


**LAND CONFLICTS AND EFFECTS THEREOF IN KAMPALA CITY:
A REVIEW OF LAND LEGISLATIONS IN UGANDA.**

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DECLARATION

I **FABIAN TUREEBIRE** declare that the work presented in this dissertation is original, and has not been presented to any University or Institution. Where the work of other people has been used, references have been provided. It is in this regard therefore that I do declare this work as originally mine and hereby presented in partial fulfillment of this requirement offer the award of bachelors of law of Kampala International University.


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APPROVAL

This is to certify that this work of **TUREEBIRE FABIAN** has been submitted to the Faculty of Law with my approval as University supervisor.

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Date:.....

DEDICATION

This research report is dedicated to my dear father Mr. Gakyaro Bonefence, my dear mother Mrs. Korubaro Agripina and to my beloved brothers and sisters for the courageous effort, support, love, care and tireless work they have done for my success.

May the Almighty God reward them abundantly.

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Finally, my sincere gratitude goes to my course mates and all the staff in the Faculty of Law of Kampala International University whose endless, academic assistance has enabled me come to the successful completion of this course.

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Lukwago v Bawa Singhano another (1959) EA 282
Lwanga v The Registrar of titles (1980) H. C. B 300
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ABSTRACT

The study is an analysis of different land legislations in Uganda in relation to acquisition, use ownership, transfer and entire management of land use. The land question being a worldwide phenomenon and Uganda being part of the entire world, land has remained an unsolved issue for a long time although; a couple of laws have been put in place to save the situation.

The study further analyses the causes and effects of land conflicts in Uganda and particularly in Kampala district. Kampala being the capital city of Uganda, it has had almost all kinds of land conflicts therefore, this study discusses them at length giving a historical background of land conflicts in Kampala from pre-colonial era up to date.

In furtherance, the study gives an analysis of the land management and conflicts in other jurisdictions putting emphasis on Nairobi and Dar es Salam. It points out how these jurisdictions deal with the land issue in terms of; policies, management and conflict resolution

The study also recommends strategies that may be adopted to avert such land conflicts in Kampala city.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Background of the Study¹

The advent of colonialism left of historical legacy structured around land relations and management. Initially, colonialists introduced individualized ownership of property rights in land previously held either communally or on the basis of severing trustees. In the process, an interact system of political relationship legitimized. The newly introduced system of property ownership was super-imposed to either supersede existing indigenous land rights systems or formally confirm pre-existing customary arrangements as the case for kingdom areas. This duality of property rights systems resulted in land tenures, whose maintenance has turned cumbersome and confusing in the current social, economic and political circumstances.

Perhaps the most critical and challenging elements of Uganda's land question, courtesy of colonial legacy, are to do with disentangling the multiple and conflicting tenure rights and interests often overlapping over the same piece of land. At the time, of the creation of mailo and native freeholds, pre-existing private interests of small holder farmers particularly land use right were not legally recognized. An attempt to rectify this, with the enactment of the Busuulu and Envujjo law of 1928 for Buganda and similar laws in Ankole and Toro in 1938, the multilayered structure of rights persisted and has become a defining characteristic of the complexity of land relation in Uganda. In addition, the multi-layered system has been largely blamed for the escalating land conflicts and eviction in the central region where resolving dual interests of ownership between the registered owner and the lawful or bonafide occupants are common.

Laws governing in Uganda are; shorting with the constitution because it is the supreme in the country, various statutes, customary law, the common law and the

¹ D.Waus and C. Rafaella, Incidents and Impacts of Conflicts in Uganda, Paper 3248

principles of equity². The constitution of the Republic of Uganda as Amended lays down certain fundamental principles with regard to land ownership which will be discussed later. Since the constitution is the supreme law of the land any other laws or custom which is inconsistent with its provision is void to the extent of the inconsistency.³ With respect to statutory sources of land law, the most important are the Land Act Cap 227 and the Registration of Titles Act Cap 230.

The land Act mainly deals with land ownership, land administration and resolution of land disputes. The registration of Titles Act, as its title suggests, deals with the registration and transfer of titles to land as will be discussed later in details.

Customary law mainly constitutes an important source of law. Customary land law mainly applies to land owned in customary law as of common law is the residue source of land law. Uganda's common law and equity is essentially the common law and the doctrines of equity as applied by the English Courts prior to 1902

1.1 Statement of the Problem

Despite the fact that various laws have been enacted to regulate land acquisition, ownership and utilization. In Uganda, land conflicts have remained a contentious issue especially in Kampala City where land ownership seems to be a desired end for every Ugandan

Given the multiplicity of land tenure systems prevailing in Uganda, the increased population and the reluctance of the law enforcement agencies to implement the land laws, land conflicts have continued to manifest themselves in Kampala whose effects are far reaching.

The Registration of Titles Act deals with the registration of titles and transfer of land. The registrar to record transactions in such a manner as to preserve their order of

² Mugambwa Principles of Land Law In Uganda page 1

³ Article 2(2) The 1995 Constitution of the Republic of Uganda

priority which generally, is the order of presentation for registration and not the order of the date the transaction were entered into.⁴

Despite laws governing land matters in Uganda, land disputes and conflicts have become part of the definition of contemporary Uganda. Trans-state boundary disputes, inter-distinct boundary disputes and conflicts, hot spots of ethnic land conflicts, and conflicts between pastoralists and agriculturalists are all on the rise. Eviction on registered land between owners and the occupants are also on the rise.

Efforts by government agencies to conserve vital ecosystems have resulted in violent conflicts that are sometimes fatal as they wrestle encroachment in protected areas.

The above elaboration of land conflict clearly shows the laws governing land in Uganda have technicalities and need to be modified to eliminate the land conflict.

1.2 Significance of the Study

The study is significant because it will bring out what really has led to the different land conflicts because it is from these different issues that are to be dealt with or rectified so as to end the land conflicts specifically in Kampala.

The study is also significant because it will pull out different technicalities in the existing land legislations, they will in turn help in the amendment of the different statutes so as to end the land conflicts in Uganda.

The study is very important it will help in finding out the different forms of implementation of land policies so as to reduce land wrangles in Uganda specifically in Kampala.

1.3 Scope of the Study

This study focused on the different land legislation in Uganda, highlighting all land conflicts and their effects in Kampala city.

⁴ Section 38(1) Registration of Titles Act Cap 230

1.4 General objective of the study.

To undertake a study on land conflicts and effects thereof in Kampala city: review of land legislations in Uganda

1.4.1 Specific Objectives of the study.

1. To review the different existing land legislations in Uganda
2. To determine if the land legislations need to be modified
3. Whether there are really land conflicts in Uganda specifically in Kampala
4. To find out if the land conflicts are really as a result of land technicalities
5. To determine possible ways on how to end land conflicts

1.5 Research questions to the Study

1. What re the existing land legislations in Uganda?
2. What are the different loopholes in land registration?
3. What are the different land conflicts in Uganda if any?
4. Are the different land conflicts due to land technicalities?
5. What are the different ways to end land conflicts?

1.6 Methodology

In order to achieve the objectives of the study, qualitative method of research is to be used. Qualitative method involves the use of statutes, library materials such as text books by distinguished writers. Law journals, articles and other written materials that is relevant to the field of study.

The study embraces a qualitative method of data collection basing on the fact that it is the most appropriate means of collecting valid, relevant and reliable information towards effectively analyzing and examining the variables of the research hence meeting the desired ends of this study.

The data will be collected through secondary means such as library research and exhaustively analyze and study reports which have been prepared by both the

government and nongovernmental organization such as research papers, booklets and journals. The qualitative method and approaches embraces the statistical data presentation via afro biometrical studies.

It is hoped that all these methods combined will enable the objectives of this research to be achieved.

1.7 Literature review

According to Mugambwa⁵ citing from Section.38 (8) RTA provides that the recorder must issue a certificate of occupancy to the tenant upon presentation of the requisite consent. The recorder is then required to notify the registrar of titles of the issue of the certificate. The registrar is then required to record the certificate as an encumbrance on the certificate of title of the landowners⁶ The effect of endorsing the certificate of occupancy on the landowners' certificate of title is that the tenant's interest in the land will bind any person who purchases or deals in that piece of land.

In the case of **Lukwago V. Bawa Singh and another**⁷, it was held that title of a registered proprietor of mailo land was subject to the interest of any tenant and theta a Kibanja holder was a tenant within the meaning of S.6 of RTA. Moreover Sec. 33(9) of the land At expressly declares that the security of tenure of a lawful or bonafide occupant is not to be prejudiced by reason only that he or she does not possess a certificate of occupancy – So it guaranteed not only in the Act that the security of tenure of lawful and bonafide occupant is guaranteed not only against the registered owner but also giants subsequent dealer in land.

In reviewing this aspect, it only looks at one side that is the tenant has advantage over the land lord, thus the land lords fees cheated because the owner's consent moreover in the conventional sense, a tenancy is only supposed to exist with consent of the land owner.

⁵J.T Mugambwa by Principles of land law in Uganda

⁶ Sec. 35(c) RTA

⁷ (1959) EA 282 ad 285

Yamane, provide four causes of land conflicts in societies namely; increased population pressure ,Expansion of agricultural projects, the emergence of large-scale commercial irrigated agriculture and the implementation of various plantations projects have deprived so far the pastoralists of thousands of hectares of dry-season (3) Expansion of wildlife parks inside the rangeland since once the parks are established the pastoralists are not allowed to graze and water their livestock, and (4) Emergence and expansion of agro-pastoralist, this practice has been spreading in Ethiopia. He recommend that development organizations should commit themselves further in lobbying that pastoralists rights be effectively respected and that their participation in the use management planning be effectively ensured⁸. The author has provided a concrete cause of land disputes in pastoral societies and I do concur with him on that causes. The author's solution to the problem being the commitment of the organization itself in respecting the rights of pastoralists, for this I do not concur with him as it is impossible for human being who always seeks their interest first. This can be possible by the introduction of the law which will guide all the transaction of the community and enhance the respect of others rights.

Fimbo, in his book has stated that land has always been an arena of struggle between contending forces since the colonial period to date the class in control of state power has vested in itself exclusive powers to decide matters regarding ownership of land, distribution of land rights, land use and disposition of interests in land. The main function of law has been to control and regulate. This author seems to appreciate the role of law in controlling and regulating land, which means with reasonable law pastoralist societies, will be free from these disputes which exist since colonial time till to date, which also shows the less concern of the government on the matter.

⁸ Kigula John, 1999. Overview of types of disputes and dispute settlement fora, Makerere Institute of Social Research and Land tenure Centre, College of agricultural and life Sciences,University of Wisconsin; research and policy development project, research paper 3. 1999

Ringo Tenga argue that the Tanzanian Land Ordinance 1923 Cap 113 and other supplementary statutes such as the Land (law of Property and Conveyance) ordinance Cap 114, the Land Registration Ordinance Cap 334, the Town and Country Planning Ordinance Cap 378, the Land Acquisition Act 1967 and the Limitation Act 1971 all give primary emphasis to the Granted Right of Occupancy, very little is provided for the Deemed Right of Occupancy which is the tenure for the majority of the inhabitants of Tanzania. He further argued that land tenure system of the Maasai has not received comprehensive treatment by the legal scholars. Pastoralists cannot live a decent life if their pastoral lands are grabbed away from them by the state⁹.

Lane and Moorehead argues that three major processes of political and economic change are presently underway in Africa that is profoundly affecting land tenure system: the nationalization of their resources, the sedentarisation of the herders themselves and the privatization of the range. A quarter of a million pastoralists mainly Maasai and Tatoga speakers like Barabaig who rely on communal lands for livestock production, now find the best of their lands taken and their movement restricted. This is best illustrated by the Barabaig case in which more than 100,000 acres of the prime grazing land was acquired by the government for parastatals wheat scheme.

The author s arguments are based on insecurity of tenure of pastoral land as the source of land disputes and they call for the law to provide tenure security to pastoral lands as a way to avoid disputes.

Goodmann, (2002),agricultural Livelihoods in Uganda; Can the Maasai Benefit from Conservation, Current Issues in Tourism, natural resource management and ensure equitable access to land resources. Goodman suggest for the legislative change as the only solution. As the author suggested I do agree with him and this in general require new law to resolve the problem in question since the present laws has proved failure to the extent of increasing confusions and disputes remain

⁹ Kigula John, 1999. Overview of types of disputes and dispute settlement fora, Makerere Institute of Social Research and Land tenure Centre, College of agricultural and life Sciences,University of Wisconsin; research and policy development project, research paper 3. 1999

unsolved. The existing laws have never started to resolve the disputes from their grassroots merely providing the mechanism of solving those disputes. Moreover the report of Eastern and Central Africa Programme for

Agriculture Analysis (ECAPAPA) provide that lack of guaranteed security of land tenure and appropriate mechanism on land ownership for agriculture production has increased social conflicts between pastoralist farmers and other land users. This report clearly shows the insecurity of tenure to pastoral society as the cause of land conflicts as they are always displaced from their land without any legal justification

The Odoki (1988) and the Sempebwa (2003) Constitutional Review Commissions, underscored the importance of a comprehensive national land policy, to harmonize the diverse needs for human settlement, production and conservation, by adopting best practice in land utilization for purposes of growth in the agricultural, industrial, and technological sectors, taking into account population trends, without losing control over the structuring of land tenure systems¹⁰.

