by Sub lessor.

12. MAINTENANCE AND ALTERATIONS

- a. **Maintenance by Sub lessee:** Sub lessee shall, at its sole cost and expense, keep in good and safe condition, order and repair all portions of the Leased Premises and all facilities appurtenant thereto and every part thereof which Sub lessor is responsible to maintain or repair as lessee under the Master Lease, including without limitation, all plumbing, heating, air conditioning, ventilating, sprinkler, electrical and lighting facilities, interior walls, interior surfaces of exterior walls, floors, ceilings, windows, doors, entrances, all glass (including plate glass), and skylights located within the Leased Premises, walkways, parking and service areas within or adjacent to the Leased Premises. If the Leased Premises are not so maintained, and such condition continues [number] hours after notice or exists upon expiration or termination hereof, Sub lessor may cause such maintenance to be performed at Sub lessee's expense and/or may obtain maintenance contracts for the Store and charge the Sub lessee for same. Sub lessor shall, when and if it deems necessary, make any and all repairs on the Leased Premises, and Sub lessee hereby consents to such actions by Sub lessor. Sub lessor may charge the Sub lessee for any of the foregoing repairs, if, in Sub lessor's opinion, such repairs are occasioned by Sub lessee's abuse or neglect. Sub lessee shall not modify, alter, or add to the Leased Premises without the prior written consent of Sub lessor.
- b. **Damage; Abatement of Rent:** Notwithstanding anything in this Sublease to the contrary, Sub lessee at its own cost and expense shall repair and replace as necessary all portions of the Leased Premises damaged by Sub lessee, its employees, agents, invitees, customers or visitors. There shall be no abatement of rent or other sums payable by Sub lessee prior to or during any repairs by Sub lessee or Sub lessor hereunder.
- c. **Alterations and Liens:** Sub lessee shall not make or permit any other person to make any structural changes, alterations, or additions to the Leased Premises or to any improvement thereon or facility appurtenant thereto without the prior written consent of Sub lessor first had and obtained. Sub lessee shall keep the Leased Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Leased Premises at the instance or request of Sub lessee. As a condition to giving its consent to any proposed alterations, Sub lessor may require that Sub lessee remove any or all of said alterations at the expiration or sooner termination of the Sublease term and restore the Leased Premises to its condition as of the date of Sub lessee's occupation of the Leased Premises. Prior to construction or installation of any alterations, Sub lessor may require Sub lessee to provide

Sub lessor, at Sub lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such alterations, to insure Sub lessor against any Liability for mechanic's and materialmen's liens and to insure completion of the work. Should Sub lessee make any alterations without the prior written consent of Sub lessor, Sub lessee shall remove the same at Sub lessee's expense upon demand by Sub lessor.

- d. **Inspection by Sub lessor:** Sub lessee shall permit Sub lessor or Sub lessor's agents, representatives, designees, or employees to enter the Leased Premises at all reasonable times for the purpose of inspecting the Leased Premises to determine whether Sub lessee is complying with the terms of this Sublease and for the purpose of doing other lawful acts that may be necessary to protect Sub lessor's interest in the Leased Premises under this Sublease, or to perform Sub lessor's duties under this Sublease, or to show the Leased Premises to insurance agents, lenders, and other third parties, or as otherwise allowed by law.
- e. **Plans and Permits:** Any alteration that Sub lessee shall desire to make in or about the Leased Premises and which requires the consent of Sub lessor shall be presented to Sub lessor in written form, with proposed detailed plans and specifications therefor prepared at Sub lessee's sole expense. Any consent by Sub lessor thereto shall be deemed conditioned upon Sub lessee's acquisition of all permits required to make such alteration from all appropriate governmental agencies, the furnishing of copies thereof to Sub lessor prior to commencement of the work, and the compliance by Sub lessee with all conditions of said permits in a prompt and expeditious manner, all at Sub lessee's sole cost and expense.
- f. **Construction Work Done by Sub lessee:** All construction work required or permitted to be done by Sub lessee shall be performed by a licensed contractor in a good and workmanlike manner and shall conform in quality and design with the Leased Premises existing as of the Commencement Date, and shall not diminish the value of the Leased Premises in any way whatsoever. In addition, all such construction work shall be performed in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Leased Premises. Sub lessee or its agents shall secure all licenses and permits necessary therefor.
- g. **Title to Alterations:** Unless Sub lessor requires the removal thereof, any alterations which may be made on the Leased Premises, shall upon installation or construction thereof on the Leased Premises become the property of Sub lessor and shall remain upon and be surrendered with the Leased Premises at the expiration or sooner termination of the term of this Sublease. Without limiting the generality of the foregoing, all heating, lighting, electrical (including all wiring, conduits, main and subpanels), air conditioning, partitioning, drapery, and carpet installations made by Sub lessee, regardless of how affixed to the Leased Premises, together with all other alterations that have become a part of the Leased Premises, shall be and become the property of Sub lessor upon installation, and shall not be deemed trade fixtures, and shall remain upon and be surrendered with the Leased Premises at the expiration or sooner termination of this Sublease.

- h. **Removal of Alterations:** In addition to Sub lessor's right to require Sub lessee at the time of installation or construction of any alteration to remove the same upon expiration or sooner termination of this Sublease, Sub lessor may elect, by notice to Sub lessee at least [number] days before expiration of the Term hereof, or within [number] days after sooner termination hereof, to acquire Sub lessee to remove any alterations that Sub lessee has made to the Leased Premises. If Sub lessor so elects, Sub lessee shall, at its sole expense, upon expiration of the Term hereof, or within [number] days after any sooner termination hereof, remove such alterations, repair any damage occasioned thereby, and restore the Leased Premises to the condition existing as of the Commencement Date or such other condition as may reasonably be designated by Sub lessor in its election.

13. INDEMNITY AND INSURANCE

- a. **Hold-Harmless Clause:** Sub lessee agrees to indemnify, defend and hold Sub lessor, the property of Sub lessor, and the Leased Premises, free and harmless from any and all claims, liability, loss, damage, or expenses incurred by reason of this Sublease or resulting from Sub lessee's occupancy and use of the Leased Premises (other than as a result of the direct gross negligence of Sub lessor), specifically including, without limitation, any claim, liability, loss, or damage arising by reason of:
- i. The death or injury of any person or persons, including Sub lessee, any person who is an employee or agent of Sub lessee, or by reason of the damage to or destruction of any property, including property owned by Sub lessee or any person who is an employee or agent of Sub lessee, and caused or allegedly caused by either the condition of the Leased Premises, or some act or omission of Sub lessee or of some agent, contractor, employee, or invitee of Sub lessee on the Leased Premises;
 - ii. Any work performed on the Leased Premises or materials furnished to the Leased Premises at the instance or request of Sub lessee or any agent or employee of Sub lessee; and
 - iii. Sub lessee's failure to perform any provision of this Sublease or to comply with any requirement of law or any requirement imposed on the use by Sub lessee of the Leased Premises by any governmental agency or political subdivision.
 - iv. Maintenance of the insurance required under this Article shall not relieve Sub lessee of the obligations of indemnification contained in this Section.
- b. **Liability Insurance:** Sub lessee shall, at its own cost and expense, secure and maintain during the term of this Sublease, a comprehensive broad form policy of Combined Single Limit Bodily

Injury and Property Damage Insurance issued by a reputable company authorized to conduct insurance business in the State of [state/province] insuring Sub lessee against loss or liability caused by or connected with Sub lessee's use and occupancy of the Leased Premises in an amount not less than [amount] per occurrence.

- c. **Casualty and Fire Insurance:** At all times during the Term hereof, Sub lessee shall keep the Leased Premises and personal property thereon insured against loss or damage by fire, windstorm, hail, explosion, damage from vehicles, smoke damage, vandalism, casualty and malicious mischief and such other risks as are customarily included in "all risk" extended insurance coverage, including coverage for business interruption, in an amount equal to not less than [number] of the actual replacement value of the Leased Premises and the personal property, fixtures, and other property on the Leased Premises.
- d. **Workers' Compensation Insurance:** During the term of this Sublease, Sub lessee shall comply with all Workers' Compensation laws applicable on the date hereof or enacted thereafter and shall maintain in full force and effect a Workers' Compensation Insurance policy covering all employees in any way connected with the business conducted by Sub lessee pursuant to this Sublease and shall pay all premiums, contributions, taxes and such other costs and expenses as are required to be paid incident to such insurance coverage, all at no cost to Sub lessor.
- e. **Policy Form:** The policies of insurance required to be secured and maintained under this Sublease shall be issued by good, responsible companies, qualified to do business in the State of [state/province], with a general policy holders' rating of at least "A". Executed copies of such policies of insurance or certificates thereof shall be delivered to Sub lessor and to the Master Lessor under the Master Lease not later than [number] days prior to the commencement of business operations of Sub lessee at the Leased Premises and thereafter, executed copies of renewal policies of insurance or certificates thereof shall be delivered to Sub lessor within [number] days prior to the expiration of the term of each such policy. All such policies of insurance shall contain a provision that the insurance company writing such policy(s) shall give Sub lessor at least [number] days' written notice in advance of any cancellation or lapse, or the effective date of any reduction in the amounts or other material changes in the provisions of such insurance. All policies of insurance required under this Sublease shall be written as primary coverage and shall list the Master Lessor under the Master Lease and the Sub lessor as loss payees and as additional insureds. If Sub lessee fails to procure or maintain in force any insurance as required by this Section or to furnish the certified copies or certificates thereof required hereunder, Sub lessor may, in addition to all other remedies it may have, procure such insurance and/or certified copies or certificates, and Sub lessee shall promptly reimburse Sub lessor for all premiums and other costs incurred in connection therewith.
- f. **Waiver of Subrogation:** Sub lessee agrees that in the event of loss or damage due to any of the perils for which it has agreed to provide insurance, Sub lessee hereby waives any and all claims that it might otherwise have against Sub lessor with respect to any risk insured against to the extent of any proceeds realized from the insurance coverage to compensate for a loss. To the

extent permitted by applicable insurance policies without voiding coverage, Sub lessee hereby releases and relieves Sub lessor, and waives its entire right of recovery against Sub lessor for loss or damage arising out of or incident to the perils insured against to the extent of insurance proceeds realized for such loss or damage, which perils occur in, on or about the Leased Premises and regardless of the cause or origin, specifically including the negligence of Sub lessor or its agents, employees, contractors and/or invitees. Sub lessee shall to the extent such insurance endorsement is available, obtain for the benefit of Sub lessor a waiver of any right of subrogation which the insurer of such party might otherwise acquire against Sub lessor by virtue of the payment of any loss covered by such insurance and shall give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Sublease.

14. SIGNS AND TRADE FIXTURES

- a. **Installation of Trade Fixtures:** For so long as Sub lessee is not in default of any of the terms, conditions and covenants of this Sublease, Sub lessee shall have the right at any time and from time to time during the Term of this Sublease and any renewal or extension of such term, at Sub lessee's sole cost and expense, to install and affix in, to, or on the Leased Premises such items (hereinafter called "trade fixtures"), for use in Sub lessee's trade or business as Sub lessee may, in its reasonable discretion, deem advisable.
- b. **Signs:** Subject to any and all requirements now or hereinafter enacted by any municipal, county, or state regulatory agency having jurisdiction thereover and subject to Sub lessor's written consent, Sub lessee may erect at Sub lessee's cost, a sign on the Leased Premises identifying the Leased Premises. Sub lessee shall maintain, at Sub lessee's sole cost and expense, said sign.
- c. **Removal of Signs and Trade Fixtures:** In addition to Sub lessor's right to require Sub lessee at the time of installation of any sign or trade fixtures to remove the same upon expiration or sooner termination of this Sublease, Sub lessor may elect, by notice to Sub lessee at least [number] days before expiration of the Term hereof, or within [number] days after sooner termination hereof, to require Sub lessee to remove any sign or trade fixture owned by Sub lessee. If Sub lessor so elects, Sub lessee shall at its sole cost and expense, upon expiration of the Term hereof, or within [number] days after any sooner termination hereof, remove such sign or trade fixture owned by Sub lessee. If Sub lessor so elects, Sub lessee shall, at its sole cost and expense, upon expiration of the Term hereof, or within [number] days after any sooner termination hereof, remove such sign or trade fixture, repair any damage occasioned thereby, and restore the Leased Premises to the condition existing as of the Commencement Date or such other condition as may reasonably be designated by Sub lessor in its election.

15. CONDEMNATION AND DESTRUCTION

- a. **Total Condemnation:** Should, during the Term of this Sublease or any renewal or extension thereof, title and possession of all of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, this Sublease shall terminate as of the date actual physical possession of the Leased Premises is taken by the agency or entity exercising the power of eminent domain and both Sub lessor and Sub lessee shall thereafter be released from all obligations under this Sublease.
- b. **Termination Option for Partial Condemnation:** Should, during the Term of this Sublease or any renewal or extension thereof, title and possession of more than [%] of the floor area of the Leased Premises, and/or more than [%] of the parking area of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, Sub lessor may terminate this Sublease. The option herein reserved shall be exercised by giving written notice on or before [number] days after actual physical possession of the portion subject to the eminent domain power is taken by the agency or entity exercising that power and this Sublease shall terminate as of the date the notice is deemed given.
- c. **Partial Condemnation Without Termination:** Should Sub lessee or Sub lessor fail to exercise the termination option described in this Article, or should the portion of the Leased Premises taken under the power of eminent domain be insufficient to give rise to the option therein described, then, in that event:
 - i. This Sublease shall terminate as to the portion of the Leased Premises taken by eminent domain as of the day (hereinafter called the “date of taking”), actual physical possession of that portion of the Leased Premises is taken by the agency or entity exercising the power of eminent domain;
 - ii. Base Minimum Rent to be paid by Sub lessee to Sub lessor pursuant to the terms of this Sublease shall, after the date of taking, be reduced by an amount that bears the same ratio to the Base Minimum Rent specified in this Sublease as the square footage of the actual floor area of the Leased Premises taken under the power of eminent domain bears to the total square footage of floor area of the Leased Premises as of the date of this Sublease; and
 - iii. Except to the extent the Master Lessor under the Master Lease is so obligated, Sub lessee, at Sub lessee’s own cost and expense shall remodel and reconstruct the building remaining on the portion of the Leased Premises not taken by eminent domain into a single efficient architectural unit in accordance with plans mutually approved by the parties hereto as soon after the date of taking, or before, as can be reasonably done.
- d. **Condemnation Award:** Should, during the Term of this Sublease or any renewal or extension thereof, title and possession of all or any portion of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, the compensation or damages for the taking awarded shall belong to and be the sole property of the Sub lessor.

- e. **Destruction:** (a) In the event the Leased Premises are damaged or destroyed and the total costs and expenses for repairing or reconstructing the Leased Premises exceeds the sum of [amount], Sub lessor, at Sub lessor's option, may:
- i. Continue this Sublease in full force and effect by restoring, repairing or rebuilding the Leased Premises at Sub lessor's own cost and expense or through insurance coverage; or
 - ii. Terminate this Sublease by serving written notice of such termination on Sub lessee no later than [number] days following such casualty, in which event this Sublease shall be deemed to have been terminated on the date of such casualty.
 - iii. In the event the Leased Premises are damaged or destroyed and Sub lessee will not be able to operate any business thereon for [number] consecutive days, Sub lessee, at Sub lessee's option, may terminate this Sublease by serving written notice of such termination on Sub lessor no later than [number] days following such casualty, in which event this Sublease shall be deemed terminated on the date of such casualty; provided, however, that such termination right shall not be applicable unless Sub lessor has a similar termination right under the Master Lease.
 - iv. Should Sub lessor or the Master Lessor under the Master Lease elect to repair and restore the Leased Premises to their former condition following partial or full destruction of the Leased Premises:
 1. Sub lessee shall not be entitled to any damages for any loss or inconvenience sustained by Sub lessee by reason of the making of such repairs and restoration.
 2. Sub lessor and such Master Lessor shall have full right to enter upon and have access to the Leased Premises, or any portion thereof, as may be reasonably necessary to enable such parties promptly and efficiently to carry out the work of repair and restoration.
- f. **Damage by Sub lessee:** Sub lessee shall be responsible for and shall pay to Sub lessor any and all losses, damages, costs, and expenses, including but not limited to attorney's fees, resulting from any casualty loss caused by the negligence or wilfull misconduct of Sub lessee or its employees, agents, contractors, or invitees.

16. SUBLEASING, ASSIGNMENT, DEFAULT AND TERMINATION

- a. **Subleasing and Assignment:** Sub lessee shall not sell, assign, hypothecate, pledge or otherwise transfer this Sublease, or any interest therein, either voluntarily, involuntarily, or by operation of law, and shall not sublet the Leased Premises, or any part thereof, or any right or privilege appurtenant thereto, for any reason whatsoever, or permit the occupancy thereof by any person, persons, or entity through or under it, or grant a security interest in Sub lessee's interest in the Leased Premises or this Sublease or any fixtures located on the Leased Premises, without the prior written consent of Sub lessor first had and obtained, which may be given or withheld in the Sub lessor's sole and absolute discretion. For the purpose of this Section, any dissolution, merger, consolidation or other reorganization of Sub lessee, or any change or changes in the stock ownership of Sub lessee, which aggregates [%] or more of the capital stock of Sub lessee shall be deemed to be an assignment of this Sublease. Sub lessee shall not mortgage, hypothecate or encumber this Sublease. Sub lessor's consent to one assignment, subletting, occupancy, or use by any other person, entity or entities shall not relieve Sub lessee from any obligation under this Sublease and shall not be deemed to be a consent to any subsequent assignment, subletting, occupancy or use. Any assignment, pledge, subletting, occupancy or use without Sub lessor's written consent shall be void and shall, at the option of the Sub lessor, terminate this Sublease.

Should this Sublease be assigned, or should the Leased Premises or any part thereof be sublet or occupied by any person or persons other than the original Sub lessee hereunder, Sub lessor may collect rent from the assignee, sub lessee or occupant and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection of rent shall be deemed a consent to such assignment, subletting or occupancy or a waiver of any term of this Sublease, nor shall it be deemed acceptance of the assignee, sub lessee or occupant as a tenant, or a release of Sub lessee from the full performance by Sub lessee of all the terms, provisions, conditions and covenants of this Sublease.

In the event Sub lessee wishes to assign this Sublease or sublet or allow the use of the Leased Premises or any part thereof, Sub lessee shall give Sub lessor not less than [number] days written notice thereof and shall, in such notice, provide the name of the proposed assignee or sub lessee, its proposed use of the Leased Premises, its background, such financial and credit information as Sub lessor may require to determine the business experience, financial stability and creditworthiness of the proposed assignee or sub lessee, and such additional information as Sub lessor may request.

Sub lessee shall also pay Sub lessor a one-time administrative fee of [amount] to reimburse Sub lessor for its costs of reviewing, analyzing and processing the request for consent to assignment or subletting. In addition to its right to consent or refuse to consent to a proposed assignment Sub lessor shall have the option, exercisable by written notice to Sub lessee within the [number] days after Sub lessee gives Sub lessor written notice of its desire to assign the Sublease, to terminate this Sublease with respect to the entire Leased Premises upon a date specified in said notice to Sub lessee not less than [number] days nor more than [number] days after the date of said notice and retake the Leased Premises for its own use. If Sub lessor exercises such option, Sub lessee shall nonetheless have the right, exercisable by notice given to Sub lessor within [number] days after Sub lessor's notice of exercise is given, to withdraw the proposed assignment from consideration, in which event the exercise of Sub lessor's option shall be of no force or effect and, except for the payment of the fee provided for in Subsection (c) above, the assignment shall be deemed not

to have been proposed. If Sub lessor does not elect to exercise its option to terminate this Lease and consents to the assignment or sublease, said assignee or sub lessee shall pay directly to Sub lessor all rent or other consideration payable by the assignee or sub lessee in excess of the amount of rent or other consideration payable by Sub lessee to Sub lessor hereunder (whether denominated as rent or otherwise) and shall expressly assume Sub lessee's obligations hereunder.

As a condition to Sub lessor's consent to an assignment or subletting, Sub lessor shall be entitled to receive (i) in the case of a subletting, [%] of all rent (however denominated and paid) payable by the subtenant to Sub lessee in excess of that payable by Sub lessee to Sub lessor pursuant to the other provisions of this Sublease, and

(ii) in the case of an assignment, [%] of all consideration given, directly or indirectly, by the assignee to Sub lessee in connection with such assignment. For purposes of this paragraph, the term "rent" shall mean and include all consideration paid or given, directly or indirectly, for the use of the Leased Premises or any portion thereof, and the term "consideration" shall mean and include money, services, property or any other thing of value such as payment of costs, cancellation of indebtedness, discounts, rebates and the like. Any rent or other consideration which is to be passed through to Sub lessor pursuant to this paragraph shall be paid to Sub lessor promptly upon receipt by Sub lessee and shall be paid in cash, regardless of the form in which received by Sub lessee. In the event any rent or other consideration received by Sub lessee is in a form other than cash, Sub lessee shall pay to Sub lessor in cash the fair value of Sub lessor's portion of such consideration.

- b. **Events of Default:** Sub lessee's failure to timely pay any rent, taxes or other charges required to be paid pursuant to the terms of this Sublease shall constitute a material breach of this Sublease and an event of default if not paid by Sub lessee within [number] days of the date such rent, taxes or charges are payable. Events of default under this Sublease shall also include, without limitation, the events hereinafter set forth, each of which shall be deemed a material default of the terms of the Sublease if not fully cured within [number] days of occurrence. Such events shall include:
 - i. Sub lessee's failure to perform or observe any term, provisions, covenant, agreement or condition of this Sublease;
 - ii. Sub lessee breaches this Sublease and abandons the Leased Premises before expiration of the Term of this Sublease;
 - iii. Any representation or warranty made by Sub lessee in connection with this Sublease between Sub lessee and Sub lessor proving to have been incorrect in any respect;
 - iv. Sub lessee's institution of any proceedings under the Bankruptcy Act, as such Act now exists or under any similar act relating to the subject of insolvency or bankruptcy,

whether in such proceeding Sub lessee seeks to be adjudicated a bankrupt, or to be discharged of its debts or effect a plan of liquidation, composition or reorganization;

- v. The filing against Sub lessee of any involuntary proceeding under any such bankruptcy laws;
- vi. Sub lessee's becoming insolvent or being adjudicated a bankrupt in any court of competent jurisdiction, or the appointment of a receiver or trustee of Sub lessee's property, or Sub lessee's making an assignment for the benefit of creditors;
- vii. The issuance of a writ of attachment by any court of competent jurisdiction to be levied on this Lease; or
- viii. Any event which is an event of default under the Master Lease or which would become so with the passage of time or the giving of notice or both.

c. **Sub lessor's Remedies for Sub lessee's Default:** Upon the occurrence of any event of default described in Section 10.02 hereof, Sub lessor may, at its option and without any further demand or notice, in addition to any other remedy or right given hereunder or by law, do any of the following:

- i. Sub lessor may terminate Sub lessee's right to possession of the Leased Premises by giving written notice to Sub lessee. If Sub lessor gives such written notice, then on the date specified in such notice, this Sublease and Sub lessee's right of possession shall terminate. No act by Sub lessor other than giving such written notice to Sub lessee shall terminate this Sublease. Acts of maintenance, efforts to relet the Leased Premises, or the appointment of a receiver on Sub lessor's initiative to protect Sub lessor's interest under this Sublease shall not constitute a termination of Sub lessee's right to possession. On termination, Sub lessor has the right to recover from Sub lessee:
 - 1. The worth at the time of the award of the unpaid rent and other charges that had been earned or owed to Sub lessor at the time of termination of this Sublease;
 - 2. The worth at the time of the award of the amount by which (a) the unpaid rent and other charges that would have been earned or owed to Sub lessor after the date of termination of this Sublease until the time of award exceeds (b) the amount of such rental loss that Sub lessee proves could have been reasonably avoided;
 - 3. The worth at the time of the award of the amount by which (a) the unpaid rent and other charges for the balance of the term after the time of award exceeds (b) the amount of such rental loss that Sub lessee proves could have been reasonably avoided; and

4. Any other amount necessary to compensate Sub lessor for all the detriment caused by Sub lessee's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including without limitation any costs or expenses incurred by Sub lessor in recovering possession of the Leased Premises, maintaining or preserving the Leased Premises after such default, preparing the Leased Premises for reletting to a new tenant, or any repairs or alterations to the Leased Premises for such reletting, and all leasing commissions, reasonable attorney's fees, architect's fees and any other costs incurred by Sub lessor to relet the Leased Premises or to adapt them to another beneficial use. Sub lessee shall also indemnify, defend and hold Sub lessor harmless from all claims, demands, actions, liabilities and expenses (including but not limited to reasonable attorney's fees and costs) arising prior to the termination of this Sublease or arising out of Sub lessee's use or occupancy of the Leased Premises.
- ii. Sub lessor may, in any lawful manner, re-enter and take possession of the Leased Premises without terminating this Sublease or otherwise relieving Sub lessee of any obligation hereunder. Sub lessor is hereby authorized, but not obligated (except to the extent required by law), to relet the Leased Premises or any part thereof on behalf of the Sub lessee, to use the premises for its or its affiliates' account, to incur such expenses as may be reasonably necessary to relet the Leased Premises, and relet the Leased Premises for such term, upon such conditions and at such rental as Sub lessor in its sole discretion may determine. Until the Leased Premises are relet by Sub lessor, if at all, Sub lessee shall pay to Sub lessor all amounts required to be paid by Sub lessee hereunder. If Sub lessor relets the Leased Premises or any portion thereof, such reletting shall not relieve Sub lessee of any obligation hereunder, except that Sub lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Sub lessee hereunder to the extent that such rent or other proceeds compensate Sub lessor for the non-performance of any obligation of Sub lessee hereunder. Such payments by Sub lessee shall be due at such times as are provided elsewhere in this Sublease, and Sub lessor need not wait until the termination of this Sublease, by expiration of the term hereof or otherwise, to recover them by legal action or in any other manner. Sub lessor may execute any lease made pursuant hereto in its own name, and the tenant thereunder shall be under no obligation to see to the application by Sub lessor of any rent or other proceeds by Sub lessor, nor shall Sub lessee have any right to collect any such rent or other proceeds. Sub lessor shall not by any re-entry or other act be deemed to have accepted any surrender by Sub lessee of the Leased Premises or Sub lessee's interest therein, or be deemed to have otherwise terminated this Sublease, or to have relieved Sub lessee of any obligation hereunder, unless Sub lessor shall have given Sub lessee express written notice of Sub lessor's election to do so as set forth herein.

- iii. Even though Sub lessee has breached this Sublease and may have abandoned or vacated the Leased Premises, this Sublease shall continue in effect for so long as Sub lessor does not terminate Sub lessee's right to possession, and Sub lessor may enforce all its rights and remedies under this Sublease, including the right to recover the rent and other charges as they become due under this Lease.
 - iv. In the event any personal property of Sub lessee remains at the Leased Premises after Sub lessee has vacated, it shall be dealt with in accordance with the statutory procedures provided by applicable law dealing with the disposition of personal property of Sub lessee remaining on the Leased Premises after Sub lessee has vacated.
 - v. Sub lessor may exercise any right or remedy reserved to the Master Lessor under the Master Lease (each of which rights and remedies are hereby incorporated herein), and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under applicable law or the equitable powers of its courts, whether or not otherwise specifically reserved herein.
 - vi. Sub lessor shall be under no obligation to observe or perform any provision, term, covenant, agreement or condition of this Sublease on its part to be observed or performed which accrues after the date of any default by Sub lessee hereunder.
 - vii. Any legal action by Sub lessor to enforce any obligation of Sub lessee or in the pursuance of any remedy hereunder shall be deemed timely filed if commenced at any time prior to [number] year after the expiration of the term hereof or prior to [number] years after the cause of action accrues, whichever period expires later.
 - viii. In any action of unlawful detainer commenced by Sub lessor against Sub lessee by reason of any default hereunder, the reasonable rental value of the Leased Premises for the period of the unlawful detainer shall be deemed to be the amount of rent and additional charges reserved in this Sublease for such period.
 - ix. Sub lessee hereby waives any right of redemption or relief from forfeiture under any present or future law, if Sub lessee is evicted or Sub lessor takes possession of the Leased Premises by reason of any default by Sub lessee hereunder.
 - x. No delay or omission of Sub lessor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Sub lessee hereunder.
- d. **Receiver:** Upon the occurrence of any event of default as defined in Article 16 b) hereof or in any action instituted by Sub lessor against Sub lessee to take possession of the Leased Premises and/or to collect Base Minimum Rent, or any other charge due hereunder, a receiver may be appointed at the request of Sub lessor to collect such rents and profits, to conduct the business of Sub lessee then being carried on in the Leased Premises and to take possession of any property belonging to Sub lessee and used in the conduct of such business and use the same in conducting such business on the Leased Premises without compensation to Sub lessee for such

use. Neither the application nor the appointment of such receiver shall be construed as an election on the Sub lessor's part to terminate this Sublease unless written notice of such intention is given by Sub lessor to Sub lessee.

- e. **Attorneys' Fees:** If as a result of any breach or default in the performance of any of the provisions of this Sublease, Sub lessor uses the services of an attorney in order to secure compliance with such provisions or recover damages therefor, or to terminate this Sublease or evict Sub lessee, Sub lessee shall reimburse Sub lessor upon demand for any and all attorneys' fees and expenses so incurred by Sub lessor, including without the limitation appraisers' and expert witness fees; provided that if Sub lessee shall be the prevailing party in any legal action brought by Sub lessor against Sub lessee, Sub lessee shall be entitled to recover the fees of its attorneys in such amount as the court may adjudge reasonable. Sub lessee shall advance to Sub lessor any and all attorneys' fees and expenses to be incurred or incurred by Sub lessor in connection with any modifications to this Sublease proposed by Sub lessee, any proposed assignment of this Sublease by Sub lessee or any proposed subletting of the Leased Premises by Sub lessee.
- f. **Cumulative Remedies; No Waiver:** The specified remedies to which Sub lessor may resort under the terms hereof are cumulative and are not intended to be exclusive of any other remedy or means of redress to which Sub lessor may be lawfully entitled in case of any breach or threatened breach by Sub lessee of any provision hereof. If for any reason Sub lessor fails or neglects to take advantage of any of the terms of this Sublease providing for termination or other remedy, any such failure of Sub lessor shall not be deemed to be a waiver of any default of any of the provisions, terms, covenants, agreements or conditions of this Sublease. The waiver by Sub lessor of any breach of any term, condition or covenant herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, condition or covenant herein contained. None of the provisions, terms, covenants, agreements or conditions hereof can be waived except by the express written consent of Sub lessor. Subsequent acceptance of rent hereunder by Sub lessor shall not be deemed to be a waiver of any preceding breach by Sub lessee of any provision, term, covenant, agreement or condition of this Sublease other than the failure of Sub lessee to pay the particular rental accepted, regardless of Sub lessor's knowledge of such preceding breach at the time of acceptance of such rent.

17. ESTOPPEL

At any time and from time to time, upon request in writing from Sub lessor, Sub lessee agrees to execute, acknowledge, and deliver to Sub lessor a statement in writing within [number] days of request, certifying that this Sublease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications), the commencement and termination dates, the Base Minimum Rent, the other charges payable hereunder the dates to which the same have been paid, and such other items as Sub lessor may

reasonably request. It is understood and agreed that any such statement may be relied upon by any mortgagee, beneficiary, or grantee of any security or other interest, or any assignee of any thereof, under any mortgage or deed of trust now or hereafter made covering any leasehold interest in the Leased Premises, and any prospective purchaser of the Leased Premises.

18. Force Majeure – Unavoidable Delays

Should the performance of any act required by this Sublease to be performed by either Sub lessor or Sub lessee be prevented or delayed by reason of an act of God, war, civil commotion, fire, flood, or other like casualty, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, unusually severe weather, or any other cause, except financial inability, not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that nothing contained in this section shall excuse the prompt payment of rent or other monies due by Sub lessee as required by this Sublease or the performance of any act rendered difficult solely because of the financial condition of the party, Sub lessor or Sub lessee, required to perform the act.

19. Notices

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Sublease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, Sub lessor or Sub lessee, to whom it is directed or any managing employee of such party, or, in lieu of such personal service, [number] hours after deposit in the United States mail, certified or registered mail, with postage prepaid, or when transmitted by telecopy or facsimile addressed to the parties as set forth on the signature page hereof. Either party, Sub lessor or Sub lessee, may change the addresses herein contained for purposes of this Section by giving written notice of the change to the other party in the manner provided in this Section.

20. Amendments

No amendment, change or modification of this Sublease shall be valid and binding unless such is contained in a written instrument executed by the parties hereto and which instrument expresses the specific intention of the parties to amend, change or modify this Sublease.

21. Accord and Satisfaction

No payment by Sub lessee or receipt by Sub lessor of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the stipulated rent earliest in time, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Sub lessor may accept such check or payment without prejudice to Sub lessor's right to recover the balance of such rent or pursue any other remedy provided in this Sublease or by law.

22. No Agency Created

Nothing contained in this Sublease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association whatsoever between Sub lessor and Sub lessee other than sub lessor and sub lessee.

23. Brokerage Commission

Sub lessee represents that neither it nor any of its affiliates has engaged the services of any real estate broker, finder, or any other person or entity in connection with this lease transaction and therefore should Sub lessee be found to be in violation of such representation, Sub lessee shall indemnify Sub lessor against any and all claims for brokerage commissions or finders fees in connection with this transaction, and to indemnify, defend and hold Sub lessor free and harmless from all liabilities arising from any such claim, including without limitation, attorneys' fees in connection therewith.

24. Sole and Only Agreement

This instrument constitutes the sole and only agreement between Sub lessor and Sub lessee respecting the Leased Premises or the leasing of the Leased Premises to Sub lessee. Sub lessor shall have no obligations to Sub lessee, whether express or implied, other than those specifically set forth in this Sublease.

25. Severability and Governing Law

This Sublease shall be governed by the laws of the State of [state/province]. Whenever possible each provision of this Sublease shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Sublease shall be prohibited, void, invalid, or unenforceable under applicable law, such provision shall be ineffective to the extent of such prohibition, invalidity, voidability, or enforceability without invalidating the remainder of such, or the remaining provisions of this Sublease.

26. Construction and Headings

All references herein in the singular shall be construed to include the plural, and the masculine, and the masculine to include the feminine or neuter gender, where applicable, and where the context shall require. Section headings are for convenience of reference only and shall not be construed as part of this Sublease nor shall they limit or define the meaning of any provision herein. The provisions of this Sublease shall be construed as to their fair meaning, and not strictly for or against Sub lessor or Sub lessee.

27. Effect of Execution

The submission of this Sublease for examination shall not effect any obligation on the part of the submitting or examining party and this Sublease shall become effective only upon the complete execution thereof by both Sub lessor and Sub lessee.

28. Inurement

Sub lessor shall have the full and unencumbered right to assign this Sublease. The covenants, agreements, restrictions, and limitations contained herein shall also be binding on Sub lessee's permitted successors and assigns.

29. Time of Essence

Time is expressly declared to be of the essence.

30. No Light, Air or View Easement

Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Leased Premises shall in no way affect this Sublease or impose any liability on Sub lessor.

31. Triple Net Lease

It is the purpose and intent of Sub lessor and Sub lessee that this Sublease be deemed and construed to be a "triple net lease" so that Sub lessor shall receive all rentals and other sums specified hereunder during the term of this Sublease, free from any and all charges, costs, assessments, expenses, deductions and/or set-offs of any kind or nature whatsoever, and Sub lessor shall not be expected or required to pay any such charge, assessment or expense, or be under any obligation or liability hereunder, except as herein expressly set forth. All charges, costs, expenses and obligations of any nature relating to the repair, restoration, alteration, maintenance and operation of the Leased Premises shall be paid by Sub lessee, except as otherwise herein expressly set forth, and Sub lessor shall be indemnified and held harmless by Sub lessee from and against such charges, costs, expenses and obligations.

32. Authority

Each individual executing this Sublease on behalf of Sub lessee and the Sub lessee (if Sub lessee is a corporation or other entity) does hereby covenant and warrant that (i) Sub lessee is a duly authorized and validly existing entity, (ii) Sub lessee has and is qualified to do business in California, (iii) the entity has full right and authority to enter into this Sublease, and (iv) each person executing this Sublease on behalf of the entity was authorized to do so.

33. Survival

All obligations of Sub lessee under this Sublease, including without limitation the obligations to pay Base Minimum Rent, shall survive the expiration or termination of this Sublease.

34. Waiver

Sub lessee hereby waives any rights it may have under the provisions of [law or code], if applicable, and any similar statutes regarding repair of the Leased Premises or termination of this Sublease after destruction of all or any part of the Leased Premises.

35. Recordation

Sub lessee shall not record this Sublease or a short form memorandum hereof without the prior written consent of the Sub lessor.

36. Transfer of Master Lease

In the event of any assignment or transfer of the Master Lease by Sub lessor to any other party or entity, Sub lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Sublease arising out of any act, occurrence or omission occurring after the consummation of such assignment or transfer; and the assignee or such transferee shall be deemed, without any further agreement between parties or their successors in interest or between the parties and any such assignee or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of the Sub lessor under this Sublease. Sub lessee hereby agrees to attorn to any such assignee or trustee. Sub lessee agrees to execute any and all documents deemed necessary or appropriate by Sub lessor to evidence the foregoing.

37. Subordination, Attornment

Without the necessity of any additional document being executed by Sub lessee for the purpose of effecting a subordination, this Sublease shall in all respects be subject and subordinate at all times to the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Leased Premises or Sub lessor's interest or estate is specified as security. Notwithstanding the foregoing, Sub lessor shall have the right to subordinate or cause to be subordinated any lien or encumbrance to this Sublease. In the event that any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Sub lessee shall, notwithstanding any subordination, atone to and become the sub lessee of the successor in interest to Sub lessor, at the option of such successor in interest. Sub lessee covenants and agrees to execute and deliver, upon demand by Sub lessor and in the form requested by Sub lessor, any additional documents evidencing the priority or subordination of this Sublease.

38. No Merger

The voluntary or other surrender of this Sublease by Sub lessee, or a mutual cancellation hereof, shall not work a merger, and shall, at the option of Sub lessor, terminate all or any existing subleases or sub tenancies or may, at the option of Sub lessor, operate as an assignment to Sub lessor of any or all such subleases or sub tenancies.

39. Right of Sub lessor to Perform

All terms, covenants and conditions of this Sublease to be performed or observed by Sub lessee shall be performed or observed by Sub lessee at its sole cost and expense and without any reduction of rent of any nature payable hereunder. If Sub lessee shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other term or covenant hereunder on its part to be performed, Sub lessor, without waiving or releasing Sub lessee from any obligation of Sub lessee hereunder, may, but shall not be obligated to, make any such payment or perform any such other term or covenant on Sub lessee's part to be performed. All sums so paid by Sub lessor and all necessary costs of such performance by Sub lessor, together with interest thereon from the date of payment at the rate eighteen percent (18%) or the highest rate permissible by law, whichever is less, shall be paid, and Sub lessee covenants to make such payment, to Sub lessor on demand, and Sub lessor shall have, in addition to any over right or remedy of Sub lessor, the same rights and remedies in the event of nonpayment thereof by Sub lessee as in the case of failure in the payment of rent hereunder.

40. Modification for Lender

If, in connection with obtaining any type of financing, Sub lessor's lender shall request reasonable modifications to this Sublease as a condition to such financing, Sub lessee shall not unreasonably withhold, delay or defer its consent thereto, provided such modifications do not materially adversely affect Sub lessee's rights hereunder.

41. Sub lessor's Personal Liability

The liability of Sub lessor to Sub lessee for any default by Sub lessor under the terms of this Sublease shall be limited to the interest of Sub lessor in the Leased Premises and Sub lessee agrees to look solely to Sub lessor's interest in the Leased Premises for the recovery of any judgment from Sub lessor, it being intended that Sub lessor shall not be personally liable for any judgment or deficiency.

42. Breach by Landlord.

Sub lessor shall not be deemed to be in breach in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within [number] days after written notice by Sub lessee to Sub lessor specifying wherein Sub lessor has failed to perform such obligation; provided, however, that if the nature of Sub lessor's obligation is such that more than [number] are required for its performance then Sub lessor shall not be deemed to be in breach if it shall commence such performance within such [number] day period and thereafter diligently prosecute the same to completion. In any event, Sub lessee must bring an action for breach of this Sublease within [number] year of Sub lessor's breach or be deemed to have waived the breach and not harmed thereby.

43. Survival of Indemnities

The obligations of the indemnifying party under each and every indemnification and hold harmless provision contained in this Sublease shall survive the expiration or earlier termination of this Sublease to and until the last to occur of (a) the last date permitted by law for bringing of any claim or action with respect to which indemnification may be claimed by the indemnified party against the indemnifying party

under such provision or (b) the date on which any claim or action for which indemnification may be claimed under such provision is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by the indemnifying party and the indemnified party is reimbursed by the indemnifying party for any amounts paid by the indemnified party in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including attorneys' fees incurred.

