OBJECTION MY LORD

LEGAL PRACTICE DEMYSTIFIED

FIRST EDITION

ISAAC CHRISTOPHER LUBOGO

OBJECTION MY LORD

"Legal Practice Demystified"

LAND TRANSACTIONS

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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FIRST EDITION

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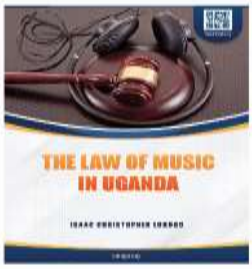

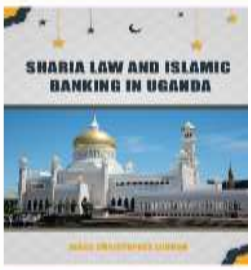

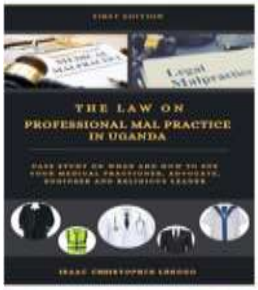

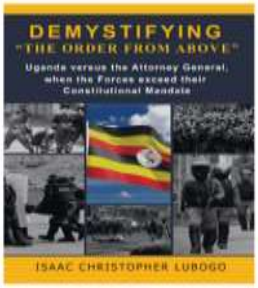

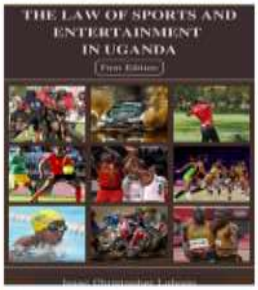

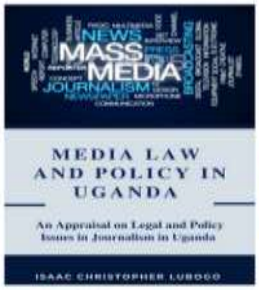

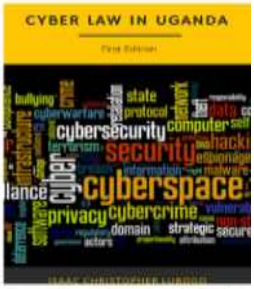

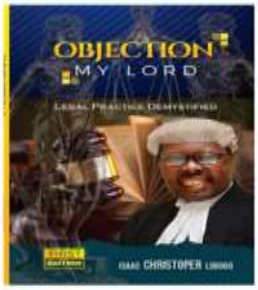

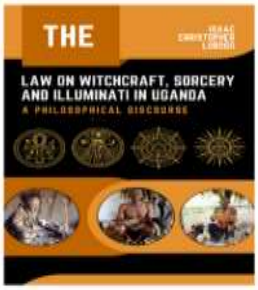

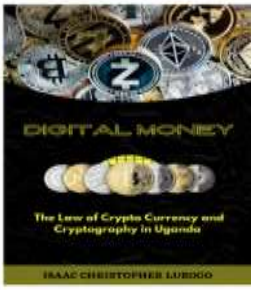

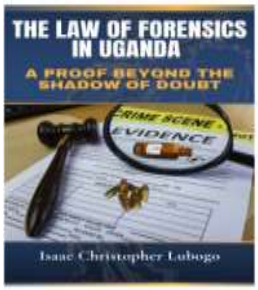

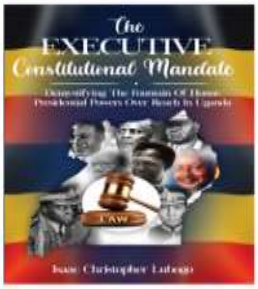

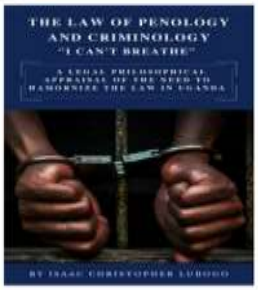

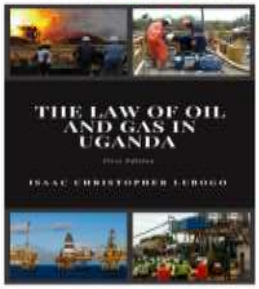

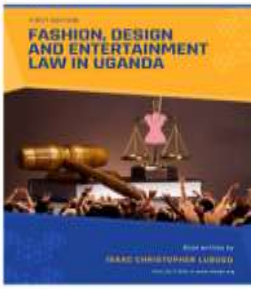

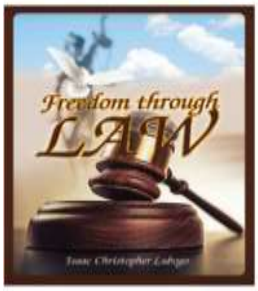

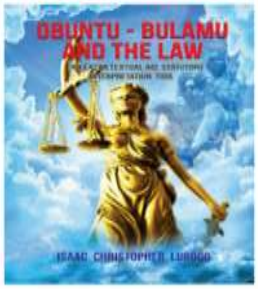

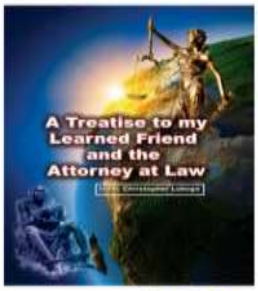

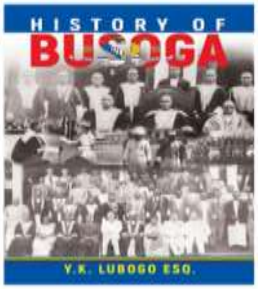