1.8 Chapterisation

This deals with the arrangement of the whole dissertation and it is as follows; chapter one deals with Introduction and simple background of problem of study, objectives, research questions, significance, and scope of the study, literature review and methodology of the study. Chapter two deals with the relevant existing land legislation, the history, their prevalence and critiques, thereof, chapter three is going to deal with main problem that is the land conflicts and effects, their history, how they came about, their prevalence where they exist in Kampala, brief background of Kampala district, chapter four deals with land management and conflicts in Dare Es Salam and Nairobi and lastly chapter five is to deal with conclusions and the different recommendations to end land conflicts both legal and social and conclusion as to the whole work load.

¹⁰ Odoki Constitutional Review Commissions, (1988)

CHAPTER TWO

LAND LEGISLATIONS IN UGANDA

2.1 Introduction

This chapter deals with different land legislations in Uganda, and critiques of the laws in conclusion. It seeks to address land legislations in Uganda deals with acquisition, registration and ownership of land. It also addresses different land management institutions in Uganda and lastly it deals with different land cases highlighting land conflicts in Uganda

2.1.1 Definition and Land

On the face of it, a common man would define land as a solid portion of the earth's surface¹¹. But in law the term 'land' means more than that. The common law conception of land is summed up in the Latin maxim: *cuius est solum cuius est usque ad coelum et ad inferos*. Translated literacy, the maxim means that the person to whom the soil belongs also owns the heavens above and everything below it.¹² The statutory definition of land indicates that the concept of land covers more than what meets the naked eye that is physical portion of the earth's surface. For instance Section 1(i) of the Registration of Title Act is to the effect that land includes "Messuages"¹³ resources, tenements and hereditaments corporeal or incorporeal and in every certificate of title, transfer and lease issued or made under this Act, "land" also includes all easements and appurtenances appertaining to the land described there in or reputed to be part of that land or appurtenant to it. Other statutory definitions may be wider or narrower depending on the object of the particular legislation. This it is significant to define land because it is important to determine the nature and extent of the rights of land owner against the rest of the community.

¹¹J.T Mugambwa Principles of land law in Uganda. Page 50

¹² Grey K.Elements of land law (2nd ed. London Butterworth's 1973)P.6

¹³ Messuages means a similar structure and garden

The legal framework of land law in Uganda is governed by the 1995 constitution of Uganda as amended, various statutes, customary law and common law and principle of equity.

2.2.1 The Constitution of the Republic of Uganda, 1995

The constitution of the Republic of Uganda, 1995 as amended, lays down fundamental principles with regard to land ownership. Since the constitution is the supreme law of the country any other law or custom which is inconsistent with its provision is void to the extent of the inconsistency¹⁴. The constitution also abolished the land reform decree and re – stated the system of customary land tenure, free hold, lease hold tenure and Mailo tenure.¹⁵ It also made new and radical changes in the relationship between the state and land ownerships in Uganda; it declared that land in Uganda would hence forth belong to the citizens of Uganda.

In the constitution it is stated that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the following land tenure systems, that is to say customary, freehold, mailo and lease hold¹⁶. Non – citizens of Uganda may only own land but only in lease hold¹⁷.

With respect to customary tenure, **Article 237 (4)** provides that all Uganda citizens owning former public land under customary tenure may convert their title to freehold a manner prescribed by the parliament.

The constitution sets out quite detailed provisions in relation to land rights while leaving provisions to be determined by subsequent legislation. It permits the government, or a local government body, to acquire land in the public interest subject to the provisions of **Article 26** of the constitution, which protects people from being arbitrarily deprived of their property right

¹⁴ Article 2(2) Constitution

¹⁵ Article 237(3) of the Constitution

¹⁶ Article 237 Constitution

¹⁷ Art 237. 2 (c) Constitution

Article 26(1) is to the effect that, every person has a right to own properly either individually or in association with others.

The constitution also gave “lawful” and bonafide” occupants of mailo land, freehold and leasehold a moratorium against eviction until parliament enacted an appropriate law to regulate their relationship with the registered owner of such land¹⁸.

Article 238 of the 1995 Constitution establishes the Uganda Land Commission which is charged with the holding and managing of any land in Uganda vested in or acquired by the government of Uganda in accordance with the provisions of the constitutions.

Article 140(1) establishes the districts land boards which are charged with different functions under **Article 141 of the 1995 Constitution** to include;

- a) To hold and allocate land in the district which is not owned by any person or authority
- b) To facilitate the registration and transfer of interest in land
- c) And to deal with all other matters connected with land

Article 243(1) provides for the establishment of Land Tribunals whose jurisdiction include the determination of disputes relating to grant lease, repossession, transfer or acquisition of land by individuals, the Uganda land Commission or other authority.

Article 242 empowers the government to regulate land use in Uganda in accordance with the laws made by the parliament.

2.2.2 The Land Act Cap 227 Of 1998

The Land Act mainly deals with land ownership, land administration and resolution of land disputes¹⁹. The Land Act came into force in 1998, following five years of vigorous and controversial debate. Most of its provisions had been previously mentioned in the constitution and the law was intended to give them practical effect. The two most important issues covered by the Land Act are ownership and tenure rights and land administration.

¹⁸ Article 237 (8) and (9)

¹⁹ Introductory part of the land Act 227

Section 2²⁰ provides that all land in Uganda shall vest in the citizens of Uganda and shall be owned under different tenure systems which include;

- a) Customary (b) free hold c) Mailo and d) lease hold.

Section 42²¹ provides for the acquisition of land by the government and it is to the effect that the government or local authority may acquire land in accordance with article 26 and 237(2) of the constitution.

While the previous **Land Reform Decree of 1975** had sought to increase control over land by the central government and make tenure conditional on the land development, the land Act of 1998 is part of a very different policy. It expressly limits government owned land as that which was being used by the government when the constitution of 1995 came into force. It stipulates that if the government requires additional land it must purchase this, either from a willing seller or through compulsory acquisition in accordance with the rights to private property contained in the constitution²².

The land Act also upholds the constitution's support for women and girls property rights by stating under **section 27** that any decision made on customary land according to the customs or traditions that denies women access to ownership occupation or use of any land or violates the rights of women. In the 1995 constitution it is null and void. Also the 2007 amendment to the land Act gives all spouses the right to security of occupancy on family land and required consent of the spouse for transactions of family land²³.

The land Act further outlines what obligation tenants and land lords have towards one another²⁴.

²⁰ Land Act Cap227

²¹ Land Act Cap227

²² Articles 26 and 237 (2) constitution and S.42 land Act Cap 227

²³ Section 39 land Act Cap 227

²⁴ Section 32 A (1) LAND Act Cap 227

2.2.3 Registration of Titles Act Cap 230

The registration of titles Act, as the title suggests, deals with transfer and registration of titles to land²⁵.

In Uganda, the system of registration of title which operates is commonly known as the Torrens system the system was its introduced in **Sir Robert's** own state of South Australian in 1858, and subsequently it spread to other Australian states, New Zealand , Malaysia , Papua New Guinea some states in the U.S.A and some Canadian provinces ²⁶.

The Torrens system was introduced in Uganda by the **Registration of Tittles Act (Cap 205)** which was enacted in 1922 by Ordinance 1908 and the Equitable Mortgages Ordinance 1912, The Act is based on the Transfer of Land Act, 1915, of the Australian state of Victoria.

The **Registration of Titles Act (Cap 230)** automatically applies to all maillo Land included in any final certificate and all lands alienated in freehold or leasehold and any transaction relation to such land²⁷. Customary land tenure is not registrable under the Act. Owners of land under customary tenure who wish to bring their land under the Act must convert their tenure to freehold as provided for under the land Act.

The **Torrens system** has two essential features that distinguish it from other system of conveyance; title by registration and the principle of indefeasibility of title. The two features are inter-dependent and they are both essential to the Torrens system.

2.2.3.1 Title by registration

Under the **Torrens system**, interests in land are created or transferred not by execution of document or under the common law but by registration in the manner prescribed by the **Registration of Title Act**. The key provision is **Section -54**

²⁵ Provision on the introductory part of Registration of Titles Act

²⁶ Section 7(i) registration of titles Act Cap 250

²⁷ Rowton Simpson, land law and registration (Cambridge University press 1976

which stipulates that an instrument purporting to confer an interest in land is not effective to pass any estate or interest in land or bind the land by way of mortgage until the instrument is registered as provided under the Act.

2.2.3.2 Unregistered instruments

Though **Section 54** of the **Registration of Title Act Cap 230** states that no estate or interest can be created or transferred until the instrument purporting to transfer the same is registered, the section does not thereby deny unregistered instruments any legal efficacy

2.2.3.3 Indefeasibility of Title

The second essential feature of the Torrens system is the principle of indefeasibility of the title. Basically this means that once a person is registered as proprietor of an estate or interest in land, the government guarantees that his or her title cannot be divested or attacked by rival claims (and except as prescribed under the R.T.A). Interestingly, the expression, "**Indefeasibility**" though widely used in the R.T.A, it's meaning and scope is nevertheless, extracted from what professor Whalan describes as a "**Mosaic of sections**".²⁸ They include,

Section 59 which declares that "the certificate of title shall be conclusive evidence of all particulars and endorsement therefore of and the person named in the certificate as the proprietor is possessed of the estate or interest described". The courts are required under the section to receive and treat the certificate of title as conclusive evidence of its particulars.

Section 64 declares that subject to the exceptions stated therein, the estate or interest of a proprietor registered under the Act prevails over any other unregistered interest or claim over the land.

Section 176, 181 and 184 protects a registered proprietor against any action or ejectment or damages. Except as stated in these provisions, production by a person of certificate of title on his or her name is deemed to be an absolute bar estoppel against any legal action.

²⁸ Mugambwa Principles of land law in Uganda

The indefeasibility principle was designed to achieve two main objectives. **First**, it was designed to protect title of the registered proprietor from unregistered interests. **Secondly**, to save persons dealing with registered land from the trouble and expense of going behind the register book in order to investigate the validity of title or possible rival claims to the land, and thus simplifying and expedite the process of transfer²⁹.

The application of the principle of indefeasibility is illustrated by the case of **Lwanga V. The Registrar of title**³⁰ The facts of the case were as follows, In 1920, the applicant's late father bought the suit property, but title , to the land was never transferred into the deceased's name. After the deceased's death one Katamba sold the subject land to one Salango, an Innocent purchase who was registered as proprietor of the land. Magistrates' grade1 Court convicted Katamba of forgery and ordered that the suit property be transferred to the applicant. When the applicant attempted to enforce the order, the registrar refused to comply. The applicant instituted these proceedings in the high count against the registrar.

Odoki Ag. J, as he then was, up held the registrar's grounds for refusing to transfer title into the applicant's name. He held that Salango was a bonafide purchaser for value, therefore under **section 189** of the registration of title of Act cap 230; his title could not be impeached or cancelled notwithstanding that he acquired his title from a forger. His Honour observed that one of the paradoxes of registered conveyance is that though registration obtained by fraud is void. It is capable of becoming a good root of title to a bonafide purchase for value.

2.2.3.4 Exceptions to indefeasibility

The principle to indefeasibility of title though central to the Torrens system is not absolute. It is subject to several exceptions, some of which are expressed within the registration of title Act Cap 230. Others are created by overriding statutes and by the courts in the exercise of their inherent jurisdiction.

²⁹ Mis cause No. TA of 1977; (1980) He B 24 (unreported)

³⁰ The Torrens system in Austria

The exception from the **Registration of Title Act Cap 230** are provided for under **section 176** which guarantees the indefeasibility of a registered title subject to the following exception which include; encumbrances notified on the folium, Fraud, the estate of a proprietor claiming under a prior instrument of title, land included by wrong description, interest of any tenant of land, Adverse possession, Public rights of way and easements and unpaid rates, taxes and charges. Other exceptions not from the Act include lease, license and other authority granted by the minister and lastly but not the least, registrar's powers as an exception to indefeasibility and these power are granted under the land Act.

2.2.3.5 Mortgages

Mortgage under the RTA shall when registered have effect as a security but shall not operate as a transfer of land thereby mortgaged. However, banks, financial institutions and money lenders have always ignored and or wrongfully sold such mortgages which have always caused conflicts. According to Meggary, a mortgage may have;

- a) Right to sell
- b) To fore close
- c) To take possession
- d) To appoint receiver³¹

2.2.3.6 Co ownership of land

Co- ownership of land is where two or more persons concurrently own an interest in land. The interest may be a lease hold, freehold and mailo. 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 co-ownership may be in joint tenancy or tenancy in common.

³¹ R.E Meggary AManual of the law of Real Property (199) page 598

2.2.3.7 Joint tenancy³²

There is a joint tenancy where two or more persons together as a group own the entire interest in the property. Co-owners in joint tenancy unlike tenants in common, do not have distinct shares in land. In the eyes of the law they hold the whole jointly and nothing separately.

A joint tenancy has two essential features which distinguish it from a tenancy in common, presence of the four unities and the right of survivorship. Unless these two exist there cannot be joint tenancy.

2.2.3.8 Tenancy in common³³

This differs from joint tenancy in that tenants in common hold land in individual shares. In other words, each tenant in common holds a distinct share in the property. What makes the parties co – owners is that they all have shares in a single piece of land though the land is not yet physically divided amongst them because each tenant in common has a fixed share in the land, the doctrine of survivorship does not apply hence if one of the tenants in common dies, his or her undivided share of the land passes under his or her will or intestacy. Although the four unities may be present in a tenancy in common, the only essential are is unity of possession.

2.2.4 Mortgage Act 2009

Section 3 of the Mortgage Act is the effect that 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 part of it to secure the payments.

Section 5 provides for mortgage of matrimonial homes notwithstanding section 39 of the land act. However, such a mortgage is only valid if the document creating a mortgage has been assented to by the mortgagor and the spouse.