44. OPTION TO RENEW

Subject to the receipt by lessee of an extension of the original lease agreement for a sufficient duration to include this renewal, at any time before the commencement of the last calendar month of the first term of this sublease agreement, sub lessee is granted the option and privilege of extending and renewing the term of this sublease agreement for an additional [number]-year period at an annual rental to be agreed on or arbitrated as provided in this sublease agreement.

45. Meaning of Consent

Whenever an act or provision contained in this Sublease is conditioned upon the consent or approval of Sub lessor, this shall be interpreted to mean, unless otherwise specified to the contrary, that the Sub lessor has the full unconditional right and sole discretion as to whether or not to give its consent, which may only be given in writing

46. Quiet Enjoyment

If sub lessee performs the terms of this sublease agreement, lessee will warrant and defend sub lessee in the enjoyment and peaceful possession of the demised premises during the term of this sublease agreement without any interruption by lessee or lessor or either of them or any person rightfully claiming under either of them.

47. Master Lease

Notwithstanding anything in this Sublease to the contrary, the rights of Sub lessee shall be subject to the terms and conditions contained in the lease ("Master Lease") between Sub lessor and the owner of the Leased Premises (the "Master Lessor"), as it may be amended from time to time. Sub lessee shall assume and perform and comply with the obligations of the lessee under the Master Lease to the same extent as if references to the Sub lessor therein were references to Sub lessee (all of which obligations are hereby incorporated herein), including, without limitation, the payment of any and all costs, expenses, charges,

fees, taxes, payments or other monetary obligations (except for minimum rent and percentage rent) for which Sub lessor is liable or responsible under the Master Lease, as such costs, expenses, charges, fees, taxes, payment or other monetary obligations come due. Sub lessee shall not commit or permit to be committed on the Leased Premises any act or omission which shall violate any term or condition of the Master Lease. Notwithstanding anything in this Sublease to the contrary, the effectiveness of this Sublease shall be conditioned upon Sub lessor obtaining the written consent of the Master Lessor (if such consent is required under the Master Lease), in form and substance satisfactory to Sub lessor, within ten (10) days of the date hereof. If the Master Lease terminates for any reason, this Sublease shall terminate coincidentally therewith without any liability of Sub lessor to Sub lessee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SUB LESSOR

SUB LESSEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EXHIBIT A

TO SUBLEASE

DESCRIPTION OF LEASED PREMISES

Access to roads

Article 43(1) of the 1995 constitution of Uganda as amended, in the enjoyment of rights and freedoms prescribed in the constitution, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

Section 2 of the roads act cap 346 defines an access road to mean a public or private road affording access to a public road or to a highway. Its important to note that the order to construct an access on another persons alnd is normally granted where there’s no other way by which the applicant or grantee can access the public high way except through the land of the respondent or grantor who is another land owner.

In the case of SENGABI V NAKIYINGI CIVIL APPEAL H.C.C.A NO.59/2018 [2019], Court noted that the creation of an access road is a matter of law or negotiations of the parties. Its important to note that under article 26 of the 2995 constitution of Uganda, every person has a right to own property either individually or in association with others. In the enjoyment of that right, a land owner shoudnot prejudice the neighbors right of access to a public road or highway.

“access” is defined in the blacks law dictionary 6th edition to mean as denoting the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to highway without obstruction;that access to property doesnot necessarily carry with it possession.

In situations where one has no access to a public road and there’s a plot of land between his piece of land and its road, then the provisions of he Roads act are invoked. \

Before invoking the provisons of the roads act, the applicant needs to first negotiate with the owner of the land to create an easement so that he/she can gain access to the road or highway. Where such negoitations fail, then you can invoke the provisions of the act.

Section 60 of the Roads act cap 346 1)Where the owner of any land is unable, through negotiations, to obtain leave from adjoining landowners to construct an access road to a public road, he or she may apply to the Minister for leave to construct an access road over any land lying between his or her land and the public road.

(2)The Minister may, in consultation with the relevant road authority, grant leave to construct an access road.

(3)The Minister shall, before granting leave to construct an access road under subsection (2), ensure that an applicant compensates the adjoining landowner.

In the case of AHMED DAUDA ZIWA AND ANOR V KAFUMBE ANTHONY H.C.C.A No.33/2012, Court stated that such compensation should conform to Article 26 of the constitution and should lso take into account the loss of the land itself.

Under section 59(2) of the Roads act cap 346; Where a road or portion of a road or any land has been designated and acquired as an access road, a person shall not, without written approval from a road authority, construct, use, or allow the use of an entrance-way or gate which or part of which is connected with or open upon the access road.

NB; The procedure for applying to the minister according to section 60(4)An application under subsection (1) shall be in a manner prescribed by regulations. This is through a formal letter to the minister of works and transport which shall clearly state;

- a) The request of the applicant and the details pertaining to the land
- b) The fact that the attempts to negotiate were frustrated
- c) Attach a plan of the proposed access road
- d) And the applicant is ready and willing to compensate the land owner.

EASEMENTS

Principles of land law in Uganda by John Tamukedde Mugambwa (2002) (2006) at page 129 An easement is defined as a right attached to a particular piece of land that entitles the owner of that land either to use the land of another person in a particular manner or to restrict that other persons' use of his/her land to a certain extent.

In MUGISHA STEPHEN V YOSTASI H.C.C.S 50/2013, an easement was defined to mean an interest in land owned by another person with the rights to use or control the land or an area or below it for a specific limited purpose.

- The land to which the right is attached is the dominant.
- The land over which the right is exercised is the servient land.
- An easement is an interest in land subject to the principle of indefeasibility and is enforceable against any proprietor of the servient land.

Essential Features of an easement.

A right over another persons right doesnt become an easement merely because the parties say so. It must satisfy certain essential features of an easement prescribed under the general law and these are:

- a) **There must be in existence a dominant and a servient land.** In **MAKUMBI (MRS. E) AND ANOTHER V PURAN SINGH GHANA & ANOTHER**, the court stated that an easement cannot exist in "gross". A right cannot be an easement unless it is connected with a dominant land that belongs to the person to whom the right was given.

In **HILL V TUPPER**¹, the court held that a public right of way is not an easement precisely because the right is dedicated to the public at large irrespective of connection with any dominant land. **HILL V TUPPER** (1863) was an **English land law case which did not find an easement** in a commercial agreement, in this case, related to boat hire. Here, the agreed "exclusive" right was held not to be benefitting the land itself, but just for the business. It could not therefore be enforced directly against third parties competing. The Basingstoke Canal Co gave Hill an exclusive contractual licence in his lease of Aldershot Wharf, Cottage and Boathouse to hire boats out. Hill did so regularly. Mr Tupper also occasionally allowed customers to use his boats by his Aldershot Inn to bathe or fish in the canal. Hill wished to stop Tupper from doing so. He sued Tupper, arguing that his lease gave him an exclusive easement and so a direct right to enforce it against third parties (rather than mere licence)

Pollock CB held that the contract did not create any legal property right, and so there was no duty on Mr Tupper. If Hill wanted to stop Tupper, he would have to force the Canal Company to assert its property right against Tupper.

¹(1866) 2 H & C 121

An easement would not be recognised. The benefit of an easement must be for the land. Here, the right to exclusive use of the canal was not for benefitting the land itself, but just for the business.

A new species of incorporeal hereditament cannot be created at the will and pleasure of the owner of property... Bramwell and Martin BB concurred.

In **MAKUMBI (MRS. E) & PURAN SINGH GHANA & ANOTHER [1962] E 331**, Bennet J stated that an easement enjoyed by the public at large was unknown to law.

The requirement for a dominant land may be waived by statute/ Act of parliament.

b) **Easement must accommodate the dominant land.**

The right created to be an easement must confer a benefit on the dominant land or same activity connected there with and is reasonably necessary for the better enjoyment of that land.

In **RE ELLENBOROUGH PARK [1955] EWCA CIV 4** Pleasure Park surrounded by other Plots was held to be an easement because there were sufficient connections because the residential property always improved in character by the availability of a garden, that a garden is a normal attribute of a house.

c) **The dominant & servient land must not be owned or occupied by the same person.**

In **RE ELLERIBOROUGH PARK**, the court stated that it's a requirement for an easement that the dominant and servient land must be owned and or occupied by different persons.

d) **The right must be capable of forming the subject matter of a grant.**

Severally things are encompassed here;

- 1) There must be a capable grantor and grantee. In **NATIONAL GUARANTEE MANURE CO V DONALD**² the court noted that a statutory corporation with no capacity to grant an easement cannot grant an easement.
- 2) Right granted must be capable of reasonable definition e.g., right to a new in **BROWNE V FLOWER (1911) 1 CH. 219** held to be incapable of reasonable definition and thus not capable to being an easement.
- 3) Right granted must be within the general nature of right capable of existing as easements e.g., right of which to light, to support, and to water.

²(1859) 4 H & C

Creation of Easements

Easements may be created by:

- Statute
- Express grant or
- Reservation
- Implied reservation

By statute.

A statute may authorize a public authority to create easements for carrying out their activities. These need not have all essential requirements. E.g electricity polls under the Electricity act.

By express grant or reservation.

The owner of the servient land either orally or writing grants the easement say a right of way to the owner of a dominant land. An easement by express reservation is created where for example sanyu seels part of her land to paul and in the interest of transfer she reserves a right of way over the land she sold for the benefit of the land she retained, the right of way is an easement created by express reservation.

By implied grant or reservation.

Where a land owner grants part of his/her land to another person, the court will readily imply an intention to grant that other person all 'quasi-easements' pertaining to the land. In **SHAH CHAMPSHI TEJSHI & ORS V A. G OF KENYA (1959) EA630** a quasi-easement was defined as a continuous and apparent easement necessary to the reasonable enjoyment of the land and is at the time of the grant used by the land owner for the benefit of that part. It will arise in a number of instances. In **BARCLAYS BANK D.CO. V PATEL (1970) EA 88** the court held that the easement of way of necessity arises by operation of law and is not created by the parties. It will arise where a land owner grants part of his or her land to another and the latter has no legally enforceable means of access to the land then an easement of way of necessity arises by operation of law over the land retained.

An easement of necessity will not arise where;

- 1) As was stated in **MELEMON V CONNOR (1907) 9 WALR 141** where there is an alternative means of access that is practically available to the claimant as a matter of right. The fact that access is inconvenient, e.g., because it is unsuitable for cars or entails traveling long distances in order to get to a public road, does not entitle the grantee to a way of necessity over the grantor's land.

- 2) As was stated in **MIDLAND RLY CO V MILES (1886) 33 CHD 632**, the necessity for access must exist at the time of the grant and not merely arise later.
- 3) In *Barclays Bank V Patel*, the court stated that the owner of the serviette land is not entitled to compensation because he or she must have envisaged the necessity way at the time of conveyance.

Easements acquired by long term user or prescription

These are founded on the doctrine of “lost modem grant” under this doctrine; courts may allow a prescriptive claim by proof of continuous use during living memory. This is set at 20 years. It was stated in **BRYANT V FOOT (1867) LR 2 QB 161**, that the doctrine is based on a fiction which is freely admitted by court that 20 years use provide evidence that a grant was properly made but had since been misplaced and lost.

In **DALTON V ARGUS (1881) 6 AC 740**, the court laid down the general rules applicable to establishing an easement acquired by lost modem grant and these are;

- (1) The claimant must prove exercise by him or her of the allowed right for at least 20years.
- (2) Right must not have been exercised with force e.g., if at one time in the 20 years the owner of the serviette land blocked the access and it was forcefully-established.
- (3) Right must have been exercised openly and not secretly.
- (4) Finally the right must be exercised without licence or permission oe owner of the seriven land

EASEMENTS UNDER THE RTA

Under Section 60 of the RTA cap 240, Whenever any certificate of title or any duplicate registered or issued under any of the provisions or otherwise under the operation of this Act contains any statement to the effect that the person named in the certificate is entitled to any easement specified in the certificate, the statement shall be received in all courts as conclusive evidence that he or she is so entitled.

Section 64 (2) of the RTA cap 240, easements created by enjoyment or user or subsisting over or upon any land constitute an exception to indefeasibility of the certificate of title.

Section 65 of the RTA, an easement under a deed or writing will be notified as an incubrnace.

TERMINATION OF EASEMENTS.

1. An easement may be terminated by express agreement of the parties. The termination is effected when the owner of the dominant land expressly releases the servient land from the easement.
2. Termination may come about by merger: where the dominant and servient land come into a common ownership and occupation, all easements affecting the land are merged and terminated.
3. An easement may be terminated by abandonment by the dominant land owner. Abandonment may be express but more often it is implied from the acts or omissions of the beneficiary. Once an easement is abandoned, the dominant landowner cannot reclaim it. For example in the case of *BARCLAYS BANK DCO V PATEL* [1970] E.A 88 AT 94, Sir Charles Newbold, said that the fact that the dominant landowner for 20 years did not use a right of way was indicative but not conclusive proof of abandonment. It must be clear that such non-use was due to abandonment.

Access to a public road

At common law except in the case of easement of way by necessity, there is no right of access over another's land.

A right of access over another's land can be granted under **Section 62(1) of the Road Act** where a person makes an application to the minister. Under **Section 3 of the Road Act**, the minister is the minister in charge of Roads. **Section 62(3) of the Road Act** mandates that the order should only be made upon the owner of the servient land being adequately compensated. **Section 62(4) of the same Act**, provides that the application shall be in the manner prescribed in the regulations however these are not yet in place so.

Profits a prendre

A profit or a prendre confers a right to enter another's land to take something off the land. **DUKE OF SUTHERLAND V HEATH COKE (1892) 1 CH 475**. The right must relate to something comprising part of the land, such as gravel and sand or things growing on the land, such as timber and grass. A right to catch fish or hunt may also constitute a profit of prendre.

A profit of prendre unlike an easement may be granted in gross. While there always must be a servient land, there need not be a dominant land. **STAFFORDSHIRE & WOREESTERSHIRE CANAL NAVIGATION V BRADLEY (1912) 1 CH 91**.

VESTING ORDERS

UNDER SECTION 150 of the RTA CAP 240. Osborne's Concise Law dictionary, defines vesting orders as an order of court by which property passes as effectually as it would under a conveyance.

Section 151 of the RTA cap 240, If it is proved to the satisfaction of the Registrar that land under this Act has been sold by the proprietor and the whole of the purchase money paid, and that the purchaser has or those claiming under the purchaser have entered and taken possession under the purchase, and that entry and possession have been acquiesced in by the vendor or his or her representatives, but that a transfer has never been executed by the vendor and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found, the Registrar may make a vesting order in the premises and may include in the order a direction for the payment of such an additional fee in respect of assurance of title as he or she may think fit, and the Registrar upon the payment of that additional fee, if any, shall effect the registration directed to be made by section 150 in the case of the vesting orders mentioned in that section, and the effecting or the omission to effect that registration shall be attended by the same results as declared by section 150 in respect of the vesting orders mentioned in that section.

Re IVAN MUTAKA (1980) HCB 27, it was held that in order to invoke and rely on the provisions of section 167 (current section 151 RTA), the applicant must prove the following;

- a) That there has been a sale of land the title of which is registered under the act
- b) That the whole of the purchase price has been paid
- c) That the purchaser and those claiming under him have taken possession of the land.
- d) That the entry into possession by the purchaser was acquiesced by the vendor or his representative
- e) That a transfer had not been executed and cannot be obtained because
 - 1) The vendor is dead
 - 2) Vendor is residing out of the jurisdiction
 - 3) Vendor cannot be found.

The principles were restated in URA V UGANDA LAND COMMISSION HCMC 20/2009, Stephen Musota J, court gave the following as conditions for grant of a vesting order. NATIONAL WATER AND SEWERAGE CORPORATION V COMMISSIONER LAND REGISTRATION H.C.MA 39/2012, if at all there was a transaction of sale as alleged and the proprietor cannot be reached but there's information that he is available, the only option is filing an ordinary suit against the registered owner seeking court to order him to perform his part of the contract of sale.

Application

2. By way of ordinary letter to the registrar of titles of the relevant land office..w rite declaration at the bottom of the letter.

3. Attach receipts, introduction letter from L.c, sales agreement (photocopy), national Id and passport photos of the purchaser, statutory declaration, pay requisite fees that is registration fee, search fee, stamp duty.





ADVERSE POSSESSION

ADVERSE POSSESSION

Adverse possession is a legal theory under which someone who is possession of land owned by another can actually become the owner if certain requirements are met for a period of time defined in the statues of that particular jurisdiction. Adverse possession was historically used as a means of encouraging people to bring unused or uninhabited land into productive use.

According to **the Black's Law Dictionary by Bryan A Garner 9th edition page 62** adverse possession is the enjoyment of real property with a claim of right when that enjoyment is opposed to another person's claim and is continuous, exclusive, hostile, open, and notorious.

In the case of **JANDU VS. KIRPAL & ANOR [1975] EA 225 AT 323**, in which the court relied on the definition adopted in the case of **BEJOY CHUNDRA VS. KALLY POSONNO [1878] 4 CAL.327 AT P. 329**; adverse possession was defined to constitute possession by a person holding the land on his own behalf, [or on behalf] of some person other than the true owner, the true owner having immediate possession. If by this adverse possession the statute is set running, and it continues to run for twelve years, then the title of the owner is extinguished and the person in possession becomes the owner

It is based on the limitation of the time when a person is entitled to bring an action for the recovery of land under the **Limitation Act cap 290**.

Section 5 of the Limitation Act 290 (supra) which provide for limitation of actions for the recovery of land. It stipulates as follows;

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”

Oluka v Mugoda & Another (Civil Appeal 64 of 2016)In this appeal, the Court, in interpreting **Section 5** of the Limitation Act, noted that in cases involving therecovery of land by an administrator, the limitationperiod begins from the date of the deceased's death. Consequently, any claim for land made after

12 years, regardless of whether it pertained to the deceased's estate, is barred by the time limitation in **Section 5** of the Limitation Act. In this case, the 2nd Respondent purchased the disputed land in 1996, and Civil Suit No. 002 of 2015 was filed on February 3, 2015, well beyond the **12-year limit**, extinguishing the Appellant's right to claim the suit land. The Court therefore noted that the claimant's claim was time-barred, and there was no evidence to suggest that the claimant was under any disability to sue.

Further, **Section 11 (1) Limitation Act Cap 290** provides that;

“No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”) and where under sections 6 to 10, any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land.”

Section 16 Limitation Act Cap 290 further provides that;

“**Subject to sections 8 and 29 of Limitation Act Cap 290** and subject to the other provisions thereof, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action), the title of that person to the land shall be extinguished.”

HOPE RWAGUMA V JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.

Held; It is important to note that all the above provisions are specific on the issue of limitation of the time when a person is entitled to bring an action for the recovery of land. The effect of the law of limitation on the defendant's claim for the recovery of the suit land must therefore be viewed in the light of the plaintiff's concurrent claim of title over the same land by adverse possession. This raises the issue of whether it is possible for a person to claim and obtain title to land as against the registered owner by adverse possession. A wealth of authorities seems to suggest that it is possible.

HOPE RWAGUMA V JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.

The spirit of the definition above is similarly captured in provisions of **Section 16 of the Limitation Act**, to the effect that at the expiration of the period of twelve years prescribed under **Section 5 (supra)** for any person to bring an action to recover land the title of that person to the land shall be extinguished.

HOPE RWAGUMA V JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.

HELD; According to decided cases of persuasive authority by the Supreme Court of India on the same issue, the rationale of the exception of adverse possession to general principle of the indefeasibility of title is premised on the theory or presumption that the owner has abandoned the property to the adverse possessor or on acquiescence of the owner to the hostile acts and claims of the person in possession. In other words, the law regards the owner of land to be under duty to protect his or her interests in the land and is not expected to just look on when his or her rights are either infringed or threatened by third parties such as

squatters and trespassers occupying his or her land. See also: **P.T. MUNICHIKANKA REDDY & O'RS VS. REVAMMA & O'RS, (2007) AIR (SC) 1753 P.T.**

In **ANNAKILI VS. A. VEDANAYAGAM & ORS, AIR 2008 SC 346** the Supreme Court of India gave the essential elements of adverse possession which were considered in light of the Limitation Act of India with provisions similar to the Uganda **Limitation Act (Cap 290)** It was held that;

“Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now settled principle of law that mere possession of land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the prescribed period under the Limitation Act. Mere long possession for a period of more than 12 years without anything more do not ripen into a title.”

Again, the principles stated in the above holding are also encapsulated in the local legislations under **Section 5 and 16 of the Limitation Act.**

HOPE RWAGUMA V JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.

HELD; The direct import of these two provisions is, firstly; that a person dispossessed of land cannot bring an action to recover land after the expiration of twelve years from the date on which the right of action accrued; which is the date of dispossession. Secondly; after the expiration of the said twelve years the title of the registered owner shall be extinguished. Thirdly; the person in adverse possession is entitled to a title by possession. **Section 29 of the Limitation Act**, crowns it all by providing that the registered owner ceases to hold the title to land in his own right but in trust of one in adverse possession. Therefore, provisions of **Section 5 of the Limitation Act** operate, as a rule, not only to cut off the defendant's right to bring an action for the recovery of the suit land that has been in adverse possession of the plaintiff for over twelve years, but also under **Section 16 of the Limitation Act** entitles the plaintiff as the possessor to be vested with title.

However, it would also be noted that it is essential to establish that the adverse possession of the adverse possessor was neither by force nor by stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that the possession is adverse to owner as was discussed in the case of **OMUNGA BAKHIT 'S AGRASIELA ALIAS DA CONTRACTARI**

In the case of **KARNATAKA BOARD OF WAKF VS. GOVERNMENT OF INDIA & ORS [(2004) 10 SCC 779]** it was stated that for a party to succeed in their claim of title to the suit land through adverse possession they have to show on:

- a) what date they came into possession of the property;
- b) what was the nature of her possession;
- c) whether the factum of their possession was known to the other party;
- d) how long her possession has continued; and
- e) Whether her possession was open and undisturbed.

HOPE RWAGUMA V JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012

HELD; It need emphasis that adverse possession is a right which comes into play not just because someone loses high right to reclaim the land out of continuous and willful neglect but also on account of possessor's positive intent to dispossess. It is thus important for this court, before stripping the defendant of his lawful title, to take into account whether the plaintiff is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the defendant the registered owner of the suit land. Once again, the efficacy of adverse possession by the plaintiff would much depend on the provisions of the **Limitation Act**; by operation of which right of the defendant to access the court expired through effluxion of time. There is yet another hurdle for the plaintiff to succeed in her claim of title to the suit land through adverse possession. She has to show on what date she came into possession; what the nature of her possession was; **whether the factum of her possession was known to the other party**; how long her possession has continued; and whether her possession was open and undisturbed. See also: **KARNATAKA BOARD OF WAKF VS. GOVERNMENT OF INDIA & ORS [(2004) 10 SCC 779]**.

The case of **OMUNGA BAKHIT 's AGRASIELA alias DACONTRACTARI** Is to the effect that possession ought to be Uninterrupted and uncontested possession of land for over twelve years, hostile to the rights and interests of the true owner, is considered to be one of the legally recognized modes of acquisition of ownership of land. This was also discussed in the case of **PERRY V. CLISSOLD [1907] AC 73, AT 79**

In respect of unregistered land, the adverse possessor acquires ownership when the right of action to terminate the adverse possession expires, under the concept of "extinctive prescription" reflected in sections 5 and 16 of The Limitation Act. In such cases, adverse possession has the effect of terminating the title of the original owner of the land. The case of **RWAJUMA V. JINGO MUKASA, H.C. CIVIL SUIT NO. 508 OF 2012** The trial judge held that where the party claiming adverse possession wins the suit, it has the effect of terminating the title of the original owner and then title is vested in the adverse possessor.

The case of MIZA V BRUNA OSOSI (CIVIL APPEAL NO. 0026 OF 2016) [2017] UGHCLD 101 (21 DECEMBER 2017) Explains the input of the law of limitation in adverse possession stating that the law of limitation guarantees that people should be free to get on with their lives or businesses without the

threat of stale claims being made. The Limitation Act also encourages claimants to bring their claims promptly and not, in the old phrase, “to sleep on their rights”. **Section 5 of The Limitation Act**, which provides for limitation of actions for the recovery of land, states as follows;

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”

This limitation is applicable to all suits for possession of land based on title or ownership i.e., proprietary title as distinct from possessory rights. Furthermore, **Section 11 (1)** of the same Act provides that;

“No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”), and where under sections 6 to 10, any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land.”

These provisions have been applied in cases such as **SEMUSAMBWA JAMES V. MULIRA REBECCA [1992-93] HCB 177 AND KINTU NAMBALU V. EFULAIMU KAMIRA [1975] HCB 222**, where it was held that a suit for a claim of right to land cannot be instituted after the expiration of twelve years from the date the right of action accrued.

According to **Section 6** of the Limitation Act, the right of action is deemed to have accrued on the date of the dispossession. A cause of action therefore accrues when the act of adverse possession occurs. In **F. X MIRAMAGO V. ATTORNEY GENERAL [1979] HCB 24**, it was held that 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. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run as against the plaintiff.

At common law, as was stated in the case of **ASHER V WHITLOCK (1865) LR 1QB1**. The court further stated that a person who is in possession has a title which is good against the whole even except a person with a better claim.

The acquisition is owing to the provisions of the limitation Act however the same

Under **Section 5 of the Limitation Act**, no person can make an entry or bring an action to recover land after the expiration of 12 years from the date the cause of action accrued to a land owner when a stranger entered into adverse possession of their land.

For one to be an adverse possessor they must have acquired in **E.R IVES INVESTMENT LTD V HIGH (1967) QB 379**, Lord Denning MR said that a licence from the owner negates the otherwise adverse quality of possession enjoyed by a claimant. Thus, were owe is a caretaker or occupied the land as a servant of the land, the limitation time does not run in their favour irrespective the period they remain in possession.

IN THE CASE OF AMOS ABAHO (CLAIMING AS A BENEFICIARY OF THE ESTATE OF THE LATE WILLIAM KAHINZA) V JUSTINE (EXECUTOR OF THE WILL OF THE LATE MIKAIRI MUKASA) MISCELLANEOUS APPLICATION NO.262 OF 2023 (ARISING FROM CIVIL SUIT NO.32 OF 2022) The court found that the applicant did not provide sufficient evidence of adverse possession, which requires uninterrupted and adverse use of the land for at least 12 years.

Vesting orders under section 77 of the registration of titles act cap 240.

The **Registration of Titles Act cap 240** under **Section 77** thereof recognises adverse possession as a basis on which a person in use and occupation of land can claim title to the land of the registered owner.

It states that **“A person who claims that he or she has acquired a title by possession to land registered under this Act may apply to the registrar for an order vesting the land in him or her for an estate in fee simple or the other estate claimed.”**

The application according to **Section 78 of the Registration of Titles Act cap 240**, must be in writing and in the form prescribed in the 7th schedule. It must be signed by the applicant, attested by at least one person subject to **Section 131 Registration of Titles Act**, supported by a statutory declaration of the person signing it and accompanied by a survey plan.

Upon receipt of the application, the registrar under S.80 should cause the gazetting of the applicate at the applicant’s expense and issue any other persons as they deem fit with notices.

Section 79, the Registrar may reject the application, altogether or in part, or may make such requisitions as to the title claimed to have been acquired,

or as to any other matter relating to the application as he or she thinks fit.

Section 80, **if** an application under section 77 is not rejected by the Registrar under section 79, he or she shall advertise notice of the application, at the applicant’s expense, once at least in the Gazette, and may give the notice to such person or persons as he or she deems fit; and notice of the application shall be given to every person appearing by the Register Book to have any estate or interest in the land or in any encumbrance notified on the title of the land.

Section 81, The applicant shall cause a copy of the notice of application to be posted in a conspicuous place on the land or at such place as the Registrar directs, and to be kept so posted for not less than three months prior to the granting of the application.

Section 82, The Registrar shall appoint a time not less than three months nor more than twelve months from the publication of the advertisement or service of the notice of application at or after the expiration of which he or she may, unless a caveat is lodged forbidding it, grant the application altogether or in part.

Section 83, **Contents of notice** (1) The notice of application required by section 80 shall (a) specify the volume and folium of the grant or certificate affected by the application, and any mortgage or lease registered as an encumbrance on the grant or certificate of title; and (b) be dated and be served by being sent in a registered letter marked outside “Office of Titles”, posted to each person to be served at his or her

address, if any, stated in the Register Book, subject to section 175, or supplied by the applicant. (2) The Registrar shall cause a copy of each notice to be filed with a memorandum of the notice having been sent, and the memorandum shall be sufficient evidence that the notice was duly sent.

Section 84, At any time prior to granting an application, the Registrar may reject the application altogether or in part if the applicant fails to comply to his or her satisfaction with any requisition made by him or her within such time as to him or her seems reasonable.

Section 85, (1) A person claiming any estate or interest in the land in respect of which any such application is made may, before the granting of the application, lodge a caveat with the Registrar forbidding the granting of the application.

(2) The caveat shall in all other respects be in the same form and be subject to the same provisions and have the same effect with respect to the application against which it is lodged as a caveat against bringing land under the operation of this Act.

Section 86. **Cancellation of existing certificate and issue of new one** Subject as aforesaid, after the expiration of the time appointed, the Registrar, if satisfied that the applicant has acquired a title by possession to the land, may (a) cancel the existing certificate of title and any instrument, entry

or memorial in the Register Book altogether or to such extent as is necessary; and (b) issue to the applicant or person entitled to receive it a new

certificate of title for an estate in fee simple or the other estate acquired in the land by the applicant free from all encumbrances appearing by the Register Book to affect the existing title, which have been determined or extinguished by such possession and free from any easement notified as an encumbrance which has

been proved to the satisfaction of the Registrar to have been abandoned.

Section 87, **Fee for assurance of title** Upon granting the application, the Registrar may grant it conditionally upon the applicant paying as an additional fee in respect of assurance of title such a sum of money as the Registrar considers to be a sufficient indemnity by reason of the imperfect nature of the evidence

of title or as against any uncertain or doubtful claim or demand incident to or which may arise upon the title or any risk to which the Government may be exposed by granting the application.

S.88. Entries to be made by Registrar, Upon granting the application, the Registrar shall make entries similar to those directed to be made by section 150, and the making or omission to make such entries shall be attended by the same results as declared by section 150 in respect of the entries mentioned in that

section.

S.89. **Duty of Registrar as to cancellation**, In cancelling any certificate of title, instrument or any memorial or entry in the Register Book, the Registrar shall endorse on it a memorandum stating the circumstances in which the cancellation is made.

S.90. **Effect of new certificate of title**, (1) Any certificate of title issued by the Registrar upon the granting of any application under this Part shall be issued and registered in the manner prescribed by section 37, and thereupon the person named in the certificate of title shall become the registered proprietor of that land.

(2) The certificate shall be dated the date of the granting of the application by the Registrar.

APPLICATION.

**THE REPUBLIC OF UGANDA
THE REGISTRATION OF TITLES ACT
IN THE MATTER OF AN APPLICATION FOR
A VESTING ORDER
IN THE MATTER OF THE LAND SITUATE
TO THE REGISTRAR OF TITLES
WAKISO ZONAL OFFICE**

Dear Sir,

APPLICATION FOR VESTING ORDER UNDER S. 77 OF RTA

I, Mwebe Kassim, C/O M/S SUI GENERIS, ADVOCATES, P.O.BOX 7117 KAMPALA, apply for a vesting order vesting in me all that piece of land being in Bulemezi Block22 Plots No.391 and 392 at Kikyusa which is delimited and coloured red upon the plan numbered 2984 in the schedule to this application for an estate free from encumbrances and I declare;

1. The particulars upon which my possession on which the claim is based are that;
 - b) I came on the land in 1979 upon the return of my late father from exile aged 11 years at the time.
 - c) That I occupy plot No. 391 fully which measures about 322 acres and Plot No.392 which measures 120 acres, I occupy only acres of it.
 - d) That may late father, mother and siblings have all since died and been buried on the land.

e) That since we settled on the land having found it unoccupied, the registered proprietor has not challenged our stay on the same.

2. That there are no documents or evidences of title affecting such land in my possession or under my control other than those include in the schedule to this application.
3. That there are no mortgages or encumbrances registered on the above-mentioned title except the following. (If any list them).
4. That except as afore said I am not aware of any mortgages or encumbrance affecting the land or that any person other than myself has any estate or interest in the land.
5. That the names and addresses so far as known to me of the occupiers of all lands contiguous to the land are as follows: -

Abweeh Stella of P. o. box 1111, Kampala.

6. That the present value of the land, including all improvements on it, does not exceed shs. 1,000,000,000.

Dated this 28th day of November 2022.

Made and signed at Kampala by Mwebe Kassim.

MWEBE KASSIM

(APPLICANT)

In the presence of

SUI GENERIS

ADVOCATE.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLE ACT CAP.240

AND

IN THE MATTER OF THE STATUTORY DECLARATION ACT CAP.222

AND

**IN THE MATTER OF LAND COMPRISED IN BULEMEZI BLOCK 22 PLOT 391 AT
KIKYUSA.**

AND

IN THE MATTER OF AN APPLICATION FOR VESTING ORDER.

Statutory Declaration

I, Kassim Mwebe of C/O M/S SUI GENERIS & CO. ADVOCATE, P.O.BOX 7117, KAMPALA do hereby solemnly declare and state as follow: -

2. THAT I am a male adult Uganda of sound mind with capacity to make this declaration.
3. THAT I am the occupant of the at Bulemezi Block 22 Plot No. 391at Kikyusa.
4. THAT I have been occupying the said land since I was 11 years old upon my father's return from exile in 1979 after the liberation war.
5. THAT I fully occupy the whole of land which measure 392 acres.
6. THAT my siblings and my parents lived, died and were buried on the same land. (Attached is a copy of the grave yard marked annexure "A")
7. THAT I currently reside in the residential house with my family and we dwell on the said land using the other part of it for commercial farming.
8. THAT the said land was registered in the names of Abwoch Stella of P.o. Box. 1111 Kampala and no knows her whereabouts, neither has she lived claim on the land in the last over 40 years we have lived on the land and nor can she be traced from 1979.
9. THAT I have been informed by my lawyers of SUI GENERIS & CO ADVOCATES that the laws of Uganda prove me as the occupant of such land having been in possession of the same for over 12 years in interrupt.
10. THAT I believe the information of my lawyers and it's in that regard that I apply to be registered as the proprietor of the land.
11. THAT I hereby affirm and declare that what i a have stated here in above is true and correct to the best of my knowledge, information and believe

DECLARED at Kampala by the said KASSIM MWEBE this 28th day of November 2022.

DEPONENT

Before me

COMMISSIONER FOR OATHS

Drawn by:

SUI GENERIS & CO ADVOCATES

P.O.BOX 7117 KAMPALA

UGANDA

Vesting order where there is a complete transfer AND is in possession but no transfer effected.

Under **Section 167 of the Registration of Titles Act** the registrar can make a vesting order in case where there was a complete purchase. The registrar must satisfy him or herself that: -

- f) The land was sold by the proprietor.
- g) The whole of the purchase money was paid.
- h) The purchaser has/ those claiming under him have entered and are in possession of the land.
- i) A transfer was never executed for reason that the transferor died or residing out of jurisdiction or cannot be found.

Where the registrar satisfies themselves as to the above, the registrar shall make a vesting order and may make an order as to payment of such other additional fee in respect of assurance of title and the applicant shall pay all other required fees; stamp duty, perusal fees, registration fees.

Necessary documents.

- (2) Formal letter applying for the order.
- (3) Evidence /proof of death (where transferor is deceased).
- (4) Sale agreement.
- (5) A statutory declaration.
- (6) Deed plan.

Court application

SUI GENERIS & CO ADVOCATES

P.O.BOX 7117, KAMPALA

UGANDA

28TH NOVEMBER, 2022

Our Ref: KK/10/2022/AB

Yours Ref:

**THE REGISTRAR OF TITLES,
WAKISO MINISTERIAL ZONAL
OFFICE.**

Dear Madam,

APPLICATION FOR A VESTING ORDER UNDER SECTION 167 OF THE RTA.

We refer to the above.

We act for and on behalf of our client MUTWE KEZIRO on whose instructions we address you as follows:

That our client entered into an agreement of sale of land with Muganda Ronald the registered proprietor of the land comprised in Bulemezi Block 22 Plot No.19 Kalule. (Attached is the agreement of sale.)

The sale agreement was in respect of the afore mention land and our client paid a purchase price of UGX 1000,000,000 in full consideration for the land.

That no transfer was signed in favour of our client because the duplicate certificate of title had been misplaced at the time of execution of the sale agreement.

That a month later, Muganda Ronald sent his to deliver to our client the duplicate certificate of the title and a message requiring our client to make arrangements to see him sign a transfer in respect of the land.

That unfortunately, before the transfer could be signed in his favour, Ronald died (attached is the copy of Ronald Muganda's death certificate.)

We therefore pray on behalf of our client that you issue a vesting order under section 167 of the RTA that the land comprised in Bulemezi Block 22 Plot No.19 at Kalule vests and be registered in our clients' names.

Yours faithfully

SUI GENERIS (PARTNER)

SUI GENERIS &CO ADVOCATES

- Attach all the documents referred to in the letter and a duplicate certificate.
- Pay all the requisite fees



LAND ACQUISITION

COMPULSORY LAND ACQUISITION

In Uganda land ownership belongs to the citizens. **Article 237 of the 1995 Constitution** provides that land in Uganda belongs to the citizens and shall vest in them in accordance with the land tenure systems provided for in the constitution which includes customary, freehold, leasehold and mailo.

The right to own land is further fortified by **Article 26 of the Constitution** which provides that every person has a right to own property either individually or in association with others. The question that can be asked is whether this right to own property is absolute? Under the constitution the right to own property is not non-derogable and can be limited within the meaning of article 43 of the Constitution.

According to section 42 of the land act the government or local government may acquire land in accordance with article 26 and 237(2) of the constitution. Under Article 237(2)(a) of the 1995 constitution of Uganda as amended provides that the government or a local government may, subject to Article 26 of this Constitution, acquire land in the public interest; and the

Conditions governing such acquisition shall be as prescribed by Parliament;

Article 26 (2) of the 1995 constitution of Uganda as amended; 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—
 - prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property;

and

- a right of access to a court of law by any person who has an interest or right over the property.

In the case of AMOOTI GODFREY NYAKAANA V NEEMA AND ORS CSTTL APPLICATION 05/2011, court stated that an analysis of the provisions of the constitution (Article 26, 237, 242, 245) points to principle although one has a right to own land through any of the system of land tenure listed in the constitution, there may be situations which necessitate the government either to take over the land or to regulate its use for common good of all the people of Uganda. This is what is referred to as compulsory acquisition of land.

Compulsory acquisition of land by government or any other public body is provided for under section 3 and section 7 of the land acquisition act cap 235

Section 3 states that Whenever the Minister is satisfied that any land is required by the Government for a public purpose, he or she may, by statutory instrument, make a declaration to that effect.

Section 7 Where a declaration has been published in respect of any land, the assessment officer shall take possession of the land as soon as he or she has made his or her award under [section 6](#); except that he or she may take possession at any time after the publication of the declaration if the Minister certifies that it is in the public interest for him or her to do so.

It should be noted that this provision is contrary to Article 26 of the constitution and the legality of section 7 of L.A.A was challenged in the case of ADVOCATES FOR NATIONAL RESOURCES LRUMBA SU,AN AND ANOTHER V ATTORNEY GENERAL AND UNRA CSTTL PETITION 40/2013, supreme court held that section 7 of the L.A.A is consistent and contravenes Article 26 of the constitution. The said provision was nullified to the extent of its inconsistency that is as it does not provide for prior payment of compensation before government compulsorily acquires anyone. Court further emphasized that judicial bodies should construe old law that predate the 1995 constitution in conformity with 274.

In the case of ONEGI OBEL AND ANOR V A.G AND ANOR H.C..C.S No.0066/2002, the government moved onto the suit land and constructed a road without the consent of the plaintiff was deprived of interest and right over the land without promptly being paid fair adequate compensation contrary to section 26. Court held that the defendant were illegal. That one of the conditions of acquiring private property by government is to pay prompt, fair and adequate compensation. Court granted exemplary and general damages by declaration that the conduct of the agents of the government was arbitrary, oppressive and constitutional.

Procedure for compulsory land Acquisition.

According to the case of ROSS V COMMONWEALTH OF AUSTRALIA AND ORS (1986) LRC (CONST) 292, states that compulsory acquisition of land by government should be made under the law and according to the procedures provided by the law.

NB; According to Article 26(2)(a) of the constitution, no person shall be compulsorily deprived of possession or acquisition is necessary for public use. In the case of B.P BHATT AND ANOR V HABIB RAJAN VERSI [1958] E.A 536, court defined the phrase 'public interest' to mean only public purposes

involving specific use, active or passive such as providing facilities and infrastructure that ensures safety, security, health, welfare.

In *ROSS V COMMONWEALTH OF AUSTRALIA (SUPRA)* court observed that the acquisition for public purpose related to a need for the proposed user application of the land and not to acquire the land merely for the purpose of depriving the owner of it.