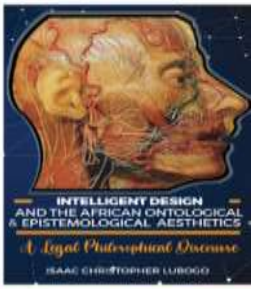

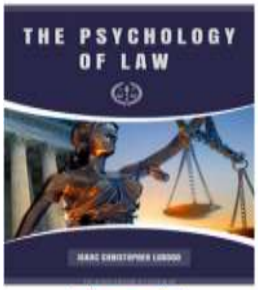

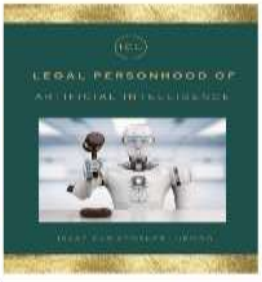

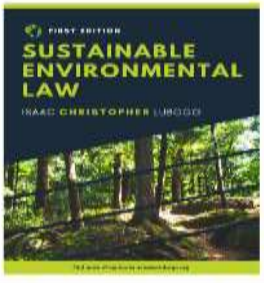

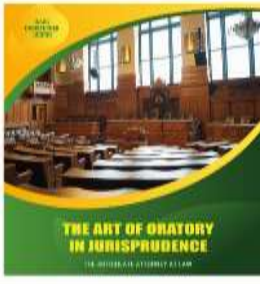

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DEDICATION

To the Lord Who Breathes Life and Spirit on Me ... Be My Guide Oh Lord of The Entire Universe

"....daniel was preferred above the presidents and princes, because an excellent spirit was in him, and the king thought to set him over the whole realm"

Daniel Chapter six verse three

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

.

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

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Great thanks to Doya, whose materials have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript. Blessings upon you.

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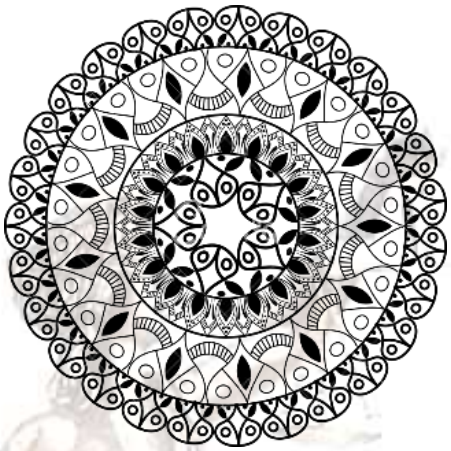

INTERESTS IN LAND AND THE RIGHTS ACCRUING

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

Land Tenures

Under article 237(3) and Section 3 of the Land Act, there four types of land tenure in Uganda.