³² Section 56 of Registration of Titles Act

³³ *ibid*

Section 7 of the Mortgage Act provides for the creation of mortgages on customary land. And it is the effect that mortgage is under customary land shall continue to be in accordance with customary laws

Section 8 of the Mortgage Act provide that mortgage of a land shall take effect as security only as shall not operate as a transfer of any interest or right from the mortgagor to the mortgagee.

Section 20 provides that where a mortgagor is in default, the mortgagee may require the mortgagor to pay, appoint a receiver, lease the mortgaged land, enter into possession or sell the mortgage land

2.2.5 The National Environment Act 1995

The Act established National Environment Management Authority as the overall body responsible for the management of the environment in Uganda National Environment Management Authority in consultation with the relevant authorities and stakeholders sets regulations and standards for the management and conservation of natural resources and the environment.

The National Environment Statute establishes the National Environment Management Authority (NEMA) as the highest institution concerned with the management of the environment. This followed recognition by the National Environment Action Plan processes that one of the factors that were hampering effective management of the environment was poor institutional set up. Section 5(1) of the statute³⁴ provides that there shall be a body called the National Environment Management Authority

Section 7 provides for the broad powers of the authority, as the principal agency in Uganda with the power to coordinate, supervise and monitor all activities in the field of the environment.

On the whole, the authority has endeavoured to play its role in ensuring that environmental standards are maintained at a minimum level. It has tried to coordinate- the various institutions involved in the management of the environment.

³⁴ The national environmental management statute

Wetlands

Since 1994 there have been significant policy developments in wetland management. The most significant are contained in the National Environment Statute and the National Wetlands Policy. Issues concerning Uganda's wetlands are a) draining of wetlands, b) over harvesting of wetlands products and c) increasing levels of pollutants in some wetland ecosystems (NEMA, 1996).

2.2.6 Land Acquisition Act Cap 226.

The land acquisition Act cap. 226 govern the compulsory acquisition of land for public purposes in addition to the constitution of Uganda and the Land Act.

2.2.7 Succession Act Cap 162

Succession and land³⁵

According to **section 2 (m)**³⁶ immovable property includes incorporeal tenements, land and things attached to land or earth.

Also under **Section.4 (i)**³⁷ when one dies leaving an immovable property in Uganda, succession to the property shall be regulated by the laws of Uganda, not regarding the domicile of the person at his death.

Section 30 Succession Act Cap 162³⁸ is to the effect that no wife or husband of the deceased will get any interest from the estate if at the time of the death of the deceased he or she had separated with the deceased.

After the death of a husband, the wife has the first priority to administer the property of the deceased. This is illustrated in the case of ***Sebowa V. Sebowa***, where it was stated that were the deceased left the wife and children, they have the first priority to apply for the letter not any other remote relative.

³⁵ Succession Act Cap 162

³⁶ Succession Act Cap 162

³⁷ Succession Act cap 162

³⁸ Succession Act Cap 162

2.2.8 Probates (Resealing) Act

In the **Probate (resealing) Act**, where the immovable property is in the other country other than Uganda, the executor or administrator, gets the letters of administration on probate from a competent court and then takes the documents to another court with competent jurisdiction in the country where the property is found so as to reseal the grant in that the person can administer the property of the deceased according to the law of the country where the property is found³⁹.

2.2.9 Customary Law

Customary law constitutes an important source of land law. Customary land law mainly applies to land owned under customary law. **Section 27** of the land Act provides that decisions in respect of land held under customary land tenure shall be determined in accordance with the customary practices; however any custom that discriminate against children, women, and people with disabilities contrary to **Articles 33, 34 and 35** of the constitution is void. The **judicature statute, 1996 (statute Ho B of 1996)**, also empowered the court to apply and enforce the observance of customary practice for as long it is not repugnant to natural justice, equity and good conscience and provided it is not inconsistent with any written and applied law ⁴⁰. A case in point is *Babiruga V Karegyesa and others*⁴¹, where the high court declined to enforce an alleged Kikiga custom, which said that land formerly cultivated by a child's mother upon her death automatically, passes to the children and does not revert to the husband.

Karokora J, as he then was, said that such custom was repugnant to natural justice, equity and good conscience because it deprived the man, as head of the family, of his powers to control family property. Moreover, in His Honour's view, it

³⁹ Section 2 of the Probate (Resealing) Act

⁴⁰ Section 17 (i) judicature statute

⁴¹ D.R.CA No MKA 13 of 1993 (unreported)

was tantamount to depriving him of his property without compensation contrary to the constitution.

Furthermore as written by **Mugambwa** ⁴² customary law is also not applicable where the parties expressly or by implication from the nature of their transaction agreed that other law should regulate the transaction⁴³. For instance, in the case of ***Wasswa V Kikungwe***⁴⁴, the court applied the general law of mortgages to a transaction resembling a mortgage of land owned under customary tenure.

2.2.10 Common Law and Doctrines of Equity

Common law is the residue source of land law. The judicature statute provides that subject to any written law and in so far as written law does not apply or extend to the matter the courts shall apply the common law and the doctrine of equity. The expression '**common law**' and '**doctrines of equity**' refers to the unwritten law in Uganda, other than customary law, administered by the high court of Uganda⁴⁵.

Uganda's common law and equity is essentially the common law and the doctrines of equity as applied by the English courts prior to 1902. However the common law applies in so far as the circumstances of Uganda and of its people permit and subject to such qualifications as the circumstances may render necessary. Never the less, both the common law and principles of equity are still a very important source of Uganda land law.

⁴² Mugambwa Principles of land law in Uganda page 1

⁴³ Section 17 (2) Judicature statute

⁴⁴ (1952) 56 line

⁴⁵ Section 17 (s) judicature statute

2.3 Land Management Institutions in Uganda

2.3.1 Uganda Land commission

The Uganda Land Commission is established by Article 238⁴⁶ whose principle function is to hold and manage any land in Uganda vested in or acquired by the government of Uganda in accordance with the provisions of the constitution.

2.3.2 Buganda Land Board

The Buganda Land Board is a creature of the Traditional Rulers Restitution of Assets and Property Act Cap 247

Section 2 of this Act vests all the restored property of Buganda including land in the Kabaka of Buganda by virtue of being the Supreme Ruler of the region⁴⁷. It is against this background that the Kabaka is termed as "The Land Lord" and thus any person to occupy lease or utilize Buganda land must get consent which is affirmed by the Buganda Land Board.

2.3.3. Kampala Land Board

Kampala Land Board was established by the 1995 Constitution⁴⁸ which among other things provides that there shall be a district land board for each district.

- a) Article 141 also provides for the functions of the district land board which inter alia include to hold and allocate any land which is not owned by any person or authority
- b) To facilitate the registration and transfer of interest in land

Although the coming into force of the Kampala city Authority Act 2010 which established KCCA, has continuously tried to disband Kampala Law Board but basing on decision of Justice Solomy Barungi, KCCA has no mandate to interfere with the functions of the Kampala Land Board.

⁴⁶ The Constitution of the Republic of Uganda 1995

⁴⁷ Section 2 Traditional Rulers Act Cap 247

⁴⁸ Article 240

2.3.4. Religious Groups /Institutions

It is pertinent to note that the acquisition of land owned by most religious groups in Uganda is traced for back in the 1880 the time when missionaries and religious groups acquired land from the Kabaka for the purpose of establishing their religious missions. It is this land that has continuously remained to be owned by chamber in Kampala, However, different religious groups have their different land management system for example for the case of the Catholic Church, the land is managed by the Catholic Church Secretariat and in Kampala Catholic Church land is managed by Kampala Archdiocese Land Board which is responsible for the management of church land and ensuring that its proper use on the other hand, other religious groups also manage the land in the same manner.

It should however be noted that, although such church land is managed privately it is subject to Uganda Land Laws. As it was evident in **Ipoto Gabriel V. Registered Trustess of Soroti Catholic Church.**

2.3.5. Private Land Owners

Private land ownership in Uganda is either by individuals or limited companies. The acquisition, management and use of land under private ownership is regulated by the Uganda Laws. It is however pertinent to assert that such private ownership may be by either of the tenure system provided under the 195 Constitution as per Article 237 (3) which include

- a) Customary
- b) Mailo
- c) Leasehold

2.4 Land use policy in Uganda

The government has committed itself to enforcing appropriate rules and regulations on the use of natural resources and environmental management. Public sensitisation on environment conservation issues like proper land use and management, rational use of fertilisers and pesticide, appropriate fishing methods, proper waste disposal

and management, optimum stocking rates, pollution etc is already underway through environmental awareness campaigns by both NGOs and respective public institutions.⁴⁹

The main objectives of the agricultural sector policy in Uganda are to increase agricultural productivity so as to ensure food security and self sufficiency in raw materials for agro processing industries. It is also expected to generate a surplus for exports, increase incomes and reduce poverty through increased sales of agricultural surplus and to diversify the country's exports through the promotion of NTAE crops⁵⁰.

Decentralisation

The PMA has been set within the context of decentralisation, which involves the transfer of political, financial and planning authority from the Central government to Local government councils.

Non Traditional Agricultural Exports

Establishment of the Export Policy Analysis and Development Unit (EPADU), the Export Refinance and Export Credit Guarantee Scheme to provide financial assistance to exporters through commercial banks by the Bank of Uganda and the USAID funded Export Diversification Program through IDEA project has boosted the growth of NTAEs.

Food Crops

The Plan for the Modernisation of Agriculture (PMA) plans to achieve rapid uptake of technologies in food production and progress on lowering costs. The first priority is to lower per unit costs of food in production and the second is to lower costs in the trading and processing chain. The government's goal is to change how agricultural growth is achieved. Previously growth stemmed from increasing cultivated area and labour helped by substantial improvements in incentives to farmers as a result of freeing markets and stabilising the macroeconomy. With very limited application of

⁴⁹ NEAP/MNR (1995) *The National Environment Action Plan*.

⁵⁰ NEMA (1996) *State of the Environment Report for Uganda 1996*.

modern inputs this growth was achieved with scarcely any improvements in average yields.⁵¹

Uganda has near self sufficiency in production. The food crop subsector is the main engine of rapid growth, but accelerating the growth rate beyond 3-4% will necessitate emphasis on the industrial exploitation of agricultural products and export markets. This coincides with the imperative need to promote agro-processing industries and increase exports through nontraditional sources.

Livestock

The government has implemented the Livestock Services Project (LSP) to improve provision of veterinary and animal health services to small livestock farmers in the country. There have also been significant increases in the population of other ruminants and poultry⁵².

2.5 Land Tenure Systems in Uganda

Land tenure systems in Uganda Land ownership with consideration of the Land Act Cap 227, subject to **Article 237(3) of the constitution**, all land in Uganda shall vest in that citizens of Uganda and shall be owned in accordance with the following land tenure systems.

- (a) Customary;
- (b) Freehold;
- (c) Mailo; and
- (d) Lease hold ⁵³

⁵¹ Government of Uganda (GOU) (1998a) "Statement to the December 1998 Consultative Group Meeting. Towards a Sector wide Approach: Developing a Framework for Modernization of Agriculture in Uganda".

⁵² NEMA (1996) *State of the Environment Report for Uganda 1996*.

⁵³ Section 2 Land Act Cap 227

2.5.1 Freehold land tenure

Thus from the above provision, there are four types of land tenure system recognized by the constitution of Uganda. **The land Act 1998** defines “**Free hold tenure**” as a tenure that derives its legality from the constitution and the written law. Freehold tenure may involve either grant of land in perpetuity, or for a lease specified time period. The Act specifically provides that a holder of land in freehold has full power of ownership of it. This means that he or she may use it for any lawful purpose and sell, rent lease dispose of it by will or transact it in any other way as he / she deems it fit⁵⁴. Only citizens of Uganda are entitled to own land under freehold tenure⁵⁵. Non citizens may lease it for a period of 99 years⁵⁶.

2.5.2 Leasehold land tenure

Leasehold tenure is a form of tenure whereby one party granted 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 rent⁵⁷. A lease is created either by contract or by operation of law. A lease can be granted for any duration except in case of a lease to a non citizen **section 40 (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 ninety – nine years.

Any owner of customary land⁵⁸, mailo or freehold may grant a lease to another person out of his or her land. The Uganda land commission and the district land boards also have the power to grant lease out of the land vested in them⁵⁹. Traditionally, leases in Uganda were granted subject to development conditions and

⁵⁴ Section 3 (2) land Act 1998

⁵⁵ Article 237 constitution of Uganda

⁵⁶ Article 237 (2) (c)

⁵⁷ Section 3 (5) land Act Cap 227 1998

⁵⁸ Section 8 (2) (a)

⁵⁹ Sections 53, 60 and 69 land Act

other covenants which imposed obligations on the tenant to use the land in a particular way⁶⁰. Indeed, this was one of the main reasons for the conversion of mailo and freehold land to leases under the land reform decree. However, the land Act does not impose any covenants or conditions in a lease it is up to parties to determine the terms of their lease subject to the terms of the lease, a lessee is entitled to exercise all the powers of the land owner as are appropriate to the type of lease⁶¹.

Conversion of lease into a freehold, **Article 237** of the constitution empowered parliament to enact a law whereby any lease that was granted to a Ugandan citizen out of former public lands might be converted into a freehold section 28 of the land Act provides a number of conditions to be fulfilled to convert lease into freehold land tenure.

