

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**LAND CIVIL SUIT NO. 0014 OF 2021**  
**NATIONAL AGRICULTURAL RESEARCH ORGANISATION:: PLAINTIFF**

**VERSUS**

- 1. MOUNTAIN OF THE MOON UNIVERSITY**
- 2. KABAROLE DISTRICT LOCAL GOVERNMENT :::::::::: DEFENDANTS**
- 3. UGANDA LAND COMMISSION**

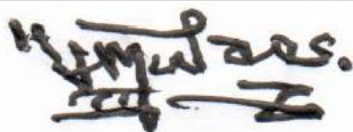
**BEFORE HON. JUSTICE VINCENT WAGONA**

**RULING**

**Introduction:**

The plaintiff filed this suit as a statutory body under the National Agriculture Act 2005 against the defendants jointly and severally for trespass and unlawful allocation and or illegal issue and procurement of a certificate of title out of land comprised in FRV 216, Folio 20, Kyembogo, Block 79, Plots 1 & 2 at Kyembogo Farm Institute, Burahya Toro Western Uganda, Kabarole District measuring approximately 502.2 acres. The plaintiff is seeking:

1. A declaration that the decision of the 3<sup>rd</sup> defendant approving the 1<sup>st</sup> defendant's title in the meeting of 21<sup>st</sup> and 22<sup>nd</sup> January 2020 under min 10/20220 (a)(2) was illegal and therefore null and void.
2. An order for cancellation of the above illegal certificate of title if at all it was issued.
3. A permanent injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants restraining them from unlawfully alienating the plaintiff's property.



4. A preservation order to protect the suit property against any form of illegal alienation.
5. A consequential order to the effect that since the plaintiff is a body corporate under section 5 of the National Agriculture Research Act No. 19 of 2005 all the land be transferred into her names.
6. General damages for trespass and costs of the suit.

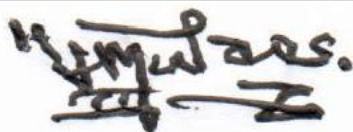
The defendant denied the allegations by the plaintiff and contended that they followed the due process of the law in allocation of land to the 1<sup>st</sup> and 2<sup>nd</sup> defendant.

On the 1<sup>st</sup> of December 2022 when the case was scheduled for mention, Counsel Bwiruka for the 1<sup>st</sup> defendant addressed court that they had a preliminary objection based on a point of law to raise regarding locus standi of the plaintiff to file the case.

**Issues: Whether the plaintiff has locus – standi to file the suit at hand against the defendant.**

**Submissions of the 1<sup>st</sup> defendant:**

Locus standi by definition connotes the right to bring an action or to be heard at any forum (**Black's Law Dictionary**). The general rule is that only a person in possession of land has capacity to bring an action for trespass (**Justine E.M.N Lutaya V. Stirling Civil Engineering Company SCCA No. 11 of 2002**).

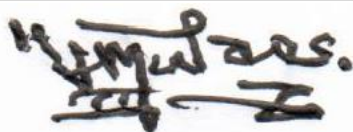


The plaintiff is established under Section 5 of the National Agriculture Research Act 2005 and its functions are set out under sections 28 (1) and (2) of the Act. The same Act also establishes Agriculture Research Institutes which are semi-autonomous agencies and among those is Rwebitaba Zonal Agriculture Research and Development institute which is listed under part II of the 3<sup>rd</sup> schedule to the Act. Under section 29 (3) of the Act, each public research organization is a body corporate with perpetual succession and a common seal and may sue or be sued in its own name and can do anything a body corporate may do.

Under paragraph 6 (l) of the plaint, the plaintiff admits that Rwebitaba Zonal Agricultural Research and Development institute is in occupation of the suit land. This clearly means that the plaintiff is not the body in possession of the suit land and therefore has no capacity to sue.

