

**A CRITICAL ANALYSIS OF THE LAW GOVERNING LAND TENURE SYSTEMS
AND RIGHTS OF OCCUPANTS THERETO IN UGANDA**

BY

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**A RESEARCH DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN
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DECLARATION

I Muyingo Doreen do hereby declare to the best of my knowledge and belief that this is my original piece of work and that it has never been submitted for the award of any credentials to any university or college or published as a whole or part.

I further declare that all materials cited in this dissertation which are not my own have been fully acknowledged.

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APPROVAL

This dissertation titled "A critical analysis of the law governing land tenure systems and rights of occupants thereto in Uganda," has been submitted under my supervision and approval.

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MADAM HADIJAH YAHYAH

DEDICATION

I dedicate this work to the Almighty God, my mum and sisters to whom am profoundly honored and extremely humbled for their outrageous and impeccable guidance and trust they have in me.

ACKNOWLEDGEMENT

Without much ado, I thank the Almighty God under whose reversed surveillance I have come to the apogee of this research paper in particular, and my course, LLB in general.

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I have made a substantial proportion of reference to sources and literature both old and contemporary. I am therefore profoundly indebted to the learned authors of those writings.

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TABLE OF CONTENTS

DECLARATION	i
APPROVAL.....	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
TABLE OF CONTENTS	v
ABSTRACT.....	ix
CHAPTER ONE:.....	1
INTRODUCTION	1
1.1 Introduction.....	1
1.2 Background of the study	1
1.3 Statement of the problem	3
1.4 General objective of the study	3
1.5 Specific objectives of the study	4
1.6 Research questions	4
1.7 Hypothesis.....	4
1.8 Scope of the study.....	5
1.9 Significance of the Study.....	5
1.10 Definition of terms	6
1.11 Methodology.....	6

1.12 Chapterisation	7
CHAPTER TWO	8
EVOLUTION OF THE LEGAL FRAME WORK OF THE LAND TENURE SYSTEMS IN UGANDA.	8
2.1 Introduction.....	8
2.2 The Pre-colonial land tenure systems in Uganda	8
2.2.1 The Colonial Period (1990-1962).....	8
2.2.2 Post Independence legal regime	9
2.3 Policy Regimes that have influenced land use tenure.....	10
2.3.1 The 1900 Buganda Agreement.....	10
2.3.2 The Busuulu and Envujjo law 1928	11
2.3.3 The 1975 Land Reform Decree.....	12
2.3.4 The 1995 Constitution of the Republic of Uganda.....	13
2.4 The Land Act 1998.....	15
2.5 The Land (Amendment) Act of 2001.....	16
2.6 The Land (Amendment) Act of 2004.....	16
2.7 The Land Amendment Act of 2010.....	17
2.8 Land Management	17
2.8.1 Uganda Land Commission.....	17
2.8.2 The Land Fund	18

2.8.3 District Land Boards	18
2.8.4 Land Committees	19
CHAPTER THREE.....	20
DISCUSSION OF THE LAND TENURE SYSTEMS IN UGANDA.....	20
3.1 Introduction.....	20
3.2 Customary Tenure System	20
3.3 Freehold Tenure System.....	22
3.4 Mailo Tenure System.....	23
3.5 Summary process of acquiring a mailo land title	24
3.6 Leasehold Tenure System.....	25
3.7 Public Land.....	27
CHAPTER FOUR.....	28
ANALYSIS OF THE IMPACT OF TENURE ON SELECTED OCCUPANTS IN UGANDA	28
4.1 Introduction.....	28
4.2 The concept of occupants in Uganda and rights of Mailo occupants.....	28
4.3 The Buganda Land question.....	33
4.4 Challenges faced by occupants on land under Buganda Land Board	35
4.5 The Acholi Land question	36

4.6 Challenges faced by Acholi land occupants.....	38
4.7 Customary Land rights	39
4.8 Key Challenges faced by customary land occupants.	41
4.9 The emerging problem of Squatters’ “rights.”	42
4.10 Women's land rights.....	44
 CHAPTER FIVE	48
 RECOMMENDATIONS FOR A SUCCESSFUL LAND LAWS AND POLICIES ..	48
5.1 Liquidating the land fund.....	48
5.2 Creation of awareness of existing land laws and policies.....	48
5.3 Protection of legal owners of land and subsequent buyers	49
5.4 Limitation on acres of land owned	49
5.4.1 More inquiries on land grievances should be adopted	50
5.4.2 Proposals for reforms of land restructuring.....	51
5.5 Conclusion.....	51
LIST OF CASES	53
LIST OF ACTS	55
LAND POLICIES AND REGULATIONS.....	56
BIBLIOGRAPHY	57

ABSTRACT

The study involves critically analyzing the law governing land tenure systems and rights of occupants thereto in Uganda; with specific aims of examining the rights of lawful and bonafide occupants on land and the effectiveness of the law governing occupants ' rights.

This research shall mainly focus on the various laws and policies that have influenced the existence of the land tenure systems and how these have impacted the rights of the occupants in Uganda.

The research shall assess the challenges faced by both the government and the land title holders in resolving their disputes.

The research shall assess the accusations of land grabbing especially from Buganda and counter accusations of selfishness in defending unpalatable land regimes from other sources, and how they currently go a long way in clouding any agreement on the appropriate land policy given the importance attached on land in Uganda.

The research shall cover the law governing squatters, challenges caused by squatters onto the legal land owners, challenges faced by people that own land communally, impact of the tenure on leasehold, and women as occupants.

The study recommends that there is need to; set realistic time limits for the meeting of the district land boards, seeking legal advice, sensitizing communities on their land rights, establishing the degree of subsidiary granted; recognizing the legitimacy and dynamism of derived rights; need to regulate degree of autonomy to generate acceptance and sensitizing landlords on derived rights

CHAPTER ONE:

INTRODUCTION

1.1 Introduction

Historical circumstances and colonial policies in Uganda are well known to have created land tenure insecurity and other unintended consequences, including establishment of the overlapping land ownership rights, conflicts on land, poor land management, and skewed land distribution.

The search for a solution to challenges in the land sector has led to several land reforms which include the 1900 Buganda Agreement, Busuulu and Envujjo law, The 1975 Land Reform Decree, The 1995 Constitution of the Republic of Uganda, The 1998 Land Act and The Land Act Amendment of 2010.

Currently, Uganda's land tenure systems include; the Mailo tenure system, freehold tenure system, leasehold tenure system, and customary tenure system.

1.2 Background of the study

Land is a fundamental factor of production and indeed is Uganda's prime and crucial asset in development. Uganda would relatively not have had any problem, had it not been its land policy (legal framework) and management regimes which are creating artificial land shortage. In any society where there are parties competing for resources, conflicts are bound to happen in relation to the using or accessing of such resources.

In 1894 the state known as Uganda came into existence, established by the government of Britain declaring it as a British protectorate. Prior to that, it was characterized by monarchies such as the then mighty Buganda kingdom in central region, the great Bunyoro kingdom in the south western region and Toro kingdom in the western region, altogether with a collection of other small

chiefdoms scattered around formed the present day Uganda. Before 1894 agriculture and pastoralism were the major economic activities, hunting, pottery and among others were subsidiary but all these activities depended on land. It's against this background that allegiances were paid to the kings or chiefs for the use of the land. This utilization and management of land was based on customary rules and regulations.

The 1900 Buganda Agreement between the British government and Buganda kingdom established the institutions needed for indirect rule and formulated a land settlement. The land settlement vested in the Kabaka, the Royal family, regents, ministers, and chiefs. Specified amounts of land were to be held in freehold. The remaining land in Buganda was vested in the British crown.

The most crucial and challenging element of Uganda's land question, courtesy of a colonial legacy is to do with disentangling the multiple and conflicting tenure rights and interests often overlapping in the same piece of land. At the time of creation of mailo and native freeholds, pre-existing private interests of smallholders, mainly land use rights were legally recognized. Despite attempts to rectify this, the enactment of Busuulu and Envujjo law of 1928 for Buganda and similar laws in Ankole and Toro in 1938, the multi structure of rights persisted and has become a defining characteristic of the complexity of land relations in Uganda today. It has been largely blamed for escalating land conflicts and evictions in the central region where resolving dual interests of ownership between registered owners and 'bibanja holders' is nearly impossible, in addition to mediating and sustaining relations for harmonious co-existence that is untenable.

In 1975, Idi Amin Dada, out of the blue enacted the Land Reform Decree 1975, which essentially sought to overhaul the country's land tenure system. Under the Decree, all land in Uganda was declared public land and the object of the decree was to make security of the land tenure deponent upon land use, which supposedly would promote agricultural developments.

The landlord-tenant relationship as enacted under the Land Act Cap 227 has become controversial around three issues; the definition of lawful/bonafide occupants, the rights conferred on the tenants and the rent payable. The Land (Amendment) Act 2010 attempted to address these issues although some still remain unsolved.

1.3 Statement of the problem

It is imperative to note that, even after the amendment of the 1998 Land Act, the rights of legal and bonafide occupants remain widely infringed either by the occupants themselves or by the registered land owners. Historically, there has been a registered misunderstanding over settlement on mailo land, with policies continuously revised to promote their recognition but these policies have generated low acceptance among the occupants of the land themselves as there is denial of the status of each party under the law.