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

FREEHOLD

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

Section 3 of the Land Act provides for the different forms of land tenure"

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

In the case of **JUSTICE ANUP SINGH CHOUDRY V WAKISO DISTRICT LAND BOARD &2 OTHERS (MICELLANEOUS CAUSE 129 OF 2019) [2019] UGHCCD 223 (20 DECEMBER 2019),** Where it was held that the respondent was compelled to convert customary tenure into free hold tenure system of land holding as applied for by the applicant and issue a free hold title thereto

MAILO TENURE.

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

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

OBJECTION MY LORD

"LAWFUL" AND "BONAFIDE" OCCUPANTS

LAWFUL OCCUPANTS.

A lawful occupant is a person who had occupies land with the consent of the owner, A lawful occupant can also be defined as a person occupying land by virtue of the repealed Busuulu and Envujjo law of 1928, Toro landlord and tenant law of 1937 and Ankole landlord and tenant law of 1937.

Section 29(1) of the Land Act defines who is a lawful occupant also refer to the case of **WASSWA V AIRTEL (U)LIMITED AND OTHERS (CIVIL APPEAL 37OF 2016) [2020] UGHCLD 30 (06 NOVEMBER 2020) which defines tenant by occupancy**

BONE FIDE OCCUPANT.

A bonafied occupant means a perso who before the coming into force of the constitution had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more or hhad been settled on land by the government or an agent of government.

Section 29 (2) of the Land Act defines who a bona fide occupantis asboth lawful occupants and bona fide occupants are considered tenants by occupancy. (Section 1 of the Land Act). Tenants by occupancy enjoy security of occupancy under **Section 31 of the Land Act.**Under Section 31 of the Land Act, deals with a tenant by occupancy and **Section 32 of the Land Act** deals with Jurisdiction of land tribunal in respect of nonpayment of ground rent can only be ejected for non-payment of ground rent.

Section 32Aof the Land Act as Amended Lawful or bona fide occupants to be evicted only for non payment of ground rent. (1) A lawful or bona fide occupant shall not be evicted from registered land except upon an order of eviction issued by a court and only for non payment of the annual nominal ground rent.

CUSTOMARY TENURE

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

LEASEHOLD TENURE.

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

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

(a) Created either by contract or by operation of law;

(b) The terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between the parties;

(c) under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending;

(d) usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for services or may be free of any required return;

(e) under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of a freehold owner as are appropriate and possible given the specific nature of a leasehold tenure.

A lease can be granted for any duration except in case of a lease to a non-Ugandan citizen. **Section 40(3) of the land Act** limits the maximum period for which a lease can be granted to a person who is not a citizen of Uganda to 99years.

ESSENTIAL FEATURES OF A LEASE.

Duration.

Under Section 3 (5) (c) of the Land Act, the duration of the leasehold tenure is usually but not necessarily defined by reference to a specific date of commencement and to a specific of ending. under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending.

The provision reverses the common law principle as stated in **PRUDENTIAL ASSURANCE CO LTD V. LONDON RESIDUARY (1992) 3 ALLER 504 AT 510**, that at common law, the duration of a lease must be certain or ascertainable at the time the purported lease is supposed to take effect. That at common law the landlord and tenant had no power to create a term which is uncertain.

Facts

A strip of land adjacent to a highway was sold to the council. The council leased the land back to the seller and the agreement stated the grant was to last until the council required the land for road widening purposes. The land was not so required. A notice to quit was served to recover possession of the land, and Prudential argued the notice was void because the land was not being recovered for road widening purposes.