2.5.3 Mailo land tenure

According to **section 3 (4)** of the **land Act 1998** mailo tenure is a form of tenure deriving its legality from the constitution and its incidents from the written law. As mentioned from the above discussions, the constitution declares mailo as one of the four land tenure systems in Uganda. According to Mugambwa from a legal perspective, mailo freehold is virtually freehold tenure. Mailo tenure like freehold tenure, entails holding registered land in perpetuity as decided by **section 3 (4) (a)** of the land Act cap 227, **section 3(4) (c)** is to the effect that a mailo owner is entailed to enjoy all powers of ownership of a freehold owner. Mailo land may also be subject to conditions, restrictions and limitations which may affect its incidents of tenure just like freehold tenure. It is suggested that the only legally significant difference between freehold and mailo tenure is that mailo is subject to customary and statutory rights of lawful and bonafide occupants of the land⁶².

⁶⁰ Sections 15 – 16 Crown lands Ordinance 1903.

⁶¹ Section s(e) land Act 1998

⁶² Section 3(4) (c) Land Act Cap 227

According to the **Land Act 227**, lawful occupant means a person occupying land by virtue of the repealed (1). Busuulu and Envujjo law of 1928 (ii) Land lord and Tenant law of 1937 and Ankole landlord with the consent of the registered owner and includes a purchaser or a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title. In the case of *Wheeler v Mercer*, it was stated at common law if a seller of land allowed a purchase to enter into possession prior to settlement, in the absence of any agreement to the contrary, the purchaser was presumed to be a tenant at will of the seller⁶³.

Citing from the **land Act 227**, a Bonafide occupant means a person who before coming into force of the 1995 constitution, First, had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more or secondly, had been settled on land by the government or an agent of the government, which way include a local authority. Referring to the first meaning bonafide occupant must have a entered the land without the consent of the land owner, for a period of not less than twelve years , unchallenged by the registered owner of the land before the coming into effect of the 1995 constitution.

2.5.4 Customary Land Tenure

One of the most innovative aspects of the land Act 1998 is in the recognition it gives to those who hold their land under customary tenure with the exception of land in Buganda (which is held under Mailo) and urban areas (which is held under freehold or leasehold) most land in Uganda is held under customary tenure.

The 1995 constitution restored recognition of the rights of those who held such land and the land Act 1998 explicitly recognized that customary law should regulate this

⁶³ (1957) AC 416 at 425, 435

form of land tenure ⁶⁴.As already discussed, customary land tenure is one of the four systems of land ownership in Uganda recognized by the constitution and land Act⁶⁵.

According to Mugambwa⁶⁶, from legal perspective customary land tenure, mailo and freehold are similar in that ownership of land under all three tenures is in perpetuity⁶⁷. The main legal difference between customary land tenure and the other tenures is that customary law regulates customary land tenure.

According to **section 3(i) land Act** is to the effect that customary land tenure shall be governed by rules generally accepted as binding by the particular community. Any person acquiring land in that community shall equally be bound by those rules.

However, the application of any customary rules is subject to the rule not being repugnant to natural justice equity and good conscience, or being incompatible either directly or indirectly with any writer law⁶⁸. Also under **section 27** of the land Act cap 227, it is expressly rendered void any customary rule or practice that denies women, children and disabled person access to ownership or use or occupation of land.

2.5.6 Certificate of Customary Ownership

According **Article 237 (4) (a)** the constitution empowers all Ugandan citizens owing land under customary tenure to acquire certificate of ownership in a manner prescribed by parliament. On the basis of this **Article, Section.4 (i)** of the land Act provided that individuals, families or communities owning land under customary tenure on former public land may acquire a certificate of customary ownership in respect of the land they occupy.

⁶⁴ Section 3 (i) Land Act Cap 227

⁶⁵ Article 237 and section 2 of the land Act

⁶⁶ Principles of land law in Uganda 2002

⁶⁷ Section 4

⁶⁸ Section 17(i) judicature statute (No. 13 of 1996)

2.6 Court Cases Highlighting Land Conflicts in Kampala

Ndigejjerewa V. Isaka Kizito and Sabane Kubulwanwana ⁶⁹ This case illustrates the application of this provision. In that case, Kizito under a written agreement sold his land to the second respondent and the latter paid the purchase price. Four days later, Kizito purported to sell the same land to the appellant who immediately lodged with the registration of titles a certain document executed by Kizito for the transfer to be registered. Latter the second respondent also lodged with the registrar of document of transfer signed by Kizito. However, neither document was registered, because they were not in a registrable form. In court, the appellant contended that he was the owner of the land, because he lodged his document of transfer with the register before the second respondent lodged his. In response to this argument, Ainsley J said that;

"It must be remembered that mailo land (and any land which is subject to the Registration of Title Act Ordinance) can be transferred only by the execution of an instrument which fulfills certain statutory requirements and by the registration of that instrument. No document or instrument can be registered unless it fulfills certain requirements and no instrument (however perfectly it fulfills the statutory requirements) is effectual to transfer any interest in land until it is registered".

Accordingly, his Honor held that neither the appellant nor the second respondent achieved a transfer of the land to himself by the execution of his document or by paying the purchase price. However, once the instrument is registered, the estate or interest in the land passes and the land become liable and subject to the covenants and conditions set forth in the instrument. **It is partly for this reason that a title under the Torrens system is described as a title conferred by registration because without registration no title is transferred.**

⁶⁹ (1952) 7 ULR 31

Souza Figueiredo and Co Ltd V. Moorings Hotel Co Ltd⁷⁰. The court of appeal in this case discussed the nature and effect of unregistered instrument under the Act. In that case, the respondent (registered proprietor) entered into a contract to lease the suit properties to the appellant for a period in excess of three years. The appellant entered possession though the lease was not registered. Before the three years expired, the appellant vacated the premises with rent in arrears. When sued for arrears the appellant contended that since the agreement for lease was not registered as required by Section 54, the lease had no effect, and hence the appellant was not liable to pay the rent. In response to the respondent's argument that there was an equitable lease the appellant submitted that the principles of equity could not override the provision of Registration of titles Act.

Sir Kenneth O' Connor P, with the concurrence of the other judges, held that though **section. 54** say that no estate or interest in land can be created or transferred by an unregistered instrument;

"There is nothing in the Act which renders such instrument ineffectual as contracts between the parties to them; there is nothing in the Act to say that an unregistered document purporting to be a lease of or an agreement to lease, land which is subject to the operation of the (R. T.A) for more than three years is void in my view it can operate as a contract inter party and can confer on the party in the position of intending lease a right to enforce the contract specifically and to obtain from the intending leaser a registrable lease".

Applying this principle to the facts of case, **His Honour** held that the respondent was entitled to the payment of the sums due as rent for the period during which the appellant enjoyed possession.

⁷⁰ [1960] EA 926

Kampala Bottler's Ltd Vs. Dominica (U) Ltd⁷¹ The appellant brought an action against the respondent seeking orders for eviction and damages. The appellant admitted entry upon the land but denied such an entry being trespass it was by virtue of a warrant of a lease in the suit property.

The respondent contended that the appellant obtained its title for the suit property by fraud. The question before Court was whether the appellant obtained the title by fraud.

Court found out that the title was obtained by fraud.

Kampala District Land Board and another Vs. National Housing and Construction Cooperation's⁷² The respondent leased a piece of land at Bugolobi from the 1st appellant and occupied or acquired an adjacent plot (suit property) by adverse possession) since 1996. The 1st appellant later issued a lease to the 2nd appellant which the respondent objected by claiming equitable rights which accrued as a result of adverse possession.

C.J Odoki as he then was observed that the respondent was entitled to a priority for a lease before any other contendatant.

Christopher Sebuliba VS. A.G.⁷³ The suit property was leased to the ministry of Defense and it expired but the defense personnel continued in occupation despite the landlord's notice to quit.

JSC Seaton invoked the provisions of Sec 21(1) (a) of the crown proceedings Act 1947 and ruled that although eviction order against government was prohibited, the defense was liable to pay rent to the appellant

Hakima Kyomanywa VS. Sajjabi Christopher⁷⁴ The appellant Akim Kyomanywa purchased a house at Alyanamasome Mutundwe from one Sanyu Sajjabi Annet with

⁷¹ SCCA No. 22 of 1992

⁷² C.A No. 2 2004

⁷³ SCCA No. 13 (1991)

and or a mistress to the respondent Sajjabi. Sanyu Annet held out and presented herself to the appellant as an Attorney of the respondent who was at the materials time out of the country. The respondent sought orders inter alia for a declaration that he is the rightful owner of the house.

***Mitwalo Magyengo V. Nedad Mutyaba*⁷⁵**

The appellant's father Magyengo lived on a mailo land of Kawalya Kaggwa allegedly since 1940 with the permission of Kawala Kagwa by virtue of their friendship. After the death, the appellant alleged that his father lived under the customary land tenure system (Kibanja). The appellant was given the option to buy the said land but he did not. The land was sold to the respondent who later sued the appellant for trespass. It was held that the respondent was entitled to relief since he was a legal owner of the land and no evidence was showed by the appellant proving his equitable interest in the land.

***Andrea Lwanga V. The Registrar of Titles*⁷⁶**

The applicant's late father bought a suit property but the title was never transferred into the deceased's name after the deceased's death one Katamba fraudulently caused the land to be transferred to their registered in his name, he later sold the land to one Salongo an innocent purchaser who was registered as a proctor of the land. Katamba was convicted by the Magistrate Court of forgery which also ordered the title be transferred back to the applicant. The registrar of titles refused to comply when the Applicant instituted proceedings in High Court against the registrar, the Odoki Ag Justice then was upheld the registrars grounds for refusal. He held that Salongo was a bonafide purchaser for value and therefore under sect 189 of the registrar of titles Act, his title coordinate be impeached.

⁷⁴ CA No. 1 (2006)

⁷⁵ C.A No11(1996)

⁷⁶ 1980 HCB

2.7 Conclusion

Despite several land legislation in Uganda as discussed above, the land question has remained unsolved given the ambiguity of different provisions in land legislation, the multiplicity of land tenures in Uganda and land management institutions. Thus even with the given legislation of land law in Uganda, there are land related conflicts due to the excessively complex and in some respect the unclearity of different sections mostly in the Registration of title Act Cap 230, like with the issue of indefeasibility of title, the unrecognition for registration of customary owned land, in other wards the customary land should first be converted to freehold for it be recognized under the registration of title officially as a freehold thus with those and other unmentioned the Act should be redrafted in order to free up access to compensation in case of any legal eviction and to make clear the circumstances in which claims can be made.

CHAPTER THREE

CAUSES AND EFFECTS OF LAND CONFLICTS IN KAMPALA CITY

3.1 Introduction

This chapter deals with the existence of different land conflicts in Uganda and in particular Kampala, historical background of land conflicts, what really causes land conflicts and effects arising from such conflicts.

3.2 Meaning of Land Conflicts

A land-use conflict occurs when there are conflicting views on land-use policies, such as when an increasing population creates competitive demands for the use of the land, causing a negative impact on other land uses nearby

A land Conflict may arise between members of the same group, known as intragroup conflict, or it can occur between members of two or more groups, and involve violence, interpersonal discord, and psychological tension, known as intergroup conflict. Conflict in groups often follows a specific course. Such conflicts may include those arising from; boundaries, inheritance, land sale mortgages, government compulsory acquisition and others. This period of conflict escalation in some cases gives way to a conflict resolution stage, after which the group can eventually return to routine group interaction once again.

3.3 Historical Background in Kampala City

In the pre-colonial Uganda, there were three broad customary and tenure systems.⁷⁷ These were communal or tribal tenure, clan tenure and nomadic tenure. In communal tenure system ownership of land was vested in the ruler as owner or trustee of land for members of the society and was prevalent in organized societies like Buganda and Bunyoro. Under the clan tenure ownership of land was organized

⁷⁷Obola Ochola; customary land law and the Economic development in Uganda 1971

according to clans as opposed to tribes as were common in Acholi region. The Nomadic tenure was common in Kalamoja.

Under the British protectorate, all land in Uganda except mailo land was crown land either by virtue of the protectorate or by treaty.⁷⁸ The crown lands ordinance 1903 allowed indigenous to occupy and un alienated land

Uganda Land Act of 1998 was required by the constitution of Uganda to be enacted into law on or before July 2 1998. It is in many respects a revolutionary law, overturning a century of land relations and laying the ground work for the possible evolution of a market in land based on individual ownership.

It is difficult to understand the present state of land tenure in any country without an awareness of its history. Even where a revolutionary change occurs, its rationale lies in the past and the chances for success of the change will also be determined in part by the past and the extent to which path dependent patterns of development can be overcome; Uganda is no exception to these generalizations.

The modern history of Uganda starts with the Buganda Agreement of 1900, an agreement equally about land and governance, made between the British governments at the kingdom of Buganda, one component of the modern state of Uganda. It defined the judicial and administrative functions of the Kabaka (king and Lukiko government) of Buganda vis- a – Vis the British colonial authorities and in Articles 15 – 17 made provision for a general land settlement. In the words of Henry West, the foremost authority on land relations in Buganda; this land settlement was fundamental to the whole agreement and should be viewed only as an integral part of it. Briefly, the total area of land in Buganda was assumed to be 19,600 square miles which was to be divided between the Kabaka and other notables on the one hand and the Uganda Administration on the other.

⁷⁸ The 1900 Buganda Agreement

Thus the Kabaka , certain members of the royal family Regents, country chiefs and certain other leaders were to receive either private or official estates totaling 958 square miles and " one thousand chiefs and private land owners" were to receive the estates of which they were already in possession" or was occupied by the subjects. The land granted to Buganda officials came to be known as mailo land. This created a tenant-landlord relationship which still exists.