Equally registered land owners undertake to pass property without any due notification to the equitable occupants, who then are evicted, without due regard to their contributions and developments on the land. The persistent eviction of equitable occupants is the best manifestation of the inadequacies reflected by the laws governing mailo land. The policies therein have been viewed as contradictory and conflicting with customary land rights, raising suspicion and ending up in evictions.

This study therefore is an analysis of the law governing the rights of occupants of the land tenures in order to provide possible recommendations through which policy makers can revise the current legal framework to promote recognition of rights of occupants in Uganda.

1.4 General objective of the study

The overall objective of the study is to critically analyze the law governing land tenure systems and rights of occupants thereto in Uganda and recommend possible solutions to the effectiveness of these laws.

1.5 Specific objectives of the study

- i. To analyze the law under which different types of land tenure systems in Uganda exist and operate.
- ii. To establish the emerging challenges which affect the rights of occupants of land in Uganda.
- iii. To analyze the legal regime governing the rights of occupants in Uganda.
- iv. To make recommendations regarding challenges facing occupants in Uganda.

1.6 Research questions

The questions that this research hopes to answer are:

- i. Under what legal framework is land owned in Uganda?
- ii. What are the emerging challenges which affect the use and development of land by the occupants in Uganda?
- iii. What can be adopted in order to increase effectiveness of the legal framework in protecting rights of land occupants in Uganda?

1.7 Hypothesis

The law effectively confers rights to occupants of land in Uganda. There is persistent infringement of the rights of occupants on land despite the presence of the law governing the same.

There are possible ways for the law to be revised to cover existing gaps in rights of occupants in the country.

1.8 Scope of the study

This paper is to look at the efficacy of emerging challenges which affect the rights of occupants in Uganda. The research focuses on existing laws governing land ownership in Uganda, their implementation and impact on the rights of occupants.

The case study was carried out in the different regions of Uganda as a country where different tenures dominate that is; Buganda where Mailo and lease hold dominates and in Acholi for customary tenure.

The study covers the period before colonialism to date. This period involves the colonial era and the effect it created on land rights, origin of Mailo tenure and kibanja holders all through to the Land Reform Decree, into the formulation of the 1995 constitution, the Land Act cap 227 followed by the amendments therein. The study considers relevant municipal laws, International instruments and other laws from England where common law was adopted and incorporated into our laws.

1.9 Significance of the Study

The study is directed towards laws governing occupants in exercise of their rights to own land as property in accordance with the recognized tenures of Mailo, freehold, customary, and leasehold that are existing in Uganda.

The research is prompted by the inequities, injustices, and rampant land disputes carried on different land occupants through the inefficiency of land legislation.

When successfully accomplished, this study will contribute significantly on concerns of occupants by providing useful information to the policy makers, local communities, stakeholders, and government on how to address land disputes, resolve and provide possible working solutions to implementation of public policies.

1.10 Definition of terms

The law of property Act 1925 defines land to include "any tenure and minerals, whether or not held apart from the surface, buildings, or part of the buildings and other corporeal hereditaments and an easements right, privilege or benefit in, over or derived from land, but not an undivided share on land," Hence there is one class of corporeal things namely 'Fixtures that are regarded as land'.

The Interpretation Act Cap 6 defines **land** to include, "messuages, tenements, hereditaments, houses and buildings of any tenure and land covered by water."

Registration of Titles Act Cap 230 defines **land** to include resource tenements and hereditaments corporeal and in very certificate of title, transfer and lease issued or made under this Act ,such word also includes easements pertaining to land therein described and or reputed to be part thereof or appurtenant thereto.

1.11 Methodology

The research methodology shall include a selection of literature on land issues as well as the aspects and trends and these shall include textbooks, journals, newspapers, statutes and Non Governmental Organisations reports to Uganda laws and policies.

Data shall be gathered through semi-structured intensive interviews of which some questions shall have been designed with pre-determined answers, while others open ended questions.

In addition to this, the above shall use questionnaires of short and precise questions that seek to establish the effectiveness of the law governing occupants of land in Uganda.

Online resources and information shall also be consulted in this research.

1.12 Chapterisation

This work is divided into five chapters;

Chapter one contains the general introduction, the background to the study, statement of problem, objectives, research questions, scope of study and methodology.

Chapter two contains the evolution of the legal framework of the land tenure systems in Uganda.

Chapter three contains a discussion of the land tenure systems in Uganda.

Chapter four entails analysis on the impact of the land tenure systems on the occupants in Uganda.

Chapter five contains recommendations and the general conclusion.

CHAPTER TWO

EVOLUTION OF THE LEGAL FRAME WORK OF THE LAND TENURE SYSTEMS IN UGANDA.

2.1 Introduction

Land tenure systems in Uganda have had different impacts on the occupants depending on the legal regime operating at any particular time. At the same time, to appreciate the factors influencing the different levels of economic development within the different areas of the country, it is necessary to analyze the historical aspects pertaining to such areas, since most of these aspects have an impact on the economic development in any given area.

2.2 The Pre-colonial land tenure systems in Uganda

The pre-colonial period land tenure system is what we now call the customary land tenure that has however lost its original status. Under customary tenure, there was clan land that was restricted to a particular clan to the exclusion of all the other clans and communal land that was accessible to by all irrespective of their clans.

Traditionally the whole land and everything on it belonged to the kings who would allot to their relatives and their territorial chiefs the control over various regions of the kingdoms. These territorial chiefs were the de facto landlords responsible for the well being of their regions. This means that radical title lay in the kings.

2.2.1 The Colonial Period (1990-1962)

This period is remarkable as far as the history of land tenure systems in the central region (Buganda) is concerned. The period marked the introduction of mailo land tenure system that was associated with new characteristics and new landlords.

The most important event in this period was the signing of the Buganda Agreement, which was signed on 10th March 1900. Under the Buganda Agreement a total land of Buganda was assumed to be 19,600 square miles out of which, one half became crown land and the other half was to be divided up between not more than 1050 people¹.

The land reforms enacted brought major advances in the individualization of land ownership in Uganda. Access to land was increased through direct purchase and through official alienation of hitherto communal land. Eventually in areas where land followed the British pattern, the land became a commodity on the market. Plantations and estates were developed by non-Ugandans to supply export markets for tea, coffee, and cotton. Mailo land suffered underdevelopment due to landlords and tenant grievances. However, apart from Buganda and a few areas of Bunyoro, Toro and Ankole, the colonial changes in the land tenure system did not affect many rural areas in Uganda for example the northern region and eastern region was not affected. And indeed, the customary tenure remained very dominant with its demerits.

2.2.2 Post Independence legal regime

Since independence, Uganda has had several legislations in form of constitutions and statutes, which have affected land tenure systems in Uganda. On 9th October 1962, Uganda had her independence and it was on that date that the 1962 Constitution of Uganda then operationalised until it was succeeded by the 1966 Pigeon Hole Constitution, 1975 Land reform decree and now the 1995 Constitution of the Republic of Uganda.

The 1962 Constitution had a semi federal set up comprising of all states, districts and the territory. Under this set up land was to be controlled and administered at both central government level and at district level.

¹ John Tamukedde Mugambwa: The legal aspects of the 1900 Buganda Agreement revisited 1981.

When the 1975 Land Decree came into place, all tenures were converted to leasehold and land was vested in the government that allocated leases subject to various conditions until 1979 when all prior tenures under the 1962 constitution were restored.

The 1995 Constitution came into force and vested all land in the citizens and spelt out the recognized land tenure systems.

2.3 Policy Regimes that have influenced land use tenure

2.3.1 The 1900 Buganda Agreement

The Buganda Agreement of 1900 was an agreement signed between the British Government and the regents of the Buganda kingdom on behalf of the then Buganda King Daudi Chwa II who was too young to be party to the agreement.

The agreement fixed Buganda's boundaries, established the institution needed for indirect rule and formulated a land settlement. Its foundation was the genesis of a restrained relationship of mailo land and kibanja holder on land. Customary tenure flourished everywhere in Uganda but colonial perception of customary law was both negative and positive, where it was in their interest, they allowed it to operate subject to repugnancy test.² Land was distributed in mailo a Luganda translation of miles to the Kabaka and his headmen hence individualizing title to land.

The colonial government created freehold land tenure in the central part (Buganda), in the western parts (Ankole, Toro, and Kigezi) and Bugisu in the eastern part of Uganda. Holders of freehold land included church missionaries and academic institutions which owned it for unlimited time and would seek land titles from the Crown.³

²Professor Kakooza Report on customary law in Uganda

³ Source Book of Uganda's land law in Uganda

Leasehold land tenure was established in 1900 to allow holders of mailo and freehold, including the crown to grant land ownership under a contract to another person over a specified period of time and on certain conditions such as payment of rent. The holders of the land under lease were also entitled to a certificate of title⁴,

2.3.2 The Busuulu and Envujjo law 1928

After signing the 1900 Buganda Agreement, the British government mindful of the powerful support rendered to the 'Bataka' from the 'bakoopi' or cultivating tenants declared its intention of insisting upon the enactment of a legislation to ensure security of tenure to native occupiers and for limitation and regulation of rents and tribute in kind which was on October 15th 1926 published in Uganda Herald.

The Busuulu (equivalent to ground rent) and Envujjo Law (rent out of agricultural produce) of 1928 which was described as "perhaps the first legislative enactment in Africa dealing with native rental conditions," came into effect on January 1st 1928.⁵ No tenant may be evicted by the mailo owner from his kibanja save for public purpose or for other good and sufficient cause unless a court having jurisdiction shall have tried the case and made the order for eviction⁶.