Issues

The landlords argued the original agreement was void because it created a term which was of uncertain duration and such tenancies are invalid under the rule in **LACE V CHANTLER [1944] KB 368**. Since the tenants had gone into possession and were paying rent, a legal periodic tenancy had been created, and the landlords could terminate the tenancy after having given the tenants appropriate notice. The tenants argued the parties should be bound by contractual agreements they had freely entered. The original land owner was only willing to allow the council to take the freehold on the basis that he could continue to remain in occupation until it was required for road widening.

Decision/Outcome

The original agreement was void because it purported to grant the land for an indeterminate term. The tenants had gone into possession and paid rent and this had created a legal periodic tenancy. Periodic tenancies are saved from being of indeterminate duration because both parties can terminate the agreement on notice expiring at the end of each period. The landlord could, therefore, terminate the lease by giving notice.

However, despite **Section 3(5) (c)** reversing the common law position, where the terms of a lease agreement, including its duration are so uncertain that the court cannot objectively determine the obligation of the parties the agreement would be void in accordance with the general law of contracts[1]Under Section 40(3) of the land Act, a non-citizen cannot be grounded a lease exceeding 99 years.

Exclusive Possession.

Under **Section 3(5) (c) of the Land Act**, a lessor grants or is deemed to grant, the lessee exclusive possession of the land. under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending

In **STREET V. MOUNTFORD (1958)**[2], the court held that exclusive possession is the line-up of lease and is what distinguishes a lease from a mere licence. The court further defined exclusive possession as a

[1]Sands V Mutual Benefits Ltd (19971) EA 156

[2]2 ALLER 289 at 292

right to use land to the exclusion of everyone else including the land owner for the duration of the grant. There is no need to expressly provide for a provision on exclusive possession but the extent of control over the land retained by the land owner determines whether the occupier has exclusive possession. If the landlord retains general control over the premises, it is a strong indication that the occupier have no exclusive possession and therefore he/she is a mere licensee.

At common law, the power to sub-lease or assign is capable of being performed in all types of leases and this was illustrated in the case of **CITY COUNCIL OF KAMPALA V MUKIIBI (1967) EA368.** However, the land lord's prior consent is a prerequisite to the effect. This exclusion may be absolute or qualified by a requirement of the agreement. The facts of this case are that the plaintiff council had entered into a tenancy agreement with the defendant in terms of which the defendant was to be leased premises at an annual rental on a year-to-year basis, but terminable by either party giving one month's notice in writing. The premises were let subject to certain covenants which provided inter alia that the tenant should use the premises only for the business of hairdressing, and that he should not assign or sublet or part with possession of the premises, with a right of re-entry to the plaintiff in the event of breach of any of the covenants. It was alleged by the plaintiff that the defendant had sublet the premises and the plaintiff sued for vacant possession of the premises and for mesne profits.

It was held inter alia that a lease was practically prohibitive in form. There is no provision that the consent of the lessor may be given, if sought by the lessee. However, such consent not to be unreasonably withheld to either sublet or assigns the premises to a third party. Therefore, it must be very strictly construed as against the plaintiff and the background that to the knowledge of the plaintiff the defendant was not a hairdresser or barber by trade at the time when the premises were demised to him.

CREATION OF A LEASE

Under Section 3(5) (a) of the Land Act, a lease is created either by agreement of the parties or by operation of law. There is no legal requirement that an agreement for a lease must be in writing in **MAYANJA-NKANGI V NATIONAL HOUSING CORPORATION**[3], the court held that a contract to grant a lease may be oral or in writing or in both or may be inferred from the conduct of the parties e.g. A lease may result without express agreement where a person enters into possession of land and pays rent, which is accepted by the landowner. **In PARDHON JIVRAJ V DUDLEY –WHELPADALE**[4]**,** it was held that payments and acceptance of rent provided the requisite evidence that the defendant and plaintiff regarded each other as landlord and tenant.

