

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT FORT PORTAL  
CIVIL SUIT NO. 0043 OF 2005**

1. ISMA HAKIRI  
2. MILTON BEGUMISA  
3. SADRRESS TURYASHEMERERWA } .....PLAINTIFFS

**VERSUS**

1. THE ATTORNEY GENERAL  
2. NGOMAYONDI ABEL  
3. TWEYONGYERE SILVER  
4. KARINDUGU SILAGI  
5. GRACE MUBONE  
6. KARAVERI TIBAHURIRA  
7. BUHENDO CHARLES  
8. NDYABAKIRA LEO  
9. NDYANABO JACKSON  
10. BYARUHANGA BEN  
11. BARUGAHARE ISAAC  
12. NDABWINE JACKSON  
13. TURYASHABA AMOS  
14. SUNDAY BARIYANGA  
15. RUSIGA JOLLY  
16. KABARI JULIUS  
17. BARIGYE BANADA } ..... DEFENDANTS  
18. MUBIRU TOMASI  
19. KAMUKUYEGYE MUHWEZI  
20. KARWEMERA ABAS  
21. KAHUZO MUGISHA  
22. KAMA TWINE  
23. TWIJUKYE JACK  
24. NDABWINE JACKSON  
25. BIRYOMUMISHO JACK  
26. BAKYIGA MUGISHA  
27. BATARINGAYA JAMES  
28. BAGAMUHUNDA NGABIRANO  
29. AKWISHASI JORIRINA  
30. BYARUHANGA RAJABU  
31. SUNDAY BUTAAMA  
32. UGANDA LAND COMMISSION

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.**

**Judgment**

The Plaintiffs instituted a Civil Suit against the Defendants on their own behalf as well as in a representative capacity for 523 others. The Plaintiffs' claim against the Defendants jointly and severally is for;

1. A declaration that the suit land belongs to the Plaintiffs and the 523 others they represent.
2. A declaration that the Government is not entitled to deprive the Plaintiffs and the 523 others they represent of their property before they are adequately compensated for it.
3. A declaration that the Certificate of Title in respect of the suit land registered in the name of the 32<sup>nd</sup> Defendant was procured by fraud.
4. An order directing cancellation of the said ill-gotten certificate of title by the 32<sup>nd</sup> Defendant.
5. An order that the Defendants pay the Plaintiffs and the person they represent special damages of UGX 1,035,0021,600/= as prayed for.
6. An order that the Defendants pay the Plaintiffs and the persons they represent general damages.
7. An order that the Defendants pay to the Plaintiffs and the persons they represent exemplary damages.
8. An order that the Defendants pay interest on (5), (6) and (7) at the rate of 25% p.a from the date of judgment till full payment.
9. An order that the Defendants pay the Plaintiffs and the persons they represent the costs of the suit.
10. An order that the Defendants pay the Plaintiffs and the persons they represent interest on (9) at the rate of 25% p.a from the date of taxation of the bill of costs till full payment.

The Plaintiffs together with 523 others alleged that they had lived on the suit land from the 1960's which they acquired by first occupation and the suit land borders with the Rwimi Prison land as gazetted in Statutory Instrument No. 304-2 known as the Prisons (Declaration) (No.2) Instrument, River Rwimi, River Nsonge, River Ntabago and Kibale National Park. That they were customary owners of land in Kisanga LC1, Rwimi Parish, Rwimi Sub-County, Bunyangabyu County, Kabarole District.

In 1992, the Prison Warders of Rwimi Government Prison acting in their due course of employment attempted to evict the Plaintiffs and the 523 others, on mistaken belief that the suit land belonged to the Prisons department. This attempt was resisted by the Plaintiffs and the 523 others.

On 20<sup>th</sup> January 2004 the Prison warders from Rwimi Prison and Regional Prison Headquarters and Police Officers from Kabarole Police Station in their course of employment, invaded the homes of the Plaintiffs and 523 others and set them ablaze, vandalized property, arrested some of the people, and later released them without any charge and were evicted from the suit land. The Plaintiffs and the 523 others have since tried to find shelter elsewhere and are living in deplorable conditions. Attempts to repossess the suit land have been futile.

On 13<sup>th</sup> May 2010 this Court issued an order that the boundaries of Rwimi Prison be established and it was found that the Prison's land was 650 Hectares or 1606 acres and the suit land was outside the gazetted boundaries.

Upon the suit being filed, the 2<sup>nd</sup> – 31<sup>st</sup> Defendants entered onto the suit land and started cultivating on it alleging to have been given permission by the Commissioner General whose letter was presented to the Plaintiffs and the 523 others and a Memorandum of understanding signed by the then Minister of Internal Affairs.

Further, that whereas the suit was pending determination, the 32<sup>nd</sup> Defendant colluded with the Prisons authorities and the 1<sup>st</sup> Defendant and had the suit land fraudulently registered in the 32<sup>nd</sup> Defendant's names to defeat the unregistered interests of the Plaintiffs and the 523 others. That, this fraudulent registration, therefore renders the Court proceedings useless.

The 1<sup>st</sup> and 13<sup>th</sup> Defendants denied all the allegations in the amended plaint. They averred that the Plaintiffs' suit is not maintainable at law as it is *Res-judicata*, time bared and full of confusion and does not disclose a cause of action. The suit land has at all material times belonged to the Government for the exclusive occupation of the Government's Prison Department.

The 1<sup>st</sup> Defendant commenced the registration of the land in issue since the 1970s but the process was only completed in 2012, in the names of the Uganda Land Commission.

Some of the Plaintiffs were among those that were compensated and are still being compensated and also resettled by the Government.

Further, that the Plaintiffs have previously been paid general damages in earlier suits namely C. S N0. 207 of 1993, Turyareeba Ben & 132 Others versus Attorney General & Another and C. S No. 1022 of 2001 Amos Bakeine, Moses Turyagumanawe & 3544 Others versus Attorney General and UWA in the High Court at Kampala. The Plaintiffs have also been filing one suit after the other on the same alleged cause of action and merely adjusting their names which tantamount to fraud and thus, should be dismissed with costs.

The 2<sup>nd</sup> to 31<sup>st</sup> Defendants on the other hand averred that they were allowed by Government to cultivate on the suit land and when an injunctive order was issued by Court stopping them from using the land, they stopped.

The Defendants further averred that some of them are cited as Plaintiffs in the suit yet they never instructed anybody to file a suit on their behalf.

The 32<sup>nd</sup> Defendant in her Written Statement of Defence denied the contents of the amended plaint and contended that the Plaintiffs' entry on the suit land was unlawful and therefore amounted to trespass. And that the Plaintiffs' suit is time barred and cannot be maintained at law.

The 32<sup>nd</sup> Defendant further averred that the Plaintiffs have never been legal owners of the suit land and the same has at all times belonged to the Government and for the exclusive occupation of Government Prisons Department. That the Plaintiffs have been in various negotiations with Government which resulted to compensation and resettlement and thus this suit was brought in bad faith and with the intention of defrauding Government.

Furthermore, that the 32<sup>nd</sup> Defendant has not been involved in any fraud or collusion as alleged and was not aware of the ongoing suit until recently.

## **Issues**

1. Whether or not at the time the Plaintiffs were evicted the land belonged to Government?
2. Whether the Plaintiffs suit is time barred?
3. Whether the Plaintiffs suit is *Res-Judicata*?
4. Whether the Plaintiffs have previously been compensated in respect to the suit land?

5. Whether these Plaintiffs and the persons they represent had any recognised interest in the suit land at the time they were evicted?
6. Whether the 2<sup>nd</sup> – 31<sup>st</sup> Defendants were allowed by Government to use the suit land?
7. If so, whether the Government had capacity to give them such permission?
8. Whether the Certificate of Title in the names of the 32<sup>nd</sup> Defendant was procured by fraud?
9. What are the remedies available to the parties?

## **Summary of evidence**

### **PLAINTIFFS' CASE**

**PW1 Isma Hakiri**, told Court that he and the other Plaintiffs sued the Defendants for unlawfully evicting them from their land at Kisanga, Rwimi. That the land was acquired by their parents in 1960 allocated to them by the old Kingdom Rulers. That he had a house, trees & crops on the suit land. In 1992 the Rwimi Prison Officers, came and wanted to evict them but they refused.

In 2004 they were forcefully evicted by armed Police, whereof they were beaten, one killed and others arrested and a list of lost property claims was attached to the original Plaintiff.

PW1 also stated that the land is currently covered with maize gardens belonging to the prison and this is in breach of the injunction issued by Court prohibiting farming activities on the suit land.

The boundaries of the suit land are Rwimi Prison in the North, R. Rwimi in the West, Game Park in the East, R. Rwimi in the South, small R. Ntabaho in the North (points North East) and also R. Nshongi.

PW1 denied being compensated by Government over the suit land and that Uganda Land Commission fraudulently obtained title to the suit land. He prayed for the recovery of land, compensation for the property destroyed, general damages, and costs and the land title cancelled for being fraudulently obtained.

On cross-examination PW1 told Court that he had two pieces of land, one in Kisanga A (park land) and another in Kisanga B he and was only compensated for land in Kisanga A, 700,000/= plus. He denied being called Ismail Hakiri but rather Isma Hakiri.

**PW2 Bahitengye Bonya** told Court that he had stayed on the suit land since 1960; the land was acquired by his father. That on 9<sup>th</sup> March 2005 he was arrested and a criminal case instituted but later dismissed. Judgment was tendered in Court and marked as PW1A. That he sued Government and won and has never been paid the compensation as ordered by Court. That his home was destroyed, plantation and goats e.t.c. That the first attempt to be evicted was in 1992 but resisted till 2005 when they were forcefully evicted.

**PW3 Byarugaba Ibrahim** stated that he got his land from his father in Nsanga which the father got in 1960. That in 2005 he was arrested by Prison's personnel and a criminal case instituted. This was in corroboration with PW2's evidence.

PW3 also stated that the suit land is currently being cultivated by the O.C, who, cut the trees of the Plaintiffs and got timber.