In *Sonko and 11 others V Banoba*⁷, for any land dispute whose occupation dates back to 1950s, the applicable law was the Busuulu and Envujjo law of 1928 and it was up to the appellant to prove compliance with the said provisions of the law.

⁴ Ibid2

⁵Time to review land by Vision 24th October 2012

⁶ Section 11 the busulu and Envujjo act of 1928

⁷ UGHCCD 145 (6 FEB 2011)

The Busuulu and Envujjo law, granted a right of residence to a kibanja holder on mailo land which only extended to the wife and child of the kibanja holder, and the successor to the kibanja holder in accordance with native customs of the kibanja holder⁸.

Any other person who wished to reside over a kibanja recognized by the mailo owner had to first obtain consent of the mailo owner. A kibanja holder had no right to transfer or subject the kibanja to any other person without the consent of the mailo owner⁹.

In *George Kasedde Mukasa V Emmanuel Wambedde* and others¹⁰, the defendant averred jointly and severally that each of them lawfully acquired his piece of land well before 1990 and that none of them is a trespasser.

2.3.3 The 1975 Land Reform Decree

In 1971, Iddi Amin overthrew Milton Obote in a coup to establish a military government. This government passed the land Reform Decree 1975, which declared all the land in Uganda to be publicly owned and centrally vested with the Uganda Land Commission. The Uganda Land Commission was granted the role to manage and allocate the land on behalf of the state. All the previous forms of freehold were abolished and converted into leaseholds. The Decree imposed development conditioned against these leaseholds and failure to comply with them, within a specified time period could result in forfeiture of the land to the government. Sale or sublease of the converted leaseholds was forbidden without the express written permission of the Commission.

⁸ Section 8(1)

⁹ Section 8 (1) (a) and (b) Land Act Cap 227

¹⁰ (Civil suit No.459 of 1998)

~~The Uganda Land Commission was empowered to lease land occupied by~~ customary tenants without their consent¹¹. The right of Ugandans to occupy unalienated public land by the customary tenure without the government's express permission was also forbidden and became an offence punishable by one year imprisonment.

The Land Reform Decree of 1975 was intended to give the government of Uganda a greater control over the use and management of land. By making security of land tenure dependant on the land use, it was hoped that this would boost agricultural development and production¹².

The final years of Amin's era were marked by rapid economic decline with growing lawlessness and corruption. This period coincided with Uganda's descent into a series of bloody conflicts which greatly weakened the authority of its central government and led to virtual collapse of the rule of law in some parts of the country.

2.3.4 The 1995 Constitution of the Republic of Uganda

The Constitution of the Republic of Uganda was adapted in 1995. It contains a chapter which comprises extensive protection of human rights¹³. This chapter of the Constitution also provides for affirmative action in the flow of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them¹⁴.

¹¹ Section 3 Land Reform Decree 1975. The only obligation was to pay compensation for any improvements that had been made by the occupants.

¹² Kevin Watkins, The Oxfam Poverty Report, Oxfam 1995

¹³ Article 21

¹⁴ Article 32

The Constitution contains a chapter providing for land and the environment¹⁵. This states that: "Land in Uganda belongs to the citizens of Uganda and shall rest in them in accordance with land tenure systems provided by this Constitution."¹⁶Non citizens are only permitted leasehold¹⁷ . The Constitution also provides for The Uganda Land Commission¹⁸, District Land Boards¹⁹ and Land Tribunals²⁰ whose functions are described therein.

The Constitution permits the central government or local government Authority to acquire land in the public interest subject to the provision of Article 26 of the Constitution and shall hold the land in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks, and anybody to be reserved for ecological and tourist purposes for the common good of all citizens²¹.

The Constitution restored the four land tenure systems that had existed before the land reform decree 1975, namely, (a) customary, (b) freehold, (c) mailo, and (d) leasehold.²²

The Constitution guarantees that the lawful and bonafide occupants of mailo land, freehold, or leasehold land shall enjoy security of occupancy on the land²³, until parliament enacts an appropriate law regulating the relationship

¹⁵ Article 237-245, Chapter 15

¹⁶ Article 237

¹⁷ Article 237(2) (c)

¹⁸ Article 238-239

¹⁹ Article 240-241

²⁰ Article 243

²¹ Article 237(2)(b)

²² Article 237(3)

²³ Article 237(8)

between the lawful or bonafide occupants of the land and through the registered owners of that land²⁴ .

2.4 The Land Act 1998

The Land Act of 1998 describes the lawful occupant in three fold²⁵;

First as a person occupying the land by virtue of Busuulu and Envujjo law of 1928 and through respective Ankole and Toro landlord and tenant laws of 1937.

Secondly, is to a person who entered the land with the consent of the land owner who is a registered owner of that land and includes a purchaser.

Thirdly, is to a person who was in occupation of the land under customary tenure but whose tenancy has neither been disclosed nor compensated for by the registered owner of the land.

Bonafide occupant is another description provided into two limbs namely; as a person before coming into force of the 1995 Constitution occupied land belonging to another, developed, utilized the same unchallenged by the registered owner for a period of twelve years or was settled on land by the government or by its agent who includes local authority.

In *Lukwago V Bawa Singh and another*²⁶, Justice Benet said that the essence of the relationship of mailo holder and kibanja holder is that kibanja holder's right of occupancy occurs for indeterminate period and is inherited by his heir and successors implying that a mailo owner cannot evict a kibanja holder from his land save for the causes provided by the law.

²⁴ Article 237(9)

²⁵ Section 29

²⁶ (1959)EA 282.284

This time round the security of the occupancy of a tenant ceased to depend ~~upon the good relationship with the land owner as was the case before this Act,~~ when a tenant is to be evicted from the land, he should be either for default of payment of annual ground rent for two consecutive years accompanied with a written six month notice to that effect, nevertheless, the one thousand shilling rent, approved ground rent, had no value commensurate with the size and place of the land.²⁷

The Act further provides for establishment of a land fund to be used in resettling people that become landless as a result of government actions and natural disasters.

The Land Act declares that the security of tenure of a lawful or bonafide occupant is or prejudiced by an individual's lack of a certificate of occupancy. In other words, the security of occupants exists with or without the formality of a certificate²⁸.

2.5 The Land (Amendment) Act of 2001

The Amendment in the proviso of the Act extended the time limit in which magistrate and local council courts were authorized to adjudicate land matters pending before them as such to continue disposing of the matters until their completion²⁹. There were many land matters pending before these courts.

2.6 The Land (Amendment) Act of 2004

Under this Amendment, additional provisions to the determination of annual ground rent were introduced to include not only the land board's approval but also minister's approval after the board's decision on rent, and included a provision for similar proprietary rights enjoyed by the land owner now to be enjoyed by the tenant, such as right to mortgage, assign, subdivide, sale,

²⁷ Section 31(5).

²⁸ Section 33(9).

²⁹ Section 98(6).

bequeath and give as a gift intervivor his interest to any person who inherits similar rights³⁰.

2.7 The Land Amendment Act of 2010

The cognizant changes in the 2010 Amendment include enhancing security of occupancy of lawful and bonafide occupants on mailo land in accordance with Article 237 of the 1995 Constitution. It includes grant of exclusive powers to the Minister to determine annual ground rent where the board fails to do so after six months³¹. Penal provisions of imprisonment of a period not exceeding seven years on conviction of attempt or illegal eviction, a declaration of a void agreement of assignment of tenancy by occupancy, without the first option given to either, kibanja holder or mailo holder to purchase the same³². The Act enjoins court to issue orders in case of illegal eviction and order of restitution of evictee or an order of compensation or payment of damages to an evictee from land³³.

2.8 Land Management

The Land Act provides for a decentralized land administration from the Ministry of Lands, Housing and Urban Development, to the District Land Boards. The role of the state has changed in the area of management as the locus of control has shifted to the Uganda Land Commission and below it are the District Land Boards and Land Committees.

2.8.1 Uganda Land Commission

This is charged with managing land vested in or acquired by the state according to 1995 Constitution. It has the power to purchase land or other interests in land, elect or demolish buildings, sale or lease land held by it,

³⁰ Section 31(3)

³¹ Section 31(4)

³² Section 35(2)

³³ Section 38

survey government owned land and carry out other activities as necessary. The line minister responsible for land rights may issue policy directives to the Commission. The Commission is also responsible for administering the land fund³⁴.

2.8.2 The Land Fund

This was originally established to purchase land of absentee mailo land owners in one specific part of Uganda, which was adjudged to have suffered from an arbitrary confiscation of land by the previous colonial administration³⁵, however its function was then broadened to assist disadvantaged people throughout Uganda to buy land³⁶. The fund is empowered to acquire land and also resettle landless people.

2.8.3 District Land Boards

The 1995 Constitution provides for the establishment of a Land Board for every district in Uganda³⁷. The Land Act 1998 specifies this membership, qualification experience as well as general functions³⁸. The Boards are deemed to own all land within a district which does not belong to anyone else and are given power to sell, lease, or otherwise deal with such land. The Boards are also charged with facilitating the registration and transfer of elements of land in their district, surveying and evaluating the land and issuing certificates related to it.