In **AGANDRU V ETOMA [2018] UGHCLD 32**The plaintiff sued the defendant for trespass to land, seeking a declaration that the defendant is a trespasser on the plaintiff's land, an order of vacant possession,

[3] **(1972)1 ULR 37**
[4] **(1920-29) 3 ULR 193**

a permanent injunction against further acts of trespass, general damages for trespass, interest and costs. His claim is that he is the registered proprietor of land comprised in LR NPL/3214 Volume 4194 Folio 10 Gulam Close measuring approximately 0.047 Hectares which he purchased from a one Bakole Joseph Odroa on 12th April, 2011. Following the purchase, he began mobilizing construction material and depositing it on the plot but to his surprise, on 27th September, 2011 the defendant unlawfully took possession of the land and began laying the foundation of a building. Attempts by the local authority, the police and Arua Municipal Council to stop the defendant's construction were futile, hence the suit,

one of the issues was whether the defendant is a trespasser on the land in dispute, having found that defendant to have a legitimate equitable proprietary interest in the land in dispute, he is therefore not a trespasser on the land. He has since been granted a lease offer (exhibit D. Ex.3 dated 10th June, 2011) and has paid the requisite fees (exhibits D. Ex.8 dated 10th June, 2011; D. Ex.7 dated 15th June, 2011; D. Ex.6 dated 15th June, 2011; D. Ex.5 dated 28th January, 2011 and D. Ex.4 dated 28th January, 2011). Arua District Land Board should therefore go ahead and execute the necessary lease agreement to enable him secure registration of the plot in his names.

In **BENEDICT ADAM V MAKUMBI AND 2 OTHERS (CIVIL SUIT 539 OF 2014) [2022] UGHCLD 4** argues trespass, possession, and equitable intrest and bonafide occupancy.

Sublease and Assignment.

In SOUZA FIGUEIREDO AND CO LTD V MOORINGS HOTEL CO LTD (1960) EA 926, a sublease was defined as a transaction whereby a lessee creates a lease that is less than the terms that the lessee has.eg the lessee having a lease of 49 years leasing out the same for 10year.Assignment was defined in **MILMO V. CARRER AC (1947) KB306**, as transaction whereby the lessee transfers absolutely the reminder of a term of the lease to another person. In **KEEVES V DEAN (1924)1 KB 685**, the court noted that the power to sublease or assign is incidental to all types of leases including periodic tenancies, unless such power is express by excluded in the lease agreement. Assignment is by land sale agreement and execution of transfer forms.

LAW SAYS ON LAND EVICTIONS

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

WHAT CONSTITUTES AN ILLEGAL LAND EVICTION?

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

WHO IS A TENANT?

The Constitution provides for two types of tenants: a Lawful occupant and a bona fide occupant. 2 "Lawful Occupant" means: a person occupying land by virtue of:

a) The repealed laws;

(i) Busuulu and Envujjo Law of 1928;

(ii) Toro Landlord and Tenant Law of 1937;

(iii) Ankole Landlord and Tenant Law of 1937.

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

(c) A person who had occupied land as customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring a registrable interest. "Bona fide Occupant" means a person who before the coming into force of the Constitution-

(a) Had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more before coming into force of the 1995 Constitution.

(b) Had been settled on land by the Government or an agent of the Government which may include a local authority. For avoidance of any doubt, the law only protects lawful and bonafide occupants on registered land. The Squatter is not protected by the law.

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

(i) Unlawful occupants;
(ii) Illegal tenants;

(iii) (iii) Trespassers;
(iv) (iv) Licensees (these are persons temporarily brought in by the land owners to utilize the land);
(v) Lessees (these are persons with oral or written agreements with the land owners to temporarily occupy or use the land) for specific period of time on given terms and conditions; (vi) People renting agricultural land; and
(vi) People renting premises. Where someone does not quality as Bonafide Occupant, the law provides that the person takes reasonable steps to look for the land owner and undertake negotiations with the owner concerning his or her occupancy on the land. They can seek the help of a mediator agreed upon by both parties.