**PW4 Kugonza Samuel Peter**, the District Surveyor, Kabarole told Court that he got instructions from the High Court at Fort Portal in 2011 and made a report on 5<sup>th</sup> December 2011. He told Court that the Prison is limited to its own land and the new Certificate of Title was brought at the end of the survey.

**PW5 Fred Biryatunga** corroborated the evidence of PW2 and PW3.

**PW6 Milton Begumisa** in his testimony stated that they were evicted in 2004 whereof they went and complained to the Minister of Internal Affairs Ruhakana Rugunda who tried to mediate between the Plaintiffs and the Prison Authorities but there was no consensus and he advised that they go legal since the Plaintiffs did not want compensation. They then went back to their land and those that were arrested were acquitted only to be rearrested on 8<sup>th</sup> March 2005. That his father gave him 5 hectares of land and he had developments on it. That Prison wanted to give them land to use temporarily but some refused and others accepted. He also maintained that the suit land was obtained in 1960 by his father.

#### **DEFENDANTS' CASE**

**DW1 Nyesiga Emma** former Councillor of Rwimi Parish told Court that in 1992 Government chased away people in Mpokya, Karusandara, Kyabitokera and Kisanga. That during the eviction houses were burnt but that was at Mpokya not Kisanga because here the eviction was peaceful.

That in 2004 people were again evicted, some arrested, charged and later acquitted. That he together with Isma went to Kampala to complain before the eviction in 2004.

On cross examination he stated that he was evicted from Mpokya but was not compensated. That in 2004 some of the evictees forcefully returned to the suit land. That he has never heard of prisons having the land title however he stated that the land belonged to prisons.

**DW2 Ocen Itorot Alfred** told Court that in 2004 he was a Principal Staff surveyor and he was instructed by the RDC to go to Rwimi Prison farm to help with the disputed land. That he moved with a team and found out that the disputed land had been surveyed under I.S No. DOO73/1973 Rwimi extension as No. 4. The survey was approved in Entebbe on 20<sup>th</sup> November 1974. That he made a report in that regard which was never challenged. The report was admitted as DI B. That he did not survey the land but only made a status report on land at Kisanga since the land was already surveyed.

**DW3 Twegogyere Silver** told Court that he settled on the suit land in 1974 when he came from Kanungu District with his parents. That at the time he settled in Kisanga there were some people and also Rwimi Prison was in existence. That he was evicted in 1992 and Sadress Turyashaba had already sold land before the eviction. Bagakomu brother to Sadress and one of the Plaintiffs also sold to DW3's father and had left before eviction.

That before 1992 prison gave them notice to leave the suit land that is both Kisanga and Mpokya settlers. The prison authorities gave them 20 days and they removed their property, iron sheets, and personal items. That the eviction at Mpokya was carried out by Police, and

there was no compensation. He was the head of the evictees together with Isma, Ezra, Benard T. among others. The claimants in the case of Benon T & 132 Others versus A.G & UWA No. 2007/1993, Amos Bakeine & Others were compensated for Kisanga land. The land is currently vacant after the injunction was issued.

**DW 4 Mugaino Baker** a Senior Land Officer with Uganda Land Commission in his witness statement stated that his duties among others are; preparing an inventory of Government land, doing land inspections, monitoring of Titles of land belonging to Government, Coordination with Government Ministries to protect Government land and any other duties as may be assigned by the Secretary of the Uganda Land Commission from time to time. He also stated that his findings in relation to the instant case are that around 1956 the Government of Uganda acquired Rwimi a Prison farm measuring approximately 245.8 hectares.

Later around 1962, the Government acquired Rwimi B Prison farm measuring approximately 405 hectares.

On or around 1972, the Government of Uganda disbanded the National Service and all land originally owned and occupied by the National Service Camp adjacent to Rwimi Prison farm amounting to approximately 970 hectares was allocated to Uganda Prison Services by Government. Consequently the land was surveyed in 1972 under I.S No. D0073 of 1972 and included 970 hectares of land situated at Kisanga that formerly belonged to National Service Camp.

Further that the newly surveyed 970 hectares was renamed Block 76 Plot 1 Rwimi Prison Farm but registration was not completed until later whereof the land was registered under FRV 1135 Folio 4. That from the above there was no fraud committed by the 32<sup>nd</sup> Defendant and the suit land has at all times been owned by the Government of Uganda and occupied by Prisons.

On cross-examination DW4 confirmed to Court the acreage of Rwimi A – 245.8 hectares, Rwimi B – 405 hectares, land adjacent to Rwimi B prison farm – 970 hectares.

DW4 however, failed to account for the pages that were missing on the job record jacket attached to his affidavit and other missing pages on other documents as attached. He also stated that he went to inspect the land after the survey had been done and yet inspection ordinarily comes before the survey.

Furthermore on cross-examination he stated that S.I No. 3042 gave demarcations of Rwimi prison and that he had not encountered any document altering the same. DW4 could not explain to Court how the mistake in regard to the Block numbering came about from Block number 79 to being changed to Block Number 76.

**DW5 John Stuart Bishanga**, retired Assistant Commissioner of Agriculture formerly attached to Uganda Prisons farm stated that during his employment his duties among others were; making requisitions for farm implements including seeds, fertilizers, tractors, soil surveys, Land management and planning, staff supervision of all farm managers and field officers.

That as part of his mandate in land planning, sometime in 1973, he got instructions from the Regional Lands and surveys Officer based at Fort Portal to travel to Rwimi Prison farm to

meet a team of surveyors that were going to survey the Rwimi extension land, the present suit land. That he went to the suit land with Mr. Ndyanabo and his two other surveyors and other prison Officers, where they traced the boundaries of the new extension along River Ntabago and proceeded under the guidance of wild life rangers to safe guard them against wild animals, up to R. Ntabago and R. Nsonja. That at that time there were no human occupants on the suit land.

DW5 also stated that it was not possible that the 1<sup>st</sup> and 32<sup>nd</sup> Defendants could have acquired or registered the suit land fraudulently. Thus, the suit land's Government land.

On cross-examination he stated that he did not know about the extension and at the time he joined Rwimi was small. That at the time he took around the surveyors the suit land had no human settlement and that he did not know of any national service camp and if it was there, it was only on paper and not on ground. He could not confirm about the National Service since it was disbanded in 1971 before he joined. He maintained that there was no human settlement on the suit land and yet he did not move around the entire land.

**DW6 Kamanzi Jackson**, retired superintendent of prisons stated that during his term of office as Deputy O/C Rwimi his duties included among others; general administration and security issues at the prison. That at the time he came to Rwimi in 1989, some people had encroached on the prison land on the lower part and the upper land was largely in the hands of the prison authority who cultivated maize, beans, simsim, ground nuts, matooke, e.t.c The encroachers mainly grew maize, ground nuts, beans and bananas on the lower part near the river banks and below the power line towards Nsongi and R. Rwimi.

Due to the encroachments, the prisons department on several occasions called in surveyors to open boundaries for the prisons land and it was clear that the encroachers were on Government land. That mark stones were found along R. Ntabago up to its confluence with R. Nsongi. He also stated that the eviction was peaceful and the evictees were resettled in Bugangaizi. The suit land was largely vacant.

On cross-examination he confirmed that there was an eviction in 1992, and during his employment there was opening of boundaries twice.

**DW7 Tweteise Besiga Angelo** a senior Surveyor with the Ministry of Lands, Housing, and Urban Development in his witness Statement stated that among his duties are; checking and verifying the job record jacket received from the Districts and other private surveyors, issuing of instructions to surveys, checking the field surveys done by private surveyors, boundary conflict resolutions, surveying of Government Land and other duties as may be assigned by the Commissioner of surveys and Mapping Department, from time to time. That he was instructed by the Assistant Commissioner Surveys and Mappings to testify in regard to the Survey documents for Uganda Prisons land at Rwimi Prions and his findings were; that the suit land was surveyed under instructions to survey (I.S) No. D0073 in 1972 and the survey was done in the names of Rwimi Prison Farm extension after approval on 20<sup>th</sup> November 1974 and a deed plan was issued.

That Government did not follow up the registration of the suit land, in 1972 until much later and he believes that the suit land is owned by Government.

**DW 8 Allan Okello**, Commissioner of Prisons stated that from 2007 February 2014 as he worked as the Regional Prisons Commander Western Region based in Fort Portal, he found land issues at Rwimi Prison Farm between Rwimi Prison and encroachers that had formerly been evicted.

On cross-examination stated that in 2007 there was no human settlement on the suit land and in 2007 and later from his annexures he confirmed to Court that in 1973 the Plaintiffs had legal representation and a letter had been addressed to them through their lawyers to leave the suit land.

DW8 denied knowing any other evictions save for the 1992 one and later admitted that was an eviction in 2008. He also confirmed that Rwimi prison had three parts and only two were gazetted.

He also told Court that he was not aware of the lease that was granted to Bunyangabu Farmers Association by the Kabarole District Administration on the suit land.

**DW9 Tusiime Anne** State Attorney with the Attorney General's Chambers made a sworn witness statement on behalf of the 1<sup>st</sup>, 13<sup>th</sup>, and 32<sup>nd</sup> Defendants. She stated that she was aware of this case and had also participated in the commencement of the survey process as ordered by Court; they were not shown the actual boundaries on the land. A written Report was however made by the surveyors.

She stated that the suit was *Res-judicata* as the same had been litigated vide Amos Bakeine & Others versus A.G, Civil Suit No. 1022 of 2001. That some of the Plaintiffs in this suit after investigations were found to be 35499 and each was awarded UGX 6,000,000/=. That some of the previously compensated Plaintiffs are also part of the instant suit and more compensation is still ongoing for the evictees from Mpokya, Ruteete, Karusandara, Mubuku, Kanamba, Kisanga and other neighbouring areas. Uganda Land Commission is the registered proprietor of the suit land and its registration commenced in the 1970s and there was no fraud involved in the registration exercise. That Government cannot act fraudulently against its citizen thus this suit is an abuse of Court process, a waste of Court's time and was filed in bad faith.

On cross-examination confirmed to Court that the 3 Plaintiffs were compensated in a previous Court case.