The District Land Boards are independent of both the Uganda Land Commission and District Land tribunals. The District Land Tribunals were the highest authority for appeal in the district after which cases could be taken to

³⁴ Article 239

³⁵ Sources of land law in Uganda, 2012: Mugambwa

³⁶ Section 24 Land Act

³⁷ Article 240-241

³⁸ Section 57-60 Land Act

the high court in Kampala. However, the District Land Tribunals became non functional in 2005 due to lack of funding from the government.³⁹

2.8.4 Land Committees

The Land Act of 1998 provides for the appointment of land committees in each parish, gazette urban areas and city divisions⁴⁰. These were intended to comprise few people (at least one of whom should be a woman) drawn from the locality and possess some knowledge of the local land matters. The main function of each committee is to determine, verify and mark the boundaries of the customary land within the locality when the certificate of customary ownership is made. The committees is expected to carry out its tasks in collaboration with traditional institutions and also to advise members of the District Land Boards on the applicable laws in the area.

In conclusion the district land tribunals that were put in place phased out in 2005 by the directive of the then Chief Justice Benjamin Odoki due to lack of adequate funding from the government. Currently it is the district land boards in operation at district levels but according to daily monitor⁴¹ the spokesperson of Ministry of Lands, Housing and Urban Development, Mr. Obbo Denis asserted that illegal land tittles are issued by the district land boards, and this was evidenced with 15 titles that were canceled including one of king of Bunyoro.

³⁹ New vision of 10th October 2010

⁴⁰ Section 64-68

⁴¹ Monday October 24th 2016

CHAPTER THREE

DISCUSSION OF THE LAND TENURE SYSTEMS IN UGANDA.

3.1 Introduction

Land in Uganda is in various tenure systems through which occupants can own it in perpetuity or for a given period of time. The 1995 Constitution of the Republic of Uganda recognizes the mailo land tenure, customary land tenure, freehold land tenure, and leasehold land tenure.

3.2 Customary Tenure System

Before the coming into force of the 1995 Constitution of Uganda, customary land holding was not recognized in Uganda as a legal tenure. Only three land systems were recognized i.e. leasehold, mailo, and freehold. Customary tenants were regarded as tenants at sufferance and could be evicted at any time.

Land under this tenure is communally owned by particular groups of people. Land use is commonly controlled by elders, or a group in its well-defined administrative structure and authority. In Uganda this tenure is dominant in the north and eastern part of the country.

In this case, people who own this land, have rights to it, but do not have land titles⁴². Some occupants on such land allocate specific areas to themselves with known and defined boundaries usually marked by ridges, trenches, trees and provisional mark stones.

In Uganda, customary tenure embodies the main part of land holdings.⁴³ There is a sizable collection of customary tenure structure among Uganda's more

⁴² Section 3 (1) Cap 227.

⁴³ Landesa Women And Customary Rights; Focus On Land In Africa Brief, Uganda World Resources Institute, Landesa 2011.

than 60 indigenous clusters that is from powerfully distinctive tenure configurations to exceedingly communal structures⁴⁴.

Customary systems also differ in how members acquire, use, manage, and transfer land. The Land Act identifies the fact that customary land occupancy conveys legitimate rights minus documented evidence and offers what is known as certificate of customary ownership⁴⁵. In the laws of Uganda, customary tenure is defined as a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons.

In Uganda, there are diverse systems in which customary land tenure occurs in various parts. In some areas customary land is owned by community, in some parts the land belongs to a certain clan whereas in other sections it is held by individual persons.

Similarly, the rules of customary arrangement as well differ in various areas of Uganda. The 1998 Land Act states that the customary land tenure shall be governed by rules largely acknowledged as obligatory by a given community and shall be legally bound by the same rules. When the customary tenure owner wants to bring the land under the Act, hereby has to modestly have to agree with the community in charge of that land (clan or tribal heads).

In ***Ernest Kinyanjui v Gikanga***⁴⁶, it was held that as a matter of necessity, the customary law must be accurately and definitely established, the onus to do so is on the party who puts forward the customary law.

In ***Emulu V Akello***⁴⁷, court held that according to the clear provisions of law, the LCII Court of Moru-Inera Parish had no jurisdiction to entertain the

⁴⁴ Section 15 Cap 227.

⁴⁵ Section 4 Cap 227

⁴⁶ (1965)EA 735 at 789

⁴⁷ (HCT-09-CV-CR.No.006/2011)[2012]UGHC 128(9 JULY 2012)

dispute between the parties hereto since it was not a village LC. Court of first instance. It acted without jurisdiction.

In *Jacobo Lomolo V Kilembe Mines*⁴⁸, it was stated that for customary tenure may be established by the cultivation only of seasonable crops or the grazing of cattle and related construction of wells to water cattle.

3.3 Freehold Tenure System

Freehold is the premier mode of private land ownership under English law. The Land Act recognizes it as one of the four regimes through which access to land rights may be obtained⁴⁹. The 1998 Land Act defines freehold as that land tenure that derives its legitimacy from the constitution and the written law.

It is a system of owning land in perpetuity or life without end and was set up by agreements between the kingdoms and the British government. The English Freeholds were governed by The Crown Lands Ordinance 1903. The Native Freeholds by the Toro and Ankole Agreement. Grants of land in freehold were made by the crown and later by the Uganda Land Commission. The grantee of land in freehold was and is entitled to a certificate of title. Most of this land was issued to the church missionaries and academic institutions and some individuals.

Its incidents are defined to include registration of title in perpetuity and conferment of full powers of ownership that is the power of use and dispositions⁵⁰. Transactions involving freehold are governed by the Registration of Titles Act Cap 230. There is little land held under freehold tenure in Uganda.

⁴⁸ [1978] HCB 157.

⁴⁹ Section 3 (2) Cap 227.

⁵⁰ Section 3 (2) (a).

It is only Ugandan citizens that are legally entitled to own land under the freehold tenure system⁵¹. Certificates of title for this tenure are pursued directly via government authorities who involve the sub-county land office, the district land office plus the ministry of Lands Zonal offices.

3.4 Mailo Tenure System

This form of tenure was only peculiar to Buganda. It was created by the 1900 Buganda Agreement between Her Majesty's government of Britain and the kingdom of Buganda.

Under this tenure, land is registered and owned in eternity or perpetuity with its holder having a land title for it⁵². This land tenure in Uganda has its basis from the allocation pursuant to the 1900 Buganda Agreement, subject to legislative qualifications. Land held under mailo tenure is mainly confined to the central region of Uganda.

Feudal in character, the mailo recognizes occupancy by tenants locally known as kibanja holders, whose relationship with their landlords is guided by the provisions of the Land Act⁵³.

In *Justine Lutaaya V Stimling Civil Engineering Company*⁵⁴, Trespass to land was described to occur when a person moves an authorized entry upon land, interferes with another person's lawful possession of that land.

For exclusive ownership, mailo is registered under the Registration of Titles Act.⁵⁵ The holder of the mailo land title has absolute ownership of that land.

⁵¹ Article 237.

⁵² Section 3 (4) (a) Cap 227.

⁵³ Section 3 (4) (c) Cap 227.

⁵⁴ Civil Appeal No. 11 of 2002 (Sc).

⁵⁵ Cap 230.

At present, there are no more titles issued for land administered under the mailo tenure since all titles were issued before 1928. What is done today is further subdivision of the already existing titles issued prior to the 1928 plus changing the names on the titles during new ownership. Within the process of subdivision and transfer of ownership, both the applicant and the transferring land owner fill application forms with the zonal office of ministry of lands in their area.

They then await the zonal office to accomplish the rest of the entire process. Mailo land tenure is mainly in Buganda, with some few traces in parts of Ankole, Toro sub regions and Bunyoro among others by virtue of agreements signed with the British.

By 1999, there were over 250,000 of mailo land title holders in Uganda courtesy of a majority having bought it or inherited it.⁵⁶

3.5 Summary process of acquiring a mailo land title

The process of acquiring certificate of mailo Land title is carried out systematically. Under mailo land there are no titles issued but instead old titles are sub divided or transferred into the names of new owners.

In order to have a land title subdivided or transferred, one must get the plot and the block number of that particular land and present it to the registrar of titles who will verify that it is registered.

The buyer picks and fills application forms from the Distinct Land Board and returns them to the board. When filling forms, one must indicate clearly whether it is subdivision or transfer. The seller fills transfer forms together with consent forms. Subsequently the land survey is done and the ministry completes the course by filling and issuing a mutation form.⁵⁷

⁵⁶ Margret Rugadya; land reform; the Ugandan experience 1999

⁵⁷ H.W.WEST: Mailo systems in Buganda 1999

In *Mwenge V Migadde*,⁵⁸ the accused wanted to sell the Butaka land without consulting the lukiiko as had been accepted in Buganda kingdom. It was held that the bataka law was now repugnant and therefore no prior consent needed.

3.6 Leasehold Tenure System

This is a system of owning land for a particular period of time .In Uganda one can obtain a leasehold from an individual, a local authority, an organization, company, an institution like Buganda kingdom or from Uganda government for a maximum of 99 years or in between with agreed terms and conditions.

The leasehold transaction being essentially contractual allows parties to define the terms and conditions of access and usage in such a manner that suits their give and take land use needs. A lease is an agreement whereby one party grants to the other exclusive possession of the land for a period and in return for a monetary consideration called rent⁵⁹.

A grant of land would be made by the owner of freehold, customary, mailo or by Uganda Land Commission to another person .The grantee of a lease for an agreed period of time is entitled to a certificate of title. Any land owner in Uganda whether for mailo, freehold, or customary tenure may award a lease to an individual⁶⁰.

In practical terms most of the land under leasehold was formally owned by government agencies and bodies, predominantly the Uganda Land Commission and District Land Boards. Thus these bodies tend to enforce some development conditions for subsequent use of land.