WHAT THE LAND LAW SAYS REGARDING EVICTIONS

1. Annual nominal ground rent will be paid to the land owner. The amount is no longer 1,000/= as most people still believe, but the amount is determined by the District Land Boards (DLBs). If DLBs delay or fail to determine the nominal ground rent, then the Minister responsible for Lands may determine the rent. In November, 2011 the Minister responsible for Lands approved rent for all Districts in the Country. (see the statutory instrument appended) 2. Nonpayment of annual nominal ground rent is the only ground for evicting tenants.
2. Landlords have to serve eviction notices to tenants who default on payment after a period of one year to show cause why the tenancy should not be terminated. If the tenant disputes the notice, he or she may refer the matter to the court within a period of six months after the date of service of the notice by the registered owner. Where the tenant does not challenge the notice within the prescribed period or pay the outstanding rent within a period of one year from the date of the notice, the registered owner applies to Court for an order to terminate the tenancy for non-payment of rent.
3. When Courts of law are making eviction orders, they shall give the date, being not less than six months after the date of the order, by which the person to be evicted shall leave the land. The Courts may also grant any other order on expenses, damages, compensation or any other matter as they deem fit.
4. A person who attempts to evict, evicts or participates in the eviction of a lawful or bonafide occupant from registered land without an order of eviction commits an offence and is liable on conviction to imprisonment not exceeding seven years.

5. Any tenant who sells his/her "Kibanja" without giving the first option of buying the "Kibanja" and taking the assignment of the tenancy to the land owner commits an offence and will be liable to imprisonment not exceeding 4 years or a fine of UShs.1,920,000/= or both, and will forfeit his/her rights to the land owner. Where the registered owner gives consent to the tenant by occupancy to sell his or her rights of occupancy to a third party, the tenant by occupancy shall introduce the third party to the landlord.
6. A change in ownership of title effected by the land owner through sale, donation or as a result of succession does not in any way affect the existing lawful interests of the lawful or bonafide occupants and the new land owner is obliged to respect the existing interests he/she finds on the land. This means that the registered land owner is free to sell his/her land with or without offering the first option to the tenant by occupancy. But the new Landlord cannot evict the existing tenants he/she finds on the land.
7. District Land Boards have no powers to allocate any land which is owned by any person or authority which is either under Customary, freehold or Mailo. District Land Boards which will allocate land, which is owned by any person 6 or authority, under any of the four tenure systems, in contravention of their function which requires them to hold and allocate land in the district which is not owned by any person or authority, will have such transactions cancelled.

THE RIGHTS AND OBLIGATIONS OF LAND OWNERS

• A Customary, Mailo and Freehold proprietor owns the land forever. The Leasehold proprietor owns the land for a given period of time under terms and conditions stipulated in the lease agreement;

• May sub-lease, mortgage, pledge or sell the land; • May sub-divide the land for purpose of sale or any other lawful purpose;

• May pass on the land to anybody by will or gift;

• Is entitled to be given the first option to buy out the interests from tenants by occupancy who may be on that land and willing to sell; • Must recognize the rights of the lawful and the bonafide occupants if they exist on his/ her land and their developments on the land;

• Must recognize the rights of the successors of the Lawful and Bonafide Occupants; and • Uses land in accordance with other policies and laws governing land use.

THE RIGHTS AND OBLIGATIONS OF TENANTS

• Enjoys security of occupancy on the land he/she occupies;

• Must pay annual nominal ground rent to the Land owner;

• May acquire a certificate of occupancy by applying through the Land owner;

• With permission of the Land owner, a tenant may sublet and /or subdivide the kibanja;

• May assign, pledge and create 3rd party rights in the land with consent of the Land owner; and

• May end the occupancy and return the Kibanja to the Land owner.

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

- Establish whether proper valuation assessments were done and whether a valuation report showing computed compensations was made for both the properties and the Kibanja.
- Establish if payments have been made to the occupants. In case the purchaser wants the occupants to move immediately, establish if the occupants have been paid a realistic disturbance fee to facilitate their moving away. If not, request for documentary evidence showing the grace period (six months) given to the occupants to move away, after full payments have been effected, should be made.
- Ensure that before any demolitions take place, compensations must have been made.
- Ensure that adequate notice must be given to the occupants to relocate.
- Where possible tenants should be given a chance to acquire the pieces of land. In case occupants buy themselves out, establish whether transfer forms for those who have paid are signed and transactions effected and occupants receive their land titles.
- The property should not be damaged before compensation and/or disturbance fee is paid to the tenants;
- Compensation must be adequate, based on comprehensive valuation assessments and not just cover-ups.
- Communication and interaction between the registered 9 owner and the occupants is important and should be as open and frequent as possible in the presence of the LCs members and other recognized stakeholders