**DW10 Fabiano Karusya** in his statement confirmed that eviction was carried out in 1992. That he had migrated from Kanungu in 1968 onto the suit land which he left and returned in 1974 and bought himself a piece of land on which he stayed until eviction. That at the time he occupied the suit land, there were also other occupants and the land was largely used by Rwimi prison. That at the time they occupied the suit land, prisons used to harvest firewood and made charcoal and they were not allowed to make permanent structure on the suit land.

That the practice at the time in Kisanga was that a migrant would give a bottle of waragi or some little money to a sub-parish Chief who would in turn allow the migrant to settle on a piece of land measuring 4-5 acres per family.

He also stated that the eviction was in 1992, notices were issued and it was peacefully done in Kisanga unlike Mpokya which was somewhat violent and without notice. That those that



were willing to be resettled were taken to Bugangaizi, Kibaale District since at the time of the eviction Government brought vehicles to ferry the evictees under the command of Tweyongere Silver.

After the eviction a civil suit was filed by Bakeine & Others, where he was Plaintiff no. 202 and a settlement was reached and Government agreed to compensate the evictees that lost their property. That so far he has received 3 instalments of UGX 700,000/=, UGX 800,000/=, UGX 900,000/= and compensation is still ongoing. And he has received his payments from Bakeine George one of the leaders of the evictees.

DW10 had lots of contradictions during cross-examination and also alluded to the fact that some of the evidence he gave was hearsay in regard to how other people got their pieces of land. He however, maintained that Isma, Milton and Sadress had been compensated as part of the evictees.

**DW 11 Kurama Justus** in his witness statement stated that he knew the first three Plaintiffs and that the 1<sup>st</sup> Plaintiff is his brother. That him and his family came from Kanungu and settled in Kisanga, Rwimi in 1974. That their father bought two pieces of land, one for his mother and her children and the other for Isma Hakiri's mother. All the pieces of land were in Kisanga. That they cultivated on the pieces of land and stayed on the same until 1992 when they were all evicted since the land belonged to the prisons department.

That Government shifted them to Kisungu Village, Mpasana Sub-County, Bugangaizi, Kibale District, where they settled and to date most of the evictees are there. And their father was buried in Kisungu.

In 2002 he returned to Rwimi where he bought the piece of land he is currently occupying. That the 1<sup>st</sup> Plaintiff still lives in Kisanga, though he had no independent piece of land there. And that he never instructed Isma to sue on his behalf.

DW11 confirmed that eviction took place in 1992, however some people returned in 2004 whereof they were arrested and the suit land remained vacant till 2008 when Government permitted some people to use it for cultivating seasonal crops.

He also told Court that the prison authorities had no buildings on the suit land. That they had nothing on the land nor did he hear about the National service in 1974.

**DW 12 Amos Turyashaba** the Assistant Commissioner of Prisons in his witness statement stated that when he was transferred to Rwimi Prisons Farm he was briefed about the issue of encroachers who had entered prisons' land in November 2004 at Kisanga but had been evicted by Uganda Police. That the outgoing Officer also took him around and showed him the boundaries of the entire prisons farm. The boundaries are; Rwimi Primary School play ground stretching along the road to Kakoga, R.Ntabago, along R.Ntabago up to its confluence with R.Nsongi, then Southwards along Uganda Wild Life Authority earth pillars to river Rwimi and Westwards following R.Rwimi, up to the boundary with the estate of late Katana.

That among the documentation he received was a letter from the Permanent Secretary Ministry of Mineral and Water Resources dated 9<sup>th</sup> February 1973 addressed to the Commissioner of lands and Survey and copied to the Commissioner of Prisons talking about

incorporating at least 2000 acres of land of the former National Service land into Rwimi Prisons farm referred to as Kisanga Block.

A letter from the president's office dated 13<sup>th</sup> March 1973 addressed among others to the Commissioner of Prisons requesting the Commissioner to be present at the handover ceremony for the suit land to Prisons at Rwimi.

A letter issued by the District Commissioner Kabarole District dated 9<sup>th</sup> December 1981 addressed to the Commissioner of Prisons Western Region headed "squatters on Rwimi Prison Farm" and referring to Rwenzururu fugitives that had been temporarily settled on Rwimi Prisons farm land.

A letter from the Minister of State for Internal Affairs dated 28<sup>th</sup> March 1992 addressed to the Commissioner of Prisoners copied among others to the Regional Police Commander – Western Region instructing Police to evict all encroachers on Rwimi Prisons land.

A letter from LCIII Chairman Rwimi Sub-County dated 8<sup>th</sup> September 1992 addressed to the District Executive Secretary, Kabarole District, stating that people were evicted from Kisanga and Nsongi and that no prisons personnel were involved in the eviction and that no property of encroachers was destroyed at all, and also that one John Bagatakira alleged to be one of the evictees and Plaintiffs herein was not known to known to them.

A letter dated 3<sup>rd</sup> October 2004 by some of the Plaintiffs in this matter namely Biryaba Fred and Turyashemererwa Sadress stating that they were evicted in 1992 from Kisanga and confirming that prisons was in control of the said land, addressed to the District Land Board and copied to the O.C Rwimi Prison.

A letter by LCIII Rwimi Sub-County dated 9<sup>th</sup> November 2004 addressed to the Resident District Commissioner Kabarole stating that encroachers had entered Kisanga Prisons land that he actually called them to his office and they accepted that they were wrong and apologized.

That during his tenure as the officer-in-charge there were no human encroachers on the suit land save for elephants.

On 24<sup>th</sup> April 2007, he received a letter from Rwimi upland rice growers and marketing cooperative group addressed to the Commissioner General of Prisons applying for land for temporal use.

On 18<sup>th</sup> August 2008 he received a letter from the Commissioner General of Prison allowing 244 people to cultivate temporarily on the suit land. This letter was supported by an agreement made between the Ministry of Internal affairs and community leaders dated 24 July 2008.

On 23<sup>rd</sup> October 2008 a group of people led by Isma Hakiri forcefully entered Kisanga area east of Rwimi Prison Farm Land, on 24<sup>th</sup> October he wrote to the District Police Commander Kabarole requesting to have the encroachers evicted, which was done within a week.

That since the grant of the injunction by this Court in 2012 Government has made financial losses since it used to earn 3 Billion Shillings every year from the suit land. That the instant

suit was instituted in bad faith, judgment should be entered in his favour, the 1<sup>st</sup> and 32<sup>nd</sup> Defendants and should therefore be dismissed.

On cross-examination DW12 could not tell Court when the Certificate of Title of the suit land was obtained and also stated that he was merely told about it and has never seen the same. That no one came to suit land to survey it during his tenure.

Further, he stated that he did not see any handover report in respect to the suit land.

**DW 13 Abel Ngomayondi** as the Rwimi Town Council Chairperson stated that due to the issue of landless persons in the area he applied to the Minister of Internal Affairs to allow them use the suit land and a resolution was made between Rwimi Government Prisons and the neighbouring Community dated 24<sup>th</sup> July 2008. The said resolution and letter were tendered in Court as exhibits. He further stated that he called a meeting of the residents and together with others they started cultivating on the suit land until an injunction was issued in 2012.

He also stated that he did not know why he and others had been sued and though he is the area Chairperson, he did not know most of the Plaintiffs.

On cross-examination he stated that he on behalf of others, he applied for land to plant seasonal crops and they were granted 500 acres of land and on these he personally got 4 acres for rice growing. That the land was only allocated to those that were interested and the three Plaintiffs never got because they were not interested.

**DW14 Barigye Bernard** in his statement stated that he came to Kisanga in 1987 from Ibanda and upon eviction he shifted to Rwimi where he eventually bought land. That he was part of a meeting that was called where they were told that they had run out of time to sue therefore they should reoccupy the suit land to be re-evicted. That he with others went back to the suit land and built grass thatched houses only to be arrested and charged. The case was later dismissed.

Further that in 2008 he was called and allocated land and in 2012 the O.C Rwimi Prison told them that an injunction had been issued stopping them from using the suit land. That he was later served with a Summons to file a defence for a suit he has no idea about.

DW14 on cross-examination stated that he did not have land on the suit land but was renting however, when others were encroaching the land in 2004, he too followed the bandwagon.

**DW15 Ndabwene Jackson** in his witness statement stated that in 1992 he was at Kyanga Rwimi and knew of the evictions at Mpokya, Kisanga, Karusandara, Rutete, Kyabandara, Kanateete and Dura. That the above places remained vacant after the evictions and him as the Chairperson Rwimi Upland Rice growers and Marketing Co-operative wrote to the Commissioner General of Prisons to allow them cultivate on Prison land. That in liaison with the LCIII Chairperson of Rwimi and the Minister of Internal Affairs, the prisons Department allowed them to use the land for cultivation until an injunction was issued in 2012 and they left the land. That his name appears twice as No. 12 and No. 24 as a Defendant and has been in Rwimi since 1972 and most of the Plaintiffs are not known to him and a quite a number say that they have no knowledge about the suit.

## **Representation:**

M/s Ngaruye Ruhindi, Spencer & Co. Advocates, M/s Kesiime & Co. Advocates, and M/s Kaahwa, Kafuzi, Bwiruka & Co. Advocates appeared for the Plaintiffs, Attorney General, Mbarara and M/s Sebalu, Lule Advocates appeared for the Defendants.

## **Submissions of the Plaintiffs:**

### **Issue 1: Whether the Plaintiffs were in lawful occupation of the suit land?**

It was the evidence of the Plaintiffs that at the time they occupied the suit land in the 1960's it was vacant and this was done in consultation with the local chiefs.

Counsel for the Plaintiffs submitted that Rwimi Prison is a creature of Statute that was created under the Prisons (Declaration) (No. 2) Statutory Instrument 304-2 under which boundaries were opened and the prison land was found to be a total of 650 Hectares. During the boundary opening maize planted by the prison was found to go beyond the gazetted land.

Further that the prison land cannot go beyond the area provided for in the gazette otherwise the statutory Instrument would lose meaning. Nor would there be any lawful extension without another instrument extending the acreage of their land.