PROCEDURE

The procedure is provided for under the land Acquisition Act however the same must be read in hive with the constitution under **Article 274 of the Constitution**

(1) entering and examining the land

The minister authorizes any person to enter upon the land identified for purposes of surveying and any other thing necessary to ascertain the suitability of the land for the intended public use. **Section 2(1)**. The phrase public use was defined in the case of **B.P. BHATT ABUDU ANOR V HABIB VERSI (1958) EA 536**.

The government is liable to pay compensation to any person who suffers damages as a result of the exercise of ascertaining suitability **Section 2(2)**.

(2) Making a declaration that land is needed for public purpose.

The minister having satisfied themselves as to the suitability issues a statutory instrument stipulating the location of the land, its approximate area and plan if made. **Section 3(1) & (2)**.

The declaration must be served on the named persons in the declaration **Section 3(3)**.

(3) Marking out the land

Under section 4, on the publication of a declaration under section 3, the assessment officer shall cause the land to be marked out and measured, issue a plan of the land if it hasn't been made already.

(4) Issuance of a notice to persons with interest.

After the publication of the declaration, the minister must appoint as assessment officer and the assessment officer shall cause a notice to be published in the Gazetted and exhibited at convenient places on or near the land stating that the government intends to take possession of the land and that claims to compensation for all interests be made to him or her. **Section 5(1)**

The notice shall not be earlier than 15 days unless the minister directs otherwise and not later than 3 days after the publication of the notice **Section 5(4)**

The notice must give the particulars of the land to which the notice relates and require all persons having an interest in the land to appear personally or by agent before the assessment officer on the day and time and place specified must state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for those interests and their objections if any to any of the place of land under **Section 4 & Section 5(3)**

Each copy of the notice issued must be served upon the registered proprietor of the land to which the notice relates **Section 5(6)**.

In UGANDA ELECTRICITY BOARD V LUANDE STEPHEN SANYA CIVIL APPEAL NO.1/2000, UEB destroyed trees, crops and made survey marks without the consent of the land owner. Twinomuji J.A, emphasized the UEB couldnot enter on any persons land without first acquiring it and paying compensation. It must also give notice to the person attached to such land before taking it and therefore its actions amounted to trespass.

(5) Inquiry and award.

1) Where a notice is published under [section 5](#) in respect of any land, the assessment officer shall, on the day specified in the notice, proceed to hold an inquiry into claims and objections made in respect of the land and shall make an award under his or her hand specifying—

(a)the true area of the land;

(b)the compensation which in his or her opinion should be allowed for the land; and

(c)the apportionment of that compensation among all the persons known or believed by him or her to have an interest in the land, whether or not they have appeared before him or her.(2)

2) An inquiry held under this section may be adjourned from time to time by the assessment officer as the occasion may require.

(3)For the purposes of an inquiry under this section the assessment officer shall have the same power to summon and enforce the attendance of witnesses and to compel the production of documents as is vested in a magistrate’s court in its civil jurisdiction.

(4)Where an assessment officer makes an award under this section in respect of any land—(a)he or she shall cause a copy of the award to be served on the Minister and on those persons having an interest in the land as are not present personally or by their representatives when the award is made; and(b)subject to subsection (5), the Government shall pay compensation in accordance with the award as soon as may be after the expiry of the time within which an appeal may be lodged.

The compensation of the land as was held in the case of Puran **CHAND MANY V THE COLLECTOR UNDER THE INDIAN LAND ACQUISITION ACT (1957) IEA 125**, must be assessed on “the price which a vender might be expected to obtain from a willing purchase.

A willing purchaser is one who although he may be a speculator, is not a wild or unreasonable speculator.

(6) Taking possession.

The government may take possession of the land having paid the compensation to the affected persons and this is under **Section 7 of the Land Acquisition Act** which must be real subject to the constitution under Art. 274 as was held by the supreme court in the case of

Upon taking possession, the assessment officer must take possession of the land as soon as possible receive the duplicate certificates **UNRA V ASUMAN IRUMBA AND ANOR.** of title and the declaration relating to the land and send the same with an endorsement on the certificate that they have taken possession of the land to the land registry **Section 7(3).**

The registrar must upon receipt of the endorsement effect the change of proprietorship in the register **Section 7(4).**

Remedies Available to persons whose land has been compulsorily acquired.

- (1) Prior, adequate and fair compensation which may be momentary or in form of resettlement.
- (2) Court action for damages where the land is compulsorily acquired without prior adequate and fair compensation.

It should be noted that **Article 237** allows for compulsory acquisition subject to **Article 26 of the Constitution.** One of the requirements for land acquisition in **Article 26** is prior compensation before acquisition. However, the Land Acquisition Act does not provide for mandatory prior compensation before acquisition.

Important to note is that the Land Acquisition Act is one of the enactments that came in force before the passing of the 1995 Constitution. **Article 274 of the Constitution** provides that existing law before coming into force of the constitution shall be read with necessary modifications and qualifications to bring it in line with the provisions of the constitution. This was emphasised in **OSOTRACO V ATTORNEY GENERAL AND ALSO KABANDIZE V KAMPALA CITY COUNCIL AUTHORITY.**

Article 2(2) of the Constitution provides that the constitution is the supreme law of the land and no statutory provision in any enactment inconsistent therewith can supersede the provisions of the Constitution. It follows therefore that for any compulsory acquisition of land to be valid, such acquisition must be within the confines of **Article 26(2) of the Constitution.** It is provided that every person has a right to own property either individually or in association with others. Property for that purpose is not defined but ordinarily included land or landed property. In **PHILLIP KARUGABA V ATTORNEY GENERAL CONSTITUTIONAL APPEAL NO. 1/2004**

Justice Bart Katureebe stated that "The word property does not have a limited connotation but applies to "personal" as well as "tangible" property."

It follows therefore that for the right of ownership of property to be interfered with such interference of any form must be in accordance with **Article 26(2) of the constitution**.

Compulsory acquisition of land is therefore an exception and permitted interference with the right of ownership of property enshrined in **Article 26** not forgetting that **Article 43 of the constitution** provides for the limitation of enjoyment of rights. In that context any limitation imposed on the right of ownership can only be legally effective if it is in tandem with the pre-condition set out in **Article 26(2)**

Article 26(2) of the Constitution allows compulsory Acquisition of land for purposes stipulated therein and subject to satisfaction of the condition precedent set out in the article. The condition precedent upon which compulsory acquisition may be deemed to be legal is provision for prior compensation before such acquisition. The compensation must be fair and adequate in the circumstances.

In **ONEG OBEL & ANOR VS. AG & ANOTHER HCCS NO. 0066/2002** the government moved onto the suit land and constructed a road without the consent of the plaintiff who was the registered proprietor thereof. The plaintiff was deprived of his interest and right over the land without promptly being paid fair and adequate compensation contrary to Article 26. Court held that the acts of the defendant were illegal. That one of the conditions of acquiring private property by government is to pay prompt fair and adequate compensation. Court granted exemplary and general damages by declaring that the conduct of the agents of the government was arbitrary, oppressive and unconstitutional.

In that context any compulsory acquisition of land will be rendered unconstitutional and illegal if provision is not made for prior and adequate compensation. In **VENANSIO BAMWEYAKA V KAMPALA DISTRICT LAND BOARD, CIVIL APPEAL NO. 2 OF 2007** Okello JA held that where the application for and the alienation of the land by the controlling authority has been done without consultation of those in occupation thereof such grant would not be allowed to stand

As noted earlier, the Land Acquisition Act is contrary to **Article 26 of the Constitution** in not providing for prior compensation before acquisition. The legality of **Section 7 of the Land Acquisition Act** was challenged in the case of **ADVOCATES FOR NATURAL RESOURCES, IRUMBA ASUMANI AND OTHERS V ATTORNEY GENERAL. CONSTITUTIONAL PETITION NO. 40/2013** ;In this case the government in upgrading the Hoima-Kaiso-Tonya road in order to ease and facilitate the oil exploration and exploitation activities, expropriated the land of Irumba Asumani without prompt payment of compensation. The petitioner contended that this act of the respondents contravened his rights as enshrined under **Article 26 of the Constitution**. The Constitutional Court held that **Section 7 of the Land Acquisition Act** is inconsistent with and contravenes **Article 26 of the Constitution**. The provision was nullified to the extent of its inconsistency that is as it does not provide for prior payment of compensation before government compulsorily acquires or takes possession of any person's property. It was further emphasised that judicial bodies should construe old laws that predate the 1995 Constitution in conformity with **Article 274 of the Constitution**.

However, of great importance in regard to this matter is the Supreme Court's judgement on appeal in **UNRA v IRUMBA ASUMANISCCA NO. 2 OF 2014** where the highest court confirmed the decision of the Constitutional Court. It was held that **Section 7(1) of the Land Acquisition Act** was inconsistent

with **Article 26 of the Constitution** as it allowed government to compulsorily acquire land without prior compensation. The Court went on to hold that whereas **Article 26 of the Constitution** is not among the non derogable rights stated under **Article 44 of the Constitution**, this doesnot give powers to government to compulsorily acquire people’s land without prior payment and that such planned government projects do not fall under the exceptions of disasters and emergencies.

The ruling of the Supreme Court is thus applauded for confirming and preserving the sanctity of property rights. As noted above the court made it clear the right to own property is absolute save in instances of disasters, calamities and emergencies. Those are the only limits court qualified to be the exceptions where someone can be deprived of their property without prior compensation.

UGANDA NATIONAL ROADS AUTHORITY VS. IRUMBA ASUMANI & PETER MAGELAH, Supreme Court Constitutional Appeal No.2 of 2014 The Supreme Court has confirmed the sanctity of property rights under the Constitution. **Article 26 of the Constitution** on freedom from deprivation of property provides for prompt payment of fair and adequate compensation prior to the State’s compulsory acquisition of any property. The Court ruled that the Land Acquisition Act (Cap 226) is unconstitutional in so far as it provided for the compulsory acquisition of property before the payment of compensation to the owner. Background The Government of Uganda commissioned a project to upgrade the Hoima-Kaiso-Tonya road, leading to Uganda’s oil fields in the Albertine Graben. Acting under the Land Acquisition Act, the Government compulsorily acquired the project land and the Uganda National Roads Authority (“UNRA”) took possession before payment of compensation to the owners. The respondents challenged the constitutionality of the Land Acquisition Act that permitted the Government to compulsorily acquire land before payment of compensation. Under **Article 26(2) of the Constitution**, no person can be compulsorily deprived of property without prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property. The Constitutional Court found the Land Acquisition Act unconstitutional to the extent of its inconsistency with **Article 26(2) of the Constitution** in so far as it did not provide for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of any property by the State. UNRA appealed to the Supreme Court and sought to argue, among others, that **Article 26** was not a non-derogable right and that in certain circumstances, the State would be entitled to compulsorily acquire property before payment of compensation for instance in situations of natural disasters, emergencies or in the interest of public good. The Supreme Court Decision The Supreme Court upheld the Constitutional Court decision that the Land Acquisition Act was inconsistent with **Article 26 of the Constitution** and therefore unconstitutional. The Supreme Court held further that whereas Article 26 was not among the non-derogable rights, this does not give powers to Government to compulsorily acquire people’s land without prior payment, and that such planned Government projects do not fall under the exceptions of disasters and emergencies.

Compensation must be fair and adequate

Article 26(2) of the 1995 Constitution makes a requirement that the enabling law must provide for prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property by the Government.

The Land Acquisition Act does not provide for payment of ‘**fair and adequate**’ compensation as laid down in the Constitution. The Act only refers to compensation and does not clearly state how that compensation should be assessed”

Although the Land Act of 1998 attempted to remove the lacuna by providing under Section 41(6) that “Compensation must be paid to the land owner at a fair market valuation assessed on a willing seller willing buyer basis.

SHEEMA COOPERATIVE RANCHING SOCIETY & 31 ORS V ATTORNEY GENERAL (HIGH COURT CIVIL SUIT NO.103 OF 2010) [2013] court held that the compensation award offered by Government pursuant to the Valuation Report of August 2005 was outdated and insufficient and inadequate since it was not based on the open market value and disturbance allowances were never considered.

THE CASE OF SOUTHERN RANGE NYANZA LIMITED V UGANDA (CIVIL SUIT 423 OF 2014) [2021] UGHC 22 provides for **Article 26 (2)** which advocates for the prompt payment of fair and adequate compensation, prior to taking possession or acquisition of the property and **GOOD MAN INTERNATIONAL LTD V ATTORNEY GENERAL & ANOR (CIVIL SUIT 73 OF 2014)** is another case that provide for compulsory acquisition.

The reasons for acquisition of land compulsorily are provided for in the Constitution.

Article 237(2)(a) provides that the Government or a local government may, subject to article 26 of this Constitution, acquire land in the **public interest**; and the conditions governing such acquisition shall be as prescribed by Parliament;

In **B.P BHATT & ANOTHER VS. HABIB RAJANI VERSI (1958) EA. 536 at 540** Court held that the phrase public interest|| means much the same as the purpose in the public interest. It must include the purpose, an aim or objective in which the general interest of the community as opposed to the particular interests of individuals directly and virtually concerned.

Article 26 (2) of the Constitution provides that 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

The taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health.

In **ONEG OBEL & ANOTHER VS. AG & ANOR HCCS NO. 0066/2002** it was held that by both provisions of **Section 73 of the Land Act and Article 26 of the Constitution** the government is bound

by statute to show that the property it intends to acquire compulsorily is necessary for defence, public security, public health or public morality and to pay adequate compensation prior to such acquisition. In the instant case the defendant failed to prove the plaintiffs land was necessary for defence, public security, public health or public morality and to pay adequate and prompt compensation as required by the Land Act and the Constitution.

From the facts, government under the Ministry of Health would like to take over the Hospital constructed by Muzamir. Public health is a matter of public interest and is one of the conditions stipulated under **Article 26(2)(a) of the Constitution**. therefore, government can acquire Muzamir's hospital compulsorily subject to prior fair and adequate compensation assessed on fair market value. As stipulated in **UGANDA NATIONAL ROADS AUTHORITY v IRUMBA AND ANOR (Constitutional Appeal 2 of 2014)[2015] UGSC 22 (29 October 2015)**, this is not a situation of emergency that government should take land without prior compensation.

Replacement of certificates of title

Duplicate certificate

Under **Section 69 of the Registration of Titles Act Cap 240**, where a duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, a person can apply to registrar of titles to have a special certificate issued in the place of the duplicate certificate.

The special certificate must contain an exact copy of the certificate of title in the register book and of every memorandum and endorsement on it.

The certificate must also contain a reason why a special certificate was issued, the registrar of titles must also notify in the register book the issuing of the special certificate and the date of issuance and why it was issued.

Effect of special certificate

Under **Section 69 of the Registration of Titles Act cap 240**, the special certificate of title is available for all purpose and uses for which the duplicate certificate of title which is lost destroyed or obliterated would have been available.

In **KONDE MATHIAS ZIMULA V BYARUGABA MOSES & ANOR HCCS. NO66 OF 2007**, court stated that in view of **Section 69 of the Registration of Titles Act**, once a special certificate of title is issued on application by the registered proprietor, it becomes a replacement for the lost or destroyed certificate of title is found, the registered proprietor must seek its reinstatement and the CLR must call for the surrender of the special certificate for purposes of cancellation.

Process of acquisition of a special certificate of title

- (1) Draft a formal letter to the registrar of titles requesting for issuance of a special certificate of title with the reasons clearly indicated e.g., lost or obliterated.
- (2) Depone and Statutory Declaration affirming the facts stated in the letter.
- (3) Pay the necessary fees i.e., registration fees of UGX 15,000 UGX 10,000 as stamp duty, UGX 5,000 for the application and 5,000 for the SD.
- (4) Present the documents to the MZO office where the land is situated. The documents must all have photo copies and these are presented with the originals together with to passport photographs.

The photocopies are stamped “received” and returned to you the applicant.

- (5) The applicant must cheek with the MZO office after 5 working days to pick a letter to the Uganda Gazette for notification of the public on the impending issuance of a special certificate of title.
- (6) Applicant on receiving the letter to the Uganda Gazette proceeds to pay the gazetting of UGX 200,000 and lodge the letter with Uganda printing and Publishing Corporation for notification in the Uganda Gazette.
- (7) After 30 days notification, the applicant presents a receipt for the Gazette to the MZO for confirmation of publication.
- (8) The MZO certifies the receipt and Gazette notice and proceeds to issue a special certificate.
- (9) After 10days, the applicant on presenting of the photocopy stamped “received” collects the special certificate of title and the photocopy is stamped “Returned” on completion.

Documents fees payable

- (1) Letter of application - Registration fees-10,000
- (2) Statutory Declaration -Stamp Duty-10,000
- (3) Gazette Extract - Gazette fees – 200,000
- (4) 2 passport photographs
- (5) Receipts of payment.

Letter of application for special title

SUI GENERIS & CO ADVOCATES

P.O.BOX 7117, KAMPALA

UGANDA

Date: 28th /01/2020

**TO THE COMMISSION LAND REGISTRATION
MINISTRY OF LANDS, HOUSING AND URBAN
DEVELOPMENT-CENTURY BUILDING.**

P.O.BOX 7096 KAMPALA

Dear Sir,

**RE: APPLICATION FOR A SPECIAL CERTIFICATE OF TITLE FOR LAND COMPRISED IN
KIBUGA BLOCK 3 PLOT NO. 142 SITUATE AT MENGO.**

We act on behalf of Mr. BENJAMIN RUBAGANO on whose behalf we address you as follows.

Our client Mr. BENJAMIN RUBAGANO is the registered proprietor of land comprised in Kibuga Block 3 plot no. 142 situated at Mengo.

Mr. Dominiko Mapapa's duplicated certificate in respect to the land was obliterated as a result of Kwette pouring on it.

We therefore, hereby pray that a special certificate be issued in respect of the land.

SUI GENERIS

COUNSEL FOR THE APPLICANT.



Statutory declaration.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLE ACT CAP.230

AND

IN THE MATTER OF THE STATUTORY DECLARATION ACT CAP. 22

AND

IN THE MATTER OF A STATUTORY DECLARATION BY DOMINIKO MAPAPA.

STATUTORY DECLARATION

I, BENJAMIN RUBAGANO C/O SUI GENERIS & CO ADVOCATES P.O.BOX 71117, KAMPALA do solemnly and sincerely declare that:

1. I am a male adult Ugandan of sound mind and capable of making this declaration.
2. That I am the registered proprietor of land comprised in Kibuga Block 3 Plot no.142 situate at Mengo.
3. That the land has no encumbrance registered against it whatsoever.
4. That the duplicate certificate of title has been damaged and completely obliterated when Kwete poured on it.
5. That as a result of the damage, the entries on the title are no longer visible.
6. That the entries I have stated herein are what is reflected on the now obliterated duplicate certificate.
7. That I make this solemn declaration conscientiously believing it to be true in accordance with the statutory Declaration Act.

SWORN BY THE SAID BENJAMIN RUBAGANO on this 28th day of Jan 2020.

DEPONENT

BEFORE WE

Original certificate (white page)

Under **Section 71 of the Registration of Titles Act cap 240**, here the white page is lost or destroyed or so obliterated as to become illegible the **Commissioner for Land Registration** may cause a copy of it to be prepared.

The copy made must be endorsed with all such entries as were upon the original so far as they can be ascertained from the records of the office and other available information.

The **registrar of titles** must sign a memorandum upon the copy made stating that if is an original & as far as is known what has happened to the original.

The copy must then be bound up in the Register book from the day when it's signed and used in place of the original for purposes of dealings.

Procedure for notifying the registrar of titles of lost, obliterated or destroyed original.

- (1) A formal letter notifying the registrar of titles that the original certificate of title was obliterated destroyed or is lost and that a copy is made.
- (2) Depone on SD to company the application.
- (3) Submit the letter accompanied with the SD, 2 passport photos and the duplicate certificate. You must make photo copies and these are stamped received and returned to the applicant.

Function and general powers of the registrar of titles.

General power of the Registrar of titles.

Section 88 of the land act cap 236, states that subject to the RTA, the registrar shall without referring a matter to court or a district land tribunal have such power to take such steps as necessary to to the acwhether by endorsement or alteration or cancellation of a certificate of title, the issue of fresh certificate of title or otherwise.

In regards to illegalit and error , section 88(1) of the land act cap 236, is to the effect that the registrar of titles shall cancel a certificate of title are limited to the following instances where a certificate of title or instrument:

- a) Is issued in error
- b) Contains a wrong description of land or boundaries.
- c) Contains an entry or endorsement made in error.
- d) Contains an illegal endorsement.
- e) Is illegally or wrongfully obtained or

- f) Is illegally or wrongfully retained, give not less than 21 days notice of the intention to take any appropriate action in the prescribed form to any party likely to be affected by any decision under this section.

Section 161 of the RTA cap 240, Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the Registrar to cancel any certificate of title or instrument, or

any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the Registrar shall give effect to that order. An aggrieved party, complaining of fraud should straight away file a suit for adjudication of the issue.

Section 88 (3) of the land act cap 236, states that the registrar of titles shall conduct a hearing giving the intended party and subsection (2) an opportunity to be heard in accordance with the rules of natural justice but subject to that duty shall not be bound to comply with the rules of evidence applicable in the court of law.

Section 88 (4) of the land act cap 236, upon making a finding on the matter, the registrar of titles shall communicate his or her decision in writing to the parties giving reasons for the decision made and may call for the duplicate cot or instrument for cancellation or correction or delivery to the proper party.

Section 88(6) of the land act cap 236, the registrar may a) correct errors in the register book or in entries made on it, b) correct errors in duplicate certificate or instruments and supply entries omitted under this act.

Section 88(7) of the Land act cap 236, the registrar may make amendments consequent upon alterations in names or boundaries but in thr correction of any such amendment shallnot erase or render illeligible the original words.

Upon the exercise of the powers under sub-section(7), the registrar shall affix the date on which the correction or amendment was made or entry supplied and shall initial it as stipulated under section 88 (8) of the land act cap 236

Section 88(9) of the land act cap 236, any error or entry corrected or supplied under this section shall have the same validity and effect hadnot benn made or entry not omitted .

Section 88(12) of the land act cap 236, a party aggrieved by the decision or action of the registrar under the section may appeal to e district land tribunal within 60 days after the decision was communicated to that party.

Section 88(13) of the land act cap 236, where the registrar has cancelled a certificate of title or in the registrar bok, a party in whose favour the cancellation is made shallnot transfer the title until expiry of the time within which an appeal maybe lodged and where an appeal is lodged against the cancellation he/she willnot transfer the title until determination of the appeal.

OTHER SPECIAL POWERS OF THE REGISTRAR OF TITLES.

1. Powers to issue a special certificate of title.

Under section 69 of the RTA cap 240, If the duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, the persons having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land or the title to the land to the best of the deponents' knowledge, information and belief; and the Registrar, if satisfied as to the truth of the statutory declaration and the bona fides of the transaction, may issue to the proprietor a special certificate of title to the land, which special certificate shall contain an exact copy of the certificate of title in the Register Book and of every memorandum and endorsement on it, and shall state why the special certificate is issued; and the Registrar shall at the same time enter in the Register Book notice of the issuing of the special certificate and the date of its issuance and why it was issued; and the special certificate shall be available for all purposes and uses for which the duplicate certificate of title so lost or destroyed or obliterated would have been available, and shall be equally valid with the duplicate certificate of title to all intents; but the Registrar, before issuing a special certificate, shall give at the applicant's expense at least one month's notice in the Gazette of his or her intention to do so.

Section 70 of the RTA cap 240, where any court calls upon the registrar to issue a special certificate of title under any provision of the CPA, the registrar shall do as prescribed.

Power to issue a vesting order.

Section 77 of the RTA cap 240, registrar may issue a vesting order to adverse possessors. Also under section 150 of the RTA cap 240, a registrar can also issue this order where a vendor cannot be found.

Power to lodge a caveat on behalf of the government or any person under disability or infancy, lunacy, unsoundness of mind or absence from Uganda to prohibit the dealing of nay land belonging to such person as per section 154(a) of the RTA cap 240, and the registrar has power to remove such caveat under section 154 (c) of the RTA cap 240.

Registrar has power to reject defective instruments, caveats, surrender or other documents lodged for registration as per section 157 of the RTA cap 240.

Registrar also has power to state a case with regard to performance of any duty or the exercise of any functions conferred or imposed on him or ner by this act for the opinion of the highcourt under section 158 of the TAC cap 240. The highcourt may give its judgement on the case and that judgement shall be binding upon the registrar.

Removal of incumbrance. Section 152 of the RTA cap 240, if its proved to the satisfaction of the registrar that any incumbrance notified on nay certificate of title has been fully satisfied, extinguished or otherwise determined and nolonger affects the land, he/she may endorse a memorandum to that effect on the certificate or permit any subsequent COT of the same land to be issued freef rom that incumbrance.

Registrar has power to require persons having in their possession or custody any deed, instruments or evidence of title relating to or affecting land subject of an application to brign land under RTA to produce them at the office of titles for his or her inspection. As per section 23 of the RTA cap 240.

INSTANCES WHEN THE REGISTRAR OF TITLES CAN BE SUED AND THE PROCEDURE.

Section 166(1) of the RTA cap 240, If upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any dealing registered or recorded, or to have any certificate of title or other document issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar, the Registrar refuses so to do, or if the owner or proprietor is dissatisfied with any decision of the Registrar upon his or her application, the owner or proprietor may require the Registrar to set forth in writing under his or her hand the grounds of his or her refusal or decision, and the owner or proprietor may, if he or she thinks fit, at his or her own cost summon the Registrar to appear before the High Court to substantiate and uphold those grounds.

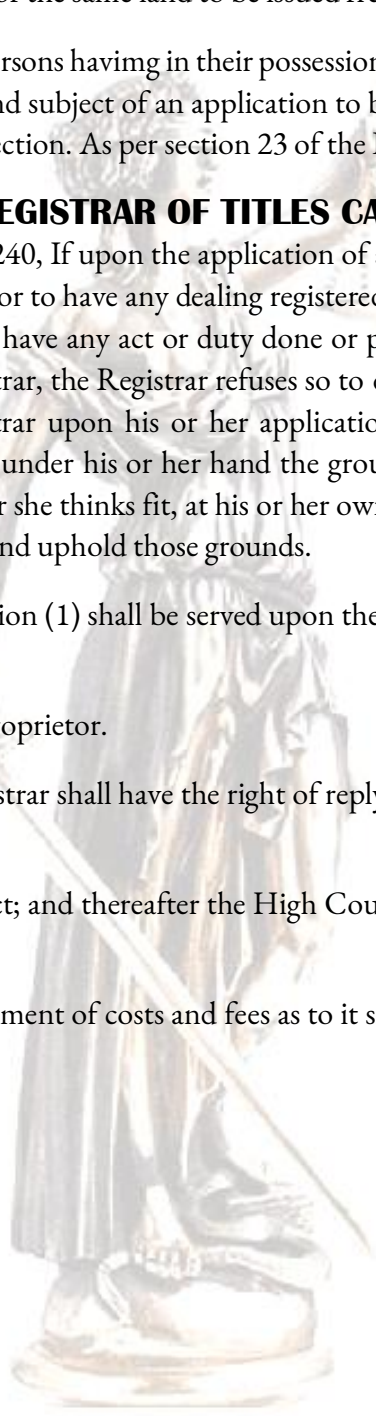
(2) The summons under subsection (1) shall be served upon the Registrar six clear days at least before the day appointed for hearing

the complaint of the owner or proprietor.

(3) Upon such hearing, the Registrar shall have the right of reply; and the High Court may, if any question of fact is involved, direct an

issue to be tried to decide the fact; and thereafter the High Court shallmake such order in the premises as the circumstances of the case

require, and such order as to payment of costs and fees as to it shall seem fit; and the Registrar shall obey that order.





INDEFEASIBILITY OF TITLE

INDEFEASIBILITY OF TITLE

This means that once a person is registered a proprietor of an estate or interest in land, the government guarantees that his or her title cannot be divested or attacked by rival claims to the land except as prescribed under the **Registration of Titles Act**.

The principle is enshrined under **Section 59 of the RTA cap 240**, No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any

estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.

The principle was intended to serve two purposes: -

1. To protect title of the registered proprietor from unregistered interests.
2. To save persons dealing with registered land from the trouble and expenses of going behind the register book in order to investigate the validity of the possible rival claims to the land, and thus simplify expedite the process of transfer.

In **LWANGA V THE REGISTRAR OF TITLE, MISC-CAUSE NO.7A OF 1977 (1980) HCB 24**, applicant's father brought the suit land but didn't effect transfer. A one Katumba through forgery which he was later convicted for transferred the land into his names and then to a one Salongo. The applicant sought to impeach Salongo's title. Odoki that Salongo was a bonafide purchaser for value, therefore under **Section 189 (now 181)** his title couldn't be impeached or cancelled notwithstanding that he acquired his title from a fraudster. He further observed that of the paradoxes of registered conveyance is that the registration obtained by fraud is void. It is capable of becoming a good root of title to a bona-fide purchase for value.

Section 64(1) of the rta cap 240, the title of a registered proprietor is indefeasible except in the case of fraud.

Exceptions to the principle of indefeasibility of title.

Pursuant to **Section 64 of Registration of Titles Act** the act guarantees indefeasibility of title subject to the following except.

a) Encumbrances notified on the folium.

Under **Section 64 of Registration of Titles Act**, a registered proprietor takes his or her title subject to estate or interests which are endorsed on the Register book and certificate of title at the time of purchase e.g., mortgages.

b) The estate of a proprietor claiming under a prior instrument of title.

Under **Section 64 of Registration of Titles Act**, the title of a registered proprietor is not indefeasible as against the interest of another proprietor claiming the same land under a prior registered title. In **NKOJO AMOOTI V KYAZZE & 2 ORS (CIVIL SUIT 536 OF 2012) [2013] UGHCLD 85**

c) Land included by wrong description.

Section 64 of the Registration of Titles Act stipulates that the title of a registered proprietor is not absolute as regards any portion of land that may have been included in his or her certificate of title by wrong description of parcels or boundaries. However, the exemption will not apply where the land is transferred to a bonafide purchaser for a value. Thus, if by time the action for ejection is brought the land is already transferred and registered in the name of an innocent purchaser for value, the bonafide purchaser acquires good title. Also refer to the case of **WESTERN AUSTRALIA FRESH FOOD AND ICE CO. V FREECORN (1904) 1WAR 22.**

d) Public right of way and easements.

e) Adverse possession

f) Failure to obtain spousal consent for family land.

Section 39(4) of the Land Act, any transaction entered into by a bonafide purchaser but in respect of family land and the spousal consent was not obtained. Such a transaction is void and the bonafide purchaser's only remedy is to recover from the person who sold to them their consideration.

g) Interests of tenants by occupancy.

Tenants by occupancy enjoy security of occupancy and can only be evicted for non-payment of ground rent. Stipulated in the Act.

h) Failure to conduct due diligence. See bonafide purchaser.

i) Right in personam.

The exception through not founded in the Act is a judicial in road established in the case of **FRASER V WALKER (1967) I AC 569 AT 585**. The pricy council stated that the principle of indefeasibility of title in no way denies the right of a plaintiff to bring against a registered proprietor a claim in personam founded in law or in equity, for such relief as a court acting in personam W/C grant.

In **ADONIA V MUTEKANGA (1970) EA 429 at 433** the East African court of appeal stated that although the concept of the sanctity of the register runs through the Act, it is clear that the legislature intended to reserve to the high court the power to enforce fiduciary obligations.

According to **Megarry & Wade: The Law of Real Property, P.113**, a claim in personam is a personal obligation of legal or equitable nature assumed by a registered proprietor before or after registration of his or her title. Unlike a right in rem, which is enforceable against the world a right in personam is only enforceable against a person who was a party to the obligation.

In **MOTTY TURINAWA AND 4 ORS V EPHRAIM TURINAWA S.C.C.A. NO.10 OF 2018**, the first respondent was an engineer with KCCA and was offered the option to purchase the KCC house he occupied. He did not have the money and entered into an agreement with the 2nd respondent in which the 2nd respondent bought the house through him. She paid to him 70million while the offer from KCC was for 52 million. The respondent paid for the house, had it transferred to him and he subsequently transferred to 2nd respondent. The appellatnt convinced a suit alleging the land was family land.

The Supreme Court decision of **FREDERICK J. K. ZAABWE VERSUS ORIENT BANK & 5 OTHERS; SCCA NO. 4/2006**; for the defined fraud;

“Fraud, according to Black’s Law Dictionary means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him/her or to surrender a legal right and fraudulent means acting willfully and with specific intent to deceive or cheat, ordinarily for purposes of either causing some financial loss to another or bringing about some financial gain to oneself”.

This case further defined fraud to mean;

“Anything calculated to deceive, whether by a single act culmination, or by suppression of truth, or suggestion of what is false, whether it is by a single, direct falsehood or the innuendo by speech or silence, word of mouth, or look or gesture a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling an any unfair way by which another is cheated...”

Examples

- Forgery
- Uttering a false document
- Obtaining registration to defeat an unregistered interest
- Deliberately refusing to find out the truth
- Under declaration of value to deny government revenue

The Supreme Court of Uganda, on 19th September 2019, ruled that under declaration of consideration and failure to disclose developments on land during the process of valuation for purposes of transfer amounts to fraud that renders a land transfer void.

Delivering the lead judgment of the Court in **SCCA NO.8 OF 2018 BETTY KIZITO VS DAVID KIZITO KANONYA & 7 OTHERS**, Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, with whom all the other 4 Justices agreed ruled that the law requires that true consideration in land transfers must be declared in view of Section 92(1) of the Registration of Titles Act.

Her Lordship approved as good law the 1982 High Court decision of **SAMUEL KIZITO MUBIRU & ANOTHER VS G.W. BYENSIBA & ANOTHER WHICH** held that a buyer is not a bona fide purchaser where he inserts a lesser figure on a transfer form as consideration than he actually paid. She unequivocally held that concealment of true consideration amounts to fraud.

In **OCHIENG V KASSIM AND 2 OTHERS (CIVIL SUIT 53 OF 2021)**, Court cannot therefore enter a consent settlement which may fundamentally be prejudicial to the other parties who have the same claim in the suit land.

Section 59 of the Registration of Titles Act provides that a Certificate of title by a registered person is conclusive evidence of ownership of land described therein and once a person is registered as proprietor of land, his title is indefeasible except for fraud.

Section 160(c) of the Registration of Titles Act cap 240 states that a registered proprietor of land is protected, save for fraud 'fraud'.

Section 77 of the Registration of Titles Act is also pertinent. It provides as follows: -

“Any Certificate of title, entry in the Register Book, procured or made by fraud shall be void as against all parties or privies to the fraud.”

CAN A CERTIFICATE OF TITLE BE CANCELLED FOR FRAUD?

Yes, it can be cancelled if strictly proved before a court of law, the burden to prove the alleged fraud however falls on he who alleged it (Per **the Evidence Act**). It is trite law that fraud must be strictly proved. The standard of proof in fraud is higher than in ordinary Civil Suits but not beyond reasonable doubt. The Plaintiff alleged that the suit property was fraudulently transferred. The law as stated in Section 101 of the Evidence Act provides that: “Whoever desires Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.”

The burden of proving fraud therefore lies on the Plaintiff: **See MILLER V MINISTER OF PENSIONS [1947] 2 ALLERL 372, 373.**

Since the allegation is about fraud, the law requires that proof must be almost to the criminal standard of beyond reasonable doubt: **SEE KAMPALA BOTTLERS LTD. VS DOMANICO (U) LIMITED, SUPREME COURT CIVIL APPEAL NO. 22 OF 1992.**

In a judgment delivered on the 25th day of April 2019 in the case of **HILDA WILSON NAMUSOKE & 3 ORS V OWALLA’S HOME INVESTMENT TRUST (E.A) LIMITED** Supreme Court Civil Appeal No. 15 of 2017, the Supreme Court held that the commissioner of land registration does not have powers to cancel a certificate of title on the ground of fraud. Prior to this judgement, the powers of the Commissioner of Land Registration with specific regard to cancelling certificates of title due to fraud were unclear.

Under the Registration of Titles Act Cap 205 (1964 edition) the Registrar of Titles (now Commissioner of Land Registration) had powers to cancel a certificate of title on the ground that it was acquired through fraud. This position was confirmed in the case of **EDWARD RURANGARANGA V MBARARA MUNICIPAL COUNCIL SUPREME COURT CIVIL APPEAL NO. 10 OF 1996.**

However, under **the 1998 Land Act as amended by the 2004 Land (Amendment) Act**, these powers to cancel a certificate of title acquired through fraud were removed from the Registrar. Courts did not uniformly apply the new position of law. While in some cases such as **SULAIT SSEMAKULA V COMMISSIONER LAND REGISTRATION & ORS; C.R PATEL V THE COMMISSIONER LAND REGISTRATION & ORS**, among others courts held that the Registrar of Titles did not have such powers, others insisted on interpreting the provision of the law broadly to include fraud. This application of the law caused confusion and debate until the Supreme Court’s decision In **HILDA WILSON NAMUSOKE & 3 ORS V OWALLA’S HOME INVESTMENT TRUST (E.A) LIMITED**,

The Supreme Court in an appeal arising from **HILDA WILSON NAMUSOKE & 3 ORS V OWALLA’S HOME INVESTMENT TRUST (E.A) LIMITED** unanimously held that the Commissioner of Land Registration does not have powers to cancel a certificate of title on the ground of fraud. The court reasoned;

1. That upon amendment of the Land Act, all the other grounds which empowered the Registrar of Titles to cancel a certificate of title were imported into the land Act save for fraud. The Supreme Court held that the absence of fraud in the new provision was deliberate.
2. That an allegation of fraud is so serious in nature and is required to be specifically pleaded and strictly proved before a court of law.
3. That whereas fraud is not authorised by the law and is therefore an illegality, fraud is a very special type of illegality.
4. Finally the Supreme Court decided that the Court of Appeal erred in relying on its decision in the case of Edward Ruranganga which was an authority that expounded a statutory provision that was no longer law at the material time.

In **KAMPALA BOTTLERS LTD V DAMANICO LTD, S.C.C.A NO.22 OF 1992**, Wambuzi, CJ stated that it is well established that fraud means actual fraud are some Act of dishonesty.

Fraud is the intentional perversion of truth to induce another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

Says Hon Mr. Justice Bashaija in the case of **WESTERN UGANDA IMPORTERS AND DISTRIBUTERS LTD V MUHASA IVAN MPONDI, KASESE DISTRICT LAND BOARD AND COMMISSIONER FOR LAND REGISTRATION CIVIL SUIT NO. 0014 OF 2014**.

IN THE CASE OF AMOS ABAHO (CLAIMING AS A BENEFICIARY OF THE ESTATE OF THE LATE WILLIAM KAHINZA) V JUSTINE (EXECUTOR OF THE WILL OF THE LATE MIKAIRI MUKASA) MISCELLANEOUS APPLICATION NO.262 OF 2023 (ARISING FROM CIVIL SUIT NO.32 OF 2022) Provides for the fraud discovery rule that is The court applied the principle that in cases of fraud, the limitation period starts when the fraud is discovered, not when it occurs. Since the respondent discovered the alleged fraud in 2020, the suit filed in 2022 was within the permissible period.

Section 25(a) of the Limitation Act states, “Where the action is based on the fraud of the defendant, the time does not begin to run until the plaintiff has discovered the fraud.”

Effects of fraud.

Once the fraud on the part of the registered proprietor is established, then his or her title is liable to be impeached pursuant to **Section 177 of the Registration of Titles Act**. In **MUDIIMA ISA AND 50 ORS V ELLY KAYANJA AND 20 ORS H.C.C.S NO. 232 OF 2009**, Justice Bashaija K. Andrew stated that once the registered proprietor title has been impeached, the remedy lies in **Section 177 of the Registration of Titles Act**, which empowers the court to direct the registrar of title to cancel the registration of the impeached proprietor from the register book.

What constitutes fraud?

In **F.J.K ZAABWE V ORIENT BANK AND 50** others court held that the conduct of a party calculated to deceive, whether by a single act or combination or by suppression of truth is dishonest and amounts to fraud.

Fraud may be actual, constructive or imputed.

Fraud is said to be actual where the registered proprietor engaged in a dishonest act during the process of execution the transfer e.g

- (1) forgeries
- (2) Under declaration of the value of the land.

In **MUDIIMA ISA & 5ORS V ELLY KAYANJA & 2 ORS H.C.C.S NO.232 OF 2009**, the defendants had declared that the suit land measuring about 130 acres in the suburbs of Kampala city had been purchased for only UGX 10 million. Evidence was led to show that the cost of an acre in the area was between 15million to 25 million. The court held that the defendants had intentionally undervalued the land with the intention of cheating government of the tax revenues payable on such transaction and therefore their title was void because of fraud.