Under Order 7 rule 11 of the Civil Procedure Rules, the plaint should be rejected where it discloses no cause of action. A cause of action was defined in *Auto Garage Vs. Motokov (NO. 3) [1971] E.A 514* wherein it is indicated that the plaintiff must show (a) that he or she has a right, (b) that the right has been violated and the defendant is liable for such violation.

The suit land is in the possession of Rwebitaba Zonal Agricultural and Development institute. That the plaintiff is not in possession and its functions are restricted to research policy and monitoring under sections 5 and 7 of the Act. The plaintiff thus has no locus standi and cause of action. Dismiss the suit with costs.

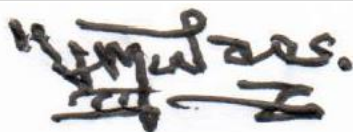
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### **Submissions of the 1<sup>st</sup> and 2<sup>nd</sup> defendants:**

Counsel associated himself with the submissions of the 1<sup>st</sup> defendant. Locus standi simply means place of standing and it means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard (**Namayega Vs. Etor& others Civil Suit No. 934 of 2019**).

It is a general rule that only a person in possession of land has the capacity to sue in trespass to land (**Mugerwa Vs. Umeme Ltd Civil Suit No. 80 of 2012**).

- 10 The plaintiff is established under Section 5 of the Act and under Section 28, the Act establishes other public research organizations which are autonomous under Section 29 (3) of the Act and this includes Rwebitaba Zonal Agricultural Research and Development institute.
- 15 The plaintiff admitted under paragraph 6 (i) that the suit land is in occupation of Rwebitaba Zonal Agricultural Research and Development Institute. This clearly shows that the plaintiff is not in possession of the suit land and therefore has no right to sue.
- 20 Under Order 7 rule 11 (a) of the Civil Procedure Rules, a plaint may be rejected for non-disclosure of a cause of action. **Auto Garage (supra)** lays down the tenets of a cause of action. The suit land is in possession of Rwebitaba Zonal Research and Development Institute. The plaintiff is not in possession of the suit land and her functions are restricted to policy formulation and monitoring as provided for under
- 25 Sections 5 and 7 of the National Agricultural Research Act 2005. The plaintiff has



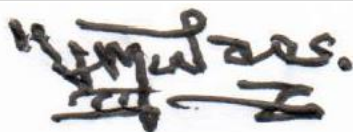


The plaintiff is the principle body under the Act which is comprised of the 15 research institutes which include Rwebitaba Zonal Agricultural Research and Development Institute by virtue of sections 5(2) & (3) and 6 of the Act. Although both the plaintiff and other public research institutes are bodies corporate, the Act is express to the effect that the plaintiff can acquire, hold and dispose of moveable and immovable property which is not in respect of its semi-autonomous Public Research Institutes like Rwebitaba.

Rwebitaba Zonal Agricultural Research and development institute is only a body corporate as regards operations relating to implementation of its programmes like allocation and management of its resources in accordance with its approved annual programmes and budgets as approved by the council. This means that it can only sue on contracts and obligations arising out of the implementation of its programmes, allocation and management of its resources without the plaintiff.

Sections 15 and 16 of the Act creates the office of the Director General as the Chief Executive of the secretariat and responsible for the day to day operations and administration of the secretariat. Among other responsibilities, is the management of the funds and property and affairs of the plaintiff.

Under section 7, the plaintiff performs such other functions conferred under the Act or under law for purposes of promoting agricultural research and development. Under Sections 34 (1), (2), 45 (5) and 78 (2) of the Public Finance Management Act No. 3 of 2015, the Director General of the plaintiff is responsible for the



management of the assets and inventories of the plaintiff and keeping a register of assets and inventories.

The above law prohibits the Director General as the Chief Executive Officer from pledging or otherwise encumbering the land or any other Assets of the plaintiff without permission from parliament.

Although the 3<sup>rd</sup> defendant refused to hand over titles over the land, the plaintiff will adduce evidence that the plaintiff occupied all this land and was in use before the 2005 Act and was registered on the titles as the restricted user.