Furthermore, that the statutory instrument came in force in 1968, why then did it not include the suit land? That no person claimed that the suit land belonged to them and Uganda Land Commission acquired the title for the same in 2012 during the pendency of this suit. Thus, the suit land was lawfully being occupied by the Plaintiffs and the suit land is not covered by the Statute.

### **Issue 2: what are the remedies available?**

The Plaintiffs prayed for the following declarations and orders;

1. A Declaration that the suit land belongs to the Plaintiffs and the 523 persons they represent.

Counsel for the Plaintiffs submitted that this is obvious.

2. A declaration that the Government is not entitled to deprive the Plaintiffs and the 523 others they represent of their property before they are adequately compensated for it.

Counsel for the Plaintiffs quoted **Article 26(1), (2)** of the Constitution of the Republic of Uganda which provides that; every person has a right to own property and no person should be compulsorily deprived of property or any interest in or right over property of any description unless certain conditions as spelt out in that clause are satisfied.

That there was no law that was made for the compulsory acquisition of or the taking of the possession of the Plaintiffs' land by the Prisons Department.

3. A declaration that the Certificate of Title in respect of the suit land registered in the name of the 32<sup>nd</sup> Defendant was procured by fraud.

That the Certificate of title was granted when the suit was ongoing, thus, was obtained fraudulently.

4. An order directing cancellation of the said ill-gotten certificate of title by the 32<sup>nd</sup> Defendant.

5. An order that the Defendants pay the Plaintiffs and the person they represent special damages of UGX 1,035,0021,600/= as prayed for.

The special damages are for the properties that were destroyed during the violent evictions.

6. An order that the Defendants pay the Plaintiffs and the persons they represent general damages.

Counsel for the Plaintiff prayed for general damages to a tune of UGX 20,000,000/= for each Plaintiff excluding those that withdrew. This being compensation for the destroyed property and eviction that left the Plaintiffs destitute.

7. An order that the Defendants pay to the Plaintiffs and the persons they represent exemplary damages.

Counsel for the Plaintiffs submitted that exemplary damages are awarded where the conduct of the Defendant is egregious and manifestly oppressive that it calls for a punishment as deterrent. **(See: Civil Appeal No. 43 of 2010, Uganda Revenue Authority versus Wanume David Kitamirike at Page 23).**

That the conduct of the Government Officials complained of was so egregious, so oppressive and so inhuman that it calls for punishment so that conduct of such a similar nature in future is deterred against citizens.

Counsel prayed for UGX 10,000,000/= to be awarded as exemplary damages to each Plaintiff.

8. An order that the Defendants pay interest on (5), (6) and (7) at the rate of 24% p.a from the date of judgment till full payment.

Counsel for the Plaintiff submitted that the interest rate be at 24% because Government has a tendency of delaying payments and by the time they are made the money has already lost its value due to inflation.

9. An order that the Defendants pay the Plaintiffs and the persons they represent the costs of the suit.

10. An order that the Defendants pay the Plaintiffs and the persons they represent interest on (9) at the rate of 24% p.a from the date of taxation of the bill of costs till full payment.

Counsel for the Plaintiffs prayed for a certificate of two Counsel.

**Submissions of the 2<sup>nd</sup> - 12<sup>th</sup> and 14<sup>th</sup> - 31<sup>st</sup> Defendants:**

Counsel for the above Defendants submitted that the Defendants never participated in the destruction of the Plaintiffs' property and the evictions of 1992 and 2004 as is being pleaded and deny all the allegations against them.

That the said Defendants in obedience to the injunction issued by the Court stopped cultivating on the suit land and this was established when Court visited the locus and no evidence was brought to the contrary.

Further that no evidence was brought to show that the special damages as pleaded were due and are payable by the 2<sup>nd</sup> -12<sup>th</sup> or 14<sup>th</sup> – 31<sup>st</sup> Defendants. The same applies to the exemplary and general damages.

Counsel for the said Defendants also noted that the 3<sup>rd</sup>, 6<sup>th</sup>, 10<sup>th</sup>, 16<sup>th</sup>, 23<sup>rd</sup> and 25<sup>th</sup> Defendants were discharged from any claims and are entitled to costs payable by the Plaintiffs for being added as Plaintiffs without their approval. Counsel prayed that costs as awarded be paid to these Defendants.

Counsel for the said Defendants also pointed out that Counsel for the Plaintiffs chose to submit on only the two previously raised issues as opposed to the new nine issues that were raised before Justice Batema. That in essence this means that the Plaintiffs have chosen to abandon the nine issues as were raised in the joint memorandum of scheduling.

### **Issue 1: Whether the Plaintiffs were in lawful occupation of the suit land?**

Counsel for the 2<sup>nd</sup> – 12<sup>th</sup> and 14<sup>th</sup> – 31<sup>st</sup> Defendants submitted that the suit is frivolous and vexatious as against the said Defendants in regard to the eviction and invasion of the suit land on 20<sup>th</sup> January 2004. That on the said date the said Defendants had not even been allocated the suit land as the allocation of the suit land was in 2008. The said Defendants also did not participate in the 1992 and 2004 evictions. Thus, the suit against the said Defendants is not tenable.

Further that evidence of ownership by Government dates back to 1970's and its occupation was by formal allocation to the said Defendants on 24<sup>th</sup> July 2008 which is not the case with the Plaintiffs. The said Defendants were lawful occupants from 24<sup>th</sup> July 2008 to 2010 when the Court injunction was issued.

### **Issue 2: what remedies are available?**

Counsel for the 2<sup>nd</sup> – 12<sup>th</sup> and 14<sup>th</sup> – 31<sup>st</sup> Defendants submitted that the Plaintiffs failed to prove the said Defendants' involvement in the alleged eviction, invasion and destruction of property. Nor was there any justification for the claim of special, general and exemplary damages against the said Defendants. That in the circumstances it is the Defendants that are entitled to general damages for being unjustly joined to the suit in 2014 for the inconvenience of the frivolous suit against them.

That the said Defendants are also entitled to costs with interest against the Plaintiffs. The Plaintiff did not disclose a cause of action against the said Defendants, the Plaintiffs failed to prove their ownership of the suit land, and upon visiting locus it was found that the said Defendants were not in occupation of the suit land. Thus, the Plaintiffs are not entitled to the remedies as prayed for.

Counsel for the 2<sup>nd</sup> – 12<sup>th</sup> and 14<sup>th</sup> – 31<sup>st</sup> Defendants went on to submit on the new issues as raised:

**Issue 1: Whether or not at the time the Plaintiffs were evicted, the land belonged to Government?**

Counsel submitted that according to the Plaintiff the Plaintiffs referred to two evictions, one in 1992 and another in 2004. The one in 1992 was said to have been peaceful and organised. This was confirmed by the evidence of DW3, DW11, and DW14, was corroborated by DW8, and DW12. That this was further corroborated by DW9, through the exhibits that were attached to her witness statement that confirmed that the evictees were compensated after the eviction in 1992 and 160 people in Kisanga were compensated.

The ownership by Government was also proved by various exhibits as dating way back to the 1970's. Thus, the suit land belongs to the Government.

**Issue 2: whether the suit is time barred?**

Counsel submitted that the suit was filed in 2005 where as the eviction occurred in 1992 which makes it more than 12 years and the suit is therefore time barred as per **Section 5** of the Limitation Act.

The suit is also time barred as per **Section 3** of the Civil Procedure and Limitation Miscellaneous Provisions Act which provides that no action founded on tort shall be brought against Government after the expiration of 2 years from which the cause of action arose.

**Issue 3: whether the suit is *Res-Judicata*?**

Counsel submitted that the Plaintiffs are barred from bringing this suit since matters relating to the land and compensation arising from eviction originating from 1992 were dealt with in HCCS No. 1022 of 2001 and HCCS No. 207 of 1993. The same was shown through the evidence of DW9 as to how some of the Plaintiffs in the instant case were also Plaintiffs in HCCS No. 1022 of 2001 and No. 43 of 2005. Thus, the suit is barred by *Res-Judicata*.

**Issue 4: Whether the Plaintiffs have previously been compensated in respect to the suit land?**

Counsel submitted that the evidence of DW9 and the exhibits attached to her evidence are uncontroverted proof of an attempt to abuse Court process to achieve double benefit from Government by the Plaintiffs who have been and are still being compensated.

Further that DW6, DW11, DW12, DW13, DW14, all show that everybody left the land and anybody who had a claim lodged the same in HCCS No. 1022 of 2001 and No. 207 of 1993. The instant case is therefore an abuse of Court process.

**Issue 5: Whether these Plaintiffs and the persons they represent had any recognised interest in the suit land at the time they were evicted.**

Counsel noted that those that were evicted in 1992 no longer have any recognised interest in the suit land and those that were evicted in 2004 were trespassers and were acting illegally as per the evidence of DW14.

**Issue 6: Whether the 2<sup>nd</sup> – 31<sup>st</sup> Defendants were allowed by Government to use the suit land?**

Counsel for the said Defendants submitted that the Plaintiffs in rejoinder to their Written Statement of Defence stated that the documents signed by Hon. Ruhakana Rugunda and Hon. Adolf Mwesige were invalid, thus the burden shifted to them to prove the invalidity of the said documents. These documents were not controverted or disowned by Government and besides the Plaintiffs did not challenge the occupation of the Defendants in 2008 when they were still within time.

**Issue 7: Whether the Government had capacity to give them such permission?**

Counsel submitted that the permission was granted in 2008 originates from the documents as ably exhibited and availed to Court by DW3, DW4, DW5, DW7, DW8, DW12 and DW13. That these documents were not controverted by the Plaintiffs nor were they proved as forgeries.

**Issue 8: Whether the Certificate of Title in the names of the 32<sup>nd</sup> Defendant was procured by fraud?**

Counsel submitted that this title and creation were properly traced from the 1970s and evidence was presented by DW1, DW2, DW3, DW4, DW5, DW8 and DW12. And the exhibits originating the title came from the historical records of Government.