In **SAMUEL KIZITO MUBIRU AND ANOR V W. BYENSIBA AND ANOR H.C.C.S NO.513 of 1982** where the PLAINTIFF inserted shs. 500,000 in the sales agreement as purchase price for land when in fact he paid shs. 2,400,000. The court held inter alia, that the mode of acquisition of the title in question was tainted with fraud and illegality because bona-fide included without fraud or without participation in wrong doings. That by the PLAINTIFF undervaluing the suit land; the design was to defraud the government of its revenue by way of paying less stamp duty.

Court further held that by public policy any transaction designed to defraud the government of its revenue is illegal, and that the effect of the illegality was to prevent the plaintiff from recovering under a contract which he seemed illegal was therefore void because of fraud.

However, where the under declaration was innocent, the same amount to fraud and the court won't impeach the title except on other reasons. The purchaser will be required nonetheless to pay the difference.

ACTUAL FRAUD

A person has actual notice of all the facts which he or she has actual knowledge of by seeing, hearing and being present. It however does not include rumors. If the purchaser is consciously aware of the relevant matters at the date of purchase, such matters are said to be within his knowledge and as such he has actual notice.

Constructive fraud.

The registered proprietor is considered to have been constructive fraudulent per the decision in **VIVO ENERGY (U) LIMITED V SHIRE PETROLEUM COMPANY LIMITED AND 2 ORS H.C.C.S NO.8 OF 2016** if they had. **Justice Mubiru** stated that constructive notice applies if a purchaser knows facts

which made it imperative to seek an explanation because in the absence of an explanation it was obvious that the transaction was probably improper.

The court further stated that, a purchaser is put on constructive notice where he/she required knowledge of circumstances which would put an honest and reasonable man on inquiry and yet he/she did not undertake the necessary inquiries.

IMPUTED FRAUD

Where a person wilfully abstains from inquiry to void notice, such a person cannot claim to have acted in good faith. The fraud in such a case would be ascribed to them. In **DAVID SEJJAKA NALIMA V. REBECCA MUSOKE. C.A NO.12 OF 1985**, court held that where a purchaser employs an agent such as an advocate to act on his or her behalf the notice the advocate receives, actual or constructive is imputed on the purchaser. Similarly where the advocate acts for both parties any notice he or she acquires is ordinarily imputed on both parties. The exception to the principle is where the agent deliberately defrauds the purchaser.

In **NABANOBA DESIRANTA AND ANOR KAYIWA JOSEPH ANOR H.C.C.S NO.496 OF 2005** cited in **MUDIIMA ISA AND 5 ORS V ELLY KAYANJA AND 2 ORS**, opio aweri j stated that as the law stands a person who purchases an estate which he knows to be in occupation of another person other than the vender is not a bonafide purchaser without notice. He further held that the defendants failed to make reasonable inquiries of the persons in possession and as such their ignorance or negligence formed particulars of fraud.

Rebecca Musoke V dick Sengonwami and 2 ors (1999) KALR 903, Byamugisha J stated that if a purchaser employs an agent such as a solicitor any actual or constructive notice which the agent receives is imputed on the purchaser. however a third party dealing with such regitred proprietor will be protected if he had no knowledge of the circumstances of prior dealings.

In **JOHN KATARIKAWE V WILLIAM KATWIREMU AND ANOR. CIVIL SUIT NO.207 1973**, court noted that aulhough mere knowledge of unregistered interest cannot be imputed as fraud under the act, were such knowledge is accompanied by wrongful intention to defeat such existing interest that would amount to fraud.

FEATURES OF FRAUD

Dishonesty: in *Katarikawe v katwiremu (supra)*, court observed that fraud covers dishonest dealings in land.

Intention to cheat or defraud. In *Fredrick Zaabwe v Orient Bank (supra)*, intent to defraud was defined to mean “ to act wilfully and with specific intent to deceive or cheat for purpose of either creating some financial loss to another or bringing about some financial gain to oneself”

Participation : in *Kampal Bottlers Ltd v Damanico (u) ltd* SCCA No.22/1992 Wambuzi CJ the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act. Fraud must be attributable to the transferee, it must be attributable either directly or by necessary implication.

PLEADING FRAUD; BURDEN AND STANDARD OF PROOF.

Plead;

Platt J.S.C in **KAMPALA BOTTLES LTD V DAMANICO (U) LTD S.C.C.A. NO. 222 OF 1992** stated that fraud is a very serious allegation to make and it always wise to plead it properly giving the particulars of the fraud alleged. In this case the plaintiffs had not pleaded the alleged fraud and court found that the defendants could be held guilty for fraud whose particulars were never pleaded.

Standard of proof.

Wambuzi J.S.C in **KAMPALA BOTTLES LTD V DAMANICO (U) LTD (SUPRA)** held that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters, the burden lies on he who alleges the fraud.

In *AK DETERGENTS LTD V G.M COMBINED (U) LTD (1999)* KALR 536, it was held that allegations of fraud are quiet serious in nature and require to be specifically pleaded and proved before a court of law beyond mere balance of probability though not necessary beyond reasonable doubt.

Burden of proof

EDWARD GATSINZI V LWANGA STEVEN HCCS NO.690/2004, it was held that its trite law that where allegations of fraud on a title are made, the burden lies on the person alleging the same to file a suit in court for the cancellation of the entry.

JWR KAZOORA V RUKUBA SCCA NO.13 1992, court stated that the general principles of evidence under part 4 the evidence act apply which are to the effect that the burden of proof lies on the party that alleges.

The fraud must be attributable to the person who becomes registered as proprietor (transferee) of the land. As *PER MUSISI GRINDLAYS BANK (U) LTD AND 5 ORS [1993]* HCB 39.

REMEDIES

Short term. Caveat under section 123 of the RTA cap 240;

Long term remedy(ies)

Instituting a suit for recovery of land ; *HON JUSTICE PROF, DR. KANYEIHAMBA GEORGE V COMMISSIONER ALND REGISTRATION AND RICHARD MUSINGUZI HCMC 79/2011* held: allegations of fraud require a full and careful inquiry where witnesses can be cross examined. This would

appropriately be through an ordinary suit rather than by notice of motion where evidence adduce is mainly through affidavit evidence.

Compensation under section 162 of the RTA cap 240.

RECOVERY OF LAND

Under section 160 (c) of the RTA cap 240, no action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this act except in the case of a person deprived of any land by fraud. IN ZEBIYA NDAGIRE V LEO KASUJJA (1974) HCB 153, it was stated that this remedy is available where's fraudulent transfer. From the above provision therefore any person deprived of his/her land by fraud can institute proceedings against the fraudulent transferee.

In the case of HON. JUSTICE PROF. DR. GEORGE W KANYEIHAMBA V COMMISSIONER OF LAND REGISTRATION AND RICHARD MUSINGUZI HCCM 79/2011, It was emphasized that the ordinary rules of procedure shall apply to the proceedings under the RTA.

Further section 19 of the civil procedure act cap 282, states that every suit shall be commenced in a manner provided for under the rule. Therefore the said suit shall be commenced under order 4 rule 1 of the CPR S.I-71-1.

Nb: as earlier noted under order 6 r 3 CPR, fraud must be particularly pleaded and proved as buttressed in the case of KAMPALA BOTTLERS LTD V DAMANICO (U) LTD S.C.C.A NO.22/1992.

Procedure to commence the suit

The suit shall be instituted by ordinary plaint under order 4 r 1 accompanied by the accompanying documents (summary of evidence, list of documents, list of witnesses as provided under order 6 r 2

Summons shall be served on the defendant under order 5 r 1 and r 2 and an affidavit of service shall be sworn under order 5 R 16

DOCUMENTS

Summons to file a defence

Plaint

Summary of evidence.

Contents of the plaint

Parties a) persons registered on the title, commissioner land registration

Para 3: The plaintiff bring this suit against the defendants for;

A declaration that the first defendant procured his registration as owners of land described as Block 120 plot 10 at kadugala fraudulently.

A declaration that the suit land or property belongs to the estate of kigundu musoke (deceased)

An order directing the second defendant (commissioner land registration) to cancel the entry MIT 13334 of 14th January 2019 by which the first defendant was fraudulently registered proprietor of the suit land

An order directing the second defendant to re-instate the name of kiggundu musoke as the proprietor of the suit land.

An order directing the second defendant to cancel the title which the first defendant fraudulently obtained.

CONSEQUENTIAL ORDER.

Under section 206 of the MCA cap 19, the Chief Magistrate shall have jurisdiction where the value of the subject matter in dispute doesnot exceed 50 Million shillings. Where the value of the land obtained by fraud is below 50 million Ugandan shillings the rightful owner of the land can/may file the suit for recovery of the land in the magistrates court. The magistrate shall then deliver a declatory judgement declaring the rightful owner of the land.

According to the Black's law dictionary 8th edition (2004), a declaratory judgement is a binding adjudication tht establishes the right and other legal relations of the parties without providing for or ordering enforcement.

After a declatory judgment has been made in favour of the rightful owner of the land he/she must apply to the highcourt for a consequential order since the magistrate court has no power to make such order.

In the case of RE HABIB LUBWAMA [1991] HCB 74, court held that whereas a magistrate is entitled to declare a transaction or transfer null and void and whereas he can order restoration of the land to the rightful owner, the effect of the consequential order under section 161 of the RTA cap 240 is within the exclusive jurisdiction of the highcourt. Its only the highcourt that has the exclusive jurisdiction to make an order directing the chief registrar of titles (now commissioner of land registration) to cancel the name of the guilty party from the registrar) to cancel the name of the guilty party from the registrar of title and substitute it with the name of the irhgful owner.

In ANDREA LWANAG V REGISTRAR OF TITLES [1980] HCB 24, court observed that before a person who has obtained judgement of the recovery of land against the registered proprietor could be registered as

proprietor, he or she has to first apply to court to make a consequential order which is made consequent upon recovery of land as prescribed by the RTA.

Section 161 of the RTA cap 240, Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the Registrar to cancel any certificate of title or instrument, or

any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the Registrar shall give effect to that order.

Procedure.

The person holding the declaratory judgement will apply to court (high court) by way of notice of motion supported by an affidavit under Order 52 r 1 of the civil procedure rules.

The applicant must prove that there was recovery of land, estate or interest from the registered proprietor and that the proceedings leading to such recovery of land is not barred and there is no need to prove anything else apart from the two ingredients as was stated in the case of NANTONGO HARRIET AND ORS V NAMUYIGA ROSE H.C.M.A No.0064/2016.

IN the case of RE IVAN MUTAKA [1981] HCB 28, it was held that in order to rely on the above provision, the application who invokes it has to satisfy court that he/she has recovered the land, estate or any interest in question by any proceeding from any person registered as proprietor of the land.

Ongam J in the case of UGANDA BLANKET MANUFACTURERS LTD V CHIEF REGISTRAR OF TITLES MISC.APPLICATION No.55/1993 held that in an application under section 177 (now section 161) of the RTA, the chief registrar should be made a respondent and that it would be pointless to make a person from whom land had been recovered the respondent alone.

Documents

Notice of motion

Affidavit in support. a) attach certified copies of the judgement and record of proceedings, certified copy of an extract of the decree.

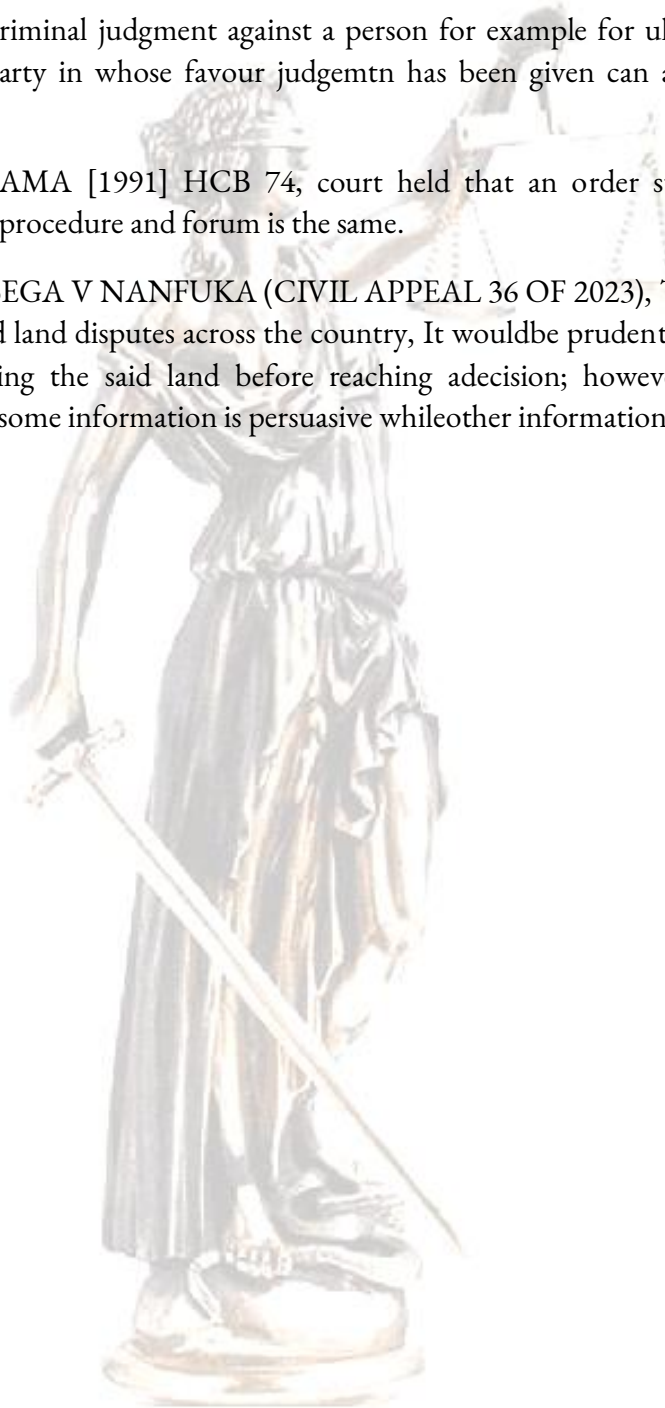
Upon grant, the registrar will be informed through an ordinary letter and attach a certified copy of the register book.

Judgements stemming from criminal cases from magistrates court.

Where there is a criminal judgment against a person for example for altering a false document i.e a certificate of title, the party in whose favour judgment has been given can apply to the high court for a consequential order.

IN RE HABIB LUBWAMA [1991] HCB 74, court held that an order stemming from a basis for a consequential order. The procedure and forum is the same.

IN THE CASE OF LUBEGA V NANFUKA (CIVIL APPEAL 36 OF 2023), The court further emphasized that, given the widespread land disputes across the country, It would be prudent for a judicial officer to study different factors concerning the said land before reaching a decision; however, the same judicial officer should keep in mind that some information is persuasive while other information is binding upon him or her.



DEFENCES TO SUITS FOR RECOVERY OF LAND BASED ON FRAUD.

DEFENCE OF BONAFIDE PURCHASER FOR VALUE WITHOUT NOTICE.

A bonafide purchaser for value without notice was defined in SIMON KATO BUGOBA V SAMUEL KIGOZI AND MAYANJA MBABALI (2007) HCB 122 as one without notice of fraud and without intent to wrongfully acquire property. A bonafide purchaser acquires good title irrespective of the vendors defective title. The defence is provided for under section 162 of the RTA cap 240 . the impact of this section is that once a registered proprietor has purchased the property in good faith his title cannot be impeached on account of the fraud .

In DAVID SEJAKA AND NALIMA V MUSOKE REBECCA S.C.C.A NO.12 OF 1985, Odoki JA (as he then was) stated that the effect of current section 162 of the RTA cap 240, is that once the registered proprietor has purchased the property in good faith, his title cannot be impeached on account of the fraud of the previous registered proprietor. A bonafide purchaser therefore obtains a good title even if he purchases from a proprietor who previously obtained the title by fraud. However , before a purchaser can claim protection of section 162 RTA he/she must act in good faith if he/she is guilty of fraud or sharp practise he/she will cease to be innocent and therefore loose protection.

LWANGA V REGISTRAR OF TITLES (1980) HCB , A title of a bonafide purchaser for value cannot be impeached on account of fraud since good title could be passed through fraud as long as he was not party or privy to the fraud.

What to prove?

In the case of HANNINGTON NJUKI V G.WILLIAM MUSISI H.C.C.S NO.434/1996, court stated that before a person or purchaser relies on the principle of bonafide purchaser for value without notice, he must prove to ciurt that;

He holds a certificate of title issue under the RTA in respect of the suit property.

He purchased the suit property for valuable consideration

He purchased the suit property in good faith and without knowledge of nay fraud on the part of the vendor

The vendor from whom he deriscribed title to the suit property was formerly the registered proprietor of the same. The above principles were reiterated in the case of HAJJI ABDUL NASSER KATENDE V VITHALIDAS HARIDAS AND CO. CACA 24/2003.

IN DANIEL SEMPA MBABALI V KIDZA AND 4 ORS (1984) HCB 46, it was held that a bonafide purchaser of legal estate for value without notice has an absolute , unqualified and an answered defence against the claims of an prior equitable owner. The onus of proof lies on the person setting it up. It's a single plea and

is not sufficiently made out by proving purchase for value and leaving it to the plaintiff to prove notice if he can.

NB: Where a purchaser has put in the plea or defence of a bonafide purchaser for valuable consideration without notice, he must be interrogated and tested to any extent as to the valuable consideration which he has given into show the bonafide and malificles of his purchase and also the presence or absence of notice.” DAVID SEJJA NALIMA V REBECCA MUSOKE (SUPRA) . Where he satisfies the terms of the plea of purchase for valuable consideration without notice, in such a case, the purchaser is entitled to hold that which without breach of that duty he has had conveyed to him/her.

ELEMENTS

a) GOOD FAITH.

A purchaser of an estate must have acted in good faith, he or she ought not to be negligent and abstain from not making inquiries about the land he/she is purchasing. TAYLOR V STIBBERT [1803-13] ALL ER 342, it was held that failure to make reasonable inquiries on the person in possession of the land or purchasers ignorance amounted to fraud.

In OLIVER V HAINTON (1892) CHD 264, it was observed that gross negligence is proof of lack of good faith.

In SIR JOHN BAGEIRE V AUSI MATOVU C.A.C.A NO.07/1996 AT 26 Okello JA, emphasized the value of land property and the need for thorough investigations before purchase and held in *intra* that “lands are not vegetables that are bought from unknown sellers. Lands are valuable, properties and buyers are expected to make thorough investigations not only of the land but of the sellers before purchase.”

Therefore before a purchaser can claim protection as a bonafide purchaser without notice of the fraud under section 162 of the RTA cap 240.

b) VALUABLE CONSIDERATION

According to Osbornes law dictionary 9th edition at page 70 by Perc George Osborn valuable consideration in the sense of law may consist in either some right interest or profit or benefit accruing to one party of forbearance, detriment, loss or responsibility given suffered or undertaken by the other. Its basically something of worth or value that is either a detriment incurred by the person making the promise.

WORMALD V MAITLAND [1866] 35 CH 69, court held that value for a bonafide purchaser for value should not be confused with other types of value and consideration should be in monetary terms.

“ A registered proprietor who acquires title by way of gift (volunteer) is not a bonafide purchaser for value and therefore his title is not protected under section 162 RTA” SEKABANJA V SAJJABI (1983) HVB 54.

c) WITHOUT NOTICE

Constructive fraud as illustrated in the **case of NANTEZA NABETA V KONDE (CIVIL SUIT 391 OF 2010) [2020] UGHCLD 2 FURTHER MORE IN NABUKENYA V BWOGI (CIVIL APPEAL 290 OF 2017) [2019] UGCA 33** the court considered whether there was constructive notice on the part of the respondent's father. The court held that a person a transaction would be robbed of honesty and truthfulness where the buyer did not conduct a physical search of the land before purchasing it. The court was satisfied that the respondent's father carried out a search in the land office and had the land surveyed before purchasing it. The court accordingly concluded that the respondent's father did not have constructive notice of the fraud but his title was subject to the appellant's right of occupancy.

However, as the court held in **KATARAKAWA V KATWIREMU (1977) HCB 187** where such knowledge is accompanied by a wrongful intention to defeat such existing interest that would amount to fraud.

Plaint on fraudulent transfer of land. Notice can be actual notice and imputed notice.

d) POSSESSION OF A CERTIFICATE OF TITLE.

Section 59 of the RTA cap 240, it was held that possession of a certificate of title by registered person is conclusive evidence of ownership of the land described therein

SEEKING DAMAGES AGAINST THE GOVERNMENT

Section 167 of the RTA cap 240, A person sustaining loss through any omission, mistake or misfeasance of the Registrar or any other officer or clerk in the

execution of their respective duties under this Act or by any error, omission or misdescription in any certificate of title or any entry or memorial in the Register Book or by the registration of any other person as proprietor, and who is barred by this Act from bringing an action of ejection or other action for the recovery of the land, estate or interest, may, in any case in which the remedy by action for recovery of damages as herein provided is inapplicable, bring an

action against the Government for recovery of damages; in estimating those damages, however, the value of all buildings and other improvements erected or made subsequently to the loss or deprivation shall be excluded.

Section 168 of the RTA cap 240, A person sustaining any loss or damage by any rectification of a certificate of title under this Act or by the bringing of land under this Act, if the rectification or issue by which the loss or damage was occasioned was in consequence of or justified by any inaccuracy in any survey or plan or description of land used upon any sale of land by the Government or by the Uganda Land Commission or a district land board, then notwithstanding sections 162 and 167, but without prejudice to the rights, if any, of that person

under those sections, may, in the first instance and without any obligation to pursue the remedies provided by those sections, bring an action against the Government for recovery of damages.

Section 169 (1) A person who has sustained or hereafter sustains any loss or damage in or by the exercise or supposed exercise by the Registrar of any of the powers or duties conferred or imposed on him or her by this Act, and who has not been party or privy to the application or dealing in connection with which the power was exercised, may, notwithstanding sections 162 and 167, and without prejudice to the rights, if any, of that person under those sections in the first instance and without any obligation to pursue the remedies provided by those sections, bring an action against the Government for recovery of damages.

(2) Where the person referred to in subsection (1) has been party or privy to the application or dealing referred to in that subsection, he or she shall be at liberty to join the Government as co-defendant in any action brought by him or her in respect of such loss or damage against any other person or persons who has or have been party or privy to that application or dealing.

PROCEDURE.

Apply to the registrar for compensation. According to section 170 (1) of the RTA cap 240, A person sustaining loss or damage in any case in which he or she is entitled to bring an action to recover damages against the Government may, before commencing proceedings, make application in writing to the Registrar for compensation, and that application shall be supported by affidavit.

Section 170 (2) of the RTA cap 240, If the Registrar admits the claim or any part of it and certifies accordingly to the Attorney General, the Minister may thereupon, if he or she thinks fit, authorise payment by the Secretary to the Treasury of the amount so certified.

Commencement of the suit. Where the registrar doesnot admit to the claim a person sustaining loss or damage in any case in which he or she is entitled to bring an action to recover damages against the government may commence proceedings against. By way of ordinary plaint under order 4 rule 1. In the case of HON. JUSTICE GEORGE KANYEIHAMBA V COMMISSIONER LAND REGISRATION AND ANOTHER HCMC 79/2011, it was held that the ordinary rules of procedure shall apply to proceedings under the RTA, as emphasized .

LIMITATION OF ACTION.

Section 171 of the RTA acp 240, No action for recovery of damages sustained through deprivation of land or of any estate or interest in land shall lie or be sustained against the Government or against the person upon whose application that land was brought under the operation of this Act or against the person who applied to be registered as proprietor in respect to the land, unless the action is commenced within six years from the date

of the deprivation; except that any person being under the disability of coverture, (except in the case of a married woman entitled to bring the action), infancy, mental illness, may bring the action within six years from the date on which the disability has ceased, so, however, that the action is brought within thirty years next after the date of the deprivation.

Registered interest (Doctrine is only a defence)

Under **Section 160 of Registration of Titles Act CAP 240**, the doctrine of bonafide purchaser is only a defence and not a remedy in an action of ejectment or an action for recovery of damages on grounds of fraud or error. In **NDIMWIBO SANDE AND 3 ORS V ALLEN PEACE AMPAIRE C.A.C.A NO.65 OF 2011**, the respondent sought to rely on the doctrine of bonafide purchaser as an equitable relief. The respondent instituted a suit for trespass and breach of contract. The appellant contended that the suit land was part of her late father's estate and Nantandu had only fraudulently held out as the owner when she sold the land to the respondent. The respondent contended that she was a bonafide purchaser it values without notice of the fraud of the Kibanja, the suit land having purchased the same from Nantunda. The court of appeal held that: "it appears clearly to us that the doctrine of bonafide purchaser for value without notice is a statutory defence available only to the person registered as proprietor under the Registration of Titles Act. it is not an equitable remedy although its history stems from the common law. It would not even quality as a remedy for it is only a defence by a person registered as proprietor under the Registration of Titles Act".

In **HANNINGTON NJUKI V WILLIAM NYANZI H.C.C.S NO. 434/ 1996**, the court held that for a purchaser to successfully rely on the defence of bona-fide purchaser he or she must inter alia prove that he or she holds a certificate of title since the defence is a statutory defence under the RTA.

Incidents of Land Fraud

1. Acquisition of special certificates of titles under false pretense;

Section 69 of the Registration of Titles Act CAP 240 provides;

'If the duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, the persons having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land or the title to the land to the best of the deponents' knowledge, information and belief; and the registrar if satisfied as to the truth of the statutory declaration and the bona fides of the transaction may issue to the proprietor a special certificate of title to the land, which special certificate shall contain an exact copy of the certificate of title in the Register Book'

This section gives a right to anyone who has custody of a title and knows the circumstances surrounding its loss to apply for a special certificate of title. This section has been misused by fraudsters to obtain special certificates of title for other people's properties and eventually transfer them to their names and then sell to third parties.

Due to many complaints and unnecessary litigation, Ministry of Lands, Housing & Urban Development (MLHUD) came up with a strict rule that the applicant of a special certificate of title must be the registered owner who must also avail an LC Letter introducing him/her as the owner of the land and a police letter confirming the loss of the title. In addition to availing this documentation, the registered owner is required to physically appear before the registrar of titles for identification and verification before the application for a special certificate of title is approved.

It is therefore important for any person interested in purchasing land held under a special Certificate of Title to carry out some due diligence around the circumstances regarding the application for and issuance of a special certificate of title.

2. Administrators/executors transferring land to their individual names or third parties without the consent of the beneficiaries;

An administrator or executor under the law is the legal representative of the estate of the deceased. As such, he or she is duty bound to administer the estate on behalf of the beneficiaries. An administrator or executor is registered on the titles as a trustee and not as a personal proprietor.

There are many incidents where administrators of estates transfer land that belongs to an estate of a deceased to themselves in their personal capacity or to third parties without the consent of all the beneficiaries or even without the involvement of all the administrators (where there are joint administrators). Whereas it is nearly impossible to ascertain all the beneficiaries of an estate, the duty to conduct due diligence on the property falls on the interested buyer.

When dealing with deceased's estates, the interested buyer must verify the letters of administration/probate with the respective court and obtain consent of the beneficiaries before purchasing the property. However, purchasing such properties is risky because of the uncertainty of the rightful beneficiaries and the risk of the property being caveated by an unknown beneficiary after the purchase.

3. Forging powers of attorney with intention to defraud;

Section 130 (1) of the Registration of Titles Act CAP 240 provides;

The proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney....

This Section empowers a holder of powers of attorney to act on behalf of a registered owner. These powers are often misused and forged too. The supreme court decision of **FREDRICK ZAABWE VS ORIENT BANK**

& OTHERS (SUPRA) was relied on in **KONDA MATHIAS ZIMULA VS BYARUGABA MOSES & ANOTHER** to cancel a certificate of title where the second defendant had taken the plaintiff's duplicate certificate of title, used forged powers of attorney purported to have been signed by the plaintiff to transfer the suit property into her names and later on into the names of the first defendant.

The above case is just one of many where duplicate certificates of title have been cancelled because they had been issued due to forged powers of attorney. It is therefore important for any one dealing with a donee of powers of attorney to verify with the donor of the powers and confirm if such are valid and if the Donee is acting within his scope.

Most land offices have made it a requirement to have the donor of the powers of attorney appears at the respective registry for identification and to confirm the sale before effecting the transfer of property.

4. Concealment of true consideration of the transaction;

In an attempt to defeat payment of stamp duty or paying less of it, most purchasers of land usually disclose the value of the land which is less than the true consideration paid to the seller. Such act of dishonesty amounts to fraud.

Recently the Supreme Court held that undervaluation of the land amounts to fraud.

Instances of concealment of the true consideration of the transactions are rampant. It is important that the intending purchaser fully and truly discloses the true value for purposes of ensuring that such a transfer is not impeached on account of defrauding the Government through the false/under declaration of the land value for purposes of stamp duty assessment and payment.

5. Double titling of land;

The existence of more than one title on the same piece of land is an incident of fraud that cannot be missed. This fraud is usually committed within the land registry which is mandated to issue duplicate certificates of title. In most cases, the land registries while acting on forged documents submitted by the clients may erroneously issue more than one title on the same piece of land. Unfortunately, such fraud may only be detected once the true owner raises a complaint with the land office.

In the case of **ST. MARK EDUCATIONAL CENTRE LIMITED VS MAKERERE UNIVERSITY CACA NO. 40 OF 1997** where two certificates of title were issued on the same piece of land, the court of appeal upheld the finding of the high court and noted that the fraud committed was not the type a purchaser or even his advocate could discover during an ordinary search at the registry. The fraud was committed on the register and the register being a Freehold title from which another register of a mailo title was created.

6. Forging land titles;

There are many cases where innocent purchasers acquire forged titles from fraudsters only to be surprised at the land registries when they are retained and cancelled on submission to affect a transfer. Many have been

victims of such scam. The forged titles appear as authentic as the titles issued by MLHUD. There are reports that this form of land fraud through the issuance of forged documents has been aided by corrupt lands officials as explained by George Musisi, a lawyer at the Foundation for Human Rights Initiative, a charity that offers legal aid services, “When you look at the forged titles, sometimes it even has the seal of the land office”.

7. Illegal removal of caveats;

Fraudsters have taken advantage of **Sections 124 the Registration of Titles Act** cap 240, which provide for removal of a caveat by the Registrar issuing to the Caveator a notice to show cause why the caveat should not be removed. The notice is sent to the Caveator by post. In most cases, the notices are never posted. As long as there is a receipt from post office, this is evidence enough for the registrar to remove the caveat on expiry of the 60 days. Unfortunately, the Registrar of Titles cannot be blamed because he/she is following the law.

In reality, communication through postal services is the most archaic mode of communication. Many people use fictitious postal addresses or postal addresses that do not actually belong to them. Whereas the postal services are available, most Ugandans do not utilize them because of the e-communication.

If a Caveator is not vigilant enough to resolve whatever issues that arise from the property or to check on the property more often to confirm if an application to lift the caveat has been lodged, his or her interest will be extinguished without his or her knowledge. Recently the Supreme Court in **SAUL KISIRIBOMBO RUMANDA VS EMMY TUMWINE (SUPRA)** found that the Respondent’s caveat had been irregularly removed by the Appellant in connivance with officials in the MLHUD.

It is therefore prudent for Caveators to constantly check on the status of their interests at the land registry with a view to confirm if their caveats are still intact on the land register.

8. Real Estate Companies/dealers giving Bibanja Holders unreasonable offers;

Real Estate Companies have a tendency of identifying customary land or unregistered land and entering unreasonable agreements with the squatters by offering them less consideration for their land or forcefully taking over their property. The said real estate dealers will then process the title to the land, subdivide the same and eventually sell to innocent buyers who will never take quiet possession of the land because of the unresolved issues with the squatters.

It is therefore an important duty on the purchaser to have made sufficient inquiries before getting registered on the land. The need for carrying out inquiries has been emphasized by court in various decisions. The position of the law is that, a person who purchases an estate which he knows or should have known to be in occupation and use of another other than the vendor without carrying out the due inquiries from the persons in occupation and use commits fraud. Therefore, the failure to make reasonable inquiries of the persons in possession and use of land or the purchaser’s ignorance or negligence to do so forms particulars of fraud. Knowledge of other people’s rights or claims and the deliberate acquisition of an interest in the face of such knowledge is fraud.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO 28 OF 2020

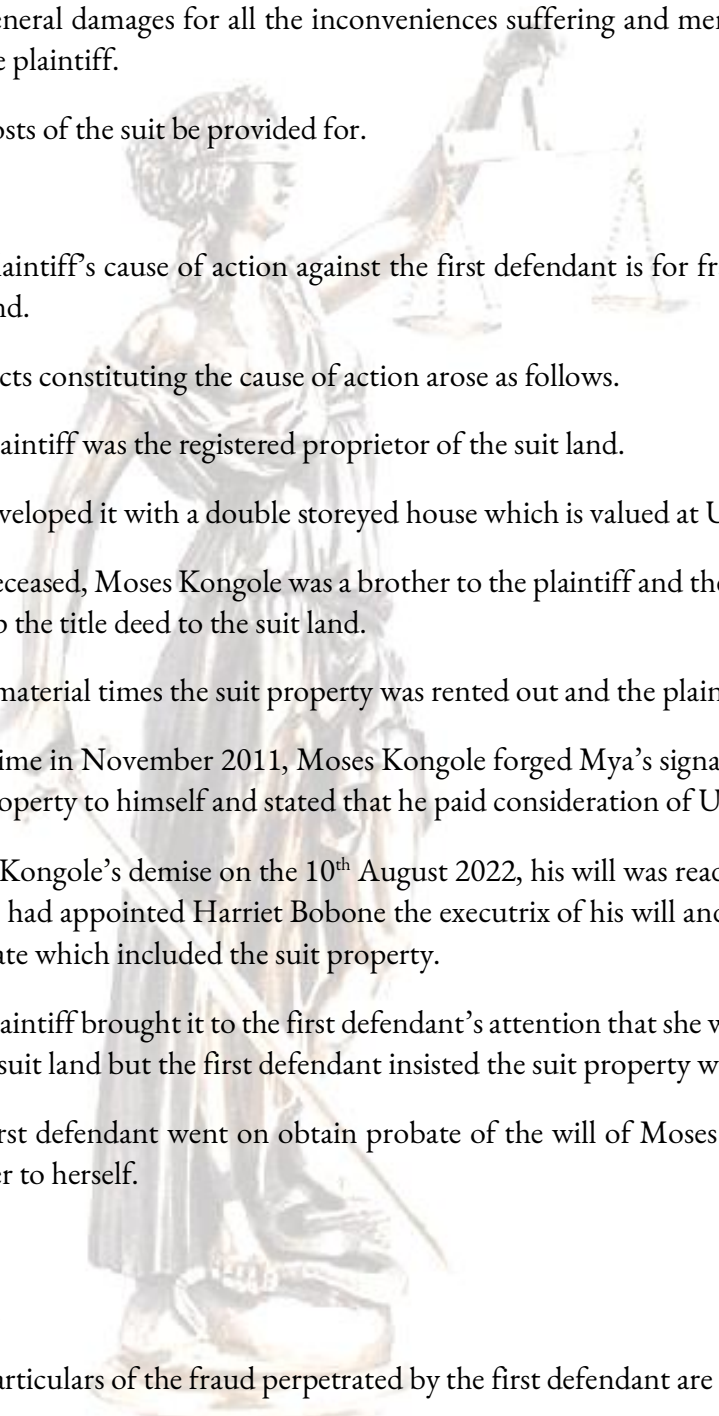
MYA ACHENG..... PLAINTIFF

VERSUS

- 1. THE EXECUTRIX OF THE STATE OF THE LATE MOSES KONGOLE**
- 2. COMMISSIONER LAND REGISTRATION..... DEFENDANTS**

PLAINT

1. The plaintiff is a female adult Ugandan of sound mind whose address of service for purpose of this suit shall be SUI GENERIS & CO ADVOCATE, P.O.BOX. 7117, KAMPALA.
2. The first defendant is the executrix of the will of the late Moses Kongole and the plaintiff and her advocates undertake to effect court process on her.
3. The second defendant is an officer of government charged with the powers and responsibility to maintain and effect changes on the land register and is being sued in that capacity.
4. The plaintiff's claim against the defendants jointly and or severally is for:
 - a) A declaration that the purported transfer of the land comprised in Kydondo Block 244 Plot no. 367 at Muyenga to the first defendant is null and void for fraud.
 - b) A declaration that the plaintiff is the rightful owner of the suit land.
 - c) An order of cancellation against the second defendant ordering the second defendant to cancel the first defendant's name on the certificate of title.
 - d) An order directing the second defendant to reinstate the plaintiff as the registered proprietor of the suit land.

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- e) A permanent injunction restraining the defendant from interfering with the plaintiff's ownership, proprietorship and possession of the suit land.
 - f) General damages for all the inconveniences suffering and mental anguish suffered by the plaintiff.
 - g) Costs of the suit be provided for.
5. The plaintiff's cause of action against the first defendant is for fraudulent transfer of the suit land.
6. The facts constituting the cause of action arose as follows.
- a) The plaintiff was the registered proprietor of the suit land.
 - b) She developed it with a double storeyed house which is valued at UGX 950,000,000.
 - c) The deceased, Moses Kongole was a brother to the plaintiff and the plaintiff entrusted him to keep the title deed to the suit land.
 - d) At all material times the suit property was rented out and the plaintiff collected the rent.
 - e) Sometime in November 2011, Moses Kongole forged Mya's signature and transferred the suit property to himself and stated that he paid consideration of UGX 200,000.
 - f) Upon Kongole's demise on the 10th August 2022, his will was read out to family members and he had appointed Harriet Bobone the executrix of his will and also sole beneficiary of his estate which included the suit property.
 - g) The plaintiff brought it to the first defendant's attention that she was the lawful proprietor of the suit land but the first defendant insisted the suit property was part of the estate.
 - h) The first defendant went on obtain probate of the will of Moses Kongole and effected a transfer to herself.

Particulars of the fraud.

7. The particulars of the fraud perpetrated by the first defendant are as follows.
- a) The deceased moses kongole forged the signature of the plaintiff and effected a transfer to himself.

- b) In the transfer of consent, the deceased declared the value of the suit land as being UGX 200,000,000 yet the suit property is valued at UGX 950,000,000
 - c) In the transfer from the deceased stated that there were no developments on the land yet the plaintiff had at the time erected a two storeyed house on the land.
 - d) When the defendant was informed that the plaintiff had an interest in the suit property, she ignored the same, went on to obtain probate and cause a transfer to herself as executrix.
8. The plaintiff avers that as a result of the actions of the defendant stated above, she has suffered great inconvenience and mental anguish.
 9. The plaintiff issued a notice of intention to sue but the defendant refused to give it heed.
 10. The cause of action across in Kampala, within the jurisdiction of this honourable court.

WHEREFORE, the plaintiff shall pray for that judgement be entered in her favour against the Defendant for:

- a) A declaration that the plaintiff's is the legal and the rightful owner of the land comprised in Kyandondo Block 244 plot no. 367 Muyenga.
- b) A declaration that the defendant fraudulently obtained the title.
- c) Cancellation of the certificate of title of land comprised in Kyandodo block. 244 plot no.367.
- d) An order directing the commissioner land registration to reinstate the plaintiff as the registered proprietor on the certificate of title of the suit land.
- e) General damages.
- f) Costs of the suit.

Dated at Kampala on this 28th day of January 2020.

M/S SUI GENERIS & CO ADVOCATES.

COUSEL FOR THE PLAINTIFF.

Drawn & filed by:

M/S SUI GENERIS& CO ADVOCATES

P.O.BOX 7117,
KAMPALA, UGANDA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO 28 OF 2020.

MYA ACHENG..... PLAINTIFF

VERSUS

HARRIET BOBONE.....DEFENDANT

Summary of evidence

The plaintiff shall at the trial adduce both oral and other evidence to prove that the suit land belongs to her and does not form part of the estate of the late Moses Kongole's estate and that the same has been fraudulently and illegally transferred into the names of the defendant.

The plaintiff shall further prove that the defendant without any lawful justification denied the plaintiff the suit land.

List of witness

1. The plaintiff
2. Any other witness with leave of court.

List of documents

1. Transfer deed
2. Certificate of title.
3. Any other with leave of court.

List of Authorities.

1. The 1995 constitution of the republic of Uganda.
2. The registration of the title Act Cap. 230.
3. The land Act Cap 227.
4. The succession Act Cap.
5. Any other authority with leave of court.

Dated at KAMPALA on this 28th day of January 2020.

M/S SUI GENERIS & CO ADVOCATES

Counsel For The Plaintiff





CONDOMINIUM PROPERTY



CONDOMINIUM PROPERTY

The common property of the condominium is owned by all the unit owners as tenants in common in shares proportional to the unit factor this means that if one owns fifty percent of the total units comprised in a condominium, and then he or she also owns fifty percent of the common property.

Section 1 of the Condominium Property Act, cap 234 defines Condominium to mean a system of separate ownership of individual units of which are designated for common ownership solely by the owners of those units.