The 1900 Buganda agreement had another unforeseen, inevitable effect. It had divided land in Buganda into two categories, freehold (mailo) land and crown land⁷⁹. Customary land tenure was not recognized as giving any secure rights to those occupying land under customary tenure were never regarded as owning the land; they were no more than tenants at will of the crown. The colonial government could and often did grant both freehold and lease hold titles to persons who applied for such land, with the customary occupiers thereafter being required to move off the land or remaining specifically as tenants at will of the new owner. This system of land tenure remained in place until certain changes were made, prior to independence in 1962.

When the independence constitution was over thrown in February 1966 and replaced, first by the constitution of Uganda a (1966)) and then by the constitution of Uganda (1967), the Kingdoms in Uganda were abolished. As a consequence the Buganda Land Board was terminated, and all public Land in Uganda was vested in the land commission. The public lands Act (1969) gave legislative backing to this new arrangement, but it left untouched the position of customary tenure. Land occupied under customary tenure was public land and could still be alienated in freeholder or leasehold, but only with the consent of those occupying the land under customary tenure.

⁷⁹ The 1900 Buganda Agreement

In 1975, another attempt was made to deal with the land question. The land reforms decree abolished mailo land and all freehold land. All land became public land, held on up to a 99 year lease from the state.

At the stroke of a pen, mailo land owners became tenants of the state, and all land lord tenant relationships were governed by the decree. As before, however, customary tenure was untouched, although the position of customary land holders was significantly, worsened; land that they occupied could be alienated without the need to obtain their consent. This remained the position, in theory at least (for the land reform decree was never fully applied) until the enactment of the constitution of Uganda (1995). During this 20 – year period, two parallel strands of land management manifested themselves. On the ground, there was a confused and chaotic operation of land tenure systems. This led to a multiplicity of land disputes, lack of security of tenure for those occupying land under customary tenure, the exclusion of women from land utilization decisions, widespread degradation of land due to unsustainable methods of resource use and encroachment into protected areas.

3.4 The Greater Kampala in Relation to Land

Kampala, which means “place of impala” in the Uganda language, had its beginnings as the headquarters of the pre- colonial Buganda kingdom. With the advent of the British protectorate in 1896, the colonial government established a small township for administrative purposes.

Just 170 acres in 1902, the town expanded to 3,200 acres by 1929 and 195 km² by 1968, six years after Uganda’s Independence. The metropolitan area has continued to expand, mainly through annexation of adjacent townships and rural areas and currently spreads over 839 km². As the city boundaries were extended, the population increased from 2, 850 in 1912 to 24, and 000 in 1948 to 458, 000 by 1980 and to 1, 208,000 in 2002, at average annual growth rates ranging between 3.14 percent and 5.6 Percent. The estimated 2008 population is 1, 770,000 about 7 percent of the country as a whole , and the growth rate remains somewhat greater

than 4 percent per year. By 2017 the population is estimated to grow to over 2.1 million. The continued growth of greater Kampala is due to natural increase as well as rural to urban migration. The government's economic development policies have also tended to concentrate commercial and industrial investment in the Kampala region which has created new job opportunities and attracted ever more people from rural areas. As the city itself has expanded, former agricultural and vacant lands within 15-20 km radius of the city, primarily to the north, east and south, have become increase residential, mostly with unplanned, inadequately serviced low – density and poor quality housing. Urban growth has also begun to spill into the city's former wetlands which are prone to flooding and to disease such as malarial

At the time of the new land law in 1998, about 30 percent of the land in Kampala was under the control of Kampala city Council, but there continue to be conversions of land leased to individuals by the Kampala city Council to freehold title. A further Amendment to the land Act in 2004 gave increased protection to bonafide tenants of mailo land, bonafide tenants being defined as tenants who had occupied the piece of land unchallenged for more than 12 years before the coming into force of the 1995 Uganda constitution. Under the current law, before a mailo landowner can sell or develop land he owns, bonafide tenants who have settled on the land have to be properly compensated and resettled. Bonafide tenants on mail land are also recognized as legal owners with rights to sell and develop land but in consultation with the mailo landowner. These bonafide tenants consider themselves the real owners of mailo land

Thus, there is in effect a dual stem of land ownership on the majority of the land in the Kampala region, the mailo land, where both tenants and mailo owners both consider themselves to be the real and rightful owners. The dual system of ownership and the unplanned, disorganized settlement patters on the mailo lands have had a significant effect on the development of an efficient land market in the Kampala region.

It has also opened the system up to Corruption” from municipal authorities such as the Kampala city council as legal land buying or allocation and approve is more complicated because of the current land law.

To sum it up all under historical background and the colonial legacy of land conflict causes, the advent of colonialism left a historical legacy structured around land relations and management. Literally, colonialists introduced individualized ownership of property rights in land previously held either communally or on the basis of sovereign trustees. In the process, an intricate system of political relationships was legitimized. The newly introduced system of property ownership was super – imposed to either super cede existing indigenous land rights systems or formally confirm pre- - existing customary arrangements as the case for kingdom areas. In other parts of the country outside the kingdom areas, customary tenure was left to continue existing with moderation but without a chance to evolve property. This duality of property rights system resulted in land tenures, whose maintenance has turned cumbersome and confusing in the current social, economic and political; circumstances. Perhaps the most critical and challenging elements of Uganda’s land question, courtesy of colonial legacy , are to do with disentangling the multiple and conflicting tenure rights and interests, pre- existing private interests of smallholder farmers particularly land use rights were not legally recognized.

An attempt to rectify this, with the enactment of the Busuulu and Envujjo law of 1928 for Buganda and similar laws in Ankole and Toro in 1938, the multi layered structure of rights persisted and has become a defining characteristic of the complexity of land relations in Uganda.

In addition, the multi- layered system has been largely blamed for the escalating land conflicts and evictions in the central region where resolving dual interests of ownership between the registered owner and the lawful or bonafide occupants are common

3.5 Kinds of Land Conflicts

Dr Babette Wehmann in his practical field to dealing with law disputes, 2008 at page 14 highlighted a number of kinds of land conflicts which possibly management themselves in any society such as Kampala and they briefly include the following⁸⁰;

3.5.1 Conflicts occurring on all types of property

1. Boundary conflict

This arises as a result of inter boundary relationships between two land owners whose land parcels are adjacent to each other. And it is the conflicting interests of the two neighbours they may cause such a conflict.

2. Inheritance conflicts

The laws of Uganda provide for succession and inheritance of the property of the deceased. Traditionally the property of the deceased such as land was inherited by the heir. However, the 1995 constitution provides for equality of family members in all spheres of life. This negates the old legacy of succession by heir thus in such a succession and inheritance, conflicts normally arise⁸¹

3. Ownership conflicts due to lack of land registration

Most unregistered land in Kampala have been reported to be the most affected and likely to engage in non conflict given the fact that the interest in land is not protected under the Registration Of Land Registration Act

4. Ownership conflicts between state and private owners

The land acquisition act provides for compulsory land acquisition by the government. However, private land owners have often objected to such acquisitions hence causing conflicts

It should be noted that land conflicts under this category may manifest in a number of other ways apart from those mentioned as highlighted by Dr. Babette wehmann and these may include; Multiple/allocation of land, Limited access to land due discrimination by the law custom or practice, Eviction by land owners, Destruction of

⁸⁰ Dr Babette Wehrman, A Practical Guide to dealing with Land Disputes 2008

⁸¹ Article 21 of the 1995 constitution

property, Disputes over value of land, Disputes over payment for using and buying land

3.5.2 Land Conflicts on private property

Another category of the land conflict is what dr. Babette Wehrman termed as "Special conflicts over private property" and these include; Expropriation by the state without compensation, Sales of someone else's private property, Leasing/renting of someone else's private property, Illegitimate expropriation by banks, Conflicts due to land/agrarian reforms, Conflicting claims in post-conflict situations, Illegal/improper uses of private land ,Intra-family conflicts, especially in cases of polygamy

3.6 Structural Drivers of Land Conflicts

Despite peculiar land conflicts, courtesy of a colonial legacy, there are structural drivers of land conflict in Uganda, inherent in the functioning of the institutional structures, within which individuals and groups secure access to land and associated resources that have exacerbated the situation.

3.6.1 Deficit in Dispute Resolution

A governance deficit manifests itself in variety of ways such as absence or weak central authority to enforce law and order, control by interest groups and biased policy, absence of transparent rules of law and enforcements, inadequate institutional and legal framework, and deficiency in capacity (that is, man power, finance and broad – based political support), where there is potential or actual conflict, there is governance deficit. There are two parallel legal and judicial systems in place for dealing with land issues, that of customary tenure and that of the state administration. Although the latter recognizes the former, there are unresolved contradictions in the way in which it has co- opted it, which could be a potential source of conflict over land in the future and are likely to give the more powerful an advantage in land disputes. The nature of mediation and dispute resolution mechanisms are important factors in determining whether parties involved in a conflict will resort to violence. If they are seen as partial or ineffective violence is likely.

Formal tenure covers significantly less than 20 % of the area, implying that more than 80% of land is held under forms of customary tenure which de facto falls outside the realm of the statutory law. This has led to a situation where instead of complementing each other, " traditional " and ' modern system compete' giving those who are affected by conflicts an opportunity to resort to " institutional shopping "that is, pursue conflicts in parallel through a variety of channels. There is a multiplicity of land dispute resolution institution working in parallel, which in many time leads to "forum shopping " by aggrieved parties , without a clear hierarchy , this is has created overlaps and conflicts in land disputes processing. It is also common for dispute resolution be undertaken by the president's Officer (Director for land affairs), and the office of Resident District Commissioner, This situation has left the justice- seeking public confused, delays in settlement of disputes and creates a backlog as disputes escalate. It should be noted that multiplicity can only be positive if it is creating a variety rather than confusion amongst users to the extent that they are viewed as complimentary (both formal and informal).

3.6.2 Corruption and ignorance of the law

Corruption and illegitimate demand for money both in land administration and dispute resolution is at the extreme. Despite Government of Uganda's array of policy formulations and technical achievements, several studies including the 2003

National integrity survey reports indicate that the perception of corruption and real level of corruption in public offices in Uganda is still high. The land registry processes about 15, 000 to 20, 00 transactions annually ⁸². MoJ carried out a survey in 2004 and found out that the registry was making on average of 100 filings per day. The filing involves transfers, lodging and release of caveats, with draws and fresh registration of leases and freeholds. The report of the survey indicates also that 92% of the lawyers perceive an increase in corruption in the land Registry.

⁸² MOJ Survey 12004

Corruption and illegitimate demand for money slow the justice delivery process. A 2008 survey⁸³ for ministry of justice found that 88% of respondents were asked to make un- receipted payments in dispute resolution institutions. 52. 3% of the respondents in the survey reported that they had made payments to District Land Tribunals (official and unofficial payments for the services they received). Bribery was highest (33.0%) in the central police 16% in the High court, 16% in the magistrate's court; 11% in the district land Tribunals; 7.3% in the LC1 Courts. Bribery was least common in the customary courts where only 2.7% of the house holders paid a bribe.

It is also a fact that knowledge on law and rights especially land law is limited amongst communities.⁸⁴ A survey for ministry of justice showed that on aggregate of 90% of respondents had no knowledge of what is contained in the land Act. Not even a single district amongst those surveyed land more than 15% of their population with any knowledge of the contents of the land Act. In another survey⁸⁵, six years after the passage of the land Act, it was found that a quarter of the population indicated that they were informed about the law.

3.6.3 Population growth

By 2050, Uganda's population is expected to reach 120 million; three- fold the current population. Uganda's population is growing at a high rate of 3.2 percent and is projected to shoot up to 39.3 million in te year 2015 and 54. 9 million in 2025 due to high fertility rate (6.7), this relatively high level of population growth has led to increased land scarcity and it is also characterized by considerable regional diversity⁸⁶. Population densities vary from 12per km 2 in the North to 282 per km2 in the West⁸⁷). The average Ugandan woman gives birth to seven children in her lifetime. Rapid population growth, agricultural employment or, in other areas ,

⁸³ Rugadya. etal, 2008

⁸⁴ Rugadga. etal, 2008

⁸⁵ Gender baseline line survey, 2004 for ministry of land

⁸⁶ ibid

⁸⁷ Mugisha 1998

increasing non- agricultural demand for land , is a key actor that causes land values to appreciate , resulting in higher competition for a limited or decreasing amount of land available. This is the major driver for conflicts across generation or ethnic groups as most of the land conflicts are in highly populated areas, a population policy might also be a key element in averting an escalation of land wars in Uganda, especially those related to inheritance. Population growth can be contained through family planning, cultural and legal measures, legal measures include; abolishing of early marriage by setting a higher marriage age of first marriage for all kinds of marriages and legalization of abortion for unwanted pregnancies. In the words of chief administrative officer (CAO), Mukono Sums it all "..... every funeral results in more land conflicts because of especially polygamous marriages and belief that making a will tantamount to signing your own death warrant.....⁸⁸.

3.6.4 Deficit in land Administration

It is pertinent at this level that land administration is distinctively addressed from conflict resolution, rather than rely heavily on either of the two, since they are complimentary in nature and the smooth functioning of one determines the efficiency of the other. The land rights administration is beset by a number of malfunctions- these are a source of land disputes and conflicts- until recently, land sector institutions were designed to serve the interests of a narrow minority of relatively wealthy registered landowner. Land conflicts and disputes are on the increase and yet there is limited or no capacity at all in the institutions charged with the adjudication and settlement of land disputes both statutory and traditional. The increasing and continuing proliferation of administrative and statutory land governance institutions existing in parallel with traditional institutions is creating a complex land governance infrastructure; this is made worse by the fact that some of these institutions are not fully operational in certain areas; such as northern Uganda and yet they are de facto legal institutions.