**Issue 9: what remedies are available to the parties?**

Counsel for the Plaintiffs submitted that there was no evidence led to the effect that the acts complained of were caused by the 2<sup>nd</sup> – 31<sup>st</sup> Defendants accordingly no award of damages can be made in those circumstances against the said Defendants.

That the principles for grant of general damages and special damages claimed have not been satisfied and prayed that the damages as claimed do not be granted.

However, the Defendants be granted damages for unfairly being dragged in this suit and costs at Court interest rate.

**Submissions of the 1<sup>st</sup>, 13<sup>th</sup> and 32<sup>nd</sup> Defendants:**

Counsel for these Defendants submitted that the Plaintiffs through Representative action sued for declarations for recognition of rights; special, general and exemplary damages; and cancellation of the Certificate of Title of the 32<sup>nd</sup> Defendants. That the Plaintiffs' claims are premised on tortious acts relating to removal from the suit land in 1992, an invasion and eviction in 2004.

The Plaintiffs are also challenging and contesting the grant of land to the 2<sup>nd</sup> – 31<sup>st</sup> Defendants by Government to grow seasonal crops on a temporary basis in 2008. And also



challenging the manner in which the 32<sup>nd</sup> Defendant obtained title to the suit land. Initially the suit was filed in 2005 and had the A.G as the only Defendant until amendment in 2014 to add the 2<sup>nd</sup> – 32<sup>nd</sup> Defendants.

Counsel for the 1<sup>st</sup>, 13<sup>th</sup> and 32<sup>nd</sup> Defendants noted that as per the joint scheduling Memorandum, the agreed fact was only one which that was;

**“The Court on 13<sup>th</sup> May 2010 issued an order to open up boundaries as defined in Statutory Instrument No. 304 – 2 known as the Prisons (Declaration) (N0.2) Instrument and the same was done and a report was submitted. The land as gazetted was found to be 650 Hectares (1606) acres.”**

In regard to abandonment of the issues by the Plaintiffs, Counsel for the Defendants submitted that the Plaintiffs only discussed two issues implying they had abandoned the other 7 issues as framed for determination and are thus no longer points of contention.

It is trite law that Courts do not pass academic or moot judgments and thus issues that are abandoned are no longer triable issues before Court as it would be a moot exercise.

Counsel cited the case of **Hon. Justice R.O. Okumu Wengi versus Attorney General, Miscellaneous Cause No. 233**, where it was stated that;

*“Courts of law do not decide cases where no live disputes between parties are in existence. Courts do not decide cases or issue orders where the issues in dispute have been removed or merely no longer exist.”*

Counsel for the Defendants prayed that these issues be considered as abandoned and that therefore the parties need not address them.

### **Issue 1: whether or not at the time the Plaintiffs were evicted the land belonged to Government?**

Counsel for the Defendants submitted that this issue puts the burden of proof on the 1<sup>st</sup> and 32<sup>nd</sup> Defendants to show ownership of the land.

Counsel noted that evidence was adduced to show ownership by the Government of the suit land which includes S.I 304-2, survey in 1970s, demarcation of the land, the National Service Camp in the 1970s, correspondences of Government allocating the land as Rwimi Prison farm extension, confirmed processes from 1973 to 2012 to obtain title, Government compensating persons who were evacuated under HCCS No. 1022 of 2001 and HCCS No. 207 of 1993 all point to Government being the owner of the land. There is also a title confirming ownership.

That the Plaintiffs apart from disputing boundaries using S.I 304 -2 have not availed any evidence of ownership which is superior to the claim of Government to the suit land.

That, out of all the Plaintiffs, none had a single documentation showing ownership, occupancy, licence, payment for occupancy or agreement of occupancy on the suit land.

Counsel submitted that the 1<sup>st</sup> and 32<sup>nd</sup> Defendants would like to address the aspect of Government owning land without a title or holding tenure other than with a title deed.

**Section 11** of the 1962 Public Lands Act, Cap. 201 states as follows;

*“Subject to the provisions of the Constitution and of this Act all crown lands which immediately prior to the commencement of this Act had not been demised by way of lease under the provisions of the crown lands ordinance and were occupied by Government for Public purposes shall be vested in the land Commission in freehold to be held and enjoyed, sued for, recovered, maintained, dealt with and disposed of or in the manner provided by the Constitution and by this Act.”*

**Article 239** of the Constitution of the Republic of Uganda, gives Uganda Land Commission powers to hold and register Government land as confirmed by **Nyumba Ya Chuma versus ULC & A.G, Constitutional Court in Constitutional Petition No. 13 of 2010**. Thus, the actions of the 32<sup>nd</sup> Defendant in registering the suit land were not fraudulent or illegal as claimed by the Plaintiffs.

**Issue: Whether the Plaintiffs were in lawful occupation of the suit land?**

Counsel for the Defendants submitted that this issue can only be answered basing on;

- a) Whether the land belonged to Government before 1992;
- b) Whether the Plaintiffs as at 1992 had lawful rights to the land.

That the evidence on record is to the effect that the Plaintiffs migrated from as far as Kabale & Kanungu to settle on the suit land. This evidence has been given by all the Plaintiffs and corroborated by DW10, DW11, DW12, DW13, and DW14. That none of the Plaintiffs has lawful ownership on the suit land and that is why they all had temporary structures and when asked to leave in 1992, they did so voluntarily and were compensated as per the decisions of Court in HCCS No. 1022 of 2001 and HCCS No. 207 of 1993. This therefore creates an estoppel by judgment for any party to come to Court and plead that the land does not belong to Government.

Further, that the ownership by Government of the suit land has been properly enumerated by the evidence of DW1, DW2, DW3, DW4, DW5, DW6, DW7 and DW8 and the exhibits tendered. Exhibits including survey reports, correspondences from Government records indicating that the suit land has been owned by Government since the 1960's.

Counsel prayed that Court finds that though the suit land falls outside the boundaries mentioned in Statutory Instrument No. 304-2 as 650 Hectares it does not remove the fact that Government started processing ownership as far back as 29<sup>th</sup> August 1973 under the survey for Rwimi Prison Farm extension as shown in exhibits tendered by DW1 and DW4 from the surveys and mappings Department. Those were to create the title deed Plot 1, Kabarole District, Block 76 FRV1135, Folio 4 registered in the names of the 32<sup>nd</sup> Defendants.

The correspondence particularly to M/s Kulubya & Co. Advocates as per the evidence of DW12 and DW8 indicates that the Plaintiffs had blindly settled on the suit land that belonged to prisons.

That S.I No. 304 -2 does not restrict Rwimi Prison to the approximated land mentioned in it. The Rwimi Prison Farm extension has sufficient documentation of its own to justify the suit land being part of Government land. The title deed incorporates Rwimi A, B and C the extension which totals to 970 Hectares including the suit land.

### **Issue 2: Whether the suit is time barred?**

Counsel for the Defendants submitted that the claim of the Plaintiffs originates as far back as 1992 and the Plaintiffs' lawyers were advised as far back as on 19<sup>th</sup>/7/1973 referring to their occupancy being of encroachers and instructions to evict given on 28<sup>th</sup> March 1992, thus, the suit is statute barred.

That everybody left the suit land after the 1992 evictions as confirmed by DW3, DW6, DW10, DW11 and DW14.

That evidence was led to the effect that in 2004 there was an attempt to forcefully re-enter the land but they were repulsed.

Para10 of the amended Plaint confirms that the Plaintiffs have since 2004 been living away from the suit land, in other places in Uganda, this corroborates the story of their attempt to come back as opposed to having been on the land between 1992 to 2004 as per DW11's evidence. This suit is thus statute barred.

Additionally, 21 Plaintiffs in the instant suit have already been compensated in a previous suit as per DW9's evidence and exhibits.

### **Issue 3: Whether the suit is *Res-judicata*?**

Counsel for the Defendants submitted that the matter in this suit was dealt with in HCCS No. 207 of 1993 and HCCS No. 1022 of 2001 as referred to by DW9. The matters of eviction and compensation of the Plaintiffs in 1992 were dealt with by Court and compensation was ordered. The suit was a representative action and some of the present Plaintiffs in this representative action got judgment and have even been compensated.

That the same facts and issues arose and were handled by Court in the suits brought within the statutory period for such actions for land and tort.

The Plaintiffs for all intents and purposes needed to have filed and joined the said suits to resolve their claim.

Counsel for the Defendants cited the case of **Maniraguha Gashumba versus Sam Nkundiye, CACA No. 23 of 2005** where it was stated that;

*"In fact Res-Judicata is a plea of jurisdiction, in that Section 7 of the Civil Procedure Act bars any Court from trying a suit or even an issue that is Res-judicata. ... It would be correct therefore to state that courts have no jurisdiction to try a matter that is res-judicata."*

### **Issue: Declaration that the suit land belongs to the Plaintiffs:**

Counsel submitted that the Plaintiffs did not produce any documentation showing proof of ownership of the suit land unlike the 1<sup>st</sup> and 32<sup>nd</sup> Defendants who produced evidence to show how the land belonged to the Government and how it was allocated and handed over to the Defendants for use and extension of the Rwimi Prison farm.

**Issue 4: Whether the Plaintiffs have previously been compensated in respect of the suit land?**

Counsel submitted that the Plaintiffs are not entitled to compensation since they were encroachers. None of the Plaintiffs proved allocation, grant or permission to occupy the suit land. Failure to claim their compensation in HCCS No. 1022 of 2001 and HCCS No. 207 of 1993 makes their claim time barred.

**Issue 5: Whether these Plaintiffs and the persons they represent had any recognizable interest in the suit land at the time they were evicted?**

Counsel for the Defendants submitted that the current Plaintiffs save for those included but having been part of HCCS No. 1022 of 2001 and HCCS No. 207 of 1993 were never verified as per the lists provided as exhibited by DW9. These Plaintiffs do not have any documents providing their occupancy or rights to the land. Hence, they have no recognizable interest giving them locus to sue or to claim the relief in the suit.

**Issue 6: whether the 2<sup>nd</sup> – 31<sup>st</sup> Defendants were allowed by Government to use the suit land?**

Counsel submitted that evidence allowing the said Defendants to grow seasonal crops on the land by Government was provided. The Plaintiffs had pleaded that the evidence is invalid and forged. But they failed to discharge the burden of proving invalidity and kept quiet about the controverted evidence of granting permission by Government.