A condominium or 'condo' is a building structure divided into several units that are separately owned and which are surrounded by common areas that are jointly owned by all owners of the units. The common areas may include the compound, staircase, hallways and amenities such as a swimming pool, children's play area and gym. The difference between an apartment building and condominium is entirely based on ownership.

The term condominium is an invented Latin word as a result of joining two words 'con' and 'dominium'. From its Latin origin, the term can be loosely translated as co-ownership. The plural of the term is either condominiums or condominia depending on the writer. For this paper, I shall use 'condominiums'.

Condominiums in Uganda are regulated by a number of laws including general laws on land, taxation, ordinances of the area where the condominium maybe located but specifically **by the Condominium Property Act cap 234 and Condominium Property Regulations of 2002. The Regulations were amended in 2012.** In this paper, I shall briefly discuss aspects of the Condominium Property Act and Regulations.

A condominium status of any building or planned building starts with registration. Before registration however one must first obtain approval of the Condominium plan from the relevant local authorities. The considerations for approval differ depending on location but include legitimate architectural drawings and civil structural plans.

After obtaining approval from the local authorities, the next step is to apply for registration of the condominium plan with the registrar of titles. The condominium plan may be registered as one whole in respect of the entire development or as a phased plan at the developer's discretion.

Upon registering the condominium plan, the registrar closes the part of the land register relating to the parcel of land described in the plan and opens a separate part for each unit described in the plan. The Registrar then issues new certificates in respect of each unit upon payment of the prescribed fee.

The certificate of title issued in respect of a condominium unit has the same effect as a certificate of title issued for land under the **Registration of Title Act Cap.240**. Therefore, the certificate of title is transferable through sale and transmittable upon death as part of the unit owner's estate.

The registered condominium plan is very important because unit owners' interests are limited to only what is registered. As such in addition to the Certificate of title, an intending purchaser of a condominium unit ought to specifically examine the condominium plan before concluding a sale transaction.

After acquiring a unit, a unit owner who desires to sub-divide his or her unit or consolidate two or more units may only subdivide or consolidate after obtaining approval of the local authorities of the area where the condominium is located. After obtaining the approval, he or she is also required to register with the Registrar of titles a modified condominium plan relating to the unit intended to be subdivided or consolidated.

A condominium property is developed for a particular use which is commonly residential but it may also be for non-residential purposes such as shops or warehousing. Therefore, any unit owner who intends to change the use of his or her unit will require a unanimous consent by all unit owners and approval by the local authorities. If the change intended will result in a modification of the condominium plan, then the owner has to submit to the Registrar a modified condominium plan.

The common property of the condominium is owned by all the unit owners as tenants in common in shares proportional to the unit factor. This means that if one owns fifty percent of the total units comprised in a condominium, then he or she also owns fifty percent of the common property. Key to note however is that although the tenants in common hold distinct and independent interests in the common area, according to the law their interest is undivided and as such there are no demarcations or boundaries drawn in favour of each unit owner.

By law, the unit owners are required to constitute themselves as a 'corporation'. The corporation is thus composed of all unit owners who may at inception include the developer. Vital to note is that the obligation to convene the first corporation meeting is on the developer and there are strict timelines within which the meeting ought to be convened.

The corporation like a company has perpetual succession with capacity to sue and be sued although the Act specifically provides that the Companies Act does not apply to the formalization of the corporation.

The corporation is supposed to make by-laws for the management of the units and the common property. The said by-laws are binding on all unit owners and violation or breach of the by-laws by a unit owner would result in a fine and in case of non-payment of the fine the unit owner maybe sued by the corporation for civil penalties.

The corporation is also supposed to elect a management board from amongst themselves. The management board has the obligation to convene a general meeting of the unit owners at least once every year. The voting rights of a unit owner at a meeting are dependent on the unit factor thus every unit owned confers a vote. The management board then elects a managing Agent to deal with the day today running of the corporation and condominium.

The Act also provides for sharing of common property by two or more corporations and in such a case, each corporation is obligated to contribute to the maintenance of the common property.

Where it becomes impractical to continue with the condominium status, it can be terminated. The first step to terminating is a unanimous resolution by the corporation. After the resolution, the corporation then applies to court for an order terminating the condominium. The court will only make an order terminating the condominium if it is satisfied that it is just and equitable for the condominium to be terminated.

After obtaining the order of court terminating the condominium, the Corporation is obligated to immediately file with the Registrar of Titles a notice of termination.

Upon receipt of such notice the Registrar makes notification to that effect on the condominium plan and upon making such notification, the owners of the units in the plan are entitled to the earlier parcel as tenants in common in shares proportional to the unit factors.

An investment in a condominium property just like any other real estate investment is undoubtedly a prime investment for anyone to make. Therefore, an investor whether as developer or unit owner ought to understand and follow the Condominium Properties Act and Regulations because they are filled with mandatory provisions that cannot be derogated from and strict timelines within which specific actions must be done?

The condominium property act, cap 234 is an Act **to provide for the division of buildings into units and common property**; to provide for individual ownership of units. This should be read and applied with the **Condominium Property Regulations, 2002 No.29**

Creation of a condominium property.

Under **Section 2(1) of the Condominium property Act**, a proprietor or developer of an existing or planned building can divide the building into two or more units by registering with the Registrar a condominium plan in accordance with the Act.

The plan must be presented for registration in quadruplicate and must indicate the number of units into which the building is divided **Section 2 (2) Condominium property Act.**

On application for registration of a condominium plan the Registrar must pursuant to **Section 4(1) of the condominium property Act**, close the part of the Register relating to the parcel described in the plan and open a separate part for each unit described in the plan and upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

Pursuant to **Section 4(2) of the Act**, a certificate of title issued in respect of a unit comprised in condominium plan is deemed to be issued under the RTA and all registration techniques, procedures and practices applicable under the RTA apply to such certificate of title as per **Section 4(1) of the Condominium property Act**.

Under **Section 4(3) of the Condominium property Act**, the registered proprietor of the unit can sell, transfer, lease, charge or otherwise deal with the unit in the same manner and form as land held under the **Registration of Titles Act**.

SALIENT FEATURES OF CONDOMINIUM PROPERTY

Division of building into units.

Under section 2(1) A proprietor or developer of an existing or planned building may divide the building into two or more units by registering with the Registrar a condominium plan in accordance with this Act.

Creation of title for each unit

under section 3(1) The Registrar shall, upon an application for registration of a condominium plan, close the part of the Register relating to the parcel described in the plan, and open a separate part for each unit described in the plan, and shall, upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

Common property

Under section 1 common property means; that part of the condominium property which does not belong to any specific unit and which is used in common by the owners of the units and includes, without prejudice to the general effect of the foregoing, the land on which the property is situated, support structures, infrastructure and services;

Section 6(2), The common property comprised in a registered condominium plan shall be held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

Unit factor : section 1 means the unit entitlement of a condominium plan and indicates the share of an owner in the common property, common facilities and other assets of the corporation and is the figure which determines the owner's contribution to the common expenses of a corporation and may be determined in

accordance with the bye-laws of the corporation using such variables as the size of the unit, location of the unit and the view which the unit commands.

boundaries of the unit

Section 11(1) Unless otherwise provided in the condominium plan—(a) a boundary of a unit is described by reference to floor, wall or ceiling; or (b) where a wall located within a unit is a load bearing wall, the only portion of that floor, wall or ceiling as the case may be, that forms part of the unit, the boundary shall be the finishing material that is in the interior of that unit, including any lath and plaster, paneling, gypsum board panels, flooring, material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

Easements; Under section 1; a right attached to one particular piece of land which allows the owner of that land either to use the land of another person in a particular manner or to restrict its use by that other person to a particular extent but which does not allow him or her to take any part of its natural produce or its soil, and includes a right of way, a right to draw water, a right to place erections such as sign posts, a right of light and a right of support to a building and any other rights provided by any law in force

Section 14(1) Common property and each unit comprised in a registered condominium plan shall have as appurtenant to it, such rights of—

- (a) support, shelter and protection;
- (b) passage or provision of water, sewerage, drainage, gas, electricity, garbage and air;
- (c) passage or provision of telephone, radio and television services; and
- (d) any other service of whatever nature, over the parcel and every structure on it as may from time to time be necessary for the reasonable use or enjoyment of the common property or unit.

Section 14(2); Common property and each unit comprised in a condominium plan shall have as appurtenant to it a right to full, free and uninterrupted access and use of light through or from any windows, doors or other apertures existing at the date of the registration of the condominium plan.

Corporation; Under section 19 there shall, upon the registration of a condominium plan, be constituted in respect of any building or structure to which the plan relates, a corporation which shall operate under the name—“The Owners, Condominium Plan No....”.

This corporation under section 19(3) shall consist of persons who own units in the parcel to which the condominium plan relates. Under section 19 (4) The corporation shall have perpetual succession and a common seal and shall sue and be sued in its corporate name.

This corporation has functions under section 20(1) to include; The functions of a corporation are—

- (a) to manage the common property;
- (b) to keep the common property in a state of good repair;
- (c) to establish and maintain a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management, and administration of the common property, and for the payment of any insurance premiums, rent and the discharge of any other obligation of the corporation;
- (d) to determine from time to time the amounts to be paid for the purposes described in paragraph(c);
- (e) to raise amounts determined under paragraph (d) by levying contributions on the properties in proportion to the unit entitlement of their respective units;
- (f) to insure and keep insured buildings and other improvements on the parcel against fire;
- (g) to effect such other insurance as required by law, or as it may consider expedient;
- (h) to pay the premiums in respect of any policies of insurance effected by it;
- (i) to do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section;
- (j) to comply with any notice or order duly served on it by any competent local authority, planning authority or public utility authority requiring repairs to, or work to be performed in respect of the land or any building or improvements on it;
- (k) to submit new plans to the registrar in case of alterations to the condominium property;
- (l) to do all things reasonably necessary for the enforcement of any lease or licence under which the land is held;
- (m) subject to this Act, carry out any duties imposed on it by its rules.

creation of condominium property.

Registration of a condominium plan; where a person has a building, he may convert the same into condominium property and this may be done by developer by registering a plan with the registrar. Section 2(1) CPA, A proprietor or developer of an existing or planned building may divide the building into two or more units by registering with the Registrar a condominium plan in accordance with this Act.

Under regulation 11 (1) of the condominium property regulations 2002 s.l 29/2002, an application for registration of a condominium plan shall be in Form 1 specified in part 2 of the second schedule.

A proprietor is defined under section 1 of the CPA to mean-

in relation to land or a lease, the person named in the Register as the proprietor of the land or lease; and

in relation to any unit, the person who is registered as proprietor of an estate in the unit;

a developer means a person who, whether alone or in conjunction with another person develops, sells or offers for sale to the public, units or proposed units

a condominium plan is also defined under section 1 means a plan registered in accordance with this Act and includes a phased condominium plan;

under section 2(2) The condominium plan shall be presented for registration in quadruplicate and shall indicate the number of units into which the building is divided.

Under section 9(1) The Registrar shall not register a plan as a condominium plan unless—

- (a) that plan, in its heading, is described as a condominium plan;
- (b) there is indicated in that plan, a delineation of the external surface boundaries of the parcel and the location of the building in relation to them;
- (c) the plan includes a drawing illustrating the units and distinguishing the units by numbers or other symbols;
- (d) the boundaries of each unit are clearly defined in the plan;
- (e) the approximate floor area of each unit is clearly shown in the plan;
- (f) the plan is accompanied by a schedule specifying in whole numbers the unit factor for each unit in the parcel;
- (g) the plan is accompanied by a statement containing such particulars as are necessary to identify the title to the parcel;
- (h) the plan is accompanied by the certificates referred to in section 10;
- (i) the plan is signed by the proprietor;
- (j) the plan contains the address at which documents are to be served on the relevant corporation in accordance with section 53; and
- (k) the plan contains any other particulars prescribed by or under regulations.

According to section 10 CPA and Regulation 11 (2) of the condominium regulations 2002, a condominium plan lodged for registration shall-

be accompanied by—(a) a certificate of a registered surveyor to the effect that the structure shown on the plan is within the external surface boundaries of the parcel which is the subject of the plan, and if there are projections beyond those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and

(b) a certificate of a local authority to the effect that the proposed division of the structure as shown on the plan has been approved by the local authority in accordance with any enactment regulating building construction.

Regulation 11(2)(b) the condominium plan shall be signed by the proprietor.

Issuance of certificate in respect of the units.

Under section 3(1) CPA; The Registrar shall, upon an application for registration of a condominium plan, close the part of the Register relating to the parcel described in the plan, and open a separate part for each unit described in the plan, and shall, upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

Section 3(2) The Registrar shall preserve the closed part of the Register referred.

Under section 4(2) CPA; A certificate of title issued in respect of a unit comprised in a condominium plan registered under this Act shall, upon registration of the plan, be deemed to have been issued under the Registration of Titles Act.

SEC 4(3); A proprietor of a unit in respect of which part of the Register is opened under section 3 may, subject to this Act, sell, transfer, lease, charge, or otherwise deal with that unit in the same manner and form as land held under the Registration of Titles Act.

Regulation 20 of the condominium property regulations; A certificate of title issued in respect of a unit comprised in a condominium plan registered under this Act shall, upon registration of the plan, be deemed to have been issued under the Registration of Titles Act.(3) A proprietor of a unit in respect of which part of the Register is opened under section 3 may, subject to this Act, sell, transfer, lease, charge, or otherwise deal with that unit in the same manner and form as land held under the Registration of Titles Act.

FEES

Under regulations 29 of the condominium regulations, the fees to be paid for any procedure or function required or permitted to be done under the act shall be prescribed in the 6th schedule

Paragraph 1 (a) 6th schedule upon submission of a condominium plan, the fees is 20000 ugandan shillings.

EFFECT OF CONVERSION TO CONDOMINIUM PROPERTY.

OWNERSHIP; section 1 of the condominium property act defines a condominium to mean means a system of separate ownership of individual units in a multiple-unit building, the individual units of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those units. Once property is turned into a condominium, the system of ownership will be of separate individual ownership and the remainder designated for common owner.

Closure of register of former title and creation of new titles; under section 3(1) The Registrar shall, upon an application for registration of a condominium plan, close the part of the Register relating to the parcel described in the plan, and open a separate part for each unit described in the plan, and shall, upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

Management; section 19(1) establishment of a corporation

Section 20; functions of the corporation including management of the common property

Restrictions in the enjoyment of the property by the unit owners; under section 8(1) An owner of a unit shall not change the use of his or her unit unless—(a)the corporation has, by unanimous approval, consented to the change of use; and(b)the planning and local authorities have approved the change of use

Common property

MANAGEMENT OF CONDOMINIUM PROPERTY

THE CONDOMINIUM CORPORATION

Section 19(1); There shall, upon the registration of a condominium plan, be constituted in respect of any building or structure to which the plan relates, a corporation which shall operate under the name—“The Owners, Condominium Plan No....”.

The corporation shall consist of persons who own units in the parcel to which the condominium plan relates

Section 19(4); The corporation shall have perpetual succession and a common seal and shall sue and be sued in its corporate name. the companies act shallnot apply to this corporation as per section 19(7)

FUNCTIONS OF THE CORPORATION

The functions are stipulated under section 20(1)-

(a)to manage the common property;(b)to keep the common property in a state of good repair;(c)to establish and maintain a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management, and administration of the common property, and for the payment of any insurance premiums, rent and the discharge of any other obligation of the corporation;(d)to determine from time to time the amounts to be paid for the purposes described in paragraph(c);(e)to raise amounts determined under paragraph (d) by levying contributions on the properties in proportion to the unit entitlement of their respective units;(f)to insure and keep insured buildings and other improvements on the parcel against fire;(g)to effect such other insurance as required by law, or as it may consider expedient;(h)to pay the premiums in respect of any policies of insurance effected by it;(i)to do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section;(j)to comply with any notice or order duly served on it by any

competent local authority, planning authority or public utility authority requiring repairs to, or work to be performed in respect of the land or any building or improvements on it;(k)to submit new plans to the registrar in case of alterations to the condominium property;(l)to do all things reasonably necessary for the enforcement of any lease or licence under which the land is held;(m)subject to this Act, carry out any duties imposed on it by its rules.

Section 20(2); A corporation is responsible for the enforcement of its bye-laws and the control, management and administration of its movable and immovable property and the common property.

Section 20(3); Without limiting the general effect of subsection (1), the duties of a corporation include the following—(a)to keep in a state of good and serviceable repair and properly maintain, the movable and immovable property of the corporation and the common property;

(b)to comply with notices or orders by any local authority, planning authority or public utility authority requiring repairs to, or work to be done in respect of the parcel.

Section 20(4) A corporation may, by a special resolution, acquire or dispose of an interest in immovable property.

Section 20(5) The functions of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board.

Section 20(6) In addition to the functions specified in subsection (1), the board shall hear complaints from aggrieved members of the corporation.

Section 20 (7)The corporation may, in accordance with a resolution of the proprietors, distribute any money or other moveable property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlement.

Section 20 (8) For the purposes of effecting any policy of insurance under subsection (1), the corporation shall be deemed to have an insurable interest in all the buildings and other improvements on the parcel.

Section 20 (9)Any policy of insurance authorised by this section and effected by the corporation in respect of any building or other improvements on the parcel, shall not be liable to be brought into contribution with any other policy, except another policy authorised by this section in respect of the same building or improvements.

Section 20 (10) A corporation may, subject to this Act, exercise such powers as are reasonably necessary to enable it to carry out its duties.

Section 20 (11) A corporation shall not engage itself in any trading activity.

RULES OF THE CONDOMINIUM CORPORATION

Under section 29(1) A corporation shall make rules to provide for the management of the units and the property of the corporation.

Section 29 (2) The rules may be amended or revoked by a special resolution.

Section 29 (3) An amendment or revocation of a rule shall not take effect until it is registered by the Registrar.

Section 29 (4) No rule shall operate to prohibit or restrict the devolution of units or any transfer, lease or other dealing in the units or to destroy or modify an easement implied or created by this Act.

Section 29 (5) The rules shall bind the corporation and the owners to the same extent as if the rules had been signed and sealed by the corporation and by each owner.

Section 29 (6) The rules shall be deemed to contain covenants on the part of each owner with every other owner and with the corporation, to observe and perform all the provisions of the rules.

Section 29 (7) The rules shall provide for fines which may be imposed for breach of the rules.

Section 29 (8) Notwithstanding section 14 of the Interpretation Decree, 1976, rules made by a corporation under this Act are not statutory instruments.

DISPUTE RESOLUTION AND REMEDIES.

Filing a complaint with the board of corporation; under section 20(6) the board shall hear complaints from aggrieved members of the corporation.

Under section 20(2); A corporation is responsible for the enforcement of its bye-laws and the control, management and administration of its movable and immovable property and the common property.

Penalties for breach of rules. ; section 29(7) The rules shall provide for fines which may be imposed for breach of the rules.

Section 30 (7); For the purposes of subsection (5), a certified extract from the rules filed with the Registrar General is prima facie proof of its contents, and that the rules were properly made.

Referral to court; according to section 30(6) Where an owner or tenant of a unit is in breach of the rules and refuses to pay a fine, the Board may refer the matter to a court.

Section 31(1) The managing agent shall refer to a court the case of an owner or tenant of a unit who habitually breaches the rules.(2)For the purposes of this section, an owner or tenant of a unit shall be deemed to be a habitual offender if he or she has breached the rules three or more times within a period of one month.(3)The court may, upon hearing a case referred to it under this section, impose a punitive fine as prescribed in the regulations.

Instituting a suit; under section 30 (8) any fine payable under the rules of a corporation shall be taken to be a civil penalty.

Termination of condominium status of property; section 47 (1) The condominium status of property may, subject to subsection 25(2), be terminated by a unanimous resolution.

Section 47(2) An application to terminate the condominium status of a property may be made to a court by the corporation, an owner of a unit, a registered chargee of a unit, or a purchaser under an agreement for sale of a unit.

Section 47 (3)Where, upon an application under this section, a court is satisfied that having regard to the rights and interests of the owners of units or of a registered mortgagee or purchaser under an agreement for sale of units, it is just and equitable that the condominium status of the property should be terminated, the court may make a declaration to that effect.

EFFECT OF TERMINATION

Upon the termination of condominium status of a property under section 47, the corporation shall immediately, file with the Registrar a notice of the termination in the prescribed form.(2)Upon the receipt of a notice referred to in subsection (1), the Registrar shall make a notification to that effect on the condominium plan and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.(3)Upon termination of the condominium status of a property by a unanimous resolution, the corporation shall dispose of the property or part of it by sale or transfer.(4)The corporation shall not dispose of the property or any part of it, unless all persons having registered interests in the property have consented in writing or executed an appropriate instrument to discharge their interests.(5)The Registrar shall not register a transfer executed under this section—(a)unless the transfer is accompanied by certified copies of the necessary resolutions and consents; and(b)until the notification required by subsection (2) has been made on the condominium plan.(6)When property is transferred by a corporation under this section, the Registrar shall close the registers relating to the units and re-open the Register closed under section 4: except that the Registrar shall preserve the closed Register.

Regulation 24(1) of the condominium regulations, the notice shall be in Form 1 specified in the 5th schedule

Regulation 14, where the condominium states of a property is terminated nd the parcel is transferred by a corporation under section 48(3) of the act the register shall

Enter on the relevant register of the condominium plan a notification of thecancelation of the plan

Indicate in an appropriate manner on any relevant register that the condominium plan has been cancelled.

MORTGAGES

MORTGAGES

Section 1 of the mortgage act cap 239, defines a mortgage to include any charge or lien over land or estate or interest land in Uganda for securing the payment of an existing or future or a contingent debt or other money or money's worth or the performance of an obligation and includes a second or subsequent mortgage , a third party mortgage and a sub-mortgage.

In *SANTLEY V WILDE* (1899) 2 CH 474 LINDLEY MR, stated that the principle is that a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which its given. This is the idea of a mortgage and the security is redeemable on the payment or discharge of such debt or obligation any provision to the contrary notwithstanding.

In *MATAMBULIRE V YOSEFU KIMERA* (1995) HCB 150.A mortgage was defined as a transaction where an owner uses his/her interest in land as security for a loan payment.

Who can create a mortgage?

Under section 2 of the mortgage act cap 239, a person holding land under any form of land tenure may by an instrument in the prescribed form, mortgage his/her interest in the land or a part of it to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfillment of a condition.

Section 1 of the mortgage act means a person who has mortgaged land or an interest in land and includes any person from time to time deriving title under the original mortgagor or is entitled to redeem the mortgage according to his or her estate, interest or right in the mortgaged property. And a mortgage means a person in whose favour a mortgage is created or subsists and includes any person deriving title under the original mortgage.

Which property can be mortgaged.

According to section 2 of the mortgage act ca 239, any form of land tenure can be mortgaged. Section 1 defines land tenure to mean a system of holding land and includes customary land tenure, freehold land tenure, leasehold and mailo tenure. However, where such land is customary land or qualifies as matrimonial home or family land it can be mortgaged subject to restrictions as follows;

MATRIMONIAL HOME : Section 1(M.A) defines a matrimonial home . means a building or part of a building in which a husband and wife or, as the case may be, wives, and their children, if any, ordinarily reside together and includes—(a)where a building and its curtilage are occupied primarily for residential purposes,

that curtilage and outbuildings on it; and (b) where a building is on or occupied in conjunction with agricultural land or pastoral land, any land allocated by one spouse to his or her spouse or in the case of a husband, to his spouses for his, her, or their exclusive use;

Section 40 of the land act cap 236, no person shall mortgage any family land; enter into any contract for mortgage of family except with prior consent from his spouse. Section 39(4) of the land act cap 236, In this section—

“family land” means land—

- (a) on which is situated the ordinary residence of a family;
- (b) on which is situated the ordinary residence of the family and from which the family derives sustenance;
- (c) which the family freely and voluntarily agrees shall be treated to qualify under paragraph (a) or (b); or
- (d) which is treated as family land according to the norms, culture, customs, traditions or religion of the family;

Section 4(1) of the Mortgage Act cap 239, requires that before matrimonial property is mortgaged, the document used for the mortgage should be signed by the mortgager & the spouse residing in that matrimonial home which would amount to consent.

Section 4 (2) (a) Mortgage Act cap 239, further imputes an obligation on the mortgagee to take reasonable steps to ascertain whether an intending mortgager is married & whether the property to be mortgaged.

under **Section 4 (3) Mortgage Act**, the duty is discharged if the mortgagee obtains a marriage certificate issued in accordance with the laws of Uganda & in the absence of it, a statutory declaration from the spouse or spouses of the mortgagor as proof of marriage

according to the case of *NUTTY NTARE V EQUITY BANK (U) LTD AND ANOR* HCMC 16/2015. HON .J. CHRISTOPHER MADRAMA stated that a mortgage shall be valid notwithstanding the prohibition of section 40 of the land act cap 236, if there was compliance with the provisions of section 4 of the mortgage act cap 239.

Pursuant to **Section 5(1) of the Mortgage Act**, the Mortgagee must satisfy the selves that the consent of a spouse referred to in section 4 is an informed & genuine consent

Section 5 (1)(a)(i) Mortgage Act, stipulates that the consent is informed & genuine if the mortgagee explained to the spouse of an applicant for a mortgage in the presence of an independent person, the terms and conditions of the mortgage which is being applied for.

Under Section 5(1) (a) (ii) Mortgage Act, if in writing advised the applicant for a mortgage that he/she should ensure that his/her spouse or spouses receive independent advice on the terms of conditions of the mortgage being applied for.

Section 5(1) (b) requires that the spouse provides a signed & witnessed document to the effect that they have received independent advice on the mortgage & assented to the terms and conditions or that they have notwithstanding the advice from the mortgage waived their right to take independent advice.

CUSTOMARY LAND.

Section 6(1) of the mortgage act cap 239, The creation and operation of mortgages on customary land shall, subject to this Act, continue to be in accordance with the customary law applicable to the land in respect of which the mortgage on customary land is created.

Section 6(5), This section shall not apply to customary land which is owned by a community

Section 6(6), In the case of customary land which is owned by a family, the land may only be mortgaged with the consent of the spouse or spouses and children of the mortgagor.

According to Regulation 19 of the mortgage regulation 2012, subject to section 4 and 6(6) of the act before granting a mortgage the mortgagee shall require the consent of the spouse and the children in form 2 schdeule.

MORTGAGE DISTINGUISHED FROM A PLEDGE AND A CHATTEL SECURITY.

1. PLEDGE

According to section 87 of the contracts act cap 284, a pledge is defined to mean the bailment of goods as security for payment of a debt or performance of a promise. Bailment is defined to mean the delivery of goods by one person to another for some purpose upon a contract that the goods shall when the purpose is accomplished be returned or disposed of according to the direction of the person who delivered them.

In UGANDA ECUMENICAL CHURCH LOAN FUND LTD V NANKABIRWA HARRIET H.C.C.S NO.0307/2002. Justice lameck mukasa, defined a pledge to mean a bailment of personal property for some debt or engagement. Its distinguishable from a transction of mortgage in two main ways; the first distinguishing factor is that:

- a) The property pledged should be actually or constructively delivered to the pledgee whereas on a mortgage, property passes by assignment and possession by the mortgagee is not essential in every case. A pledge involves a transfer of possession of the property desoposited as security for the debt to the pledge and the property on whooly discharged reverts to the person who has pledged the property on discharge of the debt or engagement.

- b) For a mortgage, the mortgagee acquires by assignment an absolute interest in the property subject to a mortgage right of redemption and its also subject to the super added equity. A mortgage may be made without any transfer of possession of the property.

2. CHATTEL SECURITY

A “chattel” is defined to mean personal property that can be completely transferred by delivery or property in respect of which a valid document of title exists. A security interest is defined to mean a property right in movable property that is created by agreement to secure payment or other performance of an obligation, any type of charge over movable property, chattel mortgage and includes a) a retention of title in movable property.

TYPES OF MORTGAGES.

a) Legal mortgages

Under 2(1)m.a CAP 239, A person holding land under any form of land tenure, may, by an instrument in the prescribed form, mortgage his or her interest in the land or a part of it to secure the payment of an existing or a future or a contingent debt or other money or money’s worth or the fulfilment of a condition

Is a mortgage that is registered as provided under **Section 2(4) of the Mortgage Act**, It’s created by a deed which is then registered as an in encumbrance on a certificate of title.

In GENERAL PARTS(U) LTD V NON-PERFORMING ASSETS RECOVERY TRUST S.C.C.A No.5/1999(2000) KALR 749, Court noted that all terms of a legal mortgage have to be expressed in a mortgage document and have to be registered as instrument under the RTA in order to have legal effect and therefore a term which is not registered doesnot by virtue of section 54 and 59 of the RTA cap 240 have legal effect.

Upon registration of the instrument, the land becomes liable as security in the manner set forth in the instrument security only. However, the mortgage shall not operate as a transfer of land thereby mortgaged.

Security only and not transfer.

Under section 7(1) of the M.A cap 239, a mortgage shall have effect as a security only and shall not operate as a transfer of any interest or right in the land from the mortgagor to the mortgagee but- the mortgage shall have subject to this Act, all the powers and remedies in case of default by the mortgagor and be subject to all the obligations conferred or implied in a transfer of an interest in land subject to redemption.

In ERICZA WAMALA V MUSA MUSOKE (1920)3 ULR 120, court observed that its an old established rule that if money is lent on the security of the land the lender will get security and nothing more. He willot be allowed totake advantage of the necessities of the borrower so as to get the land for himself.

Section 7(2) of the M.A cap 239, Where a mortgagor signs a transfer as a condition for the grant of a mortgage under this Act, the transfer shall have no effect.

Section 7(3) of the M.A cap 239, A mortgagee who requires a transfer as a condition for the grant of a mortgage under this Act, commits an offence and is liable on conviction to a fine not exceeding four thousand currency points.

Equitable/informal mortgages

Defined in **Section 1 of Mortgage Act cap 239** to mean a written and witnessed undertaking, the clear intention of which is to charge the mortgagor's land with the repayment of money or money's worth obtained from the mortgagee and includes an equitable mortgage and a mortgage on unregistered customary land;

Section 2(5) of Mortgage Act cap 239, is to the effect that unregistered mortgage shall be enforceable between the parties.

These can be created on registered land & on unregistered land.

They are created according to **Section 2(8) of Mortgage Act**, when the holder of registered land deposits any of the following;

- i. The certificate of title to the land
- ii. A certificate of customary of ownership
- iii. A lease agreement
- iv. any other document which may be agreed upon evidencing a right to an interest in land; or
- v. any other documents which may be agreed upon.

An equitable mortgage was defined in the case of *UGANDA ECUMERICAL CHURCH FUND LTD V NANKABIRWA HARRIET H.C.C.S No.0307/2002*, as a charge which creates a charge on the property but does not convey any legal estate or interest. Its operation is that of an executionary assurance which as between the parties and so far as equitable rights and remedies is equivalent to an actual assurance and is enforceable under the courts of equitable jurisdiction.

It is important to note that under section 2(5) of the mortgage act 239, Notwithstanding subsection (4) an unregistered mortgage shall be enforceable between the parties.

Under section 2(8) of the mortgage act cap 239, Nothing in this section shall operate to prevent a borrower from offering and a lender from accepting—(a) an informal mortgage to secure any payments referred to in subsection (1) AS In *AMRATLAL PURSHOTTAM BHINJI V GIAN SINGH BHAMBRA AND ORS H.C.C.S NO.298/2010*

SUBSEQUENT/SECOND MORTGAGE.

Section 2(2) of the mortgage act cap 239, The power conferred by subsection (1) includes the power to create third party mortgages, second, subsequent mortgages and sub mortgages.

Section 2(6) of the M.A Where a second or subsequent mortgage is made by a mortgagor whose title is registered under the Registration of Titles Act, the second or subsequent mortgagee may, at his or her own expense, require the first mortgagee to produce any duplicate certificate of title which he or she may hold to the registrar so that the second or subsequent mortgage may be registered.

Section 2(7), Where a second or subsequent mortgage has been registered, the second or subsequent mortgagee shall return the duplicate certificate of title to the first mortgagee..

Under section 8(1),mortgages shall rank in order of their registration.

Section 8(4) of the M.A cap 239, Where a mortgagee, subsequent in time to a prior mortgagee under a mortgage, lends money or money's worth to a mortgagor as a consequence of or through the fraud, dishonesty or misrepresentation of the prior mortgagee, either in conjunction with or separately from the fraud, dishonesty or misrepresentation of the mortgagor, that prior mortgagee's right to repayment under the mortgage shall be postponed to the rights of the subsequent mortgagee.

THIRD PARTY MORTGAGE.

Section 2(2) M.A,the power conferred by subsection(1) includes the power to create third party mortgage.

Section 1 of the mortgage act cap 239, defines a third party mortgage to mean a mortgage which is created or subsists to secure the payment of an existing or future or a contingent debt or other moneys or money's worth or the fulfilment of a condition by a person who is not the mortgagor, whether or not in common with the mortgagor.

POWER OF ATTORNEY.

A mortgage can be created by the proprietor of the land or the authority of such person. Under section section 130(1) of the RTA cap 240, The proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in Schedule 14 to this Act.

A power of attorney was defined in the case of FREDRICK J.K ZAABWE V ORIENT BANK AND 5 ORS No.4/2006,to mean an instrument in writing whereby one person as principal appoints another as his agent and confers authority to perform certain specified acts on behalf of the principal. (an instrument authorising another to act as one's agent or authority.) the dnee of the power of attorney acts as an agent of the donor and for the donor ,he cannot use the POA for his own benefit.

Section 130(2) of the RTA cap 240, every POA shall be registered in accordance with the registration of documents act.

Section 131 (1) of the RTA cap 240, the POA must be signed and attested to by one witness in order to be held to be duly executed.

Section 132(a) of the RTA cap 240, a power of attorney shall be deemed to be duly executed when a signature of each party to it is in latin character.

In *Fredrick j.k zaabwe v orient bank (supra)*, J.Kanyiehamba noted that the rationale of section 148 (now section 132) requiring a signature to be in latin character must be to make it clear to every body receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. Where the provisions of section 131 and 132 RTA are not adhered to such irregularities render a power of attorney and mortgage invalid.

SUB-MORTGAGE

Under section 2(2) M.A the power conferred under section 2(1) includes the power to create sub-mortgages. A sub-mortgage is defined under sect. 1 to mean a mortgage of a mortgage.

DUE DILEGENCE.

A mortgagee/lender is required before execution of a mortgage contract to exercise due diligence and makes appropriate inquiries including physical inspection of the subject property and confirmation of prioprietorship and the particulars of the proprietor.

Carrying out a search at the land registry. The mortgagee must carryout a search at the land registry in order to establish the existence of the land to be mortgage and the names of the prioprietor. this is done by applying for a search by way of ordinary letter to the register of titles and payment of the requisite fees.

The mortgagee should also ascertain the proprietor of the land by obtaining all their particulars. In *SIR JOHN BAGEIRE V AUSI MATOVU CACA 7/1996 AT 26 OKELLO j.a* Stated that lands are not vegetables that are bought from unknmown sellers, they are valuable properties and buyers are expected to make thorough investigations, not only of the land but of the sellers before purchase.

Carry out a physical search on the land. This is to establish if there are other interests affecting the land. In *UPTC V KITUMBA LUTAAYA SCCA NO.36/1995*, court stated that purchasers of land must make inquiries of the persons selling in possession of the land and any other interest affecting the land. Intending mortgagee has to survey the land and conduct boundary opening to ensure the size of the land indicted on the title are the same with those on the physical land.

Asertain the marital status of the indenting mortgagor. Section 4 (1) of the M.A cap 239, Notwithstanding section 40 of the Land Act, a mortgage of a matrimonial home, including mortgage on customary land of a matrimonial home is valid if—(a) any document or form used in applying for the mortgage is signed by or there is evidence from the document that it has been assented to by the mortgagor and the spouse or spouses of the

mortgagor living in that matrimonial home;(b)any document or form used to grant the mortgage is signed by or there is evidence that it has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home.(2)For the purposes of sub section (1)—(a)an intending mortgagee shall take reasonable steps to ascertain whether an intending mortgagor is married and whether or not the property to be mortgaged is a matrimonial home;(b)an intending mortgagor shall make full disclosure to the intending mortgagee as to his or her marital status and whether or not the property to be mortgaged comprises the matrimonial home.(3)The mortgagee shall be deemed to have discharged the duty under subsection (2), if the mortgagee obtains a marriage certificate issued in accordance with the laws of Uganda, and in the absence of it, a statutory declaration from the spouse or spouses of the mortgagor as proof of marriage.

Section 5(1) of the mortgage act cap 239, the mortgagee must satisfy him/herself that the consent of the spouse given is genuine and informed.

Section 5(1)(a)(i) the terms and conditions must be explained to the spouse or spouses of an applicant for a mortgage in the presence of an independent person.

Section 5(1)(a)(2), Mortgagee should advise spouse to obtain independent advise on the terms and conditions of the mortgage. An independent person is defined under section 5(2) of the mortgage act cap 239, to mean any officer of the Government, a Justice of the Peace, an advocate, a Notary public, bank manager, a minister of any religion authorised to celebrate marriages, a medical practitioner and any other person authorised in that behalf by the Minister by Statutory instrument.

Section 5(1)(b), the spouse or spouses, as the case may be, provide a signed and witnessed document to the effect that they have received independent advice on the mortgage which is being applied for and have understood and assented to the terms and conditions of the mortgage or that they have, notwithstanding the advice from the mortgagee, waived their right to take independent advice.

Regulation 3(1) of the mortgage regulations 2012, For the purpose of sections 4 and 5 of the Act and for the purposes of establishing whether an applicant for a mortgage has a spouse, a mortgagee shall require the applicant to state whether he or she is married and—
(a) where the applicant for a mortgage states that he or she is married, he or she shall make a statutory declaration to that effect stating the name and address of his or her spouse.

Valuation of land

Intending mortgagee will then carry out a valuation of the land to ascertain whether its sufficient security, this is done by a certified valuer. In REHEMA NAMULI V JAMES MULWANA AND 3 ORS H.C.C.S 613/2004 [2013], It was held that the value of the land must be ascertained before the grant.

DOCUMENTS EXPECTED ON THE BANK FILE BEFORE ITS FORWARDED TO THE MANAGER CREDIT FOR APPROVAL OF A LOAN APPLICATION.

Application for the loan: this is the form of an ordinary letter from the person intending to get a loan from a bank expressing his/her interest in the same and it must contain the specific amount of money sought and the security. The application should be accompanied with

A photocopy of the duplicate certificate of title of the land

A consent form signed by the spouse of the applicant in form 2 in schedule 2 of the mortgage regulations under R.19. a) must be accompanied with a marriage certificate or statutory declaration.

Search report from the registry of lands to prove that search was conducted.

Survey report

Valuation report (to show the estimated value of mortgaged property)

INCASE OF A COMPANY.

All the above documents, including the following

A certificate of incorporation of the company

MEMARTS

Board resolution authorizing the company to borrow money

Minutes from the board meeting

Power of attorney incase its not report from the registrar of documents to ensure the authenticity of the POA.

Annual returns of the company

Feasibility report to guage the standing of the company

Check with credit reference beaureau and get a report that shows.

PRE-CONTRACTUAL DUTIES

Mortgagor

Duty to act honestly and in good faith as stipulated under section.3(1)(a) of the mortgage act

Duty to disclose all relevant information relating to the mortgage as stipulated in sect.3(1)(b)

Under section 4(2)(b) an intending mortgagor has a duty to make full disclosure to the intending mortgagee as to his or her marital status and whether or not the property to be mortgaged comprises the matrimonial home. In *NUTTYNTARE V EQUITY BANK H.C.C.S No.16/2015*, Madrama j noted that the duty to act in good faith is the linch pin that assures that the transaction complies with the law and avoids breach of sec.40(1) of the land act cap 236. It ensures that family land or matrimonial property can be mortgaged without controversy. It further protects a financial institution from fraud perpetuated by spouses.

Intending mortgagee.

Duty to act in good faith and honestly as per section 3(1)(a)

Duty to disclose all relevant information relating to the mortgage as per section 4(1)(b) of the M.A cap 239

Under section 4(2)(a) an intending mortgagee shall take reasonable steps to ascertain whether an intending mortgagor is married and whether or not the property to be mortgaged is matrimonial home.

Under section 5(1)(a)(1), mortgagee has a duty to explain to applicants spouse(s) in the presence of an independent person the terms and conditions of the mortgage which is being applied for.

Under section 6(1)(a)(2), mortgagee also has a duty to advise the applicant for the mortgage in writing that he/she should ensure that his/her spouse received independent advice on the terms and conditions of the mortgage being applied for.

SUBSEQUENT DUTIES.