In two cases, where the City Council of Kampala sued a tenant, who was accused of sub-letting their premises to others in a breach of their lease

⁵⁸ 5 ULR 98

⁵⁹ Section 3 (5) (b) Cap 227.

⁶⁰ Section 3 (5) (e) Cap 227.

agreements and the courts drew out this diction. In **City Council of Kampala V Mukitibi**⁶¹, the court found that the tenant had allowed a group of hair dressers to use his premises in return for a fee but had not given them exclusive position or even their own key to the premises. In **City Council of Kampala V Mukubira and another**⁶², by contrast, the tenant was deemed to have parted possession because he provided no supervision over the use of the premises which he only visited occasionally.

In **Juma Noor Shakiya V Hassan Ali Jusuh Ahmed**⁶³, It was held that Ugandan law does not specify that a lease must be in writing and an oral contract could be deemed sufficient.

A lease contract can also be inferred by the conduct of the parties. In **Mayanja V National Housing and Cooperation**⁶⁴, a leasehold was inferred by the fact that one party took possession of the land and started paying rent which was accepted by the land owner.

Where a person enters into land as a tenant of the other both parties are stopped from denying that a lease exists. In **Pardham Jivraj V Dudley Whelped**⁶⁵, even though a lease had not been registered under the registration of the Titles Ordinance, which preceded the 1924 Act, this did not provide grounds for arguing that it was defective because the payment and acceptance of rent by the parties was held to prove that they regarded one another as landlord and tenant.

Common law implies that the landlord will respect the right of the tenant to quiet enjoyment of his/her possession, 'non derogation' from the purpose of the

⁶¹ [1967] EA 368.

⁶² [1968]EA 497

⁶³ (1965)EA 241

⁶⁴ [1972]1 ULR 37

⁶⁵ (1920-1929)3 ULR 193

lease and premises that are fit for habitation. In ***Opiya V Mukasa***⁶⁶, it was held that the landlord was prohibited from removing the roof of the building in an attempt to enforce eviction.

In ***Lugogo Coffee Company (U) LTD V Singo Combined Coffee Growers LTD***⁶⁷, the high court of Uganda stated that where a tenant refuses to vacate, it would be advisable for the owner to apply for a judicial order of eviction than to attempt to forcefully evict him or her.

3.7 Public Land

All crown land under the 1900 Buganda Agreement was converted to public land.

Under public land, the government owns land and has the right to lease it to any company, organization, or individuals on specific terms and covenants. In most cases, this form of land is not for settlement; it is basically for business and usually located in urban areas such as Kampala and other big towns in the country.

In ***Paul Kisekka Sakka V SDA Church Associations of Uganda***⁶⁸ one of issues to be determined by S. C was whether the appellant acquisition of new customary tenure on public land was lawful? It held that that occupation of unoccupied public land by customary tenure without permission of the prescribed authority was illegal, holder of any customary tenure on any public land may after notice of not less than three months to prescribed authority may approve, transfer shall not vest any title in the land to the transferee except the improvement or development out of land.

⁶⁶ Unreported

⁶⁷ CS No.554 of 1973;[1976] HCB

⁶⁸ Civil Appeal No. 8 of 1993.

CHAPTER FOUR

ANALYSIS OF THE IMPACT OF TENURE ON SELECTED OCCUPANTS IN UGANDA

4.1 Introduction

Under this chapter, the study was carried in two selected districts of Uganda namely; Wakiso district, about the rights of squatters, lawful and bonafide occupants and Gulu district in northern Uganda about the rights of customary land occupants. For Wakiso district, respondents were drawn from Namugongo-Jjanda village And Kira. And for Gulu district, respondents were drawn from Lalia village.

The target population was the community members, land owners, members of the District Land Boards and local council leaders who participated as key informants.

The study involved a sample of 80 participants drawn from the different sections of the target population, 50 participants from Wakiso and 30 from Lalia village in Gulu district.

4.2 The concept of occupants in Uganda and rights of Mailo occupants

According to the Land Act⁶⁹, a lawful occupant means a person occupying land by the virtue of the repealed Busuulu and Envujjo law, Toro and Ankole Landlord and Tenant Law and a person who entered the land with the consent of the registered owner and includes a purchaser or a person who had occupied the land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the lease hold certificate of title.

⁶⁹ Section 29 Land Act Cap227

Whereas the bonafide occupant means a person who before the coming into force of the Constitution had occupied and utilized or developed any land unchallenged by the registered or agent of the registered owner for twelve years or more or has been settled on land by government or agent of government, which may include a local authority⁷⁰.

This legal guarantee of continued occupancy rights for tenants by the land Act is aimed at enhancing productivity and sustainable livelihoods to reduce recurring instances of massive evictions in the country.

Tenants may acquire certificates of occupancy on the land they occupy if they so wish⁷¹. This is evidence of their ascertained rights however; not having one doesn't mean one loses the right to the tenancy. This certificate of occupancy can be mortgaged, pledged, transferred or passed on by the will with permission of the land owner⁷². In granting permission the land owner may impose conditions which must not discourage the transaction from taking place⁷³.

The 1995 Constitution directed parliament to pass a law regulating the relationship between the registered owners and the lawful or bonafide occupants of land.⁷⁴.

According to the study carried out on mailo land, most occupants are unaware of the land registered owners and also are ignorant of what they are entitled to, however in the case of ***Lwanga V Registrar of Titles***⁷⁵, where despite the case

⁷⁰ Section 29(2) Land Act

⁷¹ Section 33(1) Land Act

⁷² Section 34(1)(2) Land Act

⁷³ Section 34(4) Land Act

⁷⁴ Article 237(9)

⁷⁵ (1980) HCB 24

that ignorance of the law is no defence, Salongo Lwanga's acquired title could not be held defeasible.

In *UP and TC V Abraham Katumba*⁷⁶, it was held that as the law stands a person who purchases an estate which he knows to be in occupation of another person other than the vendor is not a purchaser without notice.

The rights of bonafide occupants on mailo land have been infringed in such a way of pausing the impasse property. Land is sold along with its occupants at the time when a registered owner wishes to pass his property which is in most cases done without notifying the occupants despite the provision of the law to accord the occupants with the first purchasing rights, prior to the consideration of any other potential buyer⁷⁷.

According to Bikaako and Ssenkumba⁷⁸, it is noted that property purchase in Uganda has caused considerable misery to a number of buyers. Some have found that the property purchased has a squatter who cannot be evicted because he is protected by the land Act. On other occasions, the land is pledged as collateral without effecting bank payment and thus put under caveat until the financial institution has been paid off.

In ***FJK Zaabwe V Orient Bank and others***⁷⁹, it was held inter alia that the conduct of a party calculated to deceive, whether by a single act or combination or by suppression of truth is dishonest and amounts to fraud.

⁷⁶ [1997]IV KALR 103

⁷⁷ Section 35(2) Land Act

⁷⁸ Gender, Land and Rights: Contemporary Debates in Law Policy and Practice in Uganda (2008)

⁷⁹ (Civil Suit No.715 of 1999)UGHC 40

In ***Sir John Bageire V Ausi Matovu***⁸⁰, that the value of land and need for thoroughly investigations before purchase was emphasized and held inter alia;

“Lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations not only of the land but of the sellers before purchase.”

According to study respondents, the kibanja holders find difficulties to negotiate with mailo owners which has led to several unlawful evictions by mailo owners or new purchasers, as the buyer is made to believe that they are illegal occupants moreover with the help of police protection. A case in point in jjanda, the family of ssewankambo Michael which settled on the land from 1975 was evicted in October 2016 by a purchaser who was told that they were squatters on land and were left homeless since they had never seen their mailo owner.

In ***Mudiima and 5 others V Kayanja and 2 others***⁸¹, it was held that the first and second defendants acted fraudulently in obtaining registration on the suit land. They did not carry out the necessary due diligence to establish the interests of the plaintiffs existing in the suit land before they purchased it and hence an order of permanent injunction was issued restraining the defendants from interfering with the plaintiff's quiet occupation and possession of the suit land. The judge pronounced that legal interest prevails over earlier equitable interest. However the claimant of a legal interest must be a bonafide purchaser of the legal estate for value without notice of the earlier equitable interest.

Mr. Apollo Kigozi a new resident in Namugongo complained that the costs of the negotiations are too high, this is because the actual purchase price is negotiated between a vendor and purchaser and this depends on the negotiating ability between the contracting parties. The law does not govern the

⁸⁰ C.A.C,A No.07 of 1996 26

⁸¹ Civil Suit No.0232 of 2009

transaction costs and besides most occupants being poor cannot afford to hire a valuer to evaluate their property.

Thus when the owner of the land offers for sale, in most cases the property passed as per development of the occupants is given little regard hence compensation awarded is not equivalent. Where of under other circumstances no compensation is given but rather occupants are either given oral notices to vacate the land within a given number of days or where they insist, they are forcefully evicted.

In ***John Katarikawe V Katwiremu***⁸², a lawful or bonafide occupant on land has protected interest on land and so can lodge a caveat.

In an interview with Betty Kaggwa chairperson Local Council1 Namugongo-Jjanda, she posed a question;

“If both the landlord and tenant by occupancy can lodge caveats on the said land, where is the superiority of the land owner who purchased for value?”

These equal powers given to the tenants and landowners undermine the position of the landowner and this affects their right and power of sell.