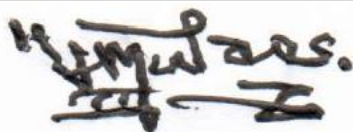
The plaintiff has locus-standi to file the suit.

#### **CONSIDERATION BY COURT:**

**Law J.A in Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd (1969) E.A 696** stated thus:

*“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by implication out of the pleadings and which objection point may dispose of the suit. A preliminary objection raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts has to be ascertained or if what is sought is exercise of judicial discretion”*

A point of law should be one purely based on law and not one that requires analysis of the evidence. It should be clear and glaring from the pleadings by the

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parties that it would not require going through the facts and evidence of the parties to ascertain the existence of the same and should be capable of determining the whole or part of the claim in the suit.

- 5 The defendant contends that plaintiff has no locus standi to file this case as the plaintiff indicated in the plaint under paragraph 6 (i) that the land is in possession of Rwebitaba Zonal Research and Development Institute. That locus to bring an action for trespass is limited to a person in possession which in this case is Rwebitaba and not the plaintiff.

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In **Aluma & 2 Ors v Okuti (Civil Appeal No. 23 of 2013) [2017] UGHCLD 5 (20 July 2017)** Hon Justice Stephen Mubiru stated as follows:

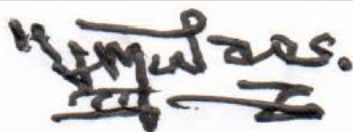
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*Whereas actions for recovery of land are premised on proof of a better title than that of the person from whom the land is sought to be recovered (see Ocean Estates Ltd v. Pinder [1969] 2 AC 19), actions for the tort of trespass to land only require proof of possession of the land in dispute at the time of the intrusion complained of. A person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire world but the rightful owner.*

20

25

*Trespass to land occurs when a person directly enters upon land in possession of another without permission and remains upon the land, places or projects any object upon the land (see Salmond and Heuston on the Law of Torts, 19<sup>th</sup> edition (London: Sweet & Maxwell, (1987) 46). It is*





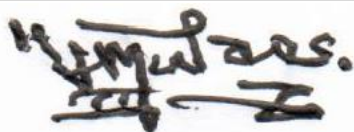
*a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession should be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's land must be unauthorised. The defendant should not have had any right to enter into plaintiff's land. In order to succeed, the plaintiff must prove that; he or she was in possession at the time of trespass; there was an unlawful or unauthorised entry by the defendant; and the entry occasioned damage to the plaintiff.*

*The fact of possession for purposes of an action in trespass to land is proved by evidence establishing physical control over the land by way of sufficient steps taken to deny others from accessing the land. That possession constitutes nearly all of the legal claim to ownership is expressed in the adage "possession is nine points of the law," explained in The Dictionary of English Law (1959) as follows;*

*The adage ... means that the person in possession can only be ousted by one whose title is better than his; every claimant must succeed by the strength of his own title and not by the weakness of his antagonist's.*

*The conditions establishing possession were discussed in Powell v. McFarlane (1977) 38 P&CR 452 as including;*

*....both factual possession and the requisite intention to possess (animus possidendi).....Factual possession signifies an*



*appropriate degree of physical control..... The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed..... what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so....Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession.*

*Actual possession therefore is established by evidence showing sufficient control demonstrating both an intention to control and an intention to exclude others. A possessor of land may not have actual physical possession, but where he or she has knowledge of its boundaries and has the ability to exercise control over them, he or she will be taken to have constructive possession of it. Where part of the land claimed is not under actual physical possession, there must be unequivocal evidence before court that the claimant deals with the cleared and un-cleared portions of the land, co-extensive with the boundaries, in the same way that a rightful owner would deal with it. Constructive possession of such land may be proved by evidence of enclosure and separation from adjoining land of the same character. Open, notorious, continuous, exclusive possession or*

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*occupation of any part thereof would in such circumstances constructively apply to all of it. In such cases, occupancy of a part may be construed as possession of the entire land where there is no actual adverse possession of the parts not actually occupied by the claimant.*

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Possession may be actual or constructive. This Court in **Kasoya Justice & Anor Vs. Kaija William & others, Civil Suit No. 06 of 2016** observed that possession for purposes of trespass may be actual or constructive and that in case of registered land, a person holding a certificate of title has by virtue of that title, legal and can  
10 sue for trespass. (See also **Justine E.M.N Lutaya Vs. Stirling Civil Engineering Co. Ltd, SCCA No. 009 of 2002**).