MORTGAGOR

Section 17(1)(a) of the mortgage act cap 239, There shall be implied in every mortgage the following covenants by the mortgagor with the mortgagee binding the mortgagor—(a)except in the case of a mortgagor under a third party mortgage, to pay the principal money on the day appointed in the mortgage agreement, and, so long as the principal money or any part of it remains unpaid, to pay interest on it or on so much of it as for the time being remains unpaid at the rate and on the days and in the manner specified in the mortgage agreement;

to pay all rates, charges, rent, taxes and other outgoings which are at all times payable in respect of the mortgaged land;

to repair and keep in a reasonable state of repair all buildings and other improvements upon the mortgaged land and to permit the mortgagee or his or her agent at all reasonable times until the mortgage is discharged and after reasonable notice to the mortgagor, to enter the land and examine the state and condition of those buildings and improvements;

to insure by insurance or any other means as may be prescribed or as are appropriate, that resources will be available to make good any loss or damage caused by fire to all buildings on the land, and where insurance is taken out, it is done in the joint names of the mortgagor and mortgagee with insurers approved by the mortgagee and to the full value of all the buildings;

in the case of a mortgage of land used for agricultural or pastoral purposes, to use and continue to use the land in a sustainable manner and in accordance with the principles of good husbandry and any conditions subject to which the land is held and to comply with all written laws and lawful orders applicable to that use of the land;

not to lease, or sublease the mortgaged land or any part of it without the previous consent in writing of the mortgagee, but that consent shall not be unreasonably withheld;

not to transfer or assign a lease or a tenancy by occupation or part of it without the previous consent in writing of the mortgagee, but that consent shall not be unreasonably withheld;

according to Regulation 7(1) of the mortgage regulations 2009, a mortgagor has a duty to notify the mortgagee in writing of any change in the address of the mortgagor.

MORTGAGEE

Regulation 4(1) a mortgagee shall not disclose any information about the mortgagor in respect of the mortgage to a third party without the consent of the mortgagor.

Under section 13 (1) of the mortgage act cap 239, the mortgagee has a duty to release the mortgage at any time on payment of all money's and performance of all other conditions and obligations secured by the mortgage.

Under section 11(1)(a) the mortgagee has a duty to serve the mortgagor with a notice of not less than 15 working days of the reduction or increase in the rate of interest.

CREATION OF A VALID MORTGAGE.

A legal mortgage is created by signing a mortgage deed. Under section 2(1) of the mortgage act cap 239, A person holding land under any form of land tenure, may, by an instrument in the prescribed form, mortgage his or her interest in the land or a part of it to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition.

PROCEDURE.

Execute a mortgage deed containing the terms and conditions of the mortgage and this mortgage deed should be registered with the registrar of documents.

Execute a mortgage instrument which is in form 1 in schedule to the mortgage regulations according to regulation 17. Under section 2(1) M.Acap 239, a person holding land may by instrument in the prescribed form mortgage it.

The mortgage instrument shall only take effect when registered as provided for in section 2(4) of the mortgage act.in UGANDA COMMERCIAL BANK V BUSHUYU H.C.C.S NO.153/1994, court held that the mortgage had to be registerd under the RTA and that no remedy is available for the lender unless the mortgage is registered.

Under regulation 17, The mortgage instrument shall be in Form 1 in Schedule 2.

NB: However under section 2(5) of the M.A not withstanding subsection (4) an unregistered mortgage shall be enforceable between the parties. The mortgage instrument must be signed and attested to as required under section 131 of the RTA and it should be in latin character. As in the case of FREDRICK J.K ZABWE V ORIENT BANK AND ORS S.C.C.A NO.4/2006

Sealing the mortgage deed and instumnent. In ECON CONSTRUCTION AND ENGEENERING LTD V GIRO COMMERCIAL BANK LTD AND ANOR (2003) E.A 426, on execution of a mortgage by a company the same must be sealed in the presence of a qualifying witness. However, when a company executes a document it cannot be the witness itself.

Assesment and payment of stamp duty on the mortgage deed. A legal mortgage attracts stamp duty and registration fees which must be duly paid before it become enforceable. In JUMA V HABIB (1978) E.A 128, a mortgage deed is an instrument liable for stamp duty and failure to pay stamp duty renders the deed inadmissiable.

Lodge the mortgage deed and instrument with the registrar of titles together with proof of payment of the prescribed fees (receipts). Attach the duplicate certificate of title, two passport photos of person registering the mortgage. The registrar shall register the mortgage which shall be reflected on the incumbrance page of the certificate of title.

Mortgage deed

Jurisdiction

Law applicable ;mortgage act, mortgage regulations; RTA cap 240

Description of the land

Title of the document

Date

Parties and their parties

Recitals

Terms a) consideration

Interest

Payment method

Security

Covenants

Realisation of security

Disclosure

Power of attorney

Assignment

Release of property

Disputes and governing law

Company seal

Signatures

Witnesses.

ENFORCEMENT ; REMEDIES FOR MORTGAGEE AGAINST THE MORTGAGOR IN DEFAULT.

Section 19 of the mortgage act cap 239 provides that where the mortgagor is in default and doesnot comply with the notice served on him/her under section 18; the mortgagee may;

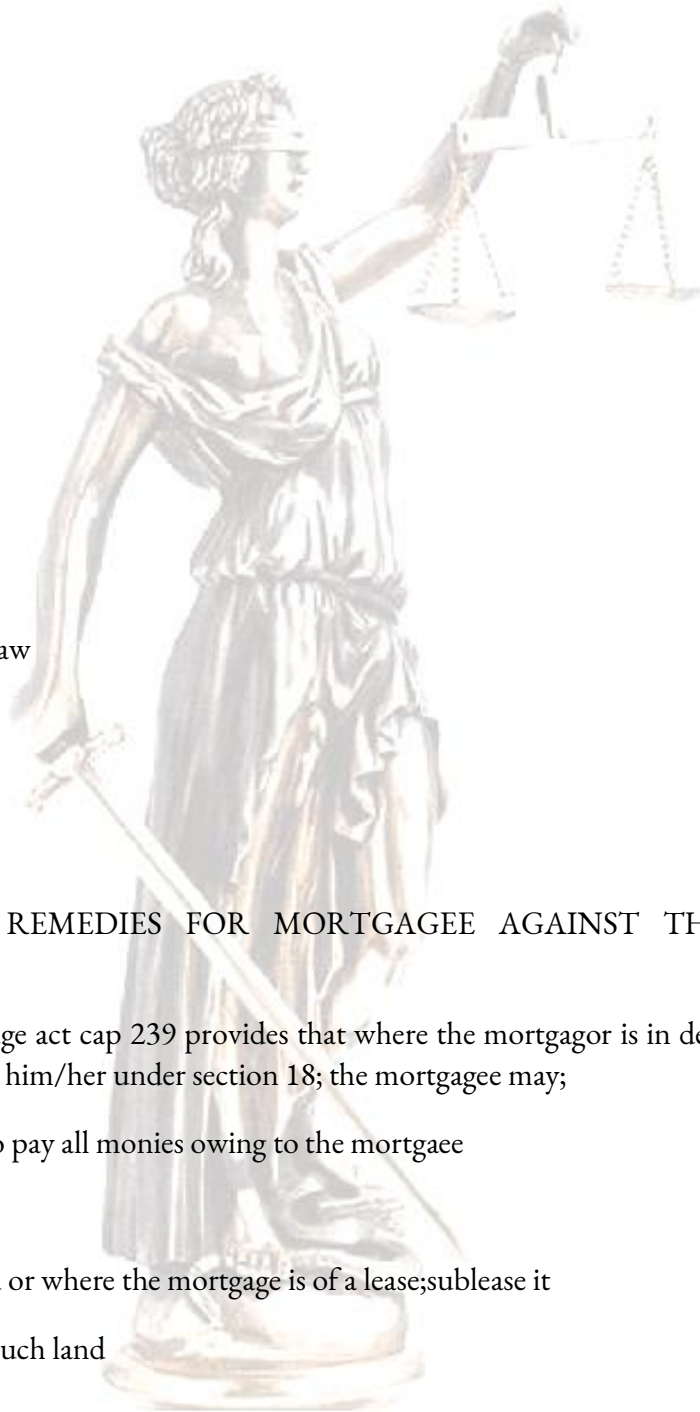
Require the mortgagor to pay all monies owing to the mortgaae

Appoint a receiver

Lease the mortgaged land or where the mortgage is of a lease;sublease it

Enter into possession of such land

Sale the mortgaged land



NOTICE OF DEFAULT

Section 18 (1) of the mortgage act cap 239, where money secured by a mortgage under the act is made payable on demand, a demand in writing shall create a default in payment.

According to section 18(2) M.A, where the mortgagor is in default of any obligation to pay obligation to pay the principal sum on demand or interest or any other periodic payment or any part of it due under any mortgage or in the fulfilment of any covenant or condition express or implied, the mortgagee may serve on the mortgagor a notice in writing of the default and require the mortgagor to rectify the default within 45 working days.

The notice shall be in the prescribed form and shall, according to section 18(3) M.A inform the mortgagor of the following matters-

the nature and extent of the default made by the mortgagor;

where the default consists of the non-payment of any monies due under the mortgage, the amount that must be paid to rectify the default, which amount may be the whole of the monies due under the mortgage, and the time, being not less than twenty one working days, by the end of which the payment in default must have been made;

where the default consists of the failure to perform or observe any covenant, express or implied, in the mortgage, the action the mortgagor must take or desist from taking so as to rectify the default and the time, being not less than twenty one working days, by the end of which the default must have been rectified;(d)

that if the default is not rectified within the time specified in the notice, the mortgagee will proceed to exercise any of the remedies referred to in section19 in accordance with the procedures provided for in this Part.

Section 18(4) of the M.A; A mortgagor will be deemed to be in default warranting the mortgagee to serve upon him or her a notice in writing of the default requiring the mortgagor to rectify the default within the prescribed number of days as stated in sub-section (2) if the mortgagor fails to meet any obligation to pay the principal sum on demand or interest or any other periodic payment or any part of it under the mortgage after a period of 30 days from the date when the obligation to pay becomes due.

Under Regulation 22 of the mortgage regulations, the notice of default to the mortgagor shall be in form 6 in the schedule 2 of the regulations.

In the case of EPAINETI MUBIRU V UGANDA CREDIT AND SAVINGS [1978]HCB 109, court observed that service of notice is mandatory and the mortgagor should be served personally. The mortgagor will be deemed to be in default if he/she fails to meet any obligation after the notice period from the date when the obligation to pay became due.

REMEDIES

1. REQUIRING MORTGAGOR TO PAY ALL THE MONIES OWING ON THE MORTGAGE.

The remedy is established under section 19(a) of the mortgage act cap 239. Under section 20(1) M.A The mortgagee may sue for the money secured by the mortgage only in the following cases—(a)where the mortgage deed provides that if there is default by the mortgagor, the money secured by the mortgage becomes payable in full

Section 20(2), an action shallnot be commenced under subsection (1) untill the timefor complying with the notice served under section 18 has expired.

NB;Section 20(3), The court may, on the application of the mortgagor or a surety, order a stay of any proceedings brought under this section, until the mortgagee has exhausted all his or her other remedies against the mortgaged land, unless the mortgagee agrees to discharge the mortgage on payment of the money secured by the mortgage.

STEPS/ENFORCING THIS REMEDY

Before suing for its money secured by the mortgagee under section 20(1)(a), the mortgagee will

- a) serve on the mortgagor a notice of default in writing and require him/her to rectify the default within 45 working days as provided under Section 18(2) M.A. the notice shall state the nature and extent of the default, the amount to be paid and the time being not less than 21 working days by the end of which the payment in default must have been made as provided under section 18(3)(b) M.A

According to Regn 22 of the mortgage regulations, the notice shall be in form 6 schedule 2 of the regulations.

- b) Where te time for complying with the notice of default served under section 18 has expired, the mortgagee will then go ahead and commence an action against the mortgagor for the money secured by the mortgage as provided under section 20(2) M.A. The mortgagee shall proceed summarily under section 2(9) of the mortgage act cap 239,is to the effect that a sum secured by a mortgage shall be deemed to be a civil debt recoverable summarily.

The suit shall be brought by way of a specially endorsed plaint under ORDER 36 R 2 CPR for recovery of the debts with or without interest. The plaint shall be accompanied by an affidavit made by the mortgagee verifying the cause of action and the amount claimed and also stating in its belief that there's no defence to the suit.

FORUM

- Pecuniary jurisdiction will dictate

- Highcourt of Uganda since under article 139 of the 1995 constitution of Uganda.

2. APPOINTMENT OF THE RECEIVER OF THE INCOME OF THE MORTGAGED LAND

Its established under section 19(d) M.A. Under section 21(1), its implied come in every mortgage that the mortgage has the power to appoint a receiver of the income of the mortgaged land. A receiver is defined under section 1 to mean a receiver or a manager respect of any land and includes any person appointed as receiver-

- a) By or under any document
- b) By the court in exercise of a power to make such an appointment whether or not the person appointed is empowered to sale any of the property in receivership.

Section 21 (6) M.A, the receiver appointed shall be deemed to be the agent of the mortgagor for the purposes for which he/she appointed and the mortgagor shall unless the mortgage instrument provides otherwise be solely responsible for the acts and defaults of the receiver.

Secton 22(7) M.A, the receiver shall have the power to demand and recover all the income to which he/she is appointed receiver by action or otherwise in the name of the mortgagor and to give valid receipts for it.

In JOHN VARJEE V SIMON KALENZI AND ORS CACA NO.71/2000, court noted that receivers are in law the agent of the debtor company, they hold the property to pay the debts of the company.

In LOCHAB BROS V KENYA FURFURD (1985) LC Comm 77, court noted that a receiver in mortgagees is appointed to take care of and receive properly of a charge, his appointment doesnt rest any property in him.

The monies received by the receiver shall be appointed in and towards the discharge of the principal sum secured by the mortgage among others as provided under Section 22(9)

STEPS FOR ENFORCEMENT.

Before appointment of a receiver, the mortgage shall;

- a) Issue notice of default to the mortgagor
- b) Where there;s non compliance by the mortgagor with the notice, the mortgagee will then appoint a receiver of the income of the mortgaged land under section 19(a).

Before appointing a receiver, it's a statutory requirement that the mortgagee serves a notice of appointment of receiver on the mortgagor and shallnot proceed until 15 working days have lapsed from the date of the service of the notice as stipulated under Section 21(2) M.A

Regulation 23 of the mortgage regulations is to the effect that the notice to the mortgagor for appointment of a receiver shall be in Form 7 in Schedule 2 to the regulations.

This appointment shall be in writing and signed by the mortgagee as stipulated under Section 21(3) M.A

NB; In the alternative, Under section 21(4), the mortgagee may apply to the court for the appointment of a receiver and such application maybe made in an interlocutory application. This shall be by way of notice of motion under Order 52 R 1 and 3

The ground shall be appointment of a receiver in respect of the mortgaged land. The notice of motion shall be supported by a valid affidavit which shall be served on the mortgagor.

2. LEASING THE MORTGAGED LAND.

This remedy is established under section 19(c) M.A,

According to section 22(1) M.A,the mortgagee has power to lease the mortgaged land and it states that a mortgagee shall unless the mortgage instrument expressly provides to the contrary, have power subject to the act and any other law applicable to the leasing of land; to grant leases in respect of the mortgaged land or any part of it and may for that purpose execute in place of the mortgagor any instrument required to execute the lease.

STEPS FOR ENFORCEING THE REMEDY

1. Serve a notice of default on the mortgagor.
2. Where there is non- compliance by the mortgagor with the notice served on him, the mortgagee will proceed to lease the mortgaged land as provided for under section 19(c) and may for that purpose execute in place of the mortgagor any instrument required to execute that lease under section 22(1)

Before granting a lease, the mortgagee shall serve a notice on the mortgagor in the prescribed form and shall not proceed with the granting or execution of that lease until 15 working days have lapsed from the service of the notice as stipulated under section 22(2) M.A

Regulation 24 of the mortgage regulations, the above notice shall be in FORM 8 in schedule 2

TERMS OF THE LEASE.

Under Section 22(3) M.A, every lease granted by the mortgagee shall:

- a) reserve the best rent that can reasonably be obtained, having regard to the circumstances of the case;
- b) be for a term not exceeding fifteen years or the length of the term of the mortgage whichever is the shorter;

- c) contain any terms and conditions which are reasonable, having regard to the interests of the mortgagor and of any other persons having an interest in the mortgaged land;
- d) if prior to granting a lease, the mortgagee has appointed a receiver under section 21, contain a declaration that the lender has appointed a receiver, stating the date of the appointment.

3. The mortgagee shall then enter into a lease agreement with the lessee and this shall be in the form provided in the 8th Schedule to the RTA. It shall be in writing as stipulated under section 101 of the RTA

The lease shall then be registered in order to be effectual as provided for under Section 54 RTA

3. ENTERING INTO THE MORTGAGED LAND.

This remedy is established under section 19 (d) M.A, under Section 24(1) M.A, a mortgagee may after the end of the period specified in section 18, and after serving a notice of not less than 5 working days of his/her intention to do so, enter into possession of the whole or part of the mortgaged land.

According to section 23(2), a mortgagee may exercise the power of entering into possession of the mortgaged land by—

- (a) entering into and taking physical possession of the land or a part of it during the day time using only such force as shall be reasonable in the circumstances;
- b) asserting management or control over the land by serving a notice in the prescribed form requiring any lessee of the mortgagor or any other occupier of the land to pay to the mortgagee any rent or profits which would otherwise be payable to the mortgagor; or
- (c) an order of court.

Under section 23(3), The mortgagee shall be regarded as being in possession on the date—(a) on which he or she enters into possession in accordance with subsection (2)(a) or (c); or (b) on which he or she first receives any rent or profit from the land.

Under section 23 (4) A mortgagee who has entered into possession may remain in possession, without prejudice to his or her right to withdraw from possession, so long as the mortgaged land continues to be subject to any liability under the mortgage.

(5) A mortgagee in possession of any mortgaged land—

- (a) by occupation, shall be entitled to manage the land and take all the profits of the land, but is liable to the borrower for any act or omission by which the value of the land, or any building on, or other permanent improvement to the land is impaired or the mortgagor otherwise suffers loss;

b) whether by occupation or by receipt of rents and profits shall be accountable to the mortgagor not only for the sums actually received by him or her, but also for any additional sums which he or she might reasonably have been expected to receive by the prudent exercise of his or her powers;

(c) where the mortgaged land is leased, is liable to the mortgagor to observe and perform all the covenants and conditions contained or implied by any rule of law or custom in the lease subject to which the mortgaged land is leased; and

(d) may renew a lease granted by the mortgagor on the same terms as the original lease but may not otherwise grant any lease out of the mortgaged land.

(6) A mortgagee in possession shall apply all the monies received by him or her to the same payments and in the same order as apply to a receiver and as set out in section 21(9); except that a mortgagee in possession is not entitled to receive any payments under subsection 21(9)(c).

(7) A person on whom a notice under subsection (1) has been served shall forthwith comply and continue to comply with that notice until—

(a) a notice of withdrawal in the prescribed form is served on that person by the mortgagee in possession;

(b) the mortgagee in possession withdraws from that possession; or

(c) a court orders the mortgagee in possession to withdraw from possession.

STEPS TO ENFORCE THE REMEDY.

1. Serve a notice of default on the mortgagor as required under section 18 of the M.A
2. Where the non-compliance by the mortgagor with the notice served on him, the mortgagee will then proceed to enter into possession of the mortgaged land as provided under section 19(d)
3. Before entering into possession, section 23(1) M.A requires that at the end of the period specified in section 18, the mortgagee shall serve a notice of not less than 5 working days of his/her intention to take possession on the mortgagor.

According to Regulation 26 mortgage regulations, this notice before taking possession shall be in Form 10 Schedule 2. after the mortgagee will take possession of the whole or part of the mortgaged land as stipulated under Section 23(1).

4. SALE OF THE MORTGAGED LAND

This remedy is established under Section 19(e) M.A, according to section 25 (1), Where a mortgagor is in default of his or her obligations under a mortgage and remains in default at the expiry of the time provided for the rectification of that default in the notice served on him or her under Section 18(3), a mortgagee may exercise his or her power to sell the mortgaged land.

Section 27(1) of the M.A, Where a mortgagee becomes entitled to exercise the power of sale, that sale may be—

- (a) Of the whole or a part of the mortgaged land;
- (b) Subject to or free of any mortgage or other encumbrance having priority to the mortgagee's mortgage;
- (c) By way of subdivision or otherwise;
- (d) by public auction, unless the mortgagor consents to a sale by private treaty;
- (e) with or without reserve; and
- (f) subject to such other conditions as the mortgagee shall think fit, having due regard to the duty imposed by Section 26(1).

Under section 26(1) M.A A mortgagee who exercises a power to sell the mortgaged land, including the exercise of the power to sell under an order of a court, owes a duty of care to the mortgagor, any surety of the whole or any part of the sums advanced to the mortgagor, any mortgagee under a subsequent mortgage including a mortgage on customary land or under a lien, to take all reasonable steps to obtain the best price as prescribed in the regulations.

Under section 26(2), A mortgagee shall not be entitled to any compensation or indemnity from the mortgagor, any former mortgagor or any surety in respect of any liability arising from a breach of the duty imposed by subsection (1).

Section 28(1), A purchaser in a sale effected by a mortgagee acquires good title except in a case of fraud, misrepresentation or other dishonest conduct on the part of the mortgagee of which the purchaser has actual or constructive notice.

Section 29 (1), The following shall not be permitted to purchase the mortgaged land without the leave of court—

- (a) a mortgagee;
- (b) an employee of the mortgagee or an immediate member of his or her family;
- (c) an agent of the mortgagee or an immediate member of his or her family;
- (d) any person in a position to influence the matter directly or indirectly; or
- (e) a person in position of any other privileged information with regard to the transaction.

Section 30, order of priority to apply the proceeds from the sale.

STEPS TO ENFORCE THE REMEDY.

- a) Serve a notice of default onto the mortgagee as required under section 18
- b) Where there's non-compliance by the mortgagor with the notice served on him, the mortgagee will then proceed to sell the mortgaged land as provided for under section 19(e)

According to section 25(1), where the mortgagor is in default of his/her obligations under the mortgage and continues in default at expiration of time provided in the default notice mortgagee may exercise his/her power to sell

- c) Serve a notice to sell

Under section 25(2), before exercising the power to sell the mortgaged land, the mortgagee shall serve a notice to sell on the mortgagor and shall not proceed to complete any contract for sale of the mortgaged land until 21 working days have elapsed from the date of service of the notice to sell. Under regulation 25; notice in form 9

Section 25 (3), requires a copy of the notice to sell to be served on;

- a) a mortgagor;
- b) any spouse or spouses of the mortgagor in respect of a matrimonial home;
- c) a surety;
- d) the independent person as provided under this Act; or
- e) in case of customary land, the children and the spouse or spouses.

4. MODE OF SALE

- a) sale by public auction

Section 27(1)(d), sale may be by public auction.

Section 27(2), Where a sale is to proceed by public auction, it shall be the duty of the mortgagee to ensure that the sale is publicly advertised in advance of the sale by auction in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the mortgaged land may include but not be limited to the mortgagee placing an advert including a colour picture of the mortgaged property, in a newspaper which has wide circulation in the area concerned, specifying the place of the auction, and the date of the auction, being no earlier than thirty days from the date of the first advert.

Under Regulation 8(1), a mortgagee exercising a power of sale shall subject to the act and these regulations sell the mortgaged property by public auction.

Regulation 8(2), after giving the notice required by section 25, the mortgagee shall give notice of the public auction by advertising the intended sell in a newspaper of wide circulation.

Regulation 8(3), the advertisement shall include a coloured picture of the mortgaged property and specify

- a) the time and place of sell a
- b) the time at which the property maybe viewed by the public.

Regulation 8(4), a sale shallnot take place before the expiration of 21 working days from the date of service of the notice as specified in section 25.

Under Regulation 8(5), A person who contravenes this regulation commits an offence and is liable on conviction to a fine not exceeding seventy two currency points or imprisonment not exceeding three years or both

Regulation 13(1), The court may on the application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of a security deposit of 30% of the forced sale value of the mortgaged property or outstanding amount.

Regulation 14 (1),at the fall of the hammer, the person declared purchaser shall within one working day pay a deposit of atleast 30% of the purchaser amount to the officer conducting the sale.

Where the purchaser defaults in paying the deposit, the property is resold as per regulation 14(2). The balance shall be paid to the officer who conducted the sale within 21 working days.

b)Sale by court order /foreclosure

Regulation 9, where court makes an order for sale of mortgaged property, the slae shall be conducted in the manner directed by court. The procedure is by originating summons for the relief of sale or foreclosure and it should be supported by an affidavit, in GENERAL PARTS (U) LTD V N PART S.C.C.A 5/1999; an application for foreclosure is by originating summons and not notice of motion.

In FARNOL EADES V IRVINCE AND CO LTD (1975) 1 CH 22 AT 24, wammington J stated that foreclosure is done by the order of court not by any other person.

- c) Sale by private treaty.

Under section 27(1)(d) the sale maybe by public auction unless the mortgagor consents to a sale by private treaty.

Regulation 10(1), a mortgagee exercising a power of sale under the act with the consent of the mortgagor may sell the mortgaged property by private treaty.

Consent of the mortgagor shall; subject to section 25, be by written notice as per Regulation 10(2) and under regulation 10 (3), a mortgagors consent shall not be retrospective.

5.Valuation of mortgaged property

Regulation 11(1), the mortgagee shall before selling the property value the property to ascertain the current market value and the forced sale value of the property. And the valuation report shall not be made more than 6 months before the date of sale.

In the case of *CUCKMERE BRICK CO LTD V MUTUAL FINANCE LTD (1971) 2 ALL ER 623*, it was stated that a mortgagee must not disregard the mortgagor's interest but must take reasonable care to obtain the true market value of the mortgaged property at the moment he chooses to sell it.

The valuation report, according to regulation 11(3) shall contain the current pictures of the property including

- a) The front view of the property; side view and the detailed description of the property.

Regulation 12(1), requires the mortgagor who is in possession of the mortgaged property at the time of sale, the mortgagor shall, upon notice, give access to the mortgaged property to—

- (a) the person authorized by the mortgagee to value the property;
- (b) persons inspecting the property after advertisement for the purposes of purchase.

Where the mortgagor refuses to give access to mortgaged property, the mortgagee shall take possession of the property for the purpose of valuation and inspection at the mortgagors cost.

5. TRANSFER

Under Reg 15, after payment of the full purchase price, the mortgagee shall execute instruments of transfer of the propert in the name of the purchaser or the person named by the purchaser.

Section 27(3) of the M.A is to the effect that; A transfer of the mortgaged land by a mortgagee in exercise of his or her power of sale shall be made in the prescribed form and the registrar or recorder, shall accept that form as sufficient evidence that the power has been duly exercised.

According to regulation 21(2), a transfer of a mortgage under the act shall be in Form 5 in Schedule 2.

Under section 27(4) Of the M.A, Upon registration of the transfer by a registrar or recorder, the interest of the mortgagor as described in it shall pass to and vest in the purchaser free of all liability on account of the mortgage,

or on account of any other mortgage or encumbrance to which the mortgage has priority, other than a lease or easement to which the mortgagee had consented in writing.

Protection of the purchaser

Section 28(1) of the M.A, A purchaser in a sale effected by a mortgagee acquires good title except in a case of fraud, misrepresentation or other dishonest conduct on the part of the mortgagee of which the purchaser has actual or constructive notice.

Section 28(2) A purchaser is not—(a) answerable for the loss, misapplication or non-application of the purchase money paid for the mortgaged land;(b) obliged to see to the application of the purchase price;

Section 28(4) , A purchaser prejudiced by unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the mortgagee exercising that power.

Regulation 16(1) of the mortgage regulations is to the effect that An irregularity in conducting a sale by public auction shall not vitiate the sale, but any person suffering loss or injury as a result of the irregularity may bring an action for damages or compensation against the mortgagee or the person who conducted the sale.

Regulation 16(2) Where a person suffering loss or injury as a result of irregularity in conducting a sale by public auction is the purchaser, that person may bring an action for declaration of ownership

Regulation 16(3) Any person suffering loss as a result of irregularity by private treaty may sue the mortgagee for breach of contract.

A mortgagee can apply to court for relief against the exercise by the mortgagee of any of the remedies referred in section 19-section 32(1)

REMEDIES OF PARTIES AGGRIEVED BY TERMS OF CONDITIONS OF A MORTGAGE.

Under section 33 M.A; where a mortgage has been obtained—

- a) Through fraud, deceit, or misrepresentation by the mortgagor; or
- b) in a manner or containing a provision which is unlawful;the court may review the mortgage on application by the persons mentioned in section 34 in the interest of justice.

Section 34(1) An application to the court to exercise any of the powers conferred upon the court by section 33 may be made—a) by the mortgagor or mortgagee;

- b) if two or more persons are joint mortgagors or joint mortgagees, by one or more of them on their own behalf;
- (c) by a spouse or spouses of the mortgagor;
- (d) by the trustee in bankruptcy of the mortgagor;
- (e) by a trustee in bankruptcy, receiver or liquidator of the mortgagee; or
- (f) by a surety.

Section 34(3) of the M.A; an application under subsection (1) may be made—

- (a) at any time before the mortgagor has obtained a discharge of the mortgage; or
- (b) On an application by the mortgagee to the court for an order for possession or the execution of such an order.

Section 35 (1) of the M.A Upon an application made under section 33, the court may—

- a) declare the mortgage void;
- b) direct that the mortgage shall have effect subject to such modifications as the court shall order; or
- c) Require the mortgagee to repay the whole or part of any sum paid under the mortgage or any related or collateral agreement by the mortgagor or any surety or other person who assumed an obligation under the mortgage whether it was paid to the mortgagee or any other person.

Section 35(2); the court shall not declare a mortgage void unless it is satisfied that the circumstances justify it.

Section 35(3); where an application is made on the grounds that the mortgage contains any provision which is unlawful, unconscionable or extortionate the court shall to the greatest extent possible, upholds the mortgage with the omission of the unlawful, unconscionable and extortionate provision.

Section 35(4) Where an application is made on the grounds of the exercise of undue influence or other unconscionable conduct, and two or more persons are joint mortgagors or mortgagees, and those grounds are proved to the satisfaction of the court, the court shall uphold the mortgage to the extent of the interests of the joint mortgagors or mortgagees upon whom undue influence was not exercised.

PROCEDURE.

An application to review the mortgage is made by way of notice of motion supported by a valid affidavit under ORDER 50 R 1 AND 3

CREATION OF FURTHER CHARGE

A further charge can be created where the mortgagee gives further advances or to give created to the mortgagor on a current or continuing account however the sma should have been provided for in the mortgage instrument as stipulated under section 9 (1) of the mortgage act and this arrangement is known as “taking”

Under regulation 5(1) of the mortgage regulations; where a mortgage includes a right to tack, the right shall be clearly and prominently specified in the mortgage instrument.

Regulation 5(2) for the purposes of sub regulation (1), the cover or first page of the mortgage instrument shall be clearly marked “mortgage with right to tack.”

Regulation 5(3), the registrrr shall when recording the mortgage, specify the right to tack in the register.

Under section 9(2) M.A, A further advance referred to in subsection (1) shall not rank in priority to any subsequent mortgage unless—

- (a)the provision for further advances is noted in the register in which the mortgage is registered; or
- (b)the subsequent mortgagee has consented in writing to the priority of the further advance.

Nb; Section 9(3) of the M.A there shall be no right to tack except as provided for under this section.

Section 9(4) of the M.A, Where a mortgage provides for the payment of a principal sum by way of instalments, the payment of those instalments shall not be taken to be a further advance and such payment shall rank in priority to all subsequent mortgages.

VARIATION OF A MORTGAGE

Variation is provided for under section 11 of the mortgage act

Under section 11 (1) of the mortgage act; The rate of interest payable under a mortgage may be reduced or increased by a notice served on the mortgagor by the mortgagee which shall—(a)give the mortgagor not less than fifteen working days’ written notice of the reduction or increase in the rate of interest;(b)state clearly and in a manner which can be readily understood, the new rate of interest to be paid in respect of the mortgage;(c)state the responsibility of the mortgagor to take such action as he or she is advised by the notice to take to ensure that the new interest rate is paid to the mortgagee.

Section 11(2) of the MA. The amount secured by a mortgage may be reduced or increased by a memorandum which—(a)complies with subsection (5); and(b)is signed—(i)in the case of a memorandum of reduction, by the mortgagee; or(ii)in the case of a memorandum of increase, by the current mortgagor; and(c)states that the principal moneys intended to be secured by the mortgage are reduced or increased as the case may be, to the amount or in the manner specified in the memorandum.

Section 11 (3) of the M.A;The term or currency of a mortgage may be shortened, extended or renewed by a memorandum which—(a)

a) complies with subsection (5);

b) is signed by the current mortgagor and by the mortgagee; and

(c)states that the term or currency of the mortgage is shortened, extended or renewed, as the case may be, to the date or in the manner specified in the memorandum.

Section 11(4) of the M.A ;The covenants, conditions and powers expressed or implied in a mortgage may be varied, but not so as to impose any significantly greater burdens on the borrower than those set out in section 16, by a memorandum which—

(a)complies with subsection (5);

(b)is signed by the current mortgagor and the mortgagee; and

(c)states that the covenants, conditions and powers expressed or implied in the mortgage are varied in the manner specified in the memorandum.

Section 11 (5)of the M.A; A memorandum for the purposes of subsections (2), (3) and (4)—

(a)shall be endorsed on or annexed to the mortgage instrument; and

(b)when so endorsed or annexed to the mortgage instrument, operates to vary the mortgage in accordance with the terms of the memorandum.

DISCHARGE OF A MORTGAGE

Section 13(1) of the mortgage act Subject to this section and section 14, on the payment of all moneys and the performance of all other conditions and obligations secured by the mortgage, and on the payment of any costs and expenses properly incurred by the mortgagee in exercising any of his or her rights under the mortgage, the mortgagee shall at the request and cost of the mortgagor release the mortgage at any time and any agreement or provision in the mortgage instrument or otherwise which—(a)purports to deprive the mortgagor of that right;(b)seeks to fetter the exercise of that right; or(c)stipulates for a collateral advantage which is unfair and unconscionable and inconsistent with the right to discharge, is void.

Sub- section (2)A discharge whether of the whole or a part of a mortgage shall be made in the prescribed form.

Regulation 20 of the mortgage regulations; a release or discharge of a mortgage by the mortgagee shall be in Form 3 in schedule 2

RELEASE OF MORTGAGE.

Section 14 (1) of the mortgage act ; Upon the presentation for registration of a release of a mortgage registered under the Registration of Titles Act or the Land Act in the prescribed form signed by the mortgagee or his or her transferees, attested by one witness and discharging wholly or in part the land or any portion of the land from the mortgage, the Registrar or Recorder as the case may be shall and upon payment of the prescribed fees, make an entry of the release upon the original and duplicate certificate of title or certificate of customary ownership evidencing the time and date of the registration.

Sub section (2); upon the entry being made under subsection (1), the land affected by the release shall cease to be subject to the mortgage to the extent stated in the release.

TRANSFER OF A MORTGAGE.

Section 16(1) of the mortgage act the current mortgagor or any person mentioned in subsection (3) may at any time, other than a time when the mortgagee is in possession of the mortgaged land, in writing request the mortgagee to transfer the mortgage to a person named in the written request.

Sub section (2); the current mortgagee may at any time transfer the mortgage by a transfer in a prescribed form and shall give notice of the transfer to the mortgagor.

Regulation 21(1), a transfer of a mortgage under the act shall be in form 4 in schedule 2

Section 16(3) of the M.A Subject to the consent of the mortgagor, which consent shall not be unreasonably withheld, the persons who may make the written request under subsection (1) are any—

- (a) person who has an interest in the land which has been mortgaged;
- (b) surety for the payment of the amount secured by the mortgage;
- (c) creditor of the mortgagor who has obtained a decree of sale of the mortgaged land.

SUB SECTION (4); Where the consent required by subsection (3) is withheld, a person aggrieved by the withholding of the consent may appeal to the court for an order requiring the mortgagor to show cause why the mortgagor cannot give consent, and the court may, in its discretion, dispense with the consent.

SUB SECTION (5); The mortgagee, on receiving a written request made under subsection (1) and on payment by the person or persons making the request of all monies which would have been payable if the discharge of the mortgage had been made under section 13, and the performance of all other obligations secured by the mortgage, shall transfer the mortgage to the person named in the written request.

SUB SECTION (6); Any express or implied term in a mortgage instrument which conflicts with this section is void.



GUARANTORHIPS

Principles on Guarantorship.

A contract of guarantee is defined in S. 67 Contracts Act cap 284, to mean a contract to perform a promise or to discharge the liability of a third party in case of default of the third party which may be oral or written.

A guarantor means a person who gives a guarantor means a person who gives a guarantee.

Principal debtor means a person in respect of whose default a guarantee is given.

S.69 Contracts Act cap 284 – anything done or any promise made for the benefit of a principal debtor may be sufficient consideration to a guarantor to give a guarantee.

In *WARDENS AND COMMONALITY OF THE MYSTERY OF MERCERS OF CITY LONDON V NEW HAMPSHIRE LNUSRANCE CO* (1993) 3 J Phillips J cited with approval the definition of a guarantee which is given in Halsbury’s laws of England 4th edition para 101 as an accessory contract by which the promisor undertakes to be answerable to the promise for the debt, default or miscarriage of another person who primary liability to the promise must exist or be contemplated.

In *PAUL KASSAGA AND ANOR V BARCLAYS BAK (U) LTD* H.C.M.A113/2008, justice Lameck defined a guarantee as a contract whereby a person contracts with another to pay a debt of a third party who not withstanding remains primarily liable for such payment.

According to Goode commercial law Penguin books 1995 at page 21, the contract of guarantee has three parties i.re the creditor to whom guarantee is given, the guarantor or surety who gives the guarantee and the principle debtor in respectof whose default a guarantee is given.

Under section 67 of the contracts ACT , creditor means a person to whom a guarantee is given. A “guarantor” means aperson who gives a guarantee. “principal debtor” means a person in respect of whose default a guarantee is given.

Under section 69 of the contracts act anything done or any promise made for the benefit of the principl debtor maybe sufficient consideration for a guarantor to give guarantee

CHARACTERISTICS OF A CONTRACT OF GUARANTY

1. secondary liability

this is because the principal debtor remains primarily liable. There's no liability on the part of the guarantor until the principal has failed to pay. In PAUL KASAGGA AND ANOR V BARCLAYS BANK (U) LTD H.C.M.A 113/2008, court stated that the nature of a contract of guarantee involves a guarantee's obligation as secondary and accessory to the obligation the performance of which is guaranteed. The guarantor undertakes that the principal debtor will perform his obligation to the creditor and that the guarantor will be liable to the creditor only if the principal debtor doesnot perform.

Therefore the guarantor is only liable for that sum that the principal debtor is liable to pay

2. the creditor must be a party to the agreement

its essential that the creditor must be a party to the contract because he is the person to whom the guarantor makes a promise to be answerable for the debt, miscarriage or default of the principal.

Types of guarantees.

- a) Bipartite and Tripartite; this is the simplest form of guarantee and its one in which the creditor, principal debtor and guarantor are all parties to the contract nd the three agree that the principal is to be primarility liable and that the guarantors liability is secondary.
- b) Continuing guarantee; under section 67 of the contracts act cap 284, a continuing guarantee means one which extends to a series of transacions
- c) Demand guarantee; this kind of guarantee contains an express stipulation that the surety is to be liable to make payment to the creditor on demand. However, the fact that the obligation of the principal is to pay on demand will not automatically mean that the creditor is obliged to make a demand on the surety.

DUTIES AND LIABILITY OF GUARANTOR

Duty

The primary duty of a guarantor is to ensure that the principal debtor pay off the debt.

In MOSCHI V LEP AIR SERVICES [1972] 2 ALL ER 393, a contract of guarantee gives the guarantor an obligation to see to it that the debtor perfomes his obligations to the creditor.

Liability

Under section 70 (1) of the C. A, The liability of a guarantor shall be to the extent to which a principal debtor is liable, unless otherwise provided by a contract.

Under section 70 (2) of the C.A; For the purpose of this section, the liability of a guarantor takes effect upon default by the principal debtor.

In the case of DFCU V MANJIT KENT AND ANOR H.C.C.S 193/2000, court held that the liability of a guarantor is dependent on the contract and that a guarantor is favored debtor who is entitled to insist upon the rigid adherence to the terms of his obligation by the creditor and cannot be made liable for more than he has undertaken

RIGHTS OF GUARANTORS.

Right of a guarantor on payment or performance.

Section 80 of the C.A; Where a guaranteed debt becomes due or where default of a principal debtor to perform a guaranteed duty takes place, the guarantor is on payment or performance of all that the guarantor is liable for, invested with all the rights which the creditor had against the principal debtor.

Right of guarantor to benefit from securities of creditor

Section 81 of the C.A ;A guarantor is entitled to the benefit of every security which a creditor has against a principal debtor at the time a contract of guarantorship is entered into, whether the guarantor knows of the existence of the security or not.

(2) Notwithstanding subsection (1), where a creditor loses or parts with the security, without the consent of the guarantor, the guarantor is discharged to the extent of the value of the security.

DISCHARGE OF GUARANTOR

RIGHT TO BE DISCHARGED OR RELEASED.