The land market especially in central Uganda is affected by the impasse created on the land, because of the restrictions on sell of land by a kibanja holder without the consent of the landlord; it is becoming more and more cumbersome to purchase mailo land especially for development purposes. This is because of the state of existing tenants by occupancy who cannot be evicted. Mrs. Kakembo Jalia of Kira asserted that since 2006 she has been negotiating with her two tenants to divide the land by giving them half an acre each out of the five acres and she retains the rest of the land in order to develop it but they have since refused each claiming and demanding for a full acre.

⁸²(1977) HCB 187

Gilbert Kasozi who is a District Land officer at Wakiso district observed that mailo occupants are at an advantage of carrying out more developmental projects compared to other tenure systems and also because one has a title, their land can easily be used as collateral for loans⁸³. However, the challenge is that land is more expensive in Buganda, compared to other regions. This is because the availability of titles means that land is economical and if the mailo holder has no money to invest on it and is not willing to sell it off, this land will remain undeveloped.

4.3 The Buganda Land question

The Buganda land question is in regards to the land that was returned to Buganda kingdom in 1993. The Buganda Land Board is a company that was entrusted to manage Buganda Kingdom Land that was returned under the Restitution of Assets and Properties Act 1993⁸⁴ which included the 350 square miles and over 300 square miles returned in the agreement signed between the president of Uganda and His Majesty the Kabaka of Buganda in August 2013. It has branches and service centers in all the 18 counties of Buganda to offer effective service delivery to all its clients.

On 24th April 2017, Katikkiro Charles Peter Mayiga addressed a press conference of Buganda kingdom launching a six month mass titling campaign offering an opportunity to bibanja owners who registered in the then concluded massive survey project and those without titles to ensure they secure their tenancy by acquiring leasehold titles 'Kyapa mu ngalo' at subsidized rates in a six month period starting 8th April 2017.

"Those who desire to get titles can do so from any of the Buganda Land Board branch offices. Assessment of the required charges of a land title can be made and once the tenant makes payment, a land title will be processed. Some

⁸³ Understanding Land Laws in Uganda

⁸⁴ Cap 247

tenants in kyadondo and Busiro counties who paid shs. 600,000/= for registration, and survey have had their bibanja surveyed pending titling. The entire exercise is voluntary and bibanja owners ought to understand the benefit," said the managing director Mr. Kiwalabye Male. This campaign will result in acquiring a 49 year leasehold at subsidized rates⁸⁵.

The benefits are:

Securing the tenancy of hitherto bibanja holders by issuing them titles hence making their occupancy verifiable in law and thus eliminate the possibility of untimely evictions.

Provide a fair and reasonable quick and transparent premium assessment mechanism in comparison with other controlling authorities and also provide title holders a chance to participate in land transactions with clarity over ownership and boundaries among others.

Areas under the Buganda Land Board include; kibuye 1 and 2, katwe 1 and 2, Nakulabye, Luby, Namungoona, Busega, Mutundwe, Rubaga, Kasubi, Kabowa, Kibuga-Mengo, Nateete, Ndeeba, Bakuli, Mulago 2 and 3, Kikuubo, Kisenyi, Wampewo, Gayaza, Bulama, Nangobo, Masooli, Katadde, Watuba, Kiteezi, Majjije, Kira, Nabbingo, Buddo, Kyengera, Kasenge, Kitemu, Nsangi, Nanziga, Katereke, Maya, Mawugulu, Nakigalala, Ssisa, Mumyuka A, Nakawuka, Nsaggu, Butabika, Makerere, Lungujja, Kasanje, Mbuya, and Bussi.

On 13th March 2017, Buganda Land Board launched the land electronic card to eliminate or minimize fraudulent transactions. The card uses biometric palm vein technology to link tenant land information to the owner by offering a

⁸⁵ The Independent Uganda 1st May 2017

secure authentication system. Priority is for those who already have files but would later extend to others after sensitization⁸⁶.

The benefits of the card would include; simplicity to use, accuracy and uniqueness, complexity to forge, efficient as it reduces human contact hence reducing temptation.

Since 1st February 2017, Buganda Land Board embarked on Busuulu collection an exercise that covers all Buganda counties under the Board's jurisdiction, the assessment made by the minister of Lands, Housing and Urban Development and also by the District Land Boards.

According to S.I No.55 of 2011 made under the Land Act⁸⁷, tenants must pay annual nominal ground rent to the landlord as assessed by District Land Boards and approved by the minister of Lands, Housing and Urban Development. Under this arrangement, all bibanja holders on kabaka's land are eligible to pay Busuulu however, all tenants with lease titles on Kabaka's land will continue paying the annual ground rent as stipulated in their lease agreement.

The benefits for this is creating and maintaining an opportunity for a good relationship between the landlord and the tenant, confidence for kibanja owner that he is known by the landlord and the landlord can be able to plan for the land and people thereon among others⁸⁸.

4.4 Challenges faced by occupants on land under Buganda Land Board

With the noose of annual ground rent fees and the premium payable every after 49 years, it means a 30year old who buys a lease on kabaka's land today may still be alive by the time the years of paying premium roll by again and the

⁸⁶ Ibid

⁸⁷ Sections 31 and 93

⁸⁸ www.bugandalandboard.or.ug

possibility of a then 79 year old being evicted on the land upon forfeiture of ground rent and premium at renewal of the lease is high and this raises insecurity among the occupants. This is the worry of most occupants of kira Sub County in Wakiso district a region under Buganda Land Board.

Trying to sell one's land especially when the number of years left on a leasehold are fewer say 10 years, can mean that one cannot recover up that much from the investment.

The value of the premium and ground rent is more likely to increase after a few years against the growth of the economy and the value of the currency yet most people after 49 years of the lease, may not be in any better position to pay such amount due to old age and failure to afford such sums today.

The occupants of Buganda Land are left vulnerable in the lease negotiation to this contract but rather all terms and conditions are laid by the Buganda Land Board and require the occupant to consent and pay the sums required.

4.5 The Acholi Land question

Customary law has traditionally been stronger in the Acholi region of Northern Uganda. It is estimated that up to 95% of the land is still held under customary tenure and the penetration by the colonially inspired freehold has remained marginal⁸⁹.

In Acholi, there was a system of chiefdoms and a number of aspects of this system have survived to this present day. Chiefs, or Rwodi, established royal lineages or kar, who rode over a number of fenced villages or gang. Each village, which often contained several hundred people, had its own head drawn from the Rwodi's lineage, and a group of elders who are responsible for regulating the social affairs of the village including marriages. An elder called

⁸⁹ Adolo and Levine, A Land market for Poverty Eradication: A case study of the impact of Uganda's Land Acts on Policy Hopes for Development and Poverty Eradication

upon to advise the Rwodi were sometimes referred to as jango⁹⁰ or Rukwena⁹¹ which means senior councilor. Villages within a particular chiefdom tended to be a mile apart and each village had its own recognized rights to agriculture and hunting land⁹².

Land conflict resolutions were by two ceremonies; Malo Oput in which an individual wrongdoer admits responsibility for his action and seeks for the forgiveness, and Gomo tong in which two clans agree to make peace and reconcile their differences. Both involve ritualized ceremonies officiated over village elders or the Rwodi. In Mato Oput the parties drink the blood of sacrificed sheep mixed with a bitter root juice while in Gomo tong spears are usually bent to symbolize reconciliation⁹³.

However, the government of Uganda created Local Councils in 1998 which have authority to deal with land right issues⁹⁴. The Local Council courts were intended to enable local leaders to deliver justice to their own communities by drawing both on formal legal principles and customary law. In practice the Local Council courts and customary institutions often operate in parallel and people tend to choose the mechanism which is more effective in their locality. Appeals from such courts can be made to the District Land Tribunals and then further up through the official legal system.

According to one report, the Local Council courts rarely function and so people would either go to Local Council 1 or Jan jago with a case. The customary system ranks the Local Council 3 with district jan Jago and the Local Council 4 with Rwodi⁹⁵. Since the Land Act 1998 states that the rule governing customary

⁹⁰ A Guide to property law in Uganda: UN-HABITAT

⁹¹ Ibid 57

⁹² Atkinson, 1999, pal

⁹³ Ibid 66

⁹⁴ Guidelines for local council courts in the Resolution of Land Disputes

⁹⁵ Ibid 66

owned land should be the customary rules of each area. Ruling of either body should have the status of law so long as they were decided fairly and in accordance with Uganda's legal and constitution provisions.

4.6 Challenges faced by Acholi land occupants

Most cases are settled by the Local Council1 and the fact that this person is not likely to have any legal training or awareness of the applicable state or customary law is clearly a matter of concern⁹⁶. Effectively, it means that the disputes are simply being settled by the most powerful person in the area. Even where the courts do exist, concern has been expressed that these are thought to be corrupt, exceed their authority by hearing serious criminal cases and do not make people aware of their right to appeal⁹⁷.

Amuge Lachor an elderly woman in Gulu, in an interview said that there is also no clear procedure surrounding how the land transactions are carried out which seems to vary between particular localities. Generally the transaction should be witnessed by a number of witnesses which might include the jan jago, village elders or Local Council 1 officials. These will be paid a fee, to which is usually around 10% of the purchase price. The seller announces his intention to sell land by word of mouth in churches and drinking groups. Notices of intention to sell land may also be posted on walls or pinned on trees.