⁸⁸ As cited in statue of urbanization in Uganda , 2007

For instance, the surveyors Registration Board⁸⁹ has been blamed on the increased number of unqualified land surveyors who have deliberately failed to adhere to professional standards, "mistakes are done during boundary openings and the problem is serious due to increased number of 'undercover surveyors'". "If we are to curb land conflicts, there should be no short cuts to qualify"⁹⁰. Out of the 650 surveyors so trained in the country, only 56 are registered members of the institute of surveyors of Uganda, a professional body for surveyors in Uganda. Within the traditional institutions on the other hand, custodians of customary law are modifying customary or informal systems to address changing socio – economic conditions often times schemed to guaranteeing greater and more secure rights for male custodians at the expense of weaker and marginalized groups thus more disputes. Many of the land administration institutions are weak or not functioning at all. Land committees that are to be responsible for recording land boundaries on customary land and recording transactions of certificates in occupancy at the local level have largely not been formed due to financial constraints. There is also a lack of knowledge on the part of the sub county chiefs that are supposed to perform the role of recorder to the level that they are not even aware of this particular responsibility. District land boards are also rare and district land officers that are supposed to support them are weak. The land register in Uganda, which operates on the Torrens system of land registration, embodied in the Registration of Titles Act (Cap 230) was established over 100 years ago.

According to the Baseline evaluation report (2007), the land registry's main problems revolve around;

(1)fraudulent and back – door practices which lead to the losses, of land by rightful owners, undermine public confidence to the state land registration system, affect the land tenure security, makes the transactions of land uncertain and has tragic

⁸⁹ A government regulatory body changed with the professional registration of surveys

⁹⁰ John Musungu, chairman surveyors registration board

consequences for many families that suffer from such practices, **(2)** counterfeit land titles circulating in the market, which create additional uncertainty in the land market **(3)**, the existing registration system and procedures are too disorganized and practically ineffective to prevent such cases and properly resolve the issue, **(4)** the degraded registry environment, damaged and outdated land records leave a little chance to the genuine owners and clients to protect themselves or get reliable information about land, and finally **(5)** a great majority of the title records in registry strong rooms are in very dilapidated and sorry state, and they continue to deteriorate with consequent loss of information and strategic data sets.

According to D.r Babette Wehmann in his book "A practical guide in dealing with land disputes", other factors that may lead to land conflict include; **politics** , **ambiguous laws**, and others that may arise from time to time.

3.7 Effects Arising From Land Conflicts

3.7.1 Constant Evictions

These arise from what is normally called public owned land and there comes a time when this land needs to be developed or be used by the government or leased to investors who are willing to develop the city, thus this leaves a hundreds of people homeless and unemployed yet not compensated. Also the people owning land in customary form do not have that absolute title, so it becomes easier for the rich to explore their land with false land titles. Thus evictions have left almost all middle class earners evicted, a case in point, people who originally worked in the new taxi park and those who have been recently evicted from the old taxi park, this in turn has led to increase in crime rates like theft due to unemployment.

3.7.2 Poor infrastructure

This is as a result of poor or unplanned settlement in the city due to the corruption given by law executors by the rich people who set up buildings without even parking lots leading to a lot of congestion in the city. Also people have used road reserves for their own purposes as long as they pay money to the law executors, yet road

reserves are left to keep the city uncongested, prevent accident and keep it clean. The Kampala City Council Authority has tried to rectify this but all in vein due to the unseen table discussion which are ended with corrupting the authority.

3.7.3 Destruction Natural Environment

This is due to illegal evictions of poor citizens and as result to look for where to work from and live, they decide to settle in swampy areas, a case in point are the Rubigi swamps where people are now carrying on business. Also another point where the rich people bribe the people in National Environment Management Authority to set up buildings in swampy areas and has in turn led to the flooding all over Kampala capital city, a case in point are building in Nalukolongo and also not to mention but few, Bwaise swamps have been completely occupied and also the Kalerwe swamps.

3.8 Reported examples of Land conflicts in Kampala city

On 24th April 2013, Businessman Sudhir Ruparelia appeared before a parliamentary committee probing the loss of land belonging to public schools to public developers. Ruparelia was answering allegations that he had grabbed the playing fields of Kololo SS⁹¹. He argued that he had got a lease for the said land to develop it in to a better sport facility for the benefit of everybody not only for his Kampala Parents School. There have been other instances of public lands being taken over, not only from schools but from police stations, hospitals and stadiums.

KCCA demolished illegal structures in Centenary Park. First it was the Nile Avenue Structures, which were built on a road reserve, Next KCCA has resolved to demolish the Centenary Park mushrooming restaurants and Bars mostly owned privately by developers including Kampala Central Division Mayor Geoffrey Nyakana together with his wife Lady Charlotte Kizito.

⁹¹ The New Vision Kampala, Uganda 24th April, 2013

The demolition by Kampala Capital City Authority of a structure that was being built in a road reserve on Nile Avenue brought that part of the city to a standstill . The operation to demolish the structure, belonging to Foton East Africa (U) Limited, caused a heavy traffic jam for several hours as part of Nile Avenue was blocked to motorists.

The KCCA executive director, Jennifer Musisi, had complained that the developer went against the granted permit and erected the structure in the road reserve. The city authority then revoked the permit but was blocked from demolishing the structure on September 4, after the Vice President, Edward Ssekandi, intervened. However, after Musisi petitioned Parliament's committee on Presidential Affairs and obtained strong backing, the Vice President backed down and the stage was set for the demolition to proceed. By 6am, Nile Avenue had been sealed off by dozens of armed police officers led by the Central Police Station (CPS) Division Police Commander, Daniel Ruhweza and hundreds of harmer-wielding KCCA enforcement officers led by their new commander, Francis Nyonyintono.

Moments later, after six Chinese nationals found on the site refused to vacate, Nyonyintono ordered the driver of the KCCA bulldozer to move in. Tom Alero, a member of the Presidential Affairs committee, was there to witness the exercise. As two of the Chinese nationals on the site vanished in their vehicle registration number UAN 652L, four others vowed to die in the crumbling structure. When the deputy KCCA spokesperson, Robert Kalumba, tried to plead with them to leave the building, one of them instead assaulted him and tore his shirt. But as the bulldozer approached where they were hiding, they ran for dear life.

President Museveni's younger brother, Michael Nuwagaba, commonly known as Toyota, rubbished reports that he owns the now demolished structure. KCCA plans to demolish several other buildings in Kampala for violating approved plans and regulations ranging from converting approved parking space into shops; absence of fire escape and fire fighting provisions; lack of human lifts; lack of toilets; and failure to provide ramps for persons with disability. "We are going to write to the developers, instructing them to [make the necessary alterations] in 28 days. If they

don't comply, we shall do as we have done today and put what is missing," the KCCA physical planner, Joseph Ssemambo⁹²,

3.9 Conclusion

In conclusion, land disputes and conflicts have become part of the definition of contemporary Uganda. Trans- state boundary disputes, inter – district boundary disputes and conflicts, hot spots of ethnic land conflicts, and conflicts between pastoralists and agriculturalists are all on the rise. Evictions on registered land between owner and the occupants are also on the rise. Efforts by government to conserve vital ecosystems have resulted in violent conflicts that are sometimes fatal as they wrestle encroachment in protected areas. The capacity of the ministry responsible for land; the justice law and order sector institutions administrators in the districts and politicians to tackle land conflicts is over stretched. Attempts by the land Act (Amendment) 2010, to criminalize eviction of tenants are yet to bear effect because implementation is in its infancy. Devising a comprehensive, legitimate accessible and cost – effective framework to tackle the root and structural causes of conflicts, disputes and frictions arising from unjust actions in the past is a prime challenge in tackling in certainly and insecurity over land rights.

⁹² The daily Observer Monday 23rd April 2014

CHAPTER FOUR

LAND MANGEMENT AND CONFLICTS IN OTHER JURISDICTIONS

4.1 Introduction

This chapter seeks to draw best practices of land management and reducing land conflicts in other jurisdictions such as Dar es Salam and Nairobi and their relevancy in Uganda and Kampala in particular.

4.2 Land management in Dar Es Salaam

In Tanzania, Dar-es-salam⁹³ land remains in principle an exclusive property of the state despite the adoption of a new liberal economic policy which have been steering the country towards a market economy since the Medlase's.

The President is the custodian of land and individuals have only usufruct rights or titles, the right to access, develop and occupy land is therefore granted by the government under the lease holds ranging between 5 and 99 years. Therefore the state retains the ownership of land and is entitled to take it back if leaseholders do not develop it within the period defined in the letter of offer, which is normally 3 years.

The Land Acquisition Act of 1967, the Land Act of 1999 and Urban Planning Act of 2007 give the president over whelming powers to acquire land required for public interest.

However, 1977 Constitution of Tanzania provides for protection of private property and besides that, compulsory acquisition laws stipulate that those persons whose property (land) has been expropriated for public interest have to be fairly compensated.

⁹³ Kombe WJ land conflicts in Dar-Salam and their social-political context

4.3 Land access, compulsory land acquisition and processes

From the early days after independence Tanzania adopted policies, principles and put in place administrative structures with the intention of enabling persons from all social groups to benefit from the national resources including land. Through the 1967 Arusha Declaration, the blue print for Socialist Transformation in Tanzania all major means of production including land were nationalized.

Regarding land acquisition, the most common instruments which the state has and can apply to access land required for urban growth and development are *'negotiations and persuasions'* or *'legalized force' through compulsory acquisition*;

The constitution of the United Republic of Tanzania (1977) articles 24(1) and (2) explicitly provides for the rights to own property and to get state protection and fair and adequate compensation in an event of compulsory purchase:

However, The Land Acquisition Act 1967 is the principal legislation in so far as land acquisition is concerned. Its compulsory acquisition of land by the government hence a conflict between the government and the nationals especially where inadequate compensation is given.

4.4 Land conflicts in Dar es Salaam

4.4.1 The Msikitini and Chasimba Land Conflict: Expropriation of land for industrial use

The two settlements of Msikitini and Chasimba are located 20km north of the Dar es Salaam city centre along Bagamoyo Road. The land that comprises the two areas was largely unbuilt. It was mainly built up after the late 1980s, mainly by indigenous land occupiers. In 1993 the Saruji Corporation, negotiated with the landholders with a view to acquire their land and compensated them, but they never gave up the land, the corporation sued them for trespass. In 2007 the corporation won the case and was entitled to evict them. In the same year, a new Court order allowed the inhabitants to continue occupying land. Hence this conflict.

4.4.2 The Kwembe and Luguruni Land Conflicts: (Expropriation of land for academic use and a new satellite town)

The Kwembe land dispute⁹⁴

The Kwembe land conflict can be explained and summarized in three different, but interrelated conflict phases, namely; the TPL/KABIMITA era, the TPDF phase and currently the MUHAS phase.

This land conflict goes back to 1978 when the village granted TPL/KABIMITA eight hectares of land for holding cattle before they were taken to the slaughter house at the then Tanganyika Packers Company Limited in Dar es Salaam

The land was vested in the Village Council, TPL/KABIMITA was granted the 8 hectares of land on condition that the company compensates the residents whose land would be appropriated. When TPL/KABIMITA went bankrupt in the 1980s, it closed operations the village without paying the compensation as agreed upon earlier or officially.

After the collapse of TPL/KABIMITA, part of the land that was occupied by TPL/KABIMITA is said to have been allocated to Tanzania People's Defence Force, TPDF-Kisarawe division by the Ministry of Lands, Housing and Human Settlements Development, but without informing or consulting Kwembe village authorities

4.4.3 The nature of the Luguruni land conflict

The land conflict in Luguruni has its background to the 1979 Dar es Salaam Master Plan, which designated the area among the four satellite towns which had been proposed to decongest the city. Like Kwembe, up to the early 1980s, the area was very sparsely inhabited.

⁹⁴ Kombe WJ; land conflicts in Dar-Salam and their social-political context

In January 2007 MLHHSD made an official announcement in the government gazette about its intent to acquire in Luguruni, for public use thereafter, a process of negotiation led begun but there was no consensus

Despite absence of a consensus, in May 2007, the Ministry dispatched surveyors to start demarcating the plot. The sitting land occupiers were however, adamant to vacate the ministry issued forms No. 69 and 70 to all the affected land and property owners most residents filled the forms indicating the amount of money they expect to be paid. They were also required to sign a commitment bond that they would vacate the area within 30 days following the receipt of the cheques.

However, the conflict intensified immediately when the dispossessed persons opened their sealed envelopes, only to find that the amount paid (on the cheque) was too little and was not at related to the figures they had indicated on the forms.

4.4.4 Land Conflict Management In Dare Salam

The Constitution Of The United Republic Of Tanzania

⁹⁵This is the mother law above all laws in Tanzania. The Constitution guarantees for the right to own property by every person and has a right the protection of that property, provided that property is held in accordance with the law⁹⁶ . Moreover the constitution provides the right to compensation⁹⁷ in case of that property being taken in accordance with the lawful law. Land (property) ownership in this case is a right recognized by the constitution and no person can alienate or confiscate land from another person unless under due process of the law, which is reasonable. This right was Cleary articulated by the High Court at Moshi in the landmark case of Kopera Keiya Kamunyu & 44 others v The Minister of Tourism and Natural resources and Environment & 3 others⁹⁸ where the court ruled that the eviction of the Maasai

⁹⁵ The Constitution of the United Republic of Tanzania, 1977, Cap. 2 [R.E. 20002]

⁹⁶ Article 24(1)

⁹⁷ Article 24(2)

⁹⁸ Civil Case No. 33 of 1995, High Court of Moshi, at Moshi, (Unreported)

from Umba game reserve without compensation was contrary to Article 24 of the Constitution of URT. The constitution provides protection to Maasai pastoralists in both land legally owned by them and their livestock. It only allows alienation of land by due process of law and with adequate compensation being paid there to.