The general rule is that a guarantor has the right to be discharged or released. The law provides for a number of circumstances that can result in the discharge or release of the guarantor. In the first instance since the guarantor's liability is limited to that of the principal indebtedness, it follows that if the guaranteed debt is paid. Then he/she is discharged.

Under section 73 of the contracts act; Any variance made in the terms of a contract between a principal debtor and a creditor without the consent of a guarantor discharges the guarantor from any transaction which is subsequent to the variance.

Discharge of guarantor by release or discharge of principal debtor; under section 74 of the C.A A guarantor is discharged by any contract between a creditor and a principal debtor, where the principal debtor is released or where an act or omission of the creditor, discharges the principal debtor.

Discharge of guarantor when creditor compromises with, gives time to or agrees not to sue; under section 75 of the C.A; contract between a creditor and a principal debtor where the creditor makes a compromise with the principal debtor or promises to give time to or not to sue the principal debtor, discharges the guarantor unless the guarantor assents to the contract.

NB; under section 76 of the C.A, Where a contract to give time to a principal debtor is made by a creditor with a thud person and not with the principal debtor, the guarantor is not discharged.

Further under section 77 of the C.A; Mere forbearance on the part of a creditor to sue a principal debtor or to enforce any other remedy against the principal debtor, does not, in the absence of any provision in the guarantee to the contrary, discharge the guarantor.

Discharge by an act or omission by creditor. Under section 79, A guarantor is discharged where the eventual remedy of the guarantor against a principal debtor is impaired, because a creditor—

- (a) does any act which is inconsistent with the right of the guarantor; or
- (b) omits to do any act which his or her duty to the guarantor requires him or her to do.

In REHEMA NAKIBUKA V BANK OF BARODA H.C.C.S NO.1492/1999 Justice Lugaizi observed that as to whether the guarantor's responsibility will be discharged depends on the answers to two questions i.e 1. Whether there was a breach of contract or arrangement in question and 2. If so, whether the breach was fundamental.

e)where creditor loses or parts with security under section 81(2) contracts act where a creditor loses or parts with the security without the consent of the guarantor the guarantor s discharged to the extent of the value of the security.

VITIATING FACTORS

Misrepresentation under section 82. In the case of Mckenzie v royal bank of canade (1934) A.C 468, a contract of guarantee like any other contract is liable to be avoided if induced by material representation of existing fact

Mistake of fact under section 16(1) and (2)

Undue influence under section 13(1), (2) and section 15

MONEY LENDING

A MORTGAGE CONTRA-DISTINGUISHED FROM A MONEY LENDING TRANSACTION.

Money lending in Uganda is governed by PART V of the tier 4 microfinance institutions and money lenders act cap

A money lender is defined in section 5 of the act to mean a company licenced under section 79. Under section 78(1); a person intending to engage in money lending business shall be a company. An application for a money lending licence shall be made in writing to the authority as stipulated under section 78 (3) and a licence shall be issued under section 79.

Section 85(1), states that a money lending contract shall be in writing and shall be signed by the money lender and borrower and shall be witnessed by a third party.

Section 85 (2) the contract shall take the form of a note or memorandum which shall contain all the terms of the contract and in particular shall show;

- a) The date on which the loan is disbursed
- b) The amount of the principal of the loan
- c) The interest charged on the loan expressed in terms of a percentage per year
- d) The nature of the security if any
- e) The duties and obligations of the borrower
- f) The mode of repayment
- g) The nature of guarantorship if any
- h) The right to early repayment

Regulation 23 of the tier 4 MIMLA (MONEY LENDERS) REGULATIONS 2018, elaborates what is contained in a money lending contract

Under section 86(1) MIMLA act, a money lending contract is illegal and unenforceable if it directly or indirectly provides for;

- a) The payment of compound interest

- b) The rate of amount of interest being increased by reason of a default in the payment of sum due under the contract

Under section 86(2), where a borrower defaults to pay the sum payable to the money lender on the due date, the money lender is entitled to charge simple interest on that sum from the date of default until the sum is paid.

According to section 98(1)(c) MIMLA this part shall not apply to a money lending transaction where the security for repayment of the loan and interest on the loan is effected by execution of a legal or equitable mortgage upon immovable property or of a charge upon immovable property or of any bona fide transaction of money lending upon such mortgage or charge.

DUTIES OF MONEY LENDERS

Under regulation 17 (1) Tier 4 MIMLA regulations 2018, a money lender shall be under a duty to –

furnish the borrower with a copy of the loan agreement; including all annexures;

display interest rate charges at all times in a conspicuous place at the premises where the money lending business is conducted;

keep and maintain records including proper books of accounts, a cash book, ledger, register of securities, register of debtors and such other books of accounts in such form and in such manner as the Authority may require;

maintain a physical address and notify the Authority of any change in address within seven days after the change;

(e) maintain and retain records relating to the money lending business for a period of ten years;

(f) provide records on request by the Authority



EXPROPRIATED PROPERTIES



EXPROPRIATED PROPERTIES

What is expropriated property?

Section 2 of the Expropriated Properties Act Cap. 87 definition expropriated properties to include: -

Any property or business which was:

- a) Vested in the government and transferred to the departed Asians property custodian Board under the Assets of department Asians Act.
- b) Acquired by the government under the properties and businesses (acquisition) decree 1973.
- c) In any other way appropriated or taken of by the military regime except property which has been affected by the provision of the repealed National Trust DECREE, 1971.

In **CHRIS AKENA ONAPA V MOHAMMED HUSSEIN RASHID PUNJANI CIVIL APPEAL 5/1993** granted to the respondent a 3-year lease over a plot for purposes of constructing a house thereon. The lease was to run up to 1st October 1972. The court was invited to decide whether the property was expropriated property and thus the expropriated properties Act applies. The Supreme Court held that the property affected must have been vested in the government when the lease agreement for a lease or any other specified tenancy was still in force. In the circumstance there was no lease or agreement for a lease to rest in government when the respondent left Uganda in February 1973 therefore the property did not fall under the operation of Act. Justice Tsekooko noted that the test for expropriated property is whether it vested in the government so as to fall within the ambit of section 1 and 2 of the expropriated properties act cap 87.

Who is a Deported Asian?

Section 1 of the Expropriated Properties Act Cap. 68 defines departed Asia to mean any Asian who left Uganda on after the 9TH day of august,1972 in such manner as necessitated the taking over in public interest of any property or business or she left in Uganda.

Who is a former owner?

A former owner is defined under **Section 1 of Expropriated Properties Act Cap. 68** to mean and include any person who was either the registered owner or proprietor of any real or movable property in Uganda or was a share holder in a business or enterprise registered in Uganda and who was either expelled or forced to free from Uganda during the period of the military regime or was in other way disposed of the property or business and anybody who is the legal heir or successor of that person.

Legality of transactions in expropriated properties.

Section 26(1) of the 1995 constitution, guarantees the constitutional right to own property.

Section 2(2) (a) of Expropriated Properties Act Cap. 68 nullified all purchase transfers and grants of any dealings ofn whatsoever kind in such properties.In interpreting this section, the court in **GOKALDAS LAXIMAIDAS TANA V SISTER ROSEMARY & DEPARTED ASIANS PROPERTY CUSTODIAN BOARD (1994-95) HCB 53** held that section 2(2) (a) of the Expropriated Properties Act Cap. 87 nullified any of the transactions entered mentioned therein, if the transactions was effected between the times when the property was first vested. In government by the Assets of Departed Asian decree 1973 and the time when the act of 1982 came into force namely on 21st Feb 1983. That provision of the act has a retrospective effect and nullified all the categories of transactions and dealings entered into in regard to expropriated properties in the period between expropriated by the decrees of Idi Amin on the EPA as correctly pointed out by Oder J Expropriated Properties Act Cap. 87 nullified sale, notwithstanding that the bank as mortgagee had carried out a sale or transfer. The mortgage sale fell under any other dealings.

Section 2 (2) (b) of the EPA cap 68, where any property was at the time of its expropriation held under a lease/any tenancy, the same shall be deemed to have continued and in force until dealt with in accordance with the act.

STEPHEN KALANI V SATWANT KAUR CIVIL APPEAL 22/1995, the surrender of the lease to the mailo owner meant that at the time of departure, there was no equitable interest to vest in the government hence the EPA did not apply to the suit property. The application of section 2(2)(a) i.e evident in number of decisions.

GOKALDAS LAXIMIDAS V ROSEMARY MUYINZA CIVIL APPEAL NO.12/1992, Justice order noted that if any of the transactions listed in S.2 (2)(b) of the EPA was carried out in respect of property vested in Uganda, such a transcation was nullified , if the transction w as effected between the time when the suit property was first vested in the government by the assets of departed Asians act cap 83 and the time when the EPA cap 87 came into force.

REPOSSESSION CERTIFICATE.

Application.

Section 4 EPA, any former owner of property/business vested in the government may apply to the minister for repossession of the property/business within 90 days. In *MABALE GROWERS TEA FACTORY LIMITED V NOORALI MOHAMED SCCA NO.2/2015*, the 3 months (90 days) requirement for applying for a certificate of repossession under section 4 was merely regulatory and not an impediment to lodging an application for the grant of a repossession certificate.

Regulation 2 expropriated properties (repossession and disposal) No.1 regulations S.I 87-8, an application for repossession of property shall be made in form 1 specified in the 1st schedule.

Regulation 4, separate applications to be made in respect of every different property/business which an applicant wishes to repossess.

Regulation 3(1)(a), every application shall be accompanied by a non-refundable fee of 25,000

Reg 3 (1)(b) , in case of a company/firm, a certified copy of the memorandum and articles of association or a copy of the certificate of registration as applicable ought to be attached.

Reg 3(1)(c), the application has to be accompanied by copies of the title deed relating to the property or particulars of the title deed.

Reg 3 (1)(d), the application has to be accompanied with copies of forms PRO/1 AND PRO/2

Reg 3(1)(e), the application has to be accompanied with copies of declarations and forms.

Reg 3(2), the minister may require any applicant to furnish him/her with further information

Reg 5(1), every application received shall be acknowledged by an acknowledgement receipt issued to the applicant.

Reg 8(a) and (b), the custodian board divestiture committee examines and verifies the authenticity of each application and accompanying documents.

Reg 10 (3), upon satisfaction with the merits of the application, the minister shall issue a certificate in form 3 second schedule.

EFFECTS OF A CERTIFICATE OF REPOSSESSION.

Section 7 EPA, the chief registrar enters the name of the former owner as proprietor. Reactivates frozen accounts with banks and re-entry of companies in the register.

In JAFFER BROTHERS LTD V MOHAMED MAGID BAGALALIWO CIVIL APPEAL NO.143/1997, the certificate of repossession immediately clothed the appellant with equitable rights over the suit property pending the transfer of the legal right by government on registration.

SULEIMAN ADRISL V RASHIDA ABDUL KARIM CIVIL SUIT 0008/2017, the effect of the certificate of repossession is that it divests proprietorship of property from government and revert it to the former owner.

PROCEDURE FOR REPOSSESSION OF PROPERTY

1. Application for and grant of certificate of repossession as per section 4 EPA and reg 10 (3) s.i 68-8)
2. Notice before repossession
3. Compensation for developments as per section 12 (2) EPA cap 68

PYARALI ABDUL RASAUL ESMAIL V ADRIAN SIBO CONSTITUTIONAL PETITION NO.9/1997, the court acknowledged the essence of Article 26 (2)(b) of the 1995 constitution which is to ensure adequate and prior compensation

4. Vacant possession as per section 10 (1) EPA

DISPOSING PROPERTY BY THE MINISTER

Section 9(1) EPA, the minister may make an order that the property or business he retained by government or sold where:

A former owner of any property/business does not apply for repossession within 90 days. JAFFER BROTHERS LTD V MOHAMED MAGID BAGALALIWO(SUPRA),the 90 day rule envisaged under section 4 of the EPA was merely regulatory.

The minister is not satisfied with the application for repossession

Where negotiations fail

Having been authorized to repossess the property/business, the former owner fails to physically return and reside in Uganda within 120 days from the date of the authorization.

Reg.11 of the expropriated properties(repossession and disposal)No.1 regulations S.I 68-8

Where the minister makes an order that any property/business be sold: then the property shall be valued; the property/business shall be sold by competitive tender;the board of valuers shall determine the reserve price for the property.

The committee shall advise the minister on the merits of tender bids

The committee shall receive and consider tender bids

The minister shall issue a certificate of purchase to a person/body that purchases the property/business. (section 9 (3) EPA.

MOHAN MUSISI KIWANUKA V ASHA CHAND S.C.C.A NO.14/2002, envisages that whether or not title is acquired lawfully, depends on the validity of the transaction leading to the issue of purchase certificate. Court made reference to the process leading to the award of the purchase certificate.

POWERS OF THE MINISTER FOR FINANCE.

Transfer property to the former owner as per section 3(1) of the EPA

issue repossession certificate as per reg 10 (3) S.I 68-8

Issue purchase certificate. Section 9(3) EPA and Reg 11 S.I 68-8

Negotiating on behalf of government as per section 5 EPA

Making orders for retention of property by government or disposing property (section 9)

Written consent prior to sale of property (section .8)

Appointment of managers. (section 2(3) EPA

MABALE GROWERS TEA FACTORY LIMITED V NOORALI MOHAMED S.C.C.A. No.2/2015, His Lordship Hon. justice Eldad mwongusya noted that the act empowered the minister to return the property to the former owners/sell it .it was unclaimed and there was nothing to stop him from dealing with the property as long as it was still available for repossession or sale.

MOHAN MUSISI KIWANUKA V ASHA CHAND S.C.C.A NO.14 OF 2002, the minister doesnot have power to revoke or otherwise to annul a certificate issued by him/her under the act. The EPA was intended to empower the minister to decide once and dispose of an expropriated property at once , and let any grievance arising from the ministers decision to be resolved by the highcourt. In the instant case, in issuing the repossession certificate in respect of the suit property after earlier on issuing a purchase certificate, the minister purported to exercise power he no longer had. It follows that his act had no legal effect.

CHALLENGING THE POWERS OF THE MINISTER

Section 15(1) EPA, provides for appeal of the ministers decision to the highcourt of Uganda within 30 days

MOHEN MUSISI KIWANUKA V ASHAN CHAND (SUPRA), that an appeal under the act is not a judicial appeal. The minister in exercise of power vested makes administrative decisions. The act directs that a person

aggrieved by such decisions may appeal to the high court within a period of 30 days. The court further noted that the challenge can be done in an ordinary suit.

A party can seek leave to extend time within which to appeal the decision of a minister by way of notice of motion supported by an affidavit.

EMMANUEL NANGOLI V ATTORNEY GENERAL (2000) KALR 817, court found that regulation 15 of the Expropriated Properties (repossession and disposal) NO.1 regulations S.I 68-8 allow the application of civil procedure rules for proceeding under the act. In the case, the applicant could not file the appeal in the high court when the time provided for it had expired. He correctly filed the application under the civil procedure rules for extension of time within which to appeal.

DOCUMENT: (ordinary plaint –Appealing the decision of the minister)

In WANGI YUSUF V COMMISSIONER FOR LAND REGISTRATION AND 3 OTHERS (MISCELLANEOUS CAUSE NO.401 OF 2023), Hon. Mr. Justice Tadeo Asiimwe averred that under the **Expropriated Properties Act**, the minister, while disposing of departed Asian properties, had guidelines to follow before issuing a certificate of purchase, including proper valuation and competitive tendering. The court found that the 4th respondent's acquisition of the property was unlawful, as it did not adhere to these mandatory requirements under the law, being effected through letters and with the price paid being merely a token. Consequently, the issuance of a certificate of purchase to the 4th respondent was declared to have been done illegally.

CHALLENGING POWERS OF ANOTHER OFFICER OTHER THAN THE MINISTER

This is by way of judicial review. (rule 3 of the judicature (judicial review) (amendment) rules s.i 32/2019. Article 42 of the 1995 constitution of Uganda as amended provides for the right to just and fair treatment in administrative decisions.

Through filling a notice of motion and accompanied by an affidavit.

PASTORI V KABALE DISTRICT LOCAL GOVERNMENT AND OTHERS (2008) 2 E.A 300, court noted that the applicant has to show that the decision/act is tainted with illegality, irrationality or procedural impropriety. Rule 7A judicature (judicial review) (amendment) rules 2019, provide that judicial review is only available if;

There is direct/sufficient interest

All internal remedies available have been exhausted

Matter involves an administrative public body/public officer.

Section 98 of the civil procedure act cap 71 and section 33 of the judicature act cap 16, enjoins the high court to exercise its inherent powers to grant such remedies as it deems fit.

The remedies include;

Certiorari quashing the decision

Prohibition restraining the respondent from recalling the certificate

Injunction restraining the respondent from interfering with the quiet possession of the applicant

Declaration that the applicant is entitled to quiet enjoyment of the property.

REMEDIES UNDER EXPROPRIATED PROPERTIES

Compensation

Article 26 (1) of the 1995 constitution of Uganda as amended guarantes the constitutional right to own property

PYARALI ABDUL RASAUL ESMAIL V ADRIAN SIBO CONSTITUTIONAL PETITION NO.9 OF 1997, the court acknowledged the essence of article 26 of the 1995 constituion which is to ensure adequate and prior compensation. Section 12 (2) EPA provides for the compensation of improvements by the former owner.

Vacant possession

Section 10 EPA, in the alternative, the former owner can enter into an arrangement with the present occupant for payment of rent.

Mesne profits

Section 98 of the CPA AND SECT.33 J.A cap 16, enjoin the courts to award such remedies as they may deem fit. RAJABALI VALIMOHAMMED VAIYA AND 3 ORS V GENERAL PARTS (U) LTD CIVIL SUIT NO.570/2002, the lady justice monica mugenyi opined that mesne profits entail a monetary benefit in terms of the applicable market rent enjoyed by a wrongful occupant of rental premises at the expense of the landlord thereof .

MABAALE GROWERS TEA FACTORY LTD V NOORALI MOHAMMED S.C.C.A NO.2/2015, the courts have wide discretioan to award mesne profits to persons dispossessed of their property even though not pleaded as long as there is evidence to show that the party in wrongful possession derived some profits in the course of wrongful possession of such property.

Nullification of transcatons

Repossession.

NATURAL RESOURCES.

Article 8A of 1995 constitution of Uganda as amended provides for national interest. Policy 27 of the national objectives and directive principles of state policy enjoins the state to promote sustainable development and public awareness of the need to manage land, air and water resources; to utilize the natural resources in such a way to meet the development and environmental needs of the present and future generations; to promote and implement energy policies and to create and develop parks, reserves and recreation areas.

Policy XIII, the state shall protect natural resources.

Article 39 of the 1995 constitution of Uganda as amended, the right to a clean and healthy environment.

PUBLIC TRUST DOCTRINE.

MC MEHTA V KAMAL NATH (1997) 1 S.C.C 388, the supreme court of india noted that the public trust doctrine primarily rests on the principal that certain resources like air, sea, water and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them subject of private ownership. The said sources being a gift of nature.

Further, the doctrine enjoins the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Article 237 (2)(b) of the 1995 constitution of Uganda as amended provides that government shall hold in trust for the people and protect natural resources for the common good of all citizens.

Article 245 of the 1995 constitution of Uganda as amended, parliament enacts laws for the protection and preservation of the environment. Section 44 of the land act cap 236, incorporates the public trust doctrine for the common good of the citizens of Uganda.

Section 5 (1) of the national forestry and tree planting act cap 160 provides for the public trust doctrine in light of forest reserves.

Section 43 of the land act cap 236, provides for utilization of land by government.

Section 27 (1) of the national forestry and tree planting act cap 160, the government has no ownership over trees or forest produce situated on private land.

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT.

Section 110(1) of the national environment act 2019, the purpose is to evaluate environmental and social impacts, risks or other concerns of a given project or activity.

Section 38 of the national forestry and tree planting act 2003, requires an environmental impact assessment for a person intending to undertake a project which may have an impact on a forest.

Section 5 NEA, projects for which environmental and social impact assessments are mandatory. Section 4 NEA, projects for which project briefs are required. ADVOCATES COALITION FOR DEVELOPMENT AND ENVIRONMENT V ATTORNEY GENERAL H.C MISC.CAUSE NO.100/2004, environmental impact assessment is a study conducted to determine the possible negative and positive impacts which a project may have on the environment. It is conducted before the project is started in order to evaluate its socio-economic benefits to the citizens.

Procedure for conducting environmental and social impact assessment.

Submission of a project brief by the developer. As per regulation 6 (2) of the national environment (environmental and socio assessment) regulations 2020. The project brief maybe prepared by the developer or an environmental practitioner and submitted to the lead agency.

Payment of required fees as stipulated under schedule 4 to the regulations.

The lead agency shall consider the project brief within 21 days from the date of receipt along with conditions

Regulation 12 (1) and (2), a developer shall undertake scoping and an environmental and social impact study where a project is located in or near an environmentally sensitive area.

The scoping exercise amongst other things determines the nature of the project area including its physical, biological, socio-economic and cultural aspect.

As per REG 13(3), Preparation of a scoping report and terms of reference for the proposed environmental and social impact study .

Regulation 14(1), the developer shall submit the terms of reference for the environmental and social impact assessment.

Reg 14(3), the terms of reference to be considered within 7 days.

Reg 15(1), upon approval of the terms of reference, the developer shall undertake an environmental and social impact study.

Reg 16(1), in undertaking the assessment, the developer shall carryout consultations with relevant stake holders and communities likely to be affected by the project.

Reg 16(3), this involves giving adequate notice of meetings of atleast 7 days and building constructive relationships with the community.

Reg 17(1) and (4), the developer shall prepare an environmental and social impact statement upon completion and shall be signed by the developer and each environmental practitioner who participated in the exercise.

Reg. 18(1), submission of 3 hard copies and an electronic copy of a complete environmental and social impact statement by the developer.

Reg. 19(1), NEMA shall submit within 7 days the environmental and social impact statement to the relevant lead agency for review.

Reg. 19(5), the lead agency shall submit comments to NEMA within 21 days of the receipt of the statement.

Reg.20(1), NEMA or the technical committee on environmental and social impact assessment may within 10 days invite the public in the area where the project is proposed to be located in order to make oral or written comments.

Reg.22(1), a public hearing is conducted in collaboration with the relevant lead agency.

Reg.23(1), the providing officer shall submit a report of the public hearing to NEMA or the technical committee.

Approval of the environmental and social impact statement. As per REG.24

Reg.25, issuance of a certificate of approval of environmental and social impact assessment valid for 10 years maximum.

Reg.26 extension of certificate of approval of environmental and social impact assessment to be made/applied for within 6 months to the date of expiry of the certificate.

Cancellation of the certificate of approval of environmental and social impact assessment as per REG. 29.

False information or data

Precluding material information

Non-compliance with the act/conditions

For the protection of human health

Substantial change/modification

Substantive undesirable effects

ROLE OF NEMA

Formulation of environmental policies

Advising the minister on legislative proposals and environmental standards.

Over look lead agencies in executing their mandate

Issue environmental compliance certificates.

Regulate environmental practitioners in the environmental and social impact assessment and environmental audit processes

Issue permits and licences

Undertake and coordinate environmental monitoring, inspections and compliance audits

Undertake public environmental awareness and literacy.

Licensing of activities/projects.

Section 43 of the land act cap 236, provides for utilization of land in accordance with the various laws of the land.

Physical planning act.

Section 3, the entire country is declared a planning area and the act applies to the entire country in all respects.

Section 25(1), a district, urban and sub-country physical committee shall cause to be prepared a district urban physical development plan.

Section 33, a person shall not carry out a development within a planning area without obtaining development permission from a planning committee.

Section 34, application for development permission shall be in the form set out. the application shall be made to the relevant local government which shall then forward the application to the relevant physical planning committee.

Section 37, the grant of development approval may be subject to an environmental and social impact assessment.

Section 38(2), the physical planning committee shall within 30 days notify the applicant of the approval for development in the form specified.

Building control act.

Section 34(1) and (2) prohibits carrying out a building operation unless there is a valid building permit issued by the building committee and contravention of this provision attracts a fine not exceeding 50 currency points or imprisonment not exceeding 2 years or both.

Section 35(1) and (2), applications for building permits shall be to the building committee, in the form prescribed and shall:

Contain the name and physical and postal address of the applicant

Be accompanied by the land title or other proof of ownership of land

Contain the name of the land owner or proof of ownership

Contain the name , registration number and a copy of the practicing certificate of the architect and his/her signature and official stamp of the Uganda society of architects and the case of an engineer, a certificate of good structural practice.

Be accompanied by copies of building plans

Letter from the chairperson of the village council of the area in which the building operation is to be carried out.

Section 36(1), a building committee may issue a building permit to the applicant within 30 days after application.

Regulation 19(1), the building control regulations 2020, provides for the application for building permit for minor building works.

Reg 20, provides for the application of a building permit for temporary building operations.

Reg 21. Application for building permit for residential or commercial building operations and the application shall be accompanied with:

Letter of introduction from the chairperson of the village council of the area.

A sketch plan of the proposed building

Proof of ownership of land

Development permission from the physical planning committee

At least 2 sets of architectural drawings.

Boundary opening report from surveyor.

At least 2 sets of electrical drawings

At least 2 sets of mechanical engineering drawings

At least 2 sets of structural engineering drawings and design calculations

Proof of payment of application fees

Any other document required by the building committee.

Reg 23(1), the building committee may receive applications in hard copy or electronic format

Reg.24(1), notification of approval hence the grant of the building permit in part 1 of form 4 specified in schedule 3

Reg 25, grounds for revocation of building permits;

Use of prohibited building methods/materials

Replacing professionals without engaging the building committee

The building operation is not in accordance with the approved plans.

The building operations have been suspended for more than 12 months.

Reg. 27(1), the requirement of a written notice of commencement of a building operation to be issued to the building committee 7 days prior.

NATIONAL ENVIRONMENT ACT

Section 81(30), the technical committee on control of pollution appointed by the board shall;

Consider applications for pollution licences

Issue pollution licences.

Section 82, provides for the application for a pollution control licence that should be made to the technical committee on control of pollution.

Section 83, upon receiving applications for a pollution control licence, the technical committee shall;

Within 30 days notify persons to be affected.

Consider representations made by the relevant lead agency

Consider the application

Grant or reject the application

May require that an environmental and social impact assessment be conducted prior to the grant of the licence.

Section 85(1), payment of prescribed fees for pollution control licence.

Section 87 provides for the cancellation of pollution control licence on the following grounds;

Where the holder of the licence contravenes any provision of the act.

Where the holder of the licence fails to comply with any condition specified.

In the interest of the environment/public interest.

the hides and skin trade act cap 71

Section 8, requirement for a valid exporters buyers licence in order to export any hide or skin. Section 9(1) and (2), the grant of an exporters-buyers licence by the licensing officer is subject to a number of conditions;

Maintaining premises having storage, packing and pressing facilities.

All hides and skins purchased by the exporter shall be graded

That all hides and skins purchased for export shall be branded.

Keeping proper books at the premises.

Sect.9 (3), the licensing officer has discretion to refuse to issue or renew the exporters-buyers licence on the following grounds;

Insufficient resources/inadequate facilities

Carrying on business in contravention with the law

The applicant within 5 years has been convicted of an offence relating to the control of hides and skins.

Section 11, a veterinary officer has power of inspection, search and seizure.

THE AGRICULTURAL CHEMICALS (CONTROL) ACT.

Section 2, agricultural chemicals include plant protection chemicals, fungicides, insecticides, nematicides, herbicides etc.

Regulation 3 the control of agricultural chemicals (registration and control) regulations S.I 29-1, provides for the following registers;

Registers of agricultural chemicals

Register of fumigators and commercial applicators

Register of premises

Regulation 4 mandatory requirement to register agricultural chemicals, fumigators and premises

Reg 8 provides for application for registration of agricultural chemicals which shall be made to the board through FORM A 1st schedule

The application ought to be accompanied by:

5 copies of the label for the agricultural chemical or duly certified copies.

Samples of the agricultural chemical

Information regarding; the technical knowledge of the applicant:certified application dosage and prescribed usage:expiry date or the shelf life; the corrosive effects, anti-dotes and first aid treatment; special protective clothinbg required.

Reg 9(1), the board shall enter the name of the agricultural chemical in the register upon payment of the prescribed fee and establishing that the applicant has sufficient technical knowledge and the official testing/screening has proved that the agricultural chemical is effective ,safe and not a danger to the public.

Reg 9(2), applicant to be issued with a certificate of registration in form B

Reg 17, application for registration for registration of fumigators and commercial applicators.

Reg 18(3) issuance of a certificate of registration in form E 1st schedule.

Reg 20 application for registration of premises

Reg 21, issuance oof certificate of registration of premises in form G in the 1st schedule.

Ethical considerations

Forgery of permits

Due diligence practices

Corruption and bribery

Proceeding without licences.

Reg 2 advocates (professional conduct) regulations provides for due diligence

Reg.7 ,confidentially

Reg.8, accounting for client's money

Reg.10, fiduciary relationship with clients

ENVIRONMENTAL ORDERS/CONSERVATION MEASURES.

Remedial measures in the event of pollution. (section 79(1) NEA 2019, such as:

Necessary action to stop further pollution

Notice of pollution to NEMA

Necessary steps to mitigate damage/nuisance

Steps to clean up and restore the environment

Payment of compensation for damage.

Polluter pays principles. (section 80)

Pollution control licences. (sec.81)

Cancellation of pollution control licence (sec.87)

Emergency response system against acute pollution (sec.89)

Prohibition of littering. (sec.97)

Environmental and social impact assessments (sect 110)

Environmental and compliance monitoring (sec.122)

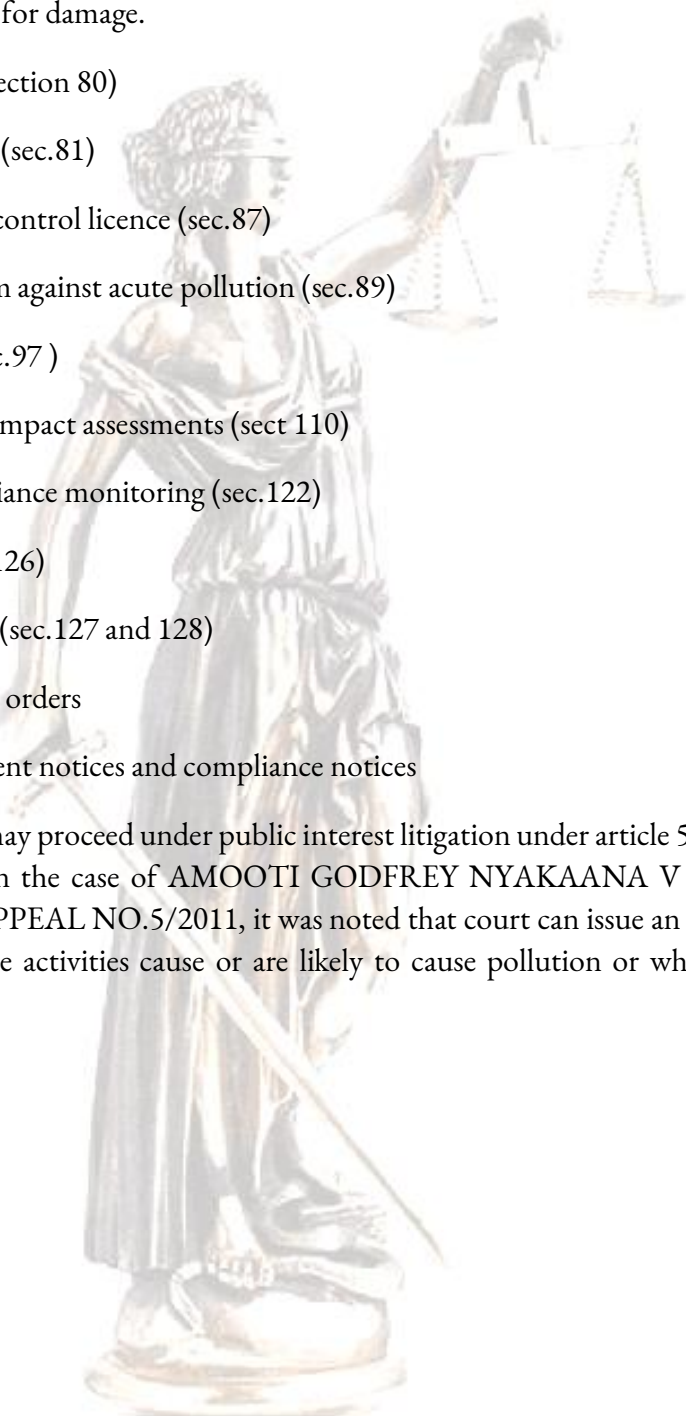
Environmental audit (sec.126)

Environmental inspection (sec.127 and 128)

Environmental restoration orders

Environmental improvement notices and compliance notices

In other instances , aparty may proceed under public interest litigation under article 50 of the 1995 constitution of Uganda as amended. In the case of AMOOTI GODFREY NYAKAANA V NEMA AND OTHERS CONSTITUTIONAL APPEAL NO.5/2011, it was noted that court can issue an environmental restoration order to any person whose activities cause or are likely to cause pollution or which is harmful to human health/environment.





DOCUMENTS

DOCUMENTS IN LAND TRANSACTIONS

1. Notice of Withdrawal of Caveat

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP 240

..... **BLOCK**..... **PLOT**.....

NOTICE OF WITHDRAWAL OF CAVEAT.

To the Registrar of Titles.

TAKE NOTICE that I (**Insert caveator's name and address**) having lodged a caveat on the land comprised in the land comprised in Block.... Ploton theday of 20.... under instrument **No.**(**Caveat instrument number and date**) and my claim having now been settled.

I HEREBY UNCONDITIONALLY WITHDRAW the said caveat

DATED at Kampala thisday of20...

(**Caveator's name and signature**)

.....

In the presence of

(**Witness' name and signature**)

2. Transfer Form

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP 240

.....(Insert Property Description)

TRANSFER

I / We..... **(Insert Name and Address of transferor)** being the owner and or registered proprietor of the lands comprised in the above described property

IN CONSIDERATION of the sum of/= **(Amount in words)** paid to us by

..... (transferee)of P.O

BOX.....on or before the execution of these presents the receipt whereof we acknowledge

I/WE DO HEREBY transfer the said land and all our estate and interest in the land

to....., the Transferee on thisday of

.....

Signed by;

SELLER/TRNSFEROR

In the presence of:

.....

WITNESS

Signed by the said

.....

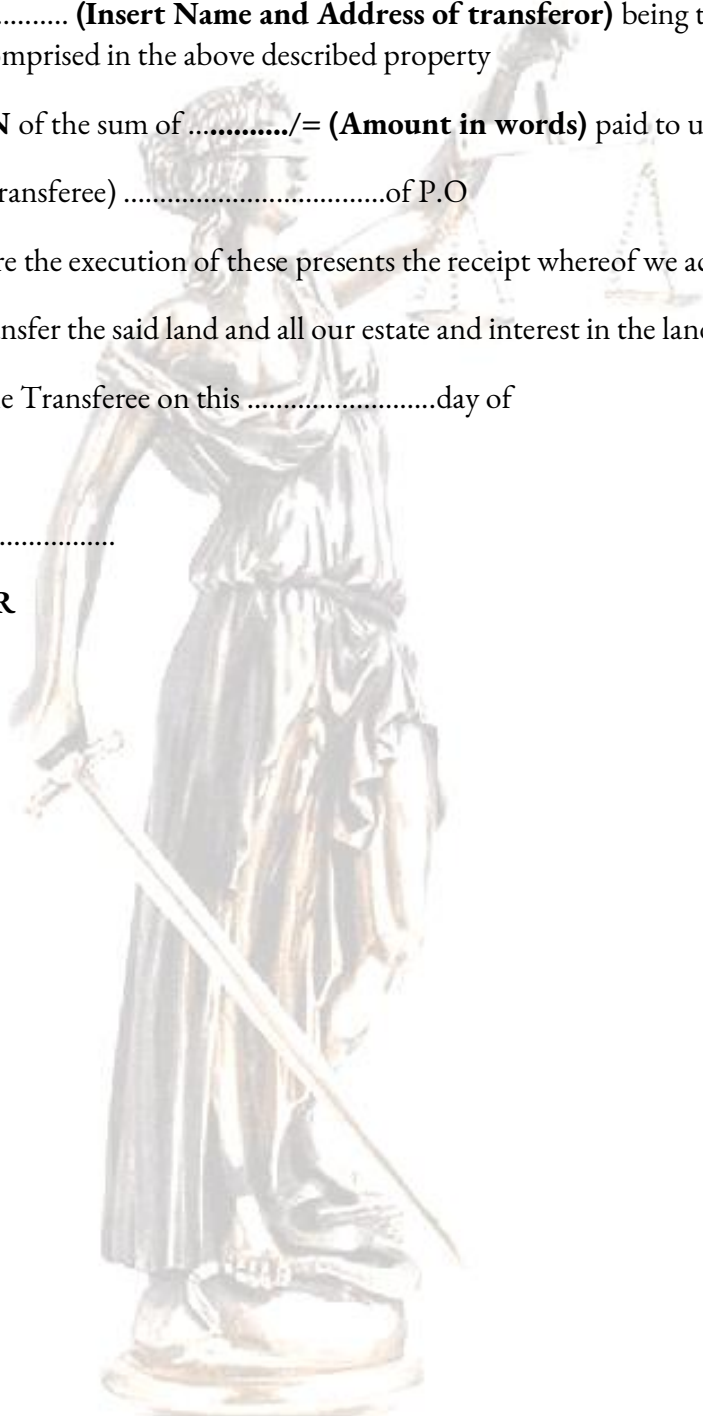
.....

TRANSFEEEE

In the presence of:

.....

WITNESS



3. Tenancy Agreement

THE REPUBLIC OF UGANDA
REGISTRATION OF TITLES ACT (CAP. 230)
TENANCY AGREEMENT

THIS AGREEMENT is made this..... day of 20..... .

BETWEEN

.....(**Insert landlord/lady's name and address**) hereinafter referred to as the
(**LANDLORD/LADY**) which expression shall unless the context so admits include his/her duly
authorized agents, heirs, successors in title, executors, administrators and legal representatives on
one hand

AND

.....(**Insert tenant's name and address**) (herein after referred to as the "**TENANT**") which
expression shall unless the context so admits include heirs, executors, administrators, successors' in
title and legal representatives on other hand.

WHEREAS:

1. The Landlord/lady is the registered proprietor/owner of (**insert property description and location**)
2. The Landlord/lady is desirous of letting out the said premises and the Tenant is ready and willing to take the same on the terms and conditions set out hereunder;

NOW THEREFORE IT IS AGREED AS FOLLOWS;

3. The Landlord/lady hereby lets and the Tenant takes the demised premises for
(**Indicate purpose eg residential, commercial etc**)
4. The monthly rent shall be/= (**amount in words**) PER MONTH

5. THE TENANT HEREBY COVENANTS WITH THE LANDLORD AS

FOLLOWS:-

- a) To use the said premises for..... (**indicate purpose eg residential and other purposes reasonably incidental thereto.**)
- b) To pay water and electricity bills imposed on the said property. (**indicate any other applicable charges**)
- c) To grant full right and liberty to the Landlord/lady and his/her surveyors, agents or workmen at all reasonable times to enter into and upon the demised premises or any part thereof for the purposes of repairing, maintaining, altering, examining or testing the building, and all parts/fixtures therein.
- d) Not to do or suffer to be done on the demised premises any act or thing which shall be an annoyance or a nuisance to the landlord/lady. (**or the occupiers of the adjoining premises if applicable**)
- e) To comply with rules, regulations and bye laws of Wakiso District or other competent authority having jurisdiction in that behalf.
- f) Not to suffer to be used the premises for any illegal or immoral purpose.
- g) To maintain the interior of the demised premises in tenantable condition.
- h) To promptly notify the Landlord/lady of any damage to the premises.
- i) **Not to repair any** damages without obtaining the prior permission of Landlord/lady.
- j) Not to sublet the premises except with the landlord/lady's prior consent.
- k) Not to alter or permit any alteration of the premises. Alterations include, but aren't limited to, painting, wallpapering, structural changes, and addition or removal of fixtures. The use of a reasonable number of small nails shall not be considered alterations. Any alterations are supposed to be

with the prior consent of the landlady provided such consent shall not be unreasonably withheld.

6. THE LANDLORD/LANGLADY HEREBY COVENANTS WITH THE TENANT AS FOLLOWS:

- a) To carry out needed repairs identified by the tenants.
- b) Not to unreasonably interfere with the tenant’s quiet occupation of the premises.

7. TERMINATION

Either party may terminate this tenancy agreement at any time by giving months written notice thereof.

8. LAW APPLICABLE

This agreement, its meaning and interpretation and the relation between the parties shall be governed by the Laws of Uganda.

IN WITNESS WHEREOF both parties hereto have set their respective hands on the day, month and year first above written.