In some cases the Local Council 1 may require a letter from the buyer confirming that he or she is of good reputation⁹⁸, but it is unclear whether the Local Council 1 actually has power to block a sale. In most cases the sales will be recorded in hand written documents, which will be drawn up by the Local Council 1 and signed by the parties and witnesses .Both the buyer and seller will retain copies of these documents as will the Local Council 1. In some cases

⁹⁶ Ibid67

⁹⁷ The Jurist, Uganda law, legal research, human rights

⁹⁸ Reportedly due to fear that the buyer may practice witchcraft

another copy will also be vent in the Local Council 3 offices, but there is no official land registry for transactions carried out under customary tenure.

Some transactions are made verbally by the two parties sometimes without witnesses. It is common, for example, for rental agreement to be made in this way. Sales are sometimes concluded at drinking places which effectively excludes women as men and women do not usually drink together.⁹⁹

According to a report, because of two existing systems, people who had left their villages are now returning to reclaim their former land in order to sell it. Sometimes they find new families settled on land that they had abandoned years ago which can lead to disputes¹⁰⁰. There are also cases where people are reclaiming land that their deceased parents had given as a gift to others (often churches and schools). Conflicts are brought about over disputes arising from verbal agreements especially renting of land¹⁰¹.

This has undoubtedly caused confusion during the limited attempts to implement the Land Act of 1998. For example, while the Land Act expressly provides rights and protection for women and children, under customary law women do not own land. This means that their names are rarely entered on ownership certificates or their consent obtained for sale.

4.7 Customary Land rights

The 1995 Constitution of the Republic of Uganda was the first document to ever recognize customary tenure as a land tenure system under Article 237(4)(a). The Constitutional provisions were restated and elaborated upon by the Land Act of 1998. This meant that the majority of Ugandans who live on customary land were recognized as land owners. Customary owners are given land rights by the land Act of 1998 through four principle mechanisms:

⁹⁹ Ibid66

¹⁰⁰ Ibid67

¹⁰¹ Ibid71

The radical title: Land in Uganda belongs to the citizens of Uganda and they hold it in accordance with four land tenure systems i.e. mailo, freehold, leasehold and customary land.¹⁰²

The Land Act grants tenure rights to the customary holders of land who can now process certificates of customary ownership thus gaining immediate identity to the land they occupy. Certificates of this nature can be obtained at three levels; individual, family or community. It confers upon the holder the right to undertake subject to any restriction and limitation in it, any transaction in respect of that land which can include leasing, mortgaging, selling¹⁰³ etc.

The Act permits holders of the land under customary tenure to convert it into freehold tenure¹⁰⁴. This can be done with or without the certificate of customary ownership. It has been said that the provision of conversion of customary tenure into freehold means that it will be difficult for people to have confidence to transact in customary tenure. It is seen as backward and a hindrance to development. Its conversion would mean doing away with it.

The Land Act Cap 227¹⁰⁵ provides for communal land Association; ¹⁰⁶ it can be formed by a group of persons with a purpose of communal ownership and management of land. The association can be asked to set aside land for common use by the members of the group, recognize that part or all of the land held, is occupied and used by individuals and families for their own purposes and benefit. Individuals may apply for a certificate of customary ownership for land made available to them by the association for occupation and use. Areas set aside for common use shall be used and managed through a common land

¹⁰² Article 237(1) of the Constitution.

¹⁰³ Sections 9(1) and (2).

¹⁰⁴ Section (10).

¹⁰⁵ Section 16.

¹⁰⁶ Section 16.

management scheme. This scheme is set up by the association and has to be agreed upon by the community on whose behalf land is held by the association. The common scheme will go a long way to protect the rights of pastoral communities.

4.8 Key Challenges faced by customary land occupants.

Although customary land is a recognized tenure in Uganda, not much in terms of implementation of the provisions in the land Act has happened to measure whether the provisions are progressive or not and the key challenges include the following:

The Land Act by providing that the customary land rights may be registered and certificates of ownership issued and customary tenure converted to freehold tenure fails to appreciate the complexities of the system. Customary tenure may have been legislated by the practices and culture of the people in terms of its administration and management may not change for a long time.

Although the law purports to recognize customary tenure, the Land Act has treated it as a transition and secondary tenure that will one day cease to exist after every community or individual has converted their land holdings to freehold. This is clear since there is only a provision for conversion to freehold and there is no reverse process of transforming freehold into customary tenure.

Most communities have not realized the changes made by the law; sensitization on the law has only happened at a very small scale and only opinion leaders have been sensitized. If the people don't know the changes it is even harder to implement the law.

Customary land remains very difficult to sale or transfer yet the law seems to indicate a very simple system that will easily be market worthy. The community more or less has to regulate its transfer even where land is used by a known

individual. It is very difficult for specific individuals to approach the communal land association to request for their parcel for individual registration. Research has shown that communal land owners are not willing to let any single individual demarcate their own share of land. This is especially true in Gulu and neighbouring districts where most land is dry and the pastoral communities have to move around looking for greener pastures. For such a community individualization of land may not be a better choice.

The Land Act Cap 227 provides a complicated and laborious system through which people in a community can become a communal land association and be able to register their land as communal land, it is also not possible to tell at this time whether the local communities which are mostly illiterate will be in position to go through all the necessary procedures to have their parcels documented and possibly converted to freehold. Experience has shown that lack of capacity for the poor to process their own document and their failure to verify their own rights has led to abuse and fraud to the detriment of the beneficiaries. It is also not clear from the law what happens to the interest of people with the secondary rights once, land is alienated and registered in the names of specific individuals or families considered to hold primary interests¹⁰⁷.

4.9 The emerging problem of Squatters' "rights."

Squatters are fond of masquerading as bonafide occupants. Many times, squatters usually disguise themselves as bonafide /lawful occupants and as such become legally protected by law hence further fueling land conflicts between landlords and their tenants¹⁰⁸.

¹⁰⁷ Customary Land Tenure Reform in Uganda :Harriet Busingye 13th August 2002

¹⁰⁸ The Evolution of the Kibanja Land Holding on mailo land tenure in Uganda: Muyomba

Nicholas

To mitigate this, the landlords should know their tenants and the same is expected from the tenants. The landlords can start by regularizing the occupancy of their tenants and keeping registers.

Landlords holding registers of their lawful/bonafide occupants will protect them from squatters who occupy their land without the land owner's consent. Such registers can also be passed down to their successors (heirs/heiress) so that the old lawful /bonafide occupants are not evicted by their new landlords. Registers also prevent double payment and impersonation of occupants when the land is being acquired by real estate investors and developers.

In *George Kasende Mukasa V Emmanuel Wambedde and others*¹⁰⁹, the defendants averred jointly and severally that each of them lawfully acquired his piece of land well before 1980 and that none of them is a trespasser.

A bonafide or lawful occupant is required to take all reasonable steps to seek and identify the registered owner of the land for the purpose of undertaking negotiations with that owner concerning his or her occupation of land.

In *City Council of Kampala V Odindo*¹¹⁰, the courts have upheld the right of a land owner to evict squatters without notice and without compensation for any improvements they might have carried out to the land that they occupied.

However, even if someone is squatting on land without permission, he or she has the right to defend this occupancy against interference by a third party and could for example; bring an action of trespass against this party.

After a certain period of uninterrupted occupancy, possession allows the occupant to claim title to the land in question and this principle is called adverse possession in that where an action must be brought under a specific period of time and such time has elapsed, no further action can be taken

¹⁰⁹ Civil Suit No.459 of 1998)

¹¹⁰ CS No. 232 of 1969

against the occupant. The principle of adverse possession, sometimes called squatters right is to the effect that, "Better for the land to be used than not used."

Under the Ugandan law, the period within which an action can be brought to recover land is 12 years¹¹¹.

In *Musoke Bafirawala V Jogga*¹¹², the High Court of Uganda ruled that the principle of adverse possession did not begin to apply until the landlord became aware of the unlawful possession.

In *Nambalu Kintu V Efulaimu Kamira*¹¹³, court came to a similar conclusion as in *Musoke Bafirawala* and in both cases the occupants had originally entered the property in question with the consent of the land owners and so clearly were not initially in adverse possession.

In *Citamong V Olinga*¹¹⁴, the high court of Uganda overturned the eviction of someone who had occupied and cultivated someone else's land for 30 years. The owner of the land was aware of the intrusion but took no action to stop it and so was held to have acquiescence in the violation of his rights. The courts reached similar conclusion in *Wandera V Okeya*¹¹⁵, and in *Lomolo V Kilembe mines*¹¹⁶ although the time periods here were only 10 and 7 years respectively.

4.10 Women's land rights

The background of women's access to land in Uganda can be described briefly as follows;

¹¹¹ Limitation Act (cap 70), section 6

¹¹² CS No.33 of 1973: (1976) HCB 26

¹¹³ CA NO.26 OF 1973: (1975) HCB 221

¹¹⁴ (1985)HCB86

¹¹⁵ CA No.100 of 1969(1970) HCB 60

¹¹⁶ CA No.395 of 1976(1978) HCB 157

The 1995 Constitution of Republic of Uganda has been hailed for being particularly gender sensitive and progressive and among the friendliest in the world. It stipulates that women and men are equal, enjoy same rights and it specifically prohibits laws, cultures, customs or traditions which violate the dignity, welfare or interests of women¹¹⁷.

The Land Act 1998 provides a number of provision designed to prevent discriminatory practices, a case in point, even though it stipulates that any decision taken in respect to customary land should follow customary law, it declares that a decision will be null and void if it discriminates against women and children's right to ownership, occupation or use of land¹¹⁸.