The Land Act

⁹⁹On land matters the land act¹⁰⁰ is the mother law, it is the law with provide a general frame work on land laws in Tanzania. The law defines land to include the surface of the earth and the earth below the surface and all substances other than minerals or petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water¹⁰¹. Part XIII¹⁰² provides for Dispute settlement. It provide for the courts vested with exclusive jurisdiction in hearing and determining land disputes¹⁰³. This means the Act only provides for the list of courts responsible for settlement for land disputes but it doesn't provide for the mechanisms of preventing disputes from occurring. With regard to pastoralist societies land Act is one of the causative agents of the occurrence of disputes by not providing land tenure security to them. The provision¹⁰⁴ provide for removal or relocation of customary land owners in favor of right of occupancy.

⁹⁹ The Land Act No. 4 of 1999, Cap. 113 [R.E 2002]

¹⁰⁰ The Land Act No. 4 of 1999, Cap. 113 [R.E 2002]

¹⁰¹ The Land Act No. 4 of 1999, Cap. 113 [R.E 2002]

Section 2

¹⁰² The Land Act No. 4 of 1999, Cap. 113 [R.E 2002]

Section 2

¹⁰³ The Land Act No. 4 of 1999, Cap. 113 [R.E 2002]

Section 167

¹⁰⁴ The Land Act No. 4 of 1999, Cap. 113 [R.E 2002]

Section 34(3)

The Village Land Act¹⁰⁵

The enactment of the Village land Act¹⁰⁶ purposely aimed at the management and administration of village land, mostly owned under customary right of occupancy. The law guarantee for communal land for Pastoralism within a village. The process for titling, granting and registration of family and communal land within the village are established, with village councils given the power and authority to administer and manage village lands according to customary rules.

Despite the Village Land Act's numerous protection provisions, pastoralists may not be able to harness or leverage these protections to protect their land claims. The Act under Part V provides for the dispute settlement mechanisms. It provides that every village shall establish a Village Land Council for assisting parties to settle their disputes amicably¹⁰⁷. This means the Village Land Council established consist of seven members¹⁰⁸ and have a role of a mediator to enable parties to reach at amicable solution. Principles of customary mediation¹⁰⁹ will be paramount in mediation of those land disputes. Moreover, the Act¹¹⁰ provides for the methods to avoid and settle disputes between pastoralists and agriculturalists in case it arises. It provides that the Village Adjudication Committee shall determine the rights of each part in land to occupy and in case where the parties can cooperate to use the land the Committee will prepare a draft for that purpose. The Act provides for the equality in all respect between the customary right of occupancy and the granted right of Occupancy¹¹¹. This provision guarantees for the security of tenure to holders of land under customary right of occupancy.

¹⁰⁵ The Village Land Act No. 5 of 1999, Cap. 114 [R.E 2002]

¹⁰⁶ The Village Land Act No. 5 of 1999, Cap. 114 [R.E 2002]

¹⁰⁷ Section 60(1) Of Act No. 5 of 1999, Cap. 114 [R.E 2002]

¹⁰⁸ Section 60(1) Of Act No. 5 of 1999, Cap. 114 [R.E 2002]Section 60(2)

¹⁰⁹ Section 60(1) Of Act No. 5 of 1999, Cap. 114 [R.E 2002]Section 61(4)

¹¹⁰ Section 60(1) Of Act No. 5 of 1999, Cap. 114 [R.E 2002]Section 58

¹¹¹ Section 60(1) Of Act No. 5 of 1999, Cap. 114 [R.E 2002]Section 18

The Land Disputes Court Act 2002¹¹²

This is the main law which provides for the land disputes machinery in Tanzania. The Act define dispute to includes any case where a person complains of and is aggrieved by the actions of another person or any case in which a complaint is made in an official capacity or is a complaint against an official act¹¹³. It enumerate Courts having jurisdiction to hear and determine land disputes, namely, the Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court and the Court of Appeal of Tanzania¹¹⁴.

The Village Land Council

This council is established subject to the Village Act¹¹⁵ to receive complaints from parties in respect of land, to convene meetings for hearing of disputes from parties and to mediate between the parties and assist parties to arrive at a mutually acceptable settlement of disputes¹¹⁶. In case any party to the dispute is dissatisfied with the decision of the Village Land Council shall refer the dispute to the ward Tribunal¹¹⁷ in accordance with the Village Land Act¹¹⁸.

¹¹² The Land Disputes Court Act No. 2 of 2002, Cap. 216 [R.E. 2002]

¹¹³ The Land Disputes Court Act No. 2 of 2002, Cap. 216 [R.E. 2002]

Section 2

¹¹⁴ The Land Disputes Court Act No. 2 of 2002, Cap. 216 [R.E. 2002]

Section 2

¹¹⁵ Section 62 of Act No. 5 of 1999, Cap. 114 [R.E 2002]

¹¹⁶ Section 62 of Act No. 5 of 1999, Cap. 114 [R.E 2002]

88 Section 7

¹¹⁷ Section 62 of Act No. 5 of 1999, Cap. 114 [R.E 2002]

Section 9

¹¹⁸ Section 62 of Act No. 5 of 1999, Cap. 114 [R.E 2002]

The Ward Tribunal

The Tribunal is established under the Ward Tribunal Act¹¹⁹ and its jurisdiction extends to the district in which it is established¹²⁰. It has power to mediate and assist parties to reach at a mutual acceptable solution to land disputes using customary principles of mediation¹²¹. The pecuniary jurisdiction of the tribunal is limited to three million shillings¹²², which is very low hence increasing unnecessary cases to District land and Housing tribunal as a result land disputes remain unsolved for a long time. Moreover, the Act provides for the right of appeal¹²³ to any party aggrieved by the decision of the ward tribunal to the District Land and Housing Tribunal within 45days¹²⁴. The Act confers power to the Minister to make rules prescribing appeals to district land and housing tribunal¹²⁵ but no rules have been made till this time.

The District Land and Housing Tribunal

The tribunal is established in each District, region or zone¹²⁶ and shall be dully resided by a Chairman and not less than two assessors¹²⁷. It is responsible for all proceedings under the Land Act¹²⁸, Customary Leaseholds (Enfranchisement) Act¹²⁹ and Rent Restriction Act¹³⁰ and the Regulation of Land Tenure (Established

¹¹⁹ The Ward Tribunal Act No.7 of 1985, Cap 206 [R.E. 2002]

¹²⁰ Section 10 of Act No. 2 of 2002, Cap. 216 [R.E. 2002]

¹²¹ Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002]

¹²² Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002] Section 15

¹²³ Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002] Section 15 Section 19

¹²⁴ Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002] Section 15 Section 20

¹²⁵ Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002] Section 15Section 21

¹²⁶ Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002] Section 15Section 22

¹²⁷ Section 13 of Act No. 2 of 2002, Cap 216 [R.E. 2002] Section 15 Section 23

¹²⁸ The Land Act No. 4 of 1999, Cap. 113 [R.E. 2002]

¹²⁹ The Customary Leaseholds (Enfranchisement) Act No.47 of 1968, Cap 377 [R.E. 2002]

¹³⁰ The Rent Restriction Act No. 17 of 1984, Cap. 339 [R.E. 20002]

Villages) Act¹³¹ as well as any written law which confer power on it¹³². The pecuniary jurisdiction of the tribunal is limited to fifty million shillings for immovable property and 40million shillings for subject matter capable of being estimated to money value¹³³. Also has got a jurisdiction to hear appeals¹³⁴ and revise¹³⁵ records from the Ward Tribunal.

High Court (Land Division)

The word "High Court (Land Division)" has been deleted substituting it with "High Court"¹³⁶, hence High court has jurisdiction to hear and determine land disputes. This court has unlimited jurisdiction¹³⁷ to hear and determine land disputes and appeals¹³⁸ from District land and Housing Tribunal provided it is lodged within 60days¹³⁹. Also the court has supervisory and revision power over District Land and housing tribunal¹⁴⁰. And any aggrieved party of the High Court decision may appeal to the Court of Appeal of Tanzania¹⁴¹

¹³¹ The Regulation of Land Tenure (Established Villages) Act No. 22 of 1992, Cap 267 [R.E. 2002]

¹³² The Regulation of Land Tenure (Established Villages) Act No. 22 of 1992, Cap 267 [R.E. 2002]97 Section 33(1)

¹³³ The Regulation of Land Tenure (Established Villages) Act No. 22 of 1992, Cap 267 [R.E. 2002] Section 33(2)

¹³⁴ The Regulation of Land Tenure (Established Villages) Act No. 22 of 1992, Cap 267 [R.E. 2002]Section 34

¹³⁵ The Regulation of Land Tenure (Established Villages) Act No. 22 of 1992, Cap 267 [R.E. 2002]Section 36

¹³⁶ Section19 of Written Laws (miscellaneous Amendment) Act No.2 of 2010

¹³⁷ Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002]

¹³⁸ Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002]

¹³⁹ Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002]Section 38

¹⁴⁰ Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002]Section 43

The Land Use Planning Act, 2007¹⁴²

This Act tries somehow to consider pastoralist by arguing the provision of serviced land to pastoralists¹⁴³. It requires the pastoralists to be given land for grazing their livestock with regard to their potential role in the community. Also it provides for a list of matters to be included in village land use plans¹⁴⁴, which among others is the consideration of livestock. This law is silent on land disputes among pastoralists.

4.5 Land management in Nairobi Kenya

4.5.1 Land Policy in Nairobi

The first land regulations in Kenya were published in 1891. These regulations formed the formal framework for land administration¹⁴⁵.¹⁴⁶ These rules provided for 21-year leases. In 1897, a new set of land regulations were issued under which the colonial administrator could grant land occupancy certificates for periods not exceeding 21 years. The maximum lease period was later changed to 99 years.

Crown Lands Ordinance of 1902 (CLO 1902)- this law empowered the Commissioner of Lands to grant leases on Crown land¹⁴⁷.

Crown lands ordinance of 1915 (CLO 1915)- This law repealed CLO 1902 but all the leases acquired under CLO 1902 were retained

In 1933, the Carter Land Commission was set up by the colonial government in response to land.

¹⁴¹ Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002]Section 47

¹⁴² Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002] 128

¹⁴³ Section 37 of Act No. 2 of 2002, Cap. 216, [R.E. 2002] Section 3 (a)

¹⁴⁴ THIRD SCHEDULE of Act No. 6 of 2007

¹⁴⁵ Anthony Lamba "Land Management And Informal Settlement In Kenya", Page 34 1993

¹⁴⁶ Anthony Lamba "Land Management And Informal Settlement In Kenya", 1993 at Page 34

¹⁴⁷ Crown land ordinance 1902

The history of land policy in Kenya, like in many former colonies in Africa, was characterized by the interaction between western land law and African customary land law.

4.5.2 Land Policy reform

Kenya has had three major land reform programmes

- i) Individualization of land tenure
- ii) Land redistribution
- iii) Alienation of public land¹⁴⁸

4.5.3 Individualization of land tenure

This land policy shift from customary tenure to individualized freehold tenure for indigenous populations in Kenya

Land redistribution

This programme has been implemented through 3 strategies;

- i) Settlement schemes
- ii) Subdivision of company and cooperative farms
- iii) Registration of group ranches

4.5.4 Alienation of Public Land

Land tenure reform on public land has involved the transfer of public land rights from the state or local authority to individuals. The alienation of public land started with the colonial government through the Crown Lands Ordinance of 1902¹⁴⁹

¹⁴⁸Anthony Lamba "Land Management And Informal Settlement In Kenya", Page 34

¹⁴⁹Crown Land Ordinance 1902

4.6 National Land Policy Formulation Process

It should however be noted that, Kenya does not have a clear and coded national land policy. The National land policy including the harmonization of land laws in Kenya.

4.7 Land Conflicts in Nairobi

In the study made by Takashi Yamano and Klaus Deininger titled land conflict in Kenya 2005, a number of factors have been discovered to be major causes of land conflicts in Kenya and Nairobi in particular and they include;

- 1) Conflicts over boundaries. About half of the land and conflicts in Kenya are over boundaries that occur mainly with behaviors or relatives who live close by.
- 2) Land inheritance. According to the survey, this has been discovered to be the second most common reason for land conflict in Kenya which sweeps even across Nairobi and this exclusively occurs among relatives
- 3) Conflicts related to land sales. As the value of land increases, due to population pressure, agricultural commercialization and urbanization, land sale markets developed and this turned land one of the most valuable asset which every person fights for as result, conflicts always arise. From fraudulent land transaction, multiple sales or un paid, and sellers who try to repudiate sale contracts after they are not paid.
- 4) Eviction by land owners. This has been one of the most prevalent land conflicts in most countries. Such evictions are made by land lords either when the tenancy has been determined or the tenant's nonpayment of rent.
- 5) Land conflicts between the government and private /common of collective ownership¹⁵⁰.

4.7.1 Land conflict management in Nairobi

As a dimension of a broader state of conflict, current conflicts over resources are not just a contingent phenomenon but are to be seen against the background of a

¹⁵⁰ Takashi Yamano and Waus D, "Land Conflicts In Kenya" 2005

history of active land alienation, mass displacements, cultural and physical aggression and political marginalization of pastoral populations.

Today, Kenyan legislation on land is still heavily biased towards sedentary groups and agriculture, in continuity with a tradition which began under the colonial administration, according to which the first step to develop pastoral grazing lands is to turn them into farmland.