LAWFUL OCCUPANT OF LAND

Occupancy on land other than the main tenures of land ownership

The law creates two main types of occupancy on land namely, lawful and bonafide occupants. These tenants can be understood by their characteristics, listed below against each of them as defined by the law:

Lawful Occupant

A Lawful occupant does not have a title to the land he/she is occupying but ccupies the land based on the repealed Busuulu and Envujjo Law of 1928 or the Toro Landlord and Tenant law of 1937; or the Ankole Landlord and Tenant Law of 1937; or occupies the land with the permission of the registered owner e.g. a buyer; or occupied the land as a customary tenant but his/ her tenancy was not disclosed or compensated for by the registered owner at the time when the registered owner was acquiring the certificate of title.

RIGHTS OF A LAWFUL OCCUPANT

A lawful occupant ...

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

MAILO LAND

Mailo land was granted with tenants in occupation. Even after allocation, mailo owners encouraged tenants to settle on their land so that they (the mailo owners) get increased payment of the Busuulu and Envujjo. Overtime, the Mailo owners increased the amount of Busulu and the quantity of Envujjo payable. This caused dis-harmony between landlords and tenants. The tenants started

agitating for reform. The colonial government responded to this crisis by enacting the Busuulu and Envujjo law of the 1928. Under this law, restrictions were imposed on the amount of Busuulu and the quantity of Envujju to be collected by Mailo owners. Tenants were also given security of tenure since they could only be evicted for non-payment of Busuulu or where they abandoned their bibajja. In 1975, the Land Reform Decree was enacted. Under this law, the system of holding Mailo land was abolished and Mailo converted into leases of 99 years. The former bibanja holders were converted into tenants at sufferance, whose tenancies could be terminated anytime. Similarly, the payment of Busuulu and Envujjo was abolished. However, these tenants and their descendants are still in occupation of their bibanja's. The abolition of Mailo land was followed by a period of uncertainty regarding acquisition, inheritance, purchase etc. of bibanja's. This period saw the increased and unregulated settlement on bibanja's and expansion by way of opening up fallow land. By the time of the enactment of the 1995 Constitution, there was need to put in place a legal framework to regulate the occupation of registered land by people who had no registered interest. This is the background to the concept of lawful and bona fide occupants. The concept of lawful and bona fide occupants was introduced in our law by the 1995 Constitution under Article 237(8).

The Constitution further provided that Parliament makes a law within two years of its first sitting, to regulate the relationship between lawful and bonafide occupants and also to provide for the acquisition of registration interests by the occupants. Occupants faced possible evictions by land owners when they needed their land for economic development. The Constituent Assembly in deliberating the Constitution were mindful of such massive evictions and put provisions to avoid such social unrest. In compliance to this Constitutional Order, the Land Act was enacted on 2nd July 1998 and has provisions for the definition of lawful and bonafide occupants on registered land, and their relationship with the registered owner. These are in Part 1, sections 29 to 38A.

Lawful Occupant

It is important for a person claiming to be a Lawful Occupant to have copies of the tickets of the Busuulu and Envujjo paid to the registered owner or agent of the registered owner before 1975. A successor of a lawful occupant is taken to be a lawful occupant. Bona fide Occupant 63. It does not include any person on land on the basis of a license from the registered owner or a person who has occupied and utilized or developed any land unchallenged by the registered owner of the land or his/her agent, for a period less than twelve years, from 9th October 1995. This tenant is recognized under section 29(2) of the Land Act.

Definition of Licensees.