**Issues 8: Whether the Certificate of title in the names of the 32<sup>nd</sup> Defendant was procured by fraud?**

Counsel for the Defendants noted that Registration of title during pendency of the suit does not make it an act of fraud. That the process of registration dates back to 1973 as per the evidence of DW7, DW5, and DW4 and no fraud was committed during the process of obtaining the title.

**Issue 9: What are the remedies available to the parties?**

**Special damages:**

Counsel submitted that these were not proved or pleaded specifically. No document was produced or tendered to support the claim for special damages, that the attachments are only on the plaint but were not tendered in Court nor exhibited. The Plaintiffs also chose not to produce each of the Plaintiffs to prove their special claims.

**General damages:**

That evidence of execution including transportation of the Plaintiffs in 1992 was provided without challenge from DW11, DW10, DW6, DW4, and DW3. These witnesses also confirmed their leaving wilfully and peacefully.

That the Plaintiffs who forcefully attempted to re-enter the land cannot be considered for general damages as they were committing an illegality and that general damages are granted at the discretion of Court. **(See: Juliet Dushabe versus Orient Bank Limited & Others, HCCS No. 131 of 2014.)**

Counsel for the Defendants went on to submit that the present case is one of torts and recognition of land rights as between the parties and the case of **URA versus Wanume Kitamirike (Supra)** is distinguishable as it refers to an employment contract which is not in dispute and the terms are very clear where as in the instant case the terms are not clear and the rights of the parties need to be determined particularly whether the Plaintiffs have a cause of action or right to challenge the Defendant's title, use or possession of the land.

#### **Exemplary damages:**

Counsel for the Defendants submitted that no evidence to this effect has been adduced and thus there is no justification for their grant. And besides the Plaintiffs were granted UGX 74M as damages as per PW1's exhibit which also confirms that the matter is *Res-judicata* and this bars this Court from granting further damages as they were already granted in Civil Suit No. 219 of 2007 at Fort Portal.

#### **Costs and interest**

Counsel for the Plaintiffs submitted that since the Plaintiffs have failed to prove their cause of action, complaints, and allegations to warrant judgment of the case against the Defendants fails. That in particular the case against the 13<sup>th</sup> Defendant has failed and has not been proved in respect to the Complaints relating to 1992 and 2004.

That costs need not be awarded to the Plaintiffs.

#### **Rejoinder by the Plaintiffs**

Counsel for the Plaintiffs submitted in rejoinder to the new nine issues as were raised.

#### **Issue 1: whether or not the Plaintiffs at the time were evicted the land belonged to Government?**

Counsel for the Plaintiffs submitted in rejoinder that the Plaintiffs were evicted from the land in 2004 and not 1992 as alleged by the Defendants' Counsel and the suit land does not belong to Government. That the people that were evicted were those that were occupying the Kibale Forest Reserve and not the suit land. Reference was made to Annexure "A" of DW9's witness statement indicating a plaint in Civil Suit No. 1022 of 2001 concerning the evictions of 1992 against the A.G and UWA and Para (4) clearly states that the Plaintiffs were residents of Kibale Game Reserve/corridor.

That whereas it may be true that some had settlements and properties in Kibale Game Reserve/Corridor and separate settlements on the Suit land and it may also be true that some of the Plaintiffs could have been Plaintiffs in Civil Suit No. 1022 of 2001 but that does not make them lose the right to sue in respect of the land in the present suit which is different and distinct and is alleged to belong to the Prison Department and not Uganda Wild life Authority.

That as of 2004, Government had not acquired proprietary interest in the suit land as it acquired a Certificate of Title on 20/2/2012 as evidenced by Annexure “C” to DW4’s witness statement. Thus cannot claim to be the owner of the suit land in 2004. That whether or not a survey commenced in 1973 is immaterial and a survey in itself does not confer proprietary rights.

**Issue 2: Whether the suit is time barred?**

Counsel for the Plaintiffs submitted in rejoinder that the suit is not time barred since trespass is a continuing tort and trespass on the suit land has continued to date. That, the amended Plaint challenging the 2012 Certificate of Title was filed in 2014 amidst continuous trespass. Thus, the trespass being continuous limitation does not arise.

**Issue 3: Whether the suit is *Res-judicata*?**

Counsel for the Plaintiffs submitted in rejoinder that the Plaint as attached by DW9 is of Civil Suit No. 1022 of 2001 which is in respect of different land therefore the instant suit does not amount to *Res-judicata* and Civil Suit No. 207 of 1993 is not attached and it is hard to know what its pleadings were about nor was it tendered in evidence nor were proceedings or judgment tendered in evidence to prove that the parties were the same and that the subject matter was the same as that in the instant case.

**Issue 4: Whether the Plaintiffs have previously been compensated in respect of the suit land?**

Counsel for the Plaintiffs in rejoinder reiterated that Civil Suit No. 1022 of 2001 was in respect of different land i.e in Kibale Game Reserve and if there was any compensation, it was for that land and not the suit land.

**Issue 5: Whether these Plaintiffs and the persons they represent had any recognizable interest in the suit land at the time they were evicted?**

Counsel for the Plaintiffs submitted that the Plaintiffs had recognizable interest in the suit land and evidence on record is to the effect that these people migrated to the area in the 1960s and lived there under customary tenure which is recognised under **Article 237** of the Constitution of the Republic of Uganda, and thus they were wrongfully evicted.

**Issue 6: whether the 2<sup>nd</sup> – 31<sup>st</sup> Defendants were allowed by Government to use the suit land?**

Counsel for the Plaintiffs submitted in rejoinder that the above Defendants were not allowed to use the suit land by Government but rather individuals i.e Hon. Ruhakana Rugunda and Hon. Mwesige who did not act through the A.G to sign a legally binding contract nor was there any Seal of Government. That in any case the land belongs to Uganda Land Commission as is being claimed. Therefore it should have been the one to grant the permission.

**Issue 7: If so, whether the Government had capacity to give them such permission?**

Counsel for the Plaintiffs submitted in rejoinder that Government could not give permission because it does not own the suit land but rather the Plaintiffs do and were occupying the same.

**Issue 8: whether the Certificate of Title in the names of the 32<sup>nd</sup> Defendant was procured by fraud?**

Counsel for the Plaintiffs submitted in rejoinder that fraud is dishonesty and cited the case of **Tibimanya Johnson & Another versus Murungi Moses & 3 Others, CACA No. 18 of 2007** where it was observed that;

*“According to **Black’s law Dictionary**, 6<sup>th</sup> Ed. Page 660, it embraces a whole range of dishonest activities as the following;*

*“Anything calculated to decide whether by single act or combination or by suppression of trust, or suggestion of what is false, whether it is by direct falsehood or innuendos by speech or silence, word of mouth, or look or gesture ... as distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything that calculates to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo by speech or by silence, by word of mouth, or by look or gesture...”*

Counsel for the Plaintiffs went on to submit in rejoinder that Uganda Land Commission together with Uganda Prisons services for whose benefit the title was being procured were aware of the Plaintiffs’ interest in the land. They were aware of the pending suit in Court at the time the title was processed and registered to defeat the Plaintiffs’ unregistered interest through Registration of the land in the name of the 32<sup>nd</sup> Defendant. This was an act of dishonesty thus fraudulent.

**Issue 9: remedies**

As earlier submitted.

**Resolution of the issues by Court:**

This is a Civil Suit brought by the three Plaintiffs on their behalf and as well as representative capacity on behalf of several other persons. An order in this Suit was issued by this Court to

survey the disputed land and it was found that the Prison gazetted land was outside the suit land as per the Statutory Instrument outlining the demarcations of the Prison land.

In regard to the abandonment of the issues and the prayer by Counsel for the Defendants to have them considered as such is overruled. These issues were raised in a bid to have the contentions at hand resolved. The Plaintiffs have addressed the same in rejoinder and thus, they will be addressed by this Court.

Court also has discretion to address any issues it finds essential in the determination of the case at hand, whether raised by either party or not. (**See: Sinba (K) Limited & Others versus UBC, Supreme Court Civil Appeal No. 03 of 2014**).

In this case I will address all the issues as raised.

### **Burden of proof:**

**Sections 101 and 102** of the Evidence Act provide that;

Whoever desires any Court to give judgment as to any legal right or liability dependant on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof in a Civil Suit lies on that person who would fail if no evidence at all was given on either side.

In the case of **Ipolito Semwanga versus Kwizera Buchana Paul & Others, HCCS No. 61/2005 at Page 2**, it was stated that;

*“Under **Sections 101 and 103** of the Evidence Act, the burden of proving all the above allegations lies on the Plaintiff.”*

In the instant case this being the Plaintiffs’ case, the burden of proof lies on them.

### **Standard of proof:**

In the case of **Miller versus Minster of pensions (1947) 2 ALLER 372**, Lord Denning said;

*“The degree of cogence ... required to discharge a burden in a Civil case ... is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say “we think it is more probable” than not the burden is discharged but if the probabilities are equal, it is not.”*

Also, in the case of **Nsubuga versus P.N. Kavuma (19178) H.C.B 307**, it was held that;

*“In Civil cases the burden lies on the Plaintiff to prove his case on a balance of probabilities.”*

### **Issue 1a: Whether the Plaintiffs were in lawful occupation of the suit land?**

It was submitted by Counsel for the Plaintiffs that the suit land was owned by the Plaintiffs from the 1960s with the permission of the local leaders as per their testimonies however,



Counsel for the Defendants contended that this was not true because the land belongs to Government and the Plaintiffs were mere trespassers.

Counsel for the Plaintiffs submitted that Government was only restricted to the gazetted land that excluded the suit land.