The defendants contend that it was pleaded by the plaintiff that the land was under possession of Rwebitaba. A review of the pleadings reveals the following:

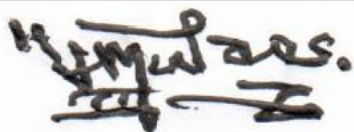
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The plaintiff indicated in the plaint under paragraph 6 (b) that: *The plaintiff is the principal institution for the coordination and oversight of all aspects of agricultural research in Uganda and operates with the semi-autonomous public agricultural research institutes under its Policy guidelines.*

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The plaintiff indicated in the plaint under paragraph 6 (l) that: *The ....irregularly, unlawfully and or illegally expropriated/alienated plaintiff's land occupied by Rwebitaba Zonal Agricultural Research and Development Organization (Rwebitaba ZARDI) a constituent institute of the plaintiff which constitutes part of  
25 the assets and developments that were handed over to the plaintiff by the Ministry*

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of Agriculture, Animal Industry and Fisheries (MAAIF) in 2011 after the establishment of NARO in 1992 and the subsequent restructuring of the National Agricultural Research system which culminated into the promulgation of the National Research Act of 2005.

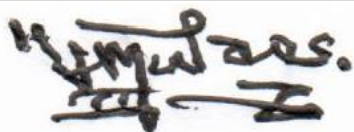
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Under paragraph 6 (q) the plaintiff stated that: *The 1<sup>st</sup> defendant has further gone ahead to unlawfully lay claim on the eucalyptus clonal tree plantation that has been in existence for the last eighteen (18) years by alleging that it is property of the first defendant yet clonal plantation was established by the plaintiff's*  
10 *constituent research institute the forest resources research institute, as a trial garden of eucalyptus clonal tree plantlets for adaptation in the Rwenzori Region.*

It appears to be the case of the plaintiff that Rwebitabi is a constituent institute of the plaintiff and as such, the land is possessed by Rwebitabi and the plaintiff or by plaintiff through Rwebitabi. This suit is therefore maintainable on ground that the  
15 plaintiff claims to be in possession of the suit land.

Further to the above, plaintiff's claim is not limited to trespass to land. The plaintiff sought to challenge the legality of the 3<sup>rd</sup> defendant to appropriate its land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants without its consent, as the pleadings show that the  
20 plaintiff claims to have an interest in the suit land. The plaintiff under paragraph 5 of the plaint stated that; *The plaintiff's cause of action and or claim against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly and severally is for trespass and or unlawful partition, allocation and or illegal issue and procurement of a certificate of title out of land comprised in FRV 216, Folio 20, Kyembogo, Block 79, Plots 1 & 2 at*

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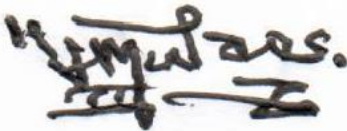
*Kyembogo Farm Institute, Burahya, Toro Western in Kabarole District measuring 502.2 acres on part of land reserved and restricted for use of the plaintiff..*

I find that the plaintiff's claim was founded in trespass to land as well as a  
5 challenge to the legality of the process that led to the creation of titles out of the  
suit land.

I thus find that the plaintiff has locus standi to bring this suit. I therefore overrule  
the preliminary point of law raised on behalf of the defendants with no order as to  
10 costs.

It so ordered.

**Dated at High Court Fort-portal this 8<sup>th</sup> day of June 2023.**



Vincent Wagona

**High Court Judge**

**FORT-PORTAL**