SIGNED by the said

LANDLORD/LADY’S NAME AND SIGNATURE

In the presence of: _____

WITNESS’ NAME AND

SIGNATURE

SIGNED by the said _____

TENANT’S NAME AND SIGNATURE

In the presence of: _____

2ND WITNESS’ NAME AND SIGNATURE

Power of Attorney

THE REPUBLIC OF UGANDA

REGIATRATION OF TITLES ACT CAP 230

(Indicate details of the land)

POWERS OF ATTORNEY

I/WE.....(**Insert grantor’s name and address**) the registered proprietor of ...
(details of the land) (hereinafter called “the Donor”) **DO HEREBY** grant this powers of
attorney to(**insert Donee’s name and address** (hereinafter called “the done”))
and in particular;

(Indicate the purpose/ scope of the powers attorney)eg;

1. To complete the transaction for the sale of the said land
2. For me and in my name, to sign all such transfers and do all such acts as I would myself do in the circumstances.
3. To secure the re-payment of any sum, or sums of money that may be due to me in respect of the said land
4. Generally to execute, do and perform all things requisite or necessary to be executed, done and performed on or about the execution of this power of attorney according to the true intent and meaning thereof.
5. I do hereby undertake to ratify whatever our Attorney lawfully does or causes to be done by virtue of this Power of Attorney.

IN WITNESS WHEREFORE; I the said (**donor’s name**) hereto affix my hand
this day of, 20.....

Signed and delivered by the said

.....

Donor

.....

Donee

Plaint

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT.....
HIGH COURT CIVIL SUIT NO;..... OF

(Insert Plaintiff's Name):.....: PLAINTIFF

VERSUS

1.(Insert Defendant's name):.....: DEFENDANT

2. THE REGISTRAR OF TITLES:.....:DEFENDANT

PLAINT

1. The plaintiff is a male/ female adult Ugandan of sound mind whose address of service for purposes of this suit shall be **(Insert plaintiff's physical/ postal address.**
2. The defendant is an adult Ugandan male/ female presumed to be of sound mind and the plaintiff undertakes to effect service of court process upon him/her.
3. The second defendant is an officer of government with the responsibility to effect changes on land titles and is being sued in that capacity.
4. The plaintiff brings this suit
 - a) to recover from the 1st defendant land comprised in block..... plot which the 1st defendant fraudulently acquired and
 - b) for orders that the 1st defendant's title be cancelled and the second defendant registers the plaintiff as the proprietor of the suit land.

c) that the said land be put in possession of the plaintiff and

d) for special and general damages and mesne profits arising from the defendant's wrongful and or unlawful possession of the plaintiff's land

5. The facts constituting the defendant's cause of action arose as hereunder; (Here give the details of how the defendant was fraudulent eg in a case of registration through fraud refer to the facts below for guidance)

a) The plaintiff was at all material times the registered proprietor of the land comprised **in (give details of the land)** (hereinafter referred to as 'the suit land')

b) In 2010, the defendant took on employment in the USA and the left the duplicate certificate of title under the custody of the a one Munanura Fred, the defendant's brother for safe custody.

c) That in 2011, without authorisation from the plaintiff, the defendant fraudulently colluded with the said Munanura Fred who fraudulently transferred the land to the defendant and the latter proceeded to have the land registered in his names.

d) The plaintiff avers that the defendant obtained title and registration of the suit land through fraud.

PARTICULARS OF FRAUD:

(This paragraph must be included detailing the specific details of the fraud that is attributable to THE DEFENDANT)

i. By accepting to unlawfully purchase the suit land from his brother Munanura fred being fully aware that the latter was only holding the plaintiff's certificate of title for safe custody

ii. By forging the defendant's signature and causing the transfer of the suit land without the knowledge or authority of the plaintiff.

iii. Insert any other facts deemed relevant

6. The plaintiff avers that by reason of the defendant's fraud, the plaintiff was unlawfully

deprived of his title to the suit land as a result of which the plaintiff prays that this honourable court be pleased to award the plaintiff the prayer sought.

7. The cause of action arose at within the jurisdiction of this honourable court;

WHEREFORE the plaintiff prays that judgment be entered against the defendant and for;

- a) A declaration that the defendant’s registration as proprietor was fraudulent and unlawful
- b) A declaration that the defendant is entitled to be re instated on the register as proprietor of the suit land.
- c) An order that the 2nd defendant cancels the 1st defendant’s title in respect of the suit land and registers the plaintiff s proprietor of the same
- d) Special damages arising from the loss of income following the 1st defendant’s unlawful eviction of the plaintiff’s tenants.
- e) Mesne profits for the deprivation of the land
- f) Interest from the date of judgment until payment in full
- g) Costs of this suit

Dated at this Day of 20.....

PLAINTIFF’S NAME AND SIGNATURE

Summary of Evidence

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT.....

HIGH COURT CIVIL SUIT NO..... OF

(Insert Plaintiff’s Name):..... PLAINTIFF

VERSUS

1. (Insert Defendant’s name):..... DEFENDANT

2. THE REGISRTAR OF TITLES:.....DEFENDANT

SUMMARY OF EVIDENCE:

The plaintiff shall adduce evidence to show that at all material times he was the registered proprietor of the land and developments comprised in (give details of the land) and that the 1st defendant obtained title to the suit land through fraud.

LIST OF WITNESSES:

1. Mr. XYZ
2. Ms. OPQ

LIST OF DOCUMENTS:

1. Duplicate certificate showing plaintiff proprietor of the suit land
2. 1st defendant’s acknowledgment of receipt of the plaintiff’s duplicate land title for safe custody
3. Duplicate certificate of title showing the 1st defendant as the proprietor of the suit land.

LIST OF AUTHORITIES

1. The constitution of Uganda 1995
2. The Registration of Titles Act Cap 230
3. The Judicature Act Cap 13

Lease Agreement

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT (CAP. 230)

PLOT NO.

BLOCK NO. ...

.....

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this.....day of.....2014

BETWEEN

..... (**Insert Lessor's Name and Address**) (Hereinafter referred to as "the **LESSOR**" which expression shall where the context so admits include his successors and assignees in title) on one part;

AND

..... (**Insert Lessee's Name and Address**) (Hereinafter referred to as "the **LESSEE**" which expression shall where the context so admits include its successors and assignees in title) of the other part;

NOW THEREFORE IT IS AGREED as follows:

IN CONSIDERATION for the sum of **UGX. UGX** /= (**Amount in words**) paid to the **LESSOR** by the **LESSEE** on or before the execution of these presents (the receipt whereof the **LESSOR** doth hereby acknowledge) and also in consideration of the rent hereby reserved and of the covenants and conditions hereinafter contained on the part of the **LESSEE** to be observed and performed, the **LESSOR HEREBY LEASES UNTO THE LESSEE** all that parcel of land comprised in the above mentioned Block and Plot being an area measuring approximately**acres/ hectares** and which, for the purposes of identification, are more particularly delineated and described in the plan annexed hereto and edged in red together with all the fixtures erected or to be erected thereon **TO HOLD** the same unto the **LESSEE** for a term of **.... years** (hereinafter referred to as the initial term) commencing the.....day of.....2014 **YIELDING AND PAYING** therefore during the said term a nominal yearly rent of **UGX.....** /= (**Amount in words**) payable in advance on the first day of January in every year.

Upon expiration of the term the lease shall be automatically renewed on the same terms stipulated herein.

THE LESSEE HEREBY COVENANTS WITH THE LESSOR as follows:

- (a) To observe and perform all the conditions and covenants implied by law in this lease or otherwise herein contained or referred to,
- (b) To pay the **LESSOR** the rent herein reserved in the manner herein specified.
- (c) To use the demised premises for the purpose of running educational facilities such as schools, colleges, universities or any other use as the **LESSEE** shall deem fit.
- (d) The lessee will at its own expense, in all things and under the inspection and control of its qualified technical personnel develop the demised plot to suit its desired use(s) in compliance with all the relevant municipal, town planning and other relevant laws.
- (e) The **LESSEE** shall install any equipment, machinery or other facilities and make any changes to the premises as it shall deem fit without first having to obtain the **LESSOR's** consent.
- (f) To keep insured the demised premises to the full value thereof in a reasonable insurance office against loss or damage or fire.
- (g) Not at any time during the said term to use, exercise or carry on or permit or suffer to be used, exercised or carried on in or upon the said land or buildings or nay part thereof any noxious, noisome, or offensive art, trade, business, occupation or calling or to allow any matter or thing whatsoever to be done at any time during the said term in or upon the said land or building which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands and properties.
- (h) To pay all future taxes such as ground rent, property rates and any other outgoings in respect of the land herein leased.

(i) To bear all costs, charges, taxes and expenses for the registration of this lease and all legal costs for preparing the same.

THE LESSOR HEREBY COVENANTS WITH THE LESSEE as follows:

(a) At all times during the continuance of the term hereby created to permit the **LESSEE** to make such alterations and additions to any of the buildings or other structures erected on the demised premises as per this Lease Agreement.

(b) That the demised land is and shall be free of any encumbrances of whatever nature legal or equitable that may adversely affect the **LESSEE'S** interest.

(c) Agrees that the Lessee may transfer, sell or sublet or part with possession of or suffer anyone to use or confer on anyone an equitable interest in or in any way mortgage the said land or buildings or any part thereof without having first obtained the consent of the **LESSOR**.

(d) That the **LESSEE** paying the rent hereby reserved and performing the covenants and conditions herein-before contained and on the part of the **LESSEE** to be observed and performed shall quietly possess and enjoy the demised premises during the term hereby granted (including an extension of the term in the said event as stipulated) without any interruption by the **LESSOR** or any person claiming under or in trust for him.

(e) To register this Lease as an encumbrance on the certificate of title pertaining to the premises and to do everything necessary to enable the **LESSEE** obtain a valid leasehold title.

(f) That the **LESSOR** shall not revise or demand for any more premium or consideration apart from what is provided herein.

(g) To hand over vacant possession of the premises on execution hereof.

(h) In the event that it shall become lawful and permissible under the laws of the Republic of Uganda for the **LESSEE** to hold the mailo estate in the demised land, the **LESSOR** or his legal representatives, assignees or successors in title shall execute a transfer of the mailo estate to the **LESSEE** for a nominal consideration of **UGX/= (Amount in words)** and for the avoidance of doubt it is agreed that the **LESSEE** or its successors in title, representatives, assigns or nominees shall have the exclusive right to purchase and transfer the mailo estate in the demised land from the **LESSOR** into their own name(s).

(i) To pay all outstanding rates/ Ground rents due and owing to any authority in respect of the premises prior to execution hereof whereupon responsibility thereafter shall become the **LESSEE'S** while the lease subsists.

(j) In the event that the **LESSOR** fails to hand over vacant possession of the demised land or in case the lease agreement is set aside for want of authority to lease on the part of the **LESSOR**, then the **LESSOR** shall refund the sums so far paid by the **LESSEE** with interest at the prevailing commercial bank rate as well as all other incidental expenses incurred by the **LESSEE**.

(k) That the **LESSOR** shall not seek to terminate this lease for any reason whatsoever and undertakes that the **LESSEE** shall have the first option of renewal upon expiry of the term created herein.

IT IS FURTHER AGREED AND DECLARED as follows:

(a) That during the subsistence of this Agreement, the **LESSOR** shall not engage in any activities prejudicial to the business or occupation of the **LESSEE** particularly not to part, transfer or lease the above parcel to any person or entity without the consent of the **LESSEE**.

(b) At the completion of the lease term, the **LESSEE** shall have the first option to

renew upon such further terms as the parties shall agree upon at the time.

(c) If and whenever any difference shall arise between the **LESSOR** and the **LESSEE** relating to the construction of any of the articles herein contained or any act or anything made or done or omitted in regard to the rights and liabilities arising hereunder or arising out of the relationship existing between the **LESSOR** and the **LESSEE** by reason of these presents, such difference shall forthwith be referred to arbitration in accordance with the Arbitration and Conciliation Act Cap 4 or such other law in force regarding arbitration in Uganda at the time before recourse can be made to court.

(d) The terms of this agreement are intended by both **PARTIES** as a final expression of their agreement. This agreement supercedes any prior written or oral agreement between the **PARTIES** and shall not be contradicted by any evidence precedent to its execution **PROVIDED** that any **PARTY** wishing to amend this agreement shall do so with the consent of the other **PARTY** and any amendment agreed upon shall be in writing and deemed an integral part of this agreement.

(e) The ineffectiveness, invalidity or unenforceability of any provision of this agreement shall not affect other valid provisions thereof which shall remain in full force and effect.

(f) This agreement shall be governed by the Laws of the Republic of Uganda.

IN WITNESS WHEREOF the parties hereto set hereunder their respective hand(s) / seal(s) on the date and year first above written.

SIGNED & DELIVERED by the said

.....

“LESSOR”

Name

Signature

Certificate of Attesting Witness

This Lease agreement is signed by.....in my presence
at.....in the District of Kampala this.....day
of.....20.....and I certify that the above instrument was signed by
him/her/them after having read the same.

Name

Signature

Designation

SIGNED BY;

(LESSEE)

.....

In the Presence of:

Name

Signature

Certificate of Attesting Witness

This Lease agreement is signed by.....in my presence
at.....in the District of Kampala this.....day
of.....20.....and I certify that the above instrument was signed by
him/her/them after having read the same.

Name

Signature

Designation



Land Sale Agreement

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP 230

IN THE MATTER OF SALE OF LAND

COMPRISED IN.....(State the location of the land description)....

.....

LAND SALE AGREEMENT

THIS LAND SALE AGREEMENT is made this1st...day of ...(month)..... 2014

BETWEEN

.....(Seller’s name) of Uganda (Seller’s Physical address),

(hereinafter referred to as the **VENDOR** which expression shall where the context so admits include his nominees, assigns and successors in title) of the one part; (**where the land is not registered indicate that the seller is the rightful owner of the land ie delete “registered owner”**)

AND

(.....Buyer’s name and address.....) (hereinafter referred to as the **PURCHASER** which expression shall where the context so admits include his nominees, assigns and successors in title) of the other part;

WHEREAS the **VENDOR** is the registered proprietor / rightful owner of the land of land comprised in where the land is registered include block and plot number where the land is unregistered include the location and measurements of the land) (hereinafter referred to as ‘the land’);

WHEREAS the **VENDOR** is desirous of selling the land, and the **PURCHASER** having duly negotiated the terms as contained herein with the **VENDOR** is willing to purchase the land, from the **VENDOR** subject to the terms and conditions herein;

NOW THIS AGREEMENT witnesseth as follows;

1. CONSIDERATION

In consideration of the sum of **UGX.**/= (**Uganda shillings (write in words.....)**), the **VENDOR** agrees to sell and hereby sells and the **PURCHASER** agrees to buy and hereby buys the land from the **VENDOR**.

2. TERMS OF PAYMENT

a. The **PURCHASER** has paid to the **VENDOR** a sum of **UGX.**/= (**Uganda shillings.....write in words**), as deposit on the purchase price and by signing this agreement the **VENDOR** acknowledges receipt of the said sum.

b. The final balance of **UGX**/= (**Uganda shillings write in words**) shall be paid on the by way of cash to the **VENDOR**.

c. (**Where the amount has been paid in full, delete paragraph (b) above and indicate under (a) that the purchaser has paid the indicated sum as the total purchase price of the land**)

3. DUTIES OF THE VENDOR

By this agreement the vendor undertakes as follows;

a. That he has authority to sell the land herein sold and is not precluded from doing so by any person or authority.

b. That the land herein is sold as is, free from any encumbrances and third party claims whatsoever **PROVIDED** that if there shall arise any claim or anything that shall prevent the purchaser from acquiring good title to the land herein sold, the vendor shall fully indemnify the purchaser against any loss and damage suffered, by refunding the full purchase price herein paid plus other monies spent under this agreement.

c. To deliver vacant possession of the land after payment of the deposit. (**or**

immediately where the money has been paid in full)

- d. To furnish all documents relating to the transaction, to the purchaser to enable the purchaser transfer the land purchased into his name, after payment of the second installment.
- e. To introduce the buyer to the area L.C Executives as the new owner of the land herein sold and the buyer shall be responsible for any dues required by or payable to the said L.C Executives, after payment of the last installment.
- f. To meet all the legal fees incurred in the preparation of these presents.

4. DUTIES OF THE PURCHASER

By this agreement the purchaser undertakes as follows;

- a. To pay the balance on the purchase price within the time stipulated in this agreement. **(If applicable)**

5. DISPUTES & LAW APPLICABLE

This agreement shall be governed by the Laws of Uganda.

IN WITNESS WHEREOF the parties hereto have appended their signatures hereunder on the day and year first above written.

SIGNED & DELIVERED by the said _____

(seller's name) VENDOR (seller's signature)

In the Presence of _____

WITNESS (witness' name and signature)

SIGNED and RECEIVED _____

BY the said **(PURCHASER) (Buyer's Signature)**

(Buyer's name)

In the presence of _____

WITNESS (witness' name and signature)

Deed of assignment

THE REPUBLIC OF UGANDA

DEED OF ASSIGNMENT

BY

.....

OF P.O BOX

IN FAVOUR OF

.....

This Deed is made this day of 201....

BY

..... **(Insert Assignor's Name and Address)** (hereinafter

called the **Assignor** which expression shall where the context so admits include its successors and assignees) on the one part.

IN FAVOR OF

.....**(Insert Assignee's Name and Address),** (hereinafter

referred to as **"the Assignee"**).

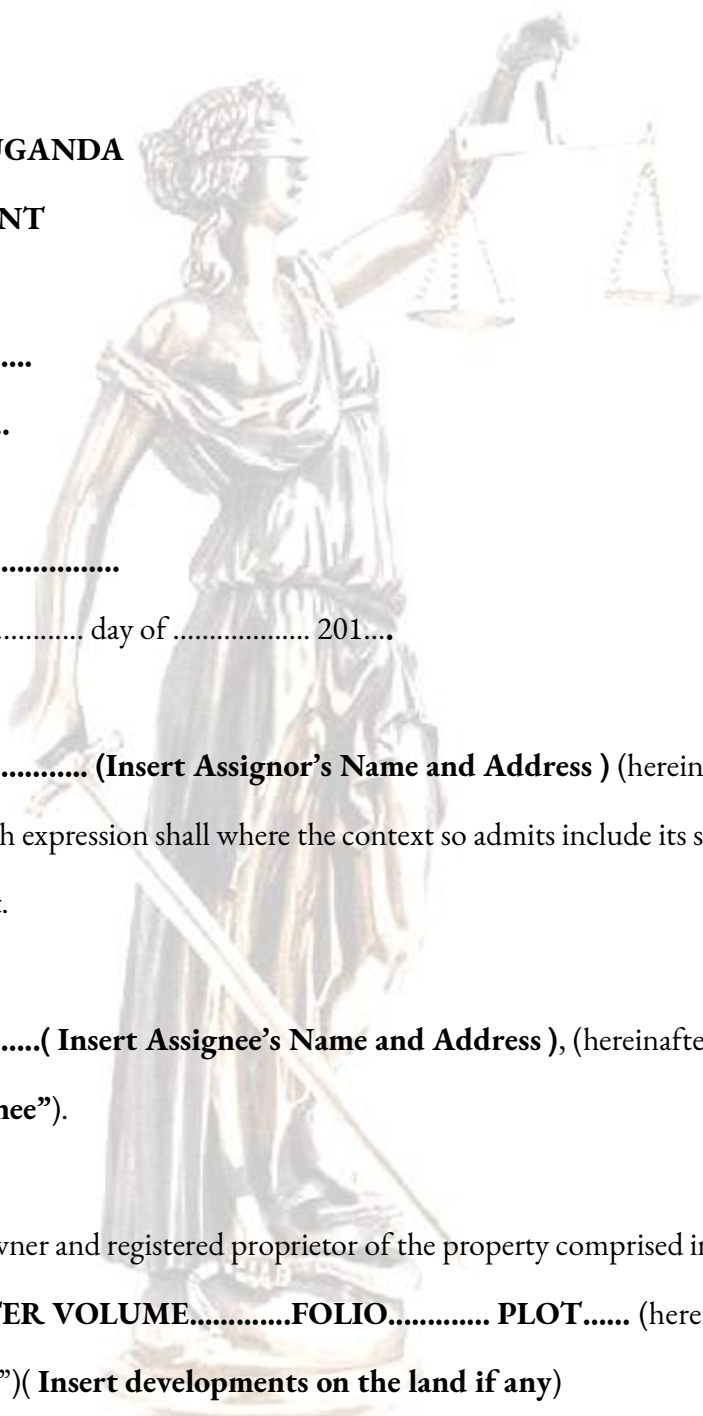
WHEREAS:

A. The Assignor is the owner and registered proprietor of the property comprised in

LEASEHOLD REGISTER VOLUME.....FOLIO..... PLOT..... (hereinafter called the **"the Property"**)(**Insert developments on the land if any**)

B. The Assignor has approached**(Insert Assignee's Name and Address)**

(hereinafter referred to as the **"Assignee"** which expression shall where the context so admits



include its successors and assigns) for financing as detailed below;

.....(**Include details of the loan**)

C. The **Assignee** has agreed to grant the financing above and in particular to grant the Mortgagor a facility of.....(Insert Amount) (**Amount in words**) upon having the repayment thereof with interest and all other charges secured by the Mortgagor's property described above in the manner hereafter appearing.

NOW THIS DEED WITNESSES AS FOLLOWS:-

IN CONSIDERATION of the Assignee agreeing to advance a loan facility to the Assignor,

1. The Assignor hereby assigns unto the Assignee the income receivable or to become receivable by the Assignor from the hotel to be constructed on the Property as a continuing security for the payment of all moneys due and owing under the Loan and discharge of all obligations and liabilities thereunder.
2. The Assignor warrants that it has full rights and authority to assign the revenue to the Assignee and execute this deed of assignment.
3. The Assignor undertakes to notify all tenants of the said Property (where applicable) of the Assignment and furnish proof of such notification to the Assignee.
4. The Assignor shall not, during the continuance of this Deed, assign its rights to the revenues arising from the aforesaid property to any other party, except with the knowledge and prior written consent of the Assignee.
5. The Assignor fully understands and recognizes that the Assignment set forth herein is a material inducement to the Assignee to provide the financing described herein and in the loan documents between the Assignor and the Assignee.

This Assignment shall be determined upon the Assignor/Borrower repaying all outstanding obligations with the Assignee.

||.....OBJECTION MY LORD.....||

IN WITNESS WHEREOF the parties have executed this Deed on the date first above written.

SIGNED BY

.....

[ASSIGNOR]

In the presence of

Name

Signature

Position

SIGNED BY

.....

[ASSIGNEE]

Name

Signature

Position

Name

Signature

Position

In the presence of:

Signature :

Name :

Designation :

Prepared and Drawn by;



Declaration

**THE REPUBLIC OF UGANDA
IN THE MATTER OF THE STATUTORY DECLARATIONS ACT CAP 22
AND**

IN THE MATTER OF STATUTORY DECLARATION

BY.....

STATUTORY DECLARATION

I of cell, Parishes ... Sub County ... District do solemnly take oath and declare as hereunder:-

- 1. That I am a female adult Ugandan of sound mind and capable of making this declaration.
- 2. That I hold an account in Centenary Rural Development Bank Account No..... in the name of
- 3. That the name was an error and my true and lawful name is
- 4. That however, I do confirm that the name on Account No. refers to no other person other than myself.
- 5. That I make this solemn declaration conscientiously believing it to be true in accordance with the statutory declarations Act

Declared at..... thisday of201..

by the said

.....

DEPONENT

BEFORE ME:

.....

MAGISTRATE/ COMMISSIONER FOR OATH

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE STATUTORY DECLARATIONS ACT CAP 22
AND
IN THE MATTER OF STATUTORY DECLARATION BY

.....
DECLARATION

1. I, of Cell,Parish/ Ward, Central Division, Municipality, District solemnly take oath and declare as hereunder:-
2. That I am a male/female adult Ugandan of sound mind with capacity to take this oath.
3. That I hold Account No. in the names of in Bank, Branch.
4. That I solely own a piece of land situate at.....**(Insert Land Location)**
5. That I make this solemn declaration to show that I am single and has never married at all and I have no spouse for purposes of consenting to my application for a loan and the piece of land guaranteed as security is my own.
6. That what is stated herein above is true and correct to the best of my knowledge.

Sworn at thisday of20.....

by the said **DEPONENT**

BEFORE ME:

.....

COMMISSIONER FOR OATHS

DRAWN BY:

Caveat

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT, CAP 230

IN THE MATTER OF LAND COMPRISED IN

..... BLOCKPLOT LAND AT.....

REGISTERED PROPRIETOR;

AND

**IN THE MATTER OF A CAVEAT FORBIDDING REGISTRATION OF ANY
CHANGE IN PROPRIETORSHIP OR ANY INSTRUMENT AFFECTING THE SAID**

LAND

CAVEAT

TAKE NOTICE that I/we,(**Insert Caveator’s name**) **WASSWA** of (**Insert Caveator’s address**) claim an equitable interest over the above captioned property and forbid the registration of any person as transferee or proprietor of the land or any instrument affecting the said property or estate until after notice of such registration is given to us at the address hereafter mentioned, or unless such instrument be expressed to be subject to our claim thereon or unless we consent in writing thereto.

I/We appoint as the address at which notices and proceedings relating to the caveat may be served

Dated at this day of.....2014.

SIGNED by the said

Name

Signature

Statutory Declaration
THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT, CAP 230

IN THE MATTER OF LAND COMPRISED IN

..... BLOCK ...PLOT LAND AT.....

REGISTERED PROPRIETOR;

AND

**IN THE MATTER OF A CAVEAT FORBIDDING REGISTRATION OF ANY
CHANGE IN PROPRIETORSHIP OR ANY INSTRUMENT AFFECTING THE SAID
LAND**

STATUTORY DECLARATION

I, (**Caveator's name and address**) do solemnly and sincerely declare as follows:

1. That I am a female/male adult Ugandan of sound mind with an equitable interest in the captioned property and I make this declaration in that capacity.

Indicate the nature of the caveator's interest in the land eg;

2. That on the the above described land was allocated to me by the Administrator General as beneficiaries to the estate of the late (**Attach documents (if any)**

proving the caveator's claim) eg; Attached is a copy of the transfer form.

3. That i/we would like to register a caveat over the above land to protect our equitable interest therein.

4. That I swear this Statutory Declaration in support of a caveat forbidding the registration of any person as transferee or proprietor of the said land and any instrument affecting the said estate or interest until after notice of such registration is given to me at the address mentioned in the caveat or unless I consent in writing thereto.

5. That I make this solemn declaration by virtue of the Statutory Declarations Act Cap 22

conscientiously believing the same to be true.

DECLARED at Kampala this.....day of.....2014] _____

by the saidCaveator's name)..... DEPONENT

BEFORE ME:

A COMMISSIONER FOR OATHS

Application for vesting order

**THE REPUBLIC OF UGANDA
IN THE MATTER OF REGISTRATION OF TITLES ACT ACT 30
IN THE MATTER OF APPLICATION FOR A VESTING ORDER**

The Principal Registrar of Titles

.....(**Insert Zonal Office**)

Dear Sir/Madam,

I (**Insert Applicant's Name and Address**), apply for a vesting order

in all that piece of land comprised in. Block..... Plot Located

at.....(**Insert Property Location and Description**) which land is delineated and coloured

red upon the plan numberedin the schedule to this application for an estate free from

incumbrances and I declare;

That in, I purchased the said land from one.....(**insert seller's name and area**

of residence).

The said.....held the land as a kibanja holder or had purchased the same

from.....

To date I have been in possession of the said land and I have enjoyed possession unchallenged by

the registered owner.

That I have been in actual possession since I purchased the suit land.

That there are no documents and any other evidence affecting such land in my possession and under my control other than those ascertaining my rights on the land. **(copies hereto attached and marked “A”)**.

That there are no mortgages or encumbrances registered on the above mentioned title or land description.

That however, the seller to date has not been able to execute or sign the transfer forms in my favour due to his incapacity.

That I have the sale agreement and of title in my possession.

That I am not aware of any mortgage or encumbrances affecting the land or that any person other than any interest in the land.

That the name and address of the registered owner as far as known to me is.....

That the current value of the land including improvements on it does not exceed.....(Insert Amount)

DATED at Kampala this.....day of.....20.....

Name and signed by.....

In the presence of

STATUTORY DECLARATION

(Persuant to S. 79 (a) and (d) of the RTA)

I.....(Insert Applicant’s name and address) do hereby

solemnly declare and state on oath that the above is true and correct information to the best of my knowledge

And I make this solemn declaration consciously believing the same to be true in accordance with the statutory declaration Act Cap 22 Laws of Uganda

Declared at this day of

By th said (Insert the name of the applicant)

.....

Deponent

Before me;

.....

Commissioner for oaths

Application for registration as proprietor of land

Address of Applicant

Date:

The Principal Registrar of Titles

Ministry of Lands, Housing & Urban Development

(Indicate area office)

Dear Sir/ Madam,

RE: APPLICATION FOR REGISTRATION OF (insert applicant's name) AS PROPRIETOR OF THE LAND COMPRISED INBLOCK..... PLOT..... LOCATED AT.....

I being the duly appointed executor/ executrix/ under the will of the late ... (**deceased's name i.e former registered proprietor**) do hereby apply to be registered as the proprietor of the said land. **(where the deceased died intestate, the applicant should indicate that he/she is the duly appointed administrator of the deceased's estate)**

The said land is registered in the names of (now deceased) A copy of the duplicate certificate of title to the said land is hereto attached.

I applied for and was granted letters of administration/ probate of the will in administrative cause

number of 20..... a copy of which is hereto attached.

Thank you for your cooperation.

Yours faithfully;

.....

(Applicant's name and signature)

Application for subdivision of land

Address of Applicant

Date:

The Principal Registrar of Titles

Ministry of Lands, Housing & Urban Development

(Indicate area office)

Dear Sir/ Madam,

RE: APPLICATION FOR SUBDIVISION OF LAND COMPRISED IN (INDICATE LAND DETAILS)

I Being the registered proprietor of the land comprised in

block..... plot..... do hereby apply for subdivision of the said land in the following portions;

1. ..(Indicate the portions in which the land should be divided). Portions measuring

..... each

2. The portions should be allocated to the following persons;

a. 1st beneficiary

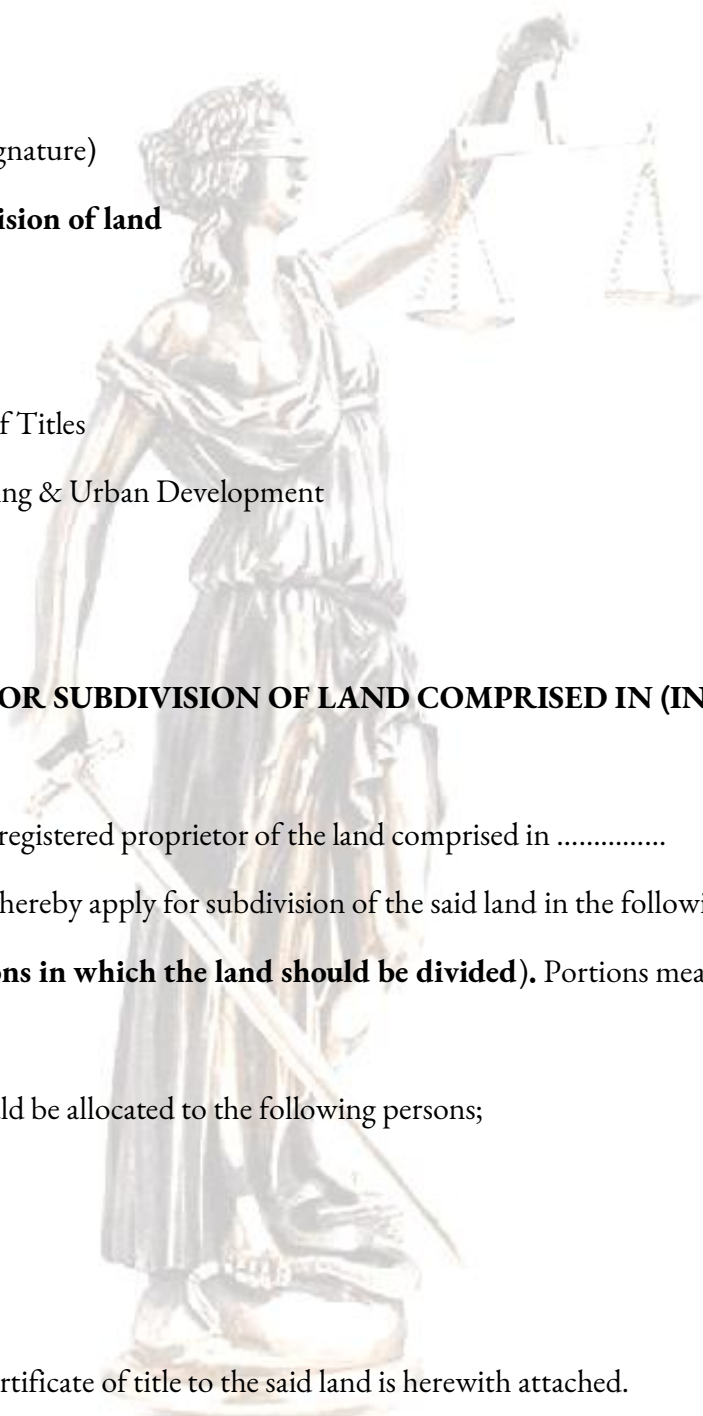
b. 2nd beneficiary

c.

a copy of the duplicate certificate of title to the said land is herewith attached.

Thank you.

Yours Faithfully;



.....

Applicant/ Registered proprietor's name and signature

Application for substitute certificate of title

Applicant's address

Date:

The Principal Registrar of Titles

Ministry of Lands, Housing & Urban Development

(Indicate area office)

Dear Sir/Madam,

RE: REQUEST FOR A SUBSTITUTE TITLE IN RESPECT OF BLOCK

PLOT LAND AT IN THE NAMES OF(Registered proprietor's name)

Reference is made to the above subject where I apply for a substitute title in respect of my land comprised i. Block..... Plot Located at.....

1. I desirous of (Insert purpose for which you would want to have the title eg using my land as security for a loan, transferring the land etc)

2. The white page of the above described land, however, cannot be traced at the land office and all our efforts to trace the same for the past **months have thus far proved futile.**

This is therefore to request that a substitute title be made to me to **(insert purpose for which you need the title eg effectively deal in the land)**

Your consideration in this matter will be highly appreciated.

Yours faithfully,

Name of applicant/ Registered proprietor

Agency Agreement

**THE REPUBLIC OF UGANDA
IN THE MATTER OF CONTRACT ACT CAP 73
AGENCY AGREEMENT**

THIS AGREEMENT is made this day of 20...

BETWEEN

..... (**Insert property owner’s name and address**) [hereinafter referred to as ‘the
Principal’] of the one part

AND

..... (**Insert the agent’s name and address**) [hereinafter referred to as ‘the Agents’]
of the other part.

WHEREAS the Principal is the registered proprietor of property comprised in
.....measuring and is desirous of selling
part of the said property.

AND WHERAS the Agents are able, ready and willing to secure a buyer for the said property upon
the terms and conditions hereinafter stipulated;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. APPOINTMENT OF AGENT

The Principal hereby appoints the Agent to perform and execute the duties above mentioned and incidental thereto as may be assigned by the Principal. The Agent shall use his/her best efforts, skill, judgment and abilities to effect his/her duties pursuant to the terms of this agreement and to provide all reasonably requested services required in connection therewith.

2. DUTIES OF THE AGENT

- a) The Agent shall perform his/her duties under this agreement in accordance with all applicable laws, rules and regulations and the highest standard of conduct.
- b) The Agent shall not make any representations or warranties on behalf of the Principal without any prior written authorization of the Principal and neither does this agreement provide the Agent with the exclusive right or authority to secure the buyer or the right to bind the Principal in any manner whatsoever without the prior written authorization of the Principal.
- c) The Agent undertakes to provide to the Principal information and advice regarding any matters being executed by him/her.
- d) Subject to the approval of the Principal, the Agent may cooperate with other persons in the execution of his/her duties but the Agent has no authority to bind the Principal in the payment of any fee, commission or other remuneration of any kind to the said persons unless prior agreed to by the Principal.
- e) The Agent shall be responsible for its own costs.

3. DUTIES OF THE PRINCIPAL

- a) The Principal shall furnish the Agent with the necessary information that may assist the agent in carrying out his/her duties.
- b) The Principal shall ensure timely payment of the Agent's commission.

2. PAYMENT OF COMMISSION

- a) The Principal shall pay the Agent% (**insert agreed percentage**) of the purchase price upon receipt of the purchase price.
- b) The commission shall constitute the total and maximum remuneration which shall be earned by and be payable to the Agent for his/her services.

4. PROHIBITION OF ASSIGNMENT

This agreement may not be assigned by the Agent without the Principal’s prior written consent, which may be granted or denied at the Principal’s discretion.

6. TERMINATION

If at any time during the term of this agreement, if either the Principal or the Agent is in default of any of their obligations under this agreement, or are unable to fulfill their obligations, then either party shall have the right to terminate this agreement by giving a written notice to the other party of such termination.

7. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of Uganda.

8. ENTIRE AGREEMENT

a) This agreement constitutes the entire agreement between the Principal and the Agent with respect to the subject matter herein contained and supersedes all prior discussions, negotiations, and agreements whether written or oral between the Principal and Agent.

b) This agreement may not be modified or amended unless such modification or amendment is in writing and duly executed by both parties.

IN WITNESS WHEREOF the Principal and Agent hereunto affix their respective hands and seals the day, month and year first above mentioned.

SIGNED & DELIVERED by the said

.....

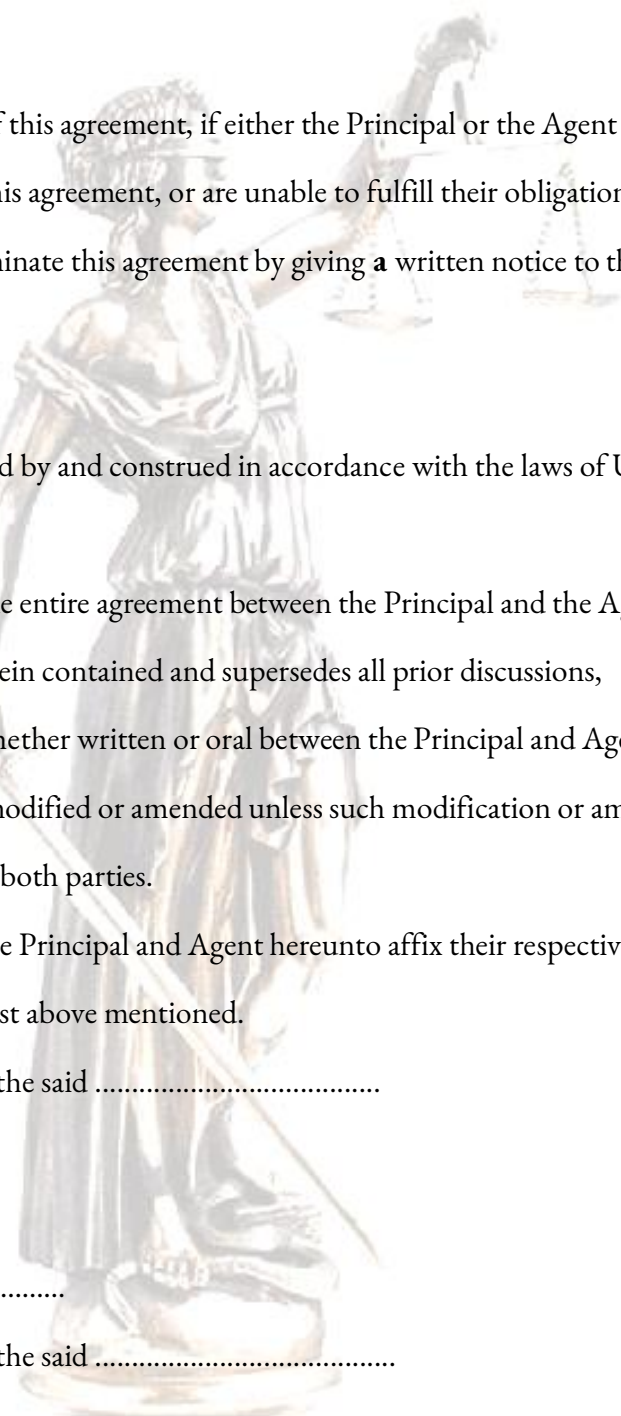
(PRINCIPAL)

In the presence of:

SIGNED & DELIVERED by the said

.....

(AGENT)



SIGNED & DELIVERED by the said

.....

(AGENT)

In the presence of:

WITNESS





AUTHOR'S NOTE

Isaac Christopher Lubogo, the esteemed author, remarks: "This revised edition reflects my unwavering commitment to advancing Ugandan jurisprudence and supporting the legal community."

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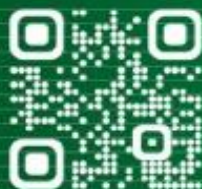
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