According to Lane and Moore head (1994) pastoralists' tenure systems are affected by three major longstanding processes: (i) nationalization of resources, (ii) sedentarization of herders and (iii) privatization of range.

Nationalization

Nationalization of the range is undermining customary tenure regimes without replacing them with effective systems (Moorehead 1991). This is the case with the provision of public facilities democratically open to "everyone". By-passing customary tenure without however being managed by the state, such facilities are immediately cause of disputes and are soon monopolized by the most powerful or better armed groups.

Sedentarization

The concentration of animals in areas of settlements is likely to have an adverse ecological impact and increase the risk of disease among the livestock. This represents an even higher risk for non-sedentary herders travelling through the area, for whom access to veterinary facilities may be more difficult. Non-sedentary groups may tend to avoid settlements and interrupt customary institutions of exchange important to maintain cross-cut linkages, such as bond-friendships, livestock entrustments and delayed exchanges (Broch-Due, 1990; White, 1990).

The division of communal rangeland areas into discrete administrative units interferes with customary land-use patterns. Moreover, as the area occupied by a settlement is usually smaller than the ecological land-use unit necessary for the settled group, sedentarization of pastoralists provides the potential for their exclusion (by sedentary farmers) from resources they previously had secondary or

perhaps tertiary rights of access to, and facilitates encroachment and alienation in favour of outsiders (Lane and Moorehead, 1994).

In Baringo, competition takes place between herders and herders, along class lines. The rich families are able to mobilize labour and capital necessary for irrigated agriculture. As they do so during the wet season, when grazing is not scarce, cultivation has little impact on livestock production. Instead, poor families can only afford wet season dry land farming in the rain-fed non-swamp areas, but this is also where and when the herds are grazed, with high potential for conflict (Little, 1987).

Privatization

By preventing customary, highly productive, tracking strategies, privatization of pastoral lands reduces the capacity of the land to support livestock. In the long term, privatization increases social polarization and deprives large numbers of people among the poorest sector of the population of crucial resources they need to sustain their livelihoods. At the same time, the very high costs of implementing private property systems divert time and important resources from survey work and conflict arbitration (Lane and Moorehead, 1994).

According to Lane and Moorehead (1994), to be effective, innovative land tenure policies for dryland pastoralists must take into account that today customary land tenure systems are irreversibly undermined by the structural changes pastoral society is undergoing. New policies should recognize this transformation of pastoral society and deal with the diversity of interests within it, including a growing rich vs poor polarization, absentee herd owners and the interests of wider economic and political structures.

Trust land

The confusion over land tenure is not only a matter of ambiguity between formal and customary law.

There are five land registration laws in Kenya. Non private land, falls into two broad categories of Government Land and Trust Land. The latter, which forms most of the

pastoral areas, is enshrined in the Constitution and governed by four different Acts (Lenaola et al., 1996). The Constitution (Section 115) gives trust land to county councils to hold in trust for the benefit of the people ordinarily resident on it and in recognition of their rights according to 'African customary law'. However, a clause in the same section allows for the legal manipulation of customary law by stating that 'no right, interest, or other benefit under African customary law shall have effect, so far as it is repugnant to any written law'. Even without legislative action, customary rights over trust land can be extinguished through the procedure of "setting apart" certain areas (Section 113).

This can be done by Parliament or government for the purpose of prospecting for or extracting minerals or oil directly or in favour of public or semi-public corporations and by county councils, for any purpose that 'in the opinion of that county council is likely to benefit the persons ordinarily resident in that area or any other area of trust land vested in that county council' (Section 117).

Government land, under which many important pastoral grazing lands fall, is controlled by the Commissioner of Lands office and the President. Government land can be, and regularly is, given to farmers as freehold land, but not to pastoralists.

In Northern Kenya, large areas of trust land are lost to irrigation schemes, game reserves, wheat farming and other cultivation. Overlapping and contradictory rights of exclusion legitimised by the parallel Acts and tenure systems, lead to lack of respect for the law, often leading in turn to open conflict (Bromley, 1991).

The recent Legal Framework on Pastoral Land Tenure and Legislation for the Arid Lands of Kenya finds that 'county councils have abused the trust placed in them by the law' and recommends the transfer of such trust land to a different legislative framework (RANTCO, 1998: 23-24). The Legal Framework also recommends several amendments to current legislation (included Chapter IX of the Constitution), in order to enable the recognition of pastoral communities as legal entities and to give legal credence to their traditional authority in the matter of land tenure.

4.8 Lessons learnt from land management practices in Nairobi Dar-es-salam

Given the fact that Kampala Nairobi and Dar-es-salam are all cities in East Africa and most of the laws in these three jurisdictions have a root from common law principles. This brings us to the conclusion that all land management practices which have been considered best in Nairobi and Dar-es-salam may be of relevancy to Kampala in a number of ways;

- 1) The Land Management System in Dar-es-salam which vests all the land in the government would be good for Uganda in order to solve the multiplicity of interests in land ownership such as registered titles, "Bibanja holding", tenancy and the like; this would create a uniform land ownership system of leases with only one land lord, (the government).
- 2) Authorities in Kampala City should also appreciate the system in Dar-es-salam since the system embraces National Development and urban planning. Under lease system in Dar-es-salam, the government is able to foster structural development and urban planning at the expiry of any given lease which is not the case with Uganda where land especially mailo is owned in perpetuity. And such landlords may subortage development in the City.
- 3) On the other hand, land management practices in Nairobi which inter alia include;
 - i) Individualization of land tenures
 - ii) Land redistribution and
 - iii) Alienation of public land may only be a good system for Kampala to adopt if it could create a uniform tenure system of let say lease holding. This would reduce the prevailing land conflicts especially the mailo- "Bibanja" holders conflicts.

4.9 Conclusion

It should be noted that land conflicts is a contentious issue which cuts a cross in almost all jurisdictions. Although their, management and the law that addresses these conflicts may differ, their causes and effects may be the same in any given jurisdiction.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSIONS

5.1 Introduction

This chapter deals with possible recommendations so as to curb land conflicts in Uganda and in particular Kampala and conclusion thereof.

5.2 Conclusion

Today, land transfer is one of the most contested issues in Uganda. In the wake of development strategies in the country, the power to control and to use land in Uganda is seen as an impetus to investors for both agricultural and industrial development. Remember, the Land Act 1998 made clear the tension between two parties (the land lord who is the ultimate owner of the land and the tenant who is the current user of the land) over the same land. These conflicting rights make it hard for landlords to develop their land even when they are financially able, which weakens the powers of the landlords over their land. The issue of willing buyers-willing seller coined in the Act further complicates the transfer of land from one person to another where the landlord might wish to buy the tenant off the land, the tenant must be willing to sell his / her rights to use the land and vice – versa. Moreover, tenants have failed to develop land out of fear that the landlords will one day evict them, like wise, landlords cannot develop land because they cannot evict the tenants. Even the very architect of the law, the government, is highly affected by these issues when trying to allocate land for investment.

Despite these problems, the majority of Ugandans are ignorant about the laws and land reforms. People have continued to occupy land they do not own without the consent of the landlords and later are evicted by the owners. This has led to many conflicts over land In Uganda today. There is significant ignorance of the law and

land tenure on both sides; the landlords are ignorant of their rights and likewise the tenants do not understand their rights over land.

It is therefore, pertinent to assert that the only way to end land conflicts in Uganda and Kampala in particular is by educating Uganda's on their land rights as clearly as possible. Land lords must learn that their rights on land are not independent of the rights of their tenants and therefore land lords must recognize their obligation in compensating tenants when seeking to change the rights of the tenants on land owned by land lords. Tenants do have rights but they also have responsibilities, they have the obligation of paying ground rent to their land lords if they are to be considered legal tenants on the land. A tenant who fails to do so may be evicted. One way to reduce the tension would be for tenants to purchase titles from their land lords to avoid future conflicts.

Interventions by organization can help find solutions for problems arising from current state of land ownership in Uganda. There has to be implementation of a land project that is aimed at providing public awareness and legal aid to indigent Ugandans in the central region in issues of land.

5.3 Recommendations

Having addressed ourselves to the causes and effects of land conflicts in Kampala and having realized a stringent manifestation of inefficiency in the legal system, the following are the recommendations that could be considered by the government of Uganda in efforts to curb land conflicts specifically in Kampala and Uganda in general.

5.3.1 Finalization of the land policy

The land policy should be finalized and new legislation based on it should be passed to implement it. As noted above, the government has been developing a new land policy for almost seven years. The constitution process with stakeholders is almost complete. The policy should start from the fundamental principle that land should be put to its most productive use and that property rights should be so as to help accomplish this. The suggestion that all four tenure systems in Uganda,

customary, freehold, mailo and leasehold be maintained but that in urban areas certain development conditions are applied to ownership would seem to be a reasonable compromise that could be politically acceptable.

5.3.2 Improving on standards of infrastructure

Standards for infrastructure should be modified to allow for more intensive occupation of scarce urban land resources. Building standards for housing should also be made more appropriate to allow for multifamily housing development in urban areas. This should be made part of the new land policy. Only through more intensive yet soundly planned and engineered development can best be brought down to levels that make housing affordable to the great majority of Kampala's urban population. Robert Buckley and Jerry Kalarickal in their study, "Thirty years of World Bank Shelter lending; what have we learned?" concluded, "There is ample evidence that when formal land development parameters (such as minimum plot sizes, setbacks and infrastructure servicing standards) are excluded from access to formal land ownership..... thus inappropriate regulation often renders dwelling construction and improvements illegal, regardless of whether the underlying plot is titled. The result is that even titled owners have reduced incentive to rehabilitate their ultimately illegal units. In the new land policy, incentives should be considered to encourage greater use of new house development, duplex construction and apartment buildings (flats). Since the majority of Kampala's residents already rent, tenants' provision should also be made for significant increases in well serviced rental housing for those whose means do not permit them to reach ownership in the near term.

5.3.3 Strengthening KCCA Administration

Land use administration by the Kampala city council Authority and the District land Commission in the city suburbs should be strengthened. As noted, the Kampala city council authority's ability to control and guide land development is weak. The same is true for the district land boards in most of Kampala's suburban areas. The city currently has no cohesive land management system that is applicable to all of the

various types of tenure. Enforcement of planning standards, especially in mailo areas and in formerly public land that is environmentally sensitive (wet lands,) is lacking. This capacity of the Kampala City council city planning and land management divisions should be strengthened. Perhaps most importantly, the city must muster the political will to put in place systems to insulate city professionals from political pressures and to discourage fraud and corruption in land matters.

5.3.4 Need for Government to make creative use of the land funds

The government should make creative use of the land fund which is proposed as part of new land policy. The government has proposed the land for the purpose of subdividing it into plots for sale to low and moderating income families. Land banking schemes are being tried in other developing countries, most recently in South Africa, Kirsten Harrison notes; "Land banking implies that government acquires that it allows the purchase of land, relatively cheaply, for public purposes and provides a tool to influence the pattern of development in accordance to overall planning objectives"¹⁵¹

The land fund could also be used to address the issue of compensation to existing occupants of properties who have rights of occupancy, which is hampering the efforts of developers to construct more housing.

5.3.5 Administration of land should be reformed

In the conflict- prone areas since the larger part of land is hold under customary tenure regime, Uganda land management and control relies more on local leaders in resolving conflicts. When a case is recorded or even before applying for a title, the area land committee has to be consulted. However, in heterogeneous communities, the composition of such committees is biased towards the larger ethnic group, in most cases, the original inhabitants. For this reason, unfair judgment in favors of highly represented group are common and are normally contested which creates tension resulting into conflicts.

¹⁵¹ (UNESCAP) 1993

5.3.6 Establishment of an independent body responsible for land transactions and conflicts resolution

It should be noted that land forgeries and illegal transactions have been on the rise, especially in receiving communities and this has raised the cases of land evictions. An independent body in charge of controlling land transactions and resolving land conflicts would help to reduce the incidence and escalation of land related conflicts in Uganda.

5.3.7 Adoption of Conflict Sensitive approaches by government while acquiring land

Companies and individual investors seeking land for investment in Kampala Uganda should adopt more conflict sensitive approaches to community analysis on the sites that they have identified for investment in order to establish existing land ownership patterns/ history, key actors and any potential or actual conflicts. Dialogue and wide community consultations should be carried out as part of the process of acquiring surface rights. Furthermore, companies should be transparent and accountable in the way they conduct business and relate to local communities.

5.3.8 Strengthening of Land Governance structures at the District level

Land governance structures in the district should be strengthened to enable them to play their role effectively. These structures lack adequate funding, and in some areas are not fully constituted. There is also a need for all actors intervening in land conflicts to co ordinate efforts, and to reduce forum shopping's a situation where people take advantage of the lack of co ordination to file the same cases in multiple courts in search of favorable justice.

5.3.9 Customary-based land dispute resolution

In many parts of the world, indigenous people have a very special relation to their land. Thus customary conflict resolution is especially appropriate for dealing with these land disputes, as long as the conflicts are within its jurisdiction.

In many micro-level land conflicts, these are the preferred means of dispute resolution because of time, cost, trust and enforceability. The fact that there are

many options to conciliate, facilitate, mediate or even arbitrate prevents the development of monopolies in land disputes resolution based on permanently standing councils.

5.3.10 "Technical" tools for solving land conflicts

In the case of land conflicts, conflict resolution often needs to be accompanied by technical tools. For instance, a boundary has to be (re-) determined future land use needs to be agreed upon, usage rights have to be documented. Technical tools to solve land conflicts range from securing property rights and land registration over land use planning and land readjustment, to state land recovery and recognition of customary land tenure and administration. They also include local conventions and solutions developed by grassroots organizations.

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