**In my opinion I find that the Plaintiffs' occupied the suit land from various places, allegedly with the permission of the local leaders. However, the Plaintiffs' claim of being first settlers on the suit land is not tenable. DW10 in his statement stated that at the time they occupied the suit land they were not allowed to make permanent structures which would only imply that the Plaintiffs were not lawfully occupying the suit land.**

**In regard to Government being restricted to only gazetted land, this is not tenable. Much as there is a law that provides for particular acreage of prison lands in Uganda, the same does not bar them from adding extensions lawfully acquired.**

**Further, if the Plaintiffs were granted land by the Kingdom leaders in the 1960s, there was no documentation produced in Court to prove the same and for Court to rely on to justify their occupation on the suit land. No Official from the Kingdom was brought to testify in this regard. The only documentation that was produced in Court were some Graduated Tax tickets which are not proof of ownership of land.**

**I therefore find that the Plaintiffs' failure to produce any documentation as issued by the Kingdom leaders/local leaders when occupying the suit land failed to prove their ownership of the same and therefore were unlawfully occupying the suit land.**

**Issue 1: whether or not the Plaintiffs at the time were evicted the land belonged to Government?**

Counsel for the Plaintiffs submitted that as of 2004, Government had not acquired proprietary interest in the suit land as it acquired a Certificate of Title on 20/2/2012 as evidenced by Annexure "C" to DW4's witness statement. Thus cannot claim to be the owner of the suit land in 2004. That whether or not a survey commenced in 1973 is immaterial and a survey in itself does not confer proprietary rights.

**I disagree with the above submission with all due respect; obtaining a Certificate of title is a process and has procedure involved therefore, it would not be right to say that the time and date of commencement of survey is immaterial because it does not confer proprietary rights. Government is known to take its time when doing its things and it was not until the threat caused by the encroachers/trespassers that Government decided to finalise registration of the Certificate of Title.**

**From the evidence as adduced I note that; land was added to Rwimi under the ban of the National Service by Uganda Land Commission by the Ministry of Mineral and Water resources in 9/2/1973. Hand over was scheduled for 14<sup>th</sup> March 1973 as per annexure "B" to the witness statement of Allan Okello.**

Attempts were made to resettle the squatters as per the letter dated 9/12/1981 addressed to the Commissioner of Prisons, Western Region from the AG. District Commissioner, Kabarole as testified by DW8 and DW12.

There is a letter dated 28/3/1992 on the eviction of encroachers from Mpokya to be kept from entering Rwimi Prison farm land written by Tom R. Butime – Minister of State for Internal Affairs.

Reference was made in a correspondence to the effect that people were evicted from Nsonja and Kisanga and this was done peacefully, save for Nsonja that was under the forest and game reserves. The letter was addressed to the District Executive Secretary by RCIII Chairperson Rwimi Sub-County, Chief – Rwimi.

I find from the evidence submitted that the suit land has always had encroachers and attempt was made to evict the same in 1981 and there was a first eviction in 1992. Upon eviction the evictees instituted Civil Suits to have their claims settled and some were compensated and others are still being compensated and this was stated by DW3, DW8, DW9, DW11, DW12, and DW1.

I also find that Government started the process of legally owning the suit land in the 1970's when instructions to survey were issued as per the testimonies of DW2, DW4 and DW7. There are also various correspondences as tendered in exhibits that prove that the land belongs to Government and not to the Plaintiffs. The Plaintiffs were therefore evicted off land that belonged to Government at all material times.

## Issue 2: Whether the suit is time barred?

Section 5 of the Limitation Act provides that;

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

Section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act provides that;

*“No action founded on tort shall be brought against the Government after the expiration of two years from the date on which the cause of action arose.”*

Counsel for the Defendants on the other submitted that claim of the Plaintiffs' claim dates back to 1992 and therefore it is statute barred. The Plaintiffs should have pursued their claims under the two civil suits under which the other evictees are being compensated.

Counsel for the Plaintiffs submitted in rejoinder that the Government trespassed on the suit land and this trespass has continued to date and thus the issue of time limitation does not arise because trespass is a continuous tort.

Trespass to land is defined in **Salmonds Law of Torts Ninth Edition at page 207** as follows:

“1. The wrong of trespass to land consists in the act of (a) entering upon land in the possession of the plaintiff or (b) remaining upon such land or (c) placing any material object upon it in each case without lawful Justification.

2. Trespass by wrongful entry. The commonest form of trespass consists in a personal entry by the Defendant, or by some other person through his procurement, into land or building occupied by the Plaintiff. The slightest crossing of the boundary is sufficient e.g. to put ones land through a window, or to sit upon a fence. Nor indeed does it seem essential that there should be any crossing of the boundary at law provided that there is some physical contact with the Plaintiff’s property.”

Trespass is also defined in **Justine E.M.N Lutaaya versus Sterling Civil Engineering Company Ltd, Civil Appeal No. 11 of 2002** as;

“Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or pretends to interfere with another person’s lawful possession of that land. Needless to say, the tort of trespass to land is committed, not against the land, but against the person who is in actual or constructive possession of the land.”

Trespass as a continuing tort. In the case of **Maniraguha Gashumba versus Sam Nkundiye, CACA No. 23 of 2005**, it was quoted that;

Winfield & Jolowicz put it as follows in regard to trespass as a continuing tort;

“Trespass, whether by way of personal entry or by placing things on the Plaintiffs land may be ‘continuing’ and give rise to actions de die in diem so long as it lasts. In **Holmes versus Wilson (1839) 10 A& E503**, Highway Authorities supported a road by wrongful buttresses on the Plaintiffs land and the paid full compensation in an action for trespass. They were nevertheless held liable in further action for trespass because they had not removed the buttresses. Nor does a transfer of the land by the injured party prevent the transferee from suing the Defendant for continuing trespass.” (See: **Winfield & Jolowicz on Tort 11<sup>th</sup> Ed., Sweet & Maxwell London, 1979, P. 342**)

**Ordinarily limitation would not bar an action based on continued trespass, however, in the instant case as the evidence adduced I see no proof of trespass by the Government on the suit land.**

**In regard to the suit being barred by Statute, it was the evidence of DW1, DW3, DW6, DW8, DW9, DW10, DW11, DW13 and DW14 that there was an eviction in 1992 whereof the evictees left the suit land. It was also stated that the said eviction was peaceful with notice and the land was left vacant. The eviction also covered Kisanga the land which the Plaintiffs claim to have been occupying. The eviction under which the Plaintiffs lay their claim is that of 2004. From the evidence of DW12, when the Plaintiffs forcefully occupied the suit land they were evicted in a week’s time because they were considered as trespassers.**

**The argument that the Plaintiffs had resisted eviction in 1992 only to be evicted in 2004 does not strike me as genuine because DW14 in his testimony categorically stated that**

these Plaintiffs forcefully entered the suit land whereof they were arrested and even charged and he was among the people that had re-entered the suit land in 2004 only to be arrested.

DW1 also allude to the forceful return to the suit land by the Plaintiffs in 2004.

DW13 and DW15 who are the area local leaders also told Court that a number of the Plaintiffs are not known to them.

I therefore, find that indeed the suit is time barred as per the Sections cited earlier and the Plaintiffs that missed out on the previous compensations used the 2004 incident to sue so as to recover from Government which they should have done in the previous suits that were instituted in time. Be as it may even if the suit were not time barred the suit land as per the other two resolved issues is seen to belong to Government.

### Issue 3: Whether the suit is *Res-judicata*?

Section 7 of the Civil Procedure Act, provides that;

*“No Court shall try any suit or issue in which the matter is directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court.”*

In the case of **Posiano Semakula versus Susane Magala & Others, 1993 KALR P. 213** it was held that;

*“The doctrine of Res-judicata embodied in Section 7 of the Civil Procedure Act is a fundamental doctrine of all Courts that there must be an end of litigation. The spirit of the doctrine succinctly expressed in the well-known maxim ‘nemo debet bis vexari pro una at eadem causa’ (No one should be vexed twice for the same cause). Justice requires that every matter should be conducted forever between the parties. The test whether or not a suit is barred by Res-judicata appears to be that the Plaintiff in the 2<sup>nd</sup> suit trying to bring before the Court in another way and in the form of a new cause of action, a transaction which he has already put before a Court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of Res-judicata applied not only to points upon which the first Court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.”*

Further, in the above case, it was stated that;

*“The Court before which the issue of Res-judicata is raised must peruse the judgment of the Court in the first suit and ascertain that the judgment exhaustively dealt with the issues raised in that case and if possible the Court should peruse the whole Court record so that it*

*gets the opportunity to appraise itself of all matters raised in the earlier suit in order to decide whether the plea of Res-judicata succeeds or not.”*

**In my opinion this suit cannot be said to constitute *Res-Judicata* since there was no proof adduced to prove the same. Merely stating and attaching a plaint of a previous suit is not enough to prove that the issues in the instant case were dealt with and resolved before. The judgments of the two previous suits as relied on by the Defendants were not attached for this Court to peruse and determine that indeed this suit is *Res-judicata*. *Res-judicata* therefore cannot be proved by oral evidence but by a valid judgment of the first Court if produced without objection.**

**I therefore find that this suit does not constitute *Res-judicata* the parties in the instant case are not the same as those in the previous cases and the causes of action also do differ. Even if we were to struck off the 21 Plaintiffs that were compensated under the previous suits, the remaining 505 Plaintiffs would still be there. And in any case the list of those compensated does not include these 505 Plaintiffs.**

**Issue 4: Whether the Plaintiffs have previously been compensated in respect to the suit land?**

Counsel for the Plaintiffs stated that the Plaintiffs were not compensated for the suit land where as Counsel for the Defendants contended that 21 of the instant Plaintiffs were previously compensated as per the evidence of DW9, and DW11.

**In my opinion and from the evidence adduced, I find that from the list attached by DW9 that verified the evictees only 21 of the Plaintiffs were paid compensation in respect to the suit land. Meaning the remaining 505 Plaintiffs were not compensated because they were not part of the previous suits.**

**Issue 5: whether these Plaintiffs and the persons they represent had any recognised interest in the suit land at the time they were evicted?**

**I find that the Plaintiffs had no recognised interest in the suit land since the Plaintiffs only relied on the fact that they occupied the suit land in the 1960s but could not provide any documentation validating their occupation of the suit land. And from the previous suits it is clear that the former claimants were compensated for the property lost and not land.**

**Issue 6: whether the 2<sup>nd</sup> – 31<sup>st</sup> Defendants were allowed by Government to use the suit land?**

Counsel for the Defendants on the other hand submitted that the Plaintiffs contested the validity of the documents as adduced by the Defendants indicating that the 2<sup>nd</sup> – 31<sup>st</sup> Defendants had been granted permission by Government to cultivate seasonal crops on the suit land. Therefore he burden was on the Plaintiffs to prove that the documents were actually a forgery.