A consent provision in the 2004 Land Amendment Act requires spousal consent for any land transactions¹¹⁹. This provision entrenches women's rights in land especially those who are married to have a say in any transaction conducted by their spouses hence aware of any transfer or mortgage or sale of land.

The weak implementation of municipal law as well as customary practice has caused problems for women in all tenure systems, however women are experiencing more land conflicts than men¹²⁰. Statistics indicate that while 83% of women in Uganda are engaged in agricultural production and over 90% in food production and processing, only 25.5% own or control the land they cultivate¹²¹. Their ownership of registered land is even lower at 7%¹²². Housing, often considered a combined asset with land, particularly in rural

¹¹⁷ Article 21

¹¹⁸ Section 27 of the Land Act

¹¹⁹ Section 40 of the Land Act

¹²⁰ Rugadya and Kamusiime, 2008: 102

¹²¹ ULA 2010

¹²² Bikaako and Ssenkumba: Gender, Land and Rights: Contemporary Debates in Law policy and Practice in Uganda (2008)

areas is also overwhelmingly owned by men. This report shows the inequality in ownership though the law calls for equality.

One study highlights the facts that whilst many households report that husbands and wives jointly own the household land, women are less likely to be listed on any ownership documents, especially titles, and women have less land rights¹²³.

The same study noted that the danger of women being marginalized in land deals was particularly acute. Although they found high reported rates of land ownership by women, either independently or jointly with their spouses, this rate would decrease dramatically if only documented land rights were considered. Both the welfare and social legitimacy of large scale deals are likely to be undermined, if the complex form of local land rights for women and men are not taken into account.

In respect of tools, Uganda experience verifies that while land and governance is a complex issue, the gender evaluation criteria is a useful tool that provides a transparent and innovative vehicle for more gender responsive land governance. The gender evaluation exercise indicates the strategic importance of taking advantage of the legal policy or political environment existing at the time to conduct the evaluation. This created momentum and became a driver for transformation.

Apart from the uneven of the land reform described above, which leaves land administrative institutions inaccessible to most people, women face other challenges. Policy implementation is also influenced by patriarchal culture and attitudes. In other words, women may be vulnerable “not from defects in the protection offered by the registration, but in the actualization of the registration on the ground.”¹²⁴

¹²³ Bomuhangi, Doss, and Meinzen Dick, 2011

¹²⁴ (Adoko and Levine 2008:117)

Distrust and discriminatory practices of men in powerful position, persist at the local level communities and higher level of government who form power centre's thus often resists the changes in land tenure relations which may affect women rights thereto¹²⁵.

Therefore, a comprehensive affirmative action to women in relation to their land rights must be rolled out by government in regard to their rights in customary land tenure which have been out rightly suppressed by unfair cultural practices but it should also be extended to other tenures. This will see the realization of women rights in land ownership.

Bye and large throughout my field study I came to an understanding that the holders of different land tenures enjoy vast rights with limitation under the law however there is widespread ignorance of this which makes it difficult for them to enforce.

¹²⁵ Ibid 94

CHAPTER FIVE

RECOMMENDATIONS FOR A SUCCESSFUL LAND LAWS AND POLICIES

5.1 Liquidating the land fund

Uganda Land Commission operates on a limited budget in that it cannot meet its statutory obligation of compensating absentee landlords to turn over land to the landless through operationalising the Land Fund. This was revealed in Uganda Land commission of inquiry of 2017 when Mr. Baguma Isokee who is chairperson of Uganda Land Commission disclosed that due to limited resources, it has led to problems of understaffing hence hampering them with their execution of duties¹²⁶

Since there is limited fund, the little available should be directed to the landless in abject poverty who should be identified at the sub-county level and given first priority to access these funds. By so doing, those who stand a high chance of being left out are catered for.

The government can also purchase the interest of the registered land owner in the land occupied by the squatters using the land fund and sell the interest to the said occupants based on social justice and equitable consideration. This can be done by identifying the highly tenanted land at the sub-county level and purchasing it first.¹²⁷

5.2 Creation of awareness of existing land laws and policies

There is urgent need of information to the public, as to the content of the laws governing land i.e. Land Act and Registration of Tittles Act and their implications which should be widely published in native languages as reported by the district administrators and nongovernmental organizations.

¹²⁶ The Ugandan of Sunday July 2nd, 2017

¹²⁷ Land Reform: The Ugandan Experience: Margaret Rugadya

The call for maintenance of grass root support for land tenure reform is a critical element in success of implementation. The government therefore has to give high priority to sensitization i.e. acquainting every citizen with provision of laws regulating land ownership and use, expected changes and what limits thereof for the parties with interests on land.

5.3 Protection of legal owners of land and subsequent buyers

The landlords must learn that their land rights are not independent of the rights of their tenants and therefore need to recognize their obligation to compensate tenants when seeking to enforce their rights. Tenants do have rights but they also have responsibilities: they have the obligation of paying ground rent to their landlords if they are to be considered legal tenants to the land¹²⁸.

The fundamental question of law relates to whether certain rights in law may survive a transfer of legal estate. Most people tend to make large investment of life time saving in real property in form of land, so it becomes a matter of concern that the rights which they purchased should not be defeated by such holders of competing interests. The issue to be handled by a purchaser is how to deal with lawful/bonafide occupants on land acquired since no purchaser would risk his money in buying land if there is any palpable degree of danger, or that the land purchased might be subject to encumbrances such as kibanja holder's interest which not only renders his own title just paper entitlement but also effectually worthless. However the doctrine of tracing good title should be emphasized at every stage of land registration and transfer, with this, subsequent purchase of land interest can be much protected.

5.4 Limitation on acres of land owned

Just like the 1975 decree on land law that reverted all the land tenures to the government and all people held land in leasehold according to the size one

¹²⁸ A Historical perspective of the land problem in Uganda: Edward Mwebaza

could efficiently put to use, a limit to customary land could also be upheld to effectively put land to use and allocate the undeveloped land to the landless people and or potential investors.

Anybody who holds land which he or she is not utilizing should be taxed. In order to realize revenue, government should tax idle land as a way forward for generating revenue to finance the land fund. This will make people with idle land to surrender it or make developments on to it.

5.4.1 More inquiries on land grievances should be adopted

Due to many complaints on land there is need to institute many commissions of inquiry on land and if their recommendations are adopted and implemented, this will solve long lasting disputes on land

Like the 2017 Uganda Land Commission Inquiry that was appointed by president of the country under the Inquiries Act Cap 166, headed by Justice Catherine Bamugemerire, with other commissioners Ms Mary Odia Ochan, Owek. Robert Sebunya, Ms Joyce Habasa, Dr Rose Nakayi, Hon. Fred Ruhindi, Mr. George Bagoya and lead counsel Ebert Byenkya.

Their mandate was to look into the law, process, and procedure by which land is administered and registered in Uganda. Secondly, the role and effectiveness of Uganda Land Commission in administering public land, land fund, management of wetlands and forest reserves. Thirdly, the role of traditional cultural institutions which own large chunks of land with occupants. To also assess the legal and policy framework on government land acquisition among others.

This commission has helped to name and shame the people involved in land grabbing and frustrating the landless through evictions. More of such inquiry commissions will bring an end to land disputes if their recommendations are adopted.

5.4.2 Proposals for reforms of land restructuring

Among the proposals, displacement and re-adjustment may be adopted which involve radical change of whole social fabric to take the form of ironing out-age long historical inequalities created during the 1900 Buganda Agreement.

The bibanja holders occupying mailo land should be assisted to acquire registrable interest of the area they occupy as a way of making them secede from ties of mailo holders, besides that a mailo holder should be left free to develop his or her land as he or she wishes subject to limitation imposed by the Land Act.

5.5 Conclusion

Back in the years before the colonialists came into Uganda, apart from the Buganda kingdom which lived on land that was held in trust for them by their kabaka and who was helped by his bataka, the rest of Uganda was communally organized and had equal rights to the land. There were no demarcations and boundaries in any form of titles or certificates of ownership that gave one exclusive access and possession of land at the exclusion of others. Everybody owned land and there was no such a thing as landless people. The village elders, family heads, and community leaders formed the land dispute committees that settled all land matters amicably.

After the colonialists came into Uganda, the story changed. They entered into different agreements and enacted different laws that partitioned the land of Uganda into different tenures in which different individuals owned land at the expense of the community. So many other laws followed and others were repealed but none of those restored the tenure systems back to customary.

Upon coming into force of the 1995 Constitution, the major land conflicts were between the bibanja holders and the mailo holders, power was given to the parliament to enact laws that would form a peaceful settlement between the two major parties and this led to the enactment of 1998 Land Act that gave

legal identity to the bibanja holders but this seemed not to be good enough. Few enactments to it followed thereafter including the latest amendment of 2010. All these amendments targeted a mutual agreement and peaceful living of the bibanja holders and mailo holders.

Saying that they have been totally ineffective would be false. The other tenures like leasehold, freehold, and customary have curbed many of their problems and challenges from the continuous revision of the Land Act provisions and their amendments.

Different commissions of inquiry have been set up to look into the loopholes of the land system, the causes and impact to the rights of occupants with the current commission being headed by Justice Bamugereire Catherine hoping that their findings and guidelines in their report shall improve on the peaceful ownership and possession of land owners and occupants in Uganda today.

It is in my view that if the above recommendations are adopted and integrated into the land management system, our country will see cordial relationship and interaction between different owners of competing interests on land and security of tenures possessed by different holders.

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