Counsel for the Plaintiffs submitted in rejoinder that the above Defendants were not allowed to use the suit land by Government but rather individuals as opposed to Uganda Land Commission which is said to be the owner of the suit land.

**In my opinion I am inclined to believe that the two Ministers acted as Government agents not as individuals otherwise this would mean that they were masquerading as the owners of the suit land. The Defendants produced documentation detailing how they got to occupy the suit land for purposes of cultivating the same. This was corroborated by the evidence of DW3, DW11, DW12, DW13, DW14, and DW15.**

**I therefore find that the 2<sup>nd</sup> – 31<sup>st</sup> Defendants were allowed by Government to occupy the suit land.**

**Issue 7: If so, whether the Government had capacity to give them such permissions?**

**In line with Issue 6, I do find that the Government had capacity to grant permission to the 2<sup>nd</sup> – 31<sup>st</sup> Defendants for cultivation. This is land that belongs to Government as per the evidence adduced before this Court dating to as far back as the 1970s. Government therefore had capacity to grant permission to use the same to the 2<sup>nd</sup> – 31<sup>st</sup> Defendants.**

**Issue 8: Whether the Certificate of Title in the names of the 32<sup>nd</sup> Defendant was procured by fraud?**

**The answer is no. There was no fraud committed by the 32<sup>nd</sup> Defendant by merely obtaining a title to the suit land during the pendency of the instant suit. The 1<sup>st</sup> Defendant started the procuring of the said title as far back as 1973 when the instructions to survey the suit land were issued and the survey carried and a deed plan extracted and this was corroborated by DW2, DW4, and DW7. Completing registration in 2012 does not amount an act of fraud.**

**Issue 9: what are the remedies available to the parties?**

The Plaintiffs prayed for the following declarations and orders;

1. A Declaration that the suit land belongs to the Plaintiffs and the 523 persons they represent.

**From the evidence adduced and the resolution of the issues above it has been proved that the suit land belongs to Government and not the Plaintiffs. This prayer is therefore not tenable.**

2. A declaration that the Government is not entitled to deprive the Plaintiffs and the 523 others they represent of their property before they are adequately compensated for it.

**It is true that the Constitution of the Republic of Uganda, 1995 gives any person a right to own property however; this property should be owned legally.**

Counsel for the Plaintiffs submitted that there was no law that was made for the compulsory acquisition of or the taking of the possession of the Plaintiffs' land by the Prisons Department.

**In my opinion, the suit land does not belong to the Plaintiffs and thus there was no need for a special law to be passed for Government to compulsorily acquire the suit land. This was not a case of compulsory land acquisition by Government.**

3. A declaration that the Certificate of Title in respect of the suit land registered in the name of the 32<sup>nd</sup> Defendant was procured by fraud.

**The Certificate of title was granted when the suit was ongoing; this however was not obtained fraudulently.**

4. An order directing cancellation of the said ill-gotten certificate of title by the 32<sup>nd</sup> Defendant.

**This has already been covered under issue 8 and thus this prayer is not tenable.**

5. An order that the Defendants pay the Plaintiffs and the person they represent special damages of UGX 1,035,0021,600/= as prayed for.

Counsel for the Plaintiffs submitted that the special damages are for the properties that were destroyed during the violent evictions.

Counsel for the Defendants on the other hand submitted that these were not proved or pleaded specifically. No document was produced or tendered to support the claim for special damages, that the attachments are only on the plaint but were not tendered in Court nor exhibited.

The Plaintiffs also chose not to produce each of the Plaintiffs to prove their special claims.

**My opinion in regard to this is that this is a representative suit and the number of the Plaintiffs makes it practically impossible to produce all of them. Otherwise this case would go forever.**

**However, it is true the special damages as pleaded by the Plaintiffs were not strictly proved. There were mere lists of allegedly destroyed properties belonging to the Plaintiffs attached to the original Plaint. There should have been a comprehensive report by a valuer proving the value of the properties lost.**

Special damages must be specifically pleaded and strictly proved. Lord Goddard CJ in **Borham – Carter versus Hyde Park Hotel [1948] 64 TLR** where he stated that;

*“... [The] Plaintiff must understand that they bring action for damages it is for them to prove their damages, it is not enough to write down the particulars and so to speak, throw them at the head of the Court saying ‘this is what I lost, I ask you to give me these damages’, they have to prove it...”*

This prayer is also not tenable.

6. An order that the Defendants pay the Plaintiffs and the persons they represent general damages.

Counsel for the Plaintiff prayed for general damages to a tune of UGX 20,000,000/= for each Plaintiff excluding those that withdrew. This being compensation for the destroyed property and eviction that left the Plaintiffs destitute.

In the case of **Katakanya & Others versus Raphael Bikogoro** , HCCA No. 12 of 2010, Court discussed that;

*“General damages are awarded at the discretion of court, and are as always as the law will presume to be the natural consequences of the Defendant’s act or omission. In the assessment of the quantum of damages, Courts are guided mainly inter alia by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach ... further still, general damages need not be specifically pleaded, particularized and proved before they can be awarded since they are as the law will presume to be the direct natural or probable consequence of the act or omission complained of.”*

**I do not find any justification to award general damages to the Plaintiffs and if anything if find that these damages ought to be awarded to the 2<sup>nd</sup> -31<sup>st</sup> Defendants.**

**I accordingly award general damages to a tune of UGX 20,000,000/= to the 2<sup>nd</sup> – 31<sup>st</sup> Defendants for being added to a frivolous suit in 2014 and denial of use of the suit land and the inconvenience caused to them. The said Defendants were in occupation of the suit land with permission of Government in 2008 and upon issuance of an injunction in 2010 they stopped using the same.**

**I will however not award general damages to the 1<sup>st</sup> and 32<sup>nd</sup> Defendants because they are mandated by the law to represent Government and protect its interest.**

7. An order that the Defendants pay to the Plaintiffs and the persons they represent exemplary damages.

Counsel for the Plaintiffs submitted that exemplary damages are awarded where the conduct of the Defendant is egregious and manifestly oppressive that it calls for a punishment as deterrent.

Counsel prayed for UGX 10,000,000/= to be awarded as exemplary damages to each Plaintiffs.

In the case of **Ongom and Another versus Attorney General and Another (1979) HCB 267**, where it was held that;

*“Exemplary damages are awarded over and above the compensatory damages where aggravating circumstances have been created...due to the conduct or intention of the Defendant.”*

**In my opinion I see no justification for the award of exemplary damages. The Plaintiffs in their defiance brought about the forceful evictions to which they allude. The**



**Plaintiffs themselves stated that they had resisted eviction in 1992 only to be evicted in 2004.**

**I therefore find this prayer not tenable.**

8. An order that the Defendants pay interest on (5), (6) and (7) at the rate of 24% p.a from the date of judgment till full payment.

**Since no damages have been awarded to the Plaintiffs this prayer is equally not tenable.**

9. An order that the Defendants pay the Plaintiffs and the persons they represent the costs of the suit.

As regards costs, **Section 27(2)** Civil Procedure Act provides that:

*“The fact that the court of judge has no jurisdiction to try the suit shall not be a bar to the exercise of powers in Subsection (1) but the costs of any action, cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order.”*

Costs are therefore granted at the discretion of court as and when it deems fit to do so during and after trial. Therefore, it is not automatic that for every case court will award costs.

In the case of **Butagira Vs Deborah Namukasa (1992-1993) H.C.B 98 at 101** as cited for the Plaintiff, it was held that:

*“The general rule is that costs shall follow the event and a successful party should not be deprived of them except for good cause. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation but matters which led up to the litigation.”*

**From the evidence adduced and the locus visit I find that the Plaintiffs in the instant case failed to prove their case to the satisfaction of this Court against the Defendants. The Plaintiffs failed to prove their ownership of the suit land and their suit was also time in order to recover the lost property during the eviction. The Plaintiffs also failed to prove the direct participation of the 2<sup>nd</sup> – 31<sup>st</sup> Defendants in the 2004 eviction.**

**I therefore dismiss the Plaintiffs’ case with costs to the 2<sup>nd</sup> – 31<sup>st</sup> Defendants.**

**I reiterate my earlier reason for not granting general damages to the 1<sup>st</sup> and 32<sup>nd</sup> Defendants as the reason for not granting costs to the same.**

10. An order that the Defendants pay the Plaintiffs and the persons they represent interest on (9) at the rate of 24% p.a from the date of taxation of the bill of costs till full payment.

**The Plaintiffs not being the successful parties in this suit, this prayer is not tenable.**

**In summary the plaintiffs’ claim is dismissed in the following terms of the orders;**

- 1. A declaration that the suit land is validly registered in the 32<sup>nd</sup> Defendant’s name.**

2. That the Plaintiff pay a tune of UGX 20,000,000/= to the 2<sup>nd</sup> – 31<sup>st</sup> Defendants as general damages at Court rate of 6% per annum from the date of judgment till full payment.
3. That the Plaintiffs pay the 2<sup>nd</sup> – 31<sup>st</sup> Defendants the costs of this suit.

I so order.

Right of appeal explained.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**08/05/2017**

Judgment read and delivered in open Court in the presence of;

1. Counsel Mugisha Vincent for the Plaintiffs.
2. Counsel Ngaruye Ruhindi for the Plaintiffs.
3. Counsel Victor A. Bunsinge for the Plaintiffs.
4. Counsel Richard Bwiruka for the Plaintiffs.
5. Attorney General for the Defendants.
6. The Plaintiffs.
7. James – Court Clerk.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**08/05/2017**