A person who occupies land with the permission, authorization, pass, ticket, warrant or allowance of a registered owner is a licensee. A license is usually for a specific period of time/duration and for specific activities. Examples of a licensee are hotel guests, house rental tenants, seasonal plant tenants, a lessee. Licenses to land are created by way of an agreement between the registered owner

and another person. Examples of such agreements are tenancy agreement, lease agreements and rental agreements.

Definition of Trespassers/Squatters

Any occupant on registered land, who does not qualify as a lawful or bona fide Occupant or a Licensee, is a trespasser and or squatter. This is a person unlawfully enters/invades/encroaches and occupies land of another without permission. Such a person is one that does not qualify as a Lawful or Bona fide Occupant or a Licensee. Such a person is an intruder. Acquisition of Tenancies on Mailo Land Succession.

The law governing succession and inheritance in Uganda is in Chapter 162 of the Laws of Uganda. It is a general principle worldwide that when a person dies, he or she is succeeded to. Upon the death of a registered owner of Mailo land or the death of a tenant, his or her beneficiaries are entitled to succeed to the land or "Kibanja" according to the wished of the deceased as left in a will, or according to the law of succession.

Purchase

A tenancy on Mailo land can also be acquired by purchase from the "Kibanja" owner. However, the Land Act requires that the Mailo owner should give consent to such a purchase. Since Mailo land is all registered, it is important for the purchaser to ascertain the genuineness of the title where the "Kibanja" falls. The following steps should be followed:

Get the particulars of the title of the Mailo land on which the "Kibanja" which you intend to buy falls. The particulars incluse sub-county, village and plot number.

Check at the office where the land is registered. For Mailo land title in Mityana and Mubende, you check at the Mityana Ministry Zonal Office.

You will be required to pay an official search fee of 10,000/- plus a bank charge. This money should be paid in the bank. It is also good to verify the sellers' identity by checking his or her national identity card and making inquiries with the Local Council Officials

Ascertain the boundaries of the "Kibanja" with the assistance of the neighbours, local council officials and elders. Obtain copies of the agreements and other documents showing the "Kibanja" ownership.

Once satisfied about the ownership and boundaries of the "Kibanja", the buyer should require the seller to obtain the written consent of the Mailo owner, before the sale of the "Kibanja" can be concluded.

The buyer and the seller then write and sign an agreement of purchase. The agreement should specify the terms of the sale on matters like purchase price, payment. It is advisable to have witnesses. After the agreement is concluded, the seller should hand over possession of the "Kibanja" and introduce the purchase to the neighbors', Local Council leaders and the Mailo Owner.

If the purchase if for part of the "Kibanja", the seller and buyer should demarcate the portion by planting boundary marks in the presence of neighbours, LC's and other witnesses.

Gift

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

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

Termination of Tenancies on Mailo Land .

The tenants by occupancy on mailo land are a historical creation and are now statutory tenants. Once created, it does not mean that this situation must last forever. It can terminate any time by conversion, abandonment or breach.

Purchase of mailo

Under section 36 of the Land Act, the registered owner of land and the tenancy by occupancy may mutually agree on the determination of the occupancy by sub-dividing the land and each having exclusive ownership and occupation of the different portions of the land. The agreement may include surrender and or purchase by other party of the interest of the other. When the registered owner buys the interest of the tenant by occupancy, then the occupancy is terminated. Equally so, when the tenant acquires the registrable interest of the registered land, either under mutual agreement under section 36 or applying to the landowner with the assistance of a mediator under section 38, then the tenancy by occupation is terminated. Section 38(2) provides that a tenant by occupancy may apply to the registered owner for permission to convert his or her tenancy. The land owner may grant his or her consent with or without conditions, or reject the application outright, or invite the tenant to enter into negotiations. It is up to the parties to reach an agreement, but

either party may invoke the assistance of a mediator to bring them to a settlement. There is no right of appeal by the tenant provided in the Land Act.

Abandonment

In law, to abandon land means to give up all claim in relation to it with no intention of ever again asserting, claiming right, or interest over it. Abandonment can be voluntary or involuntary For voluntary abandonment, a tenant by occupancy can voluntarily inform the registered owner of his/her intention to abandon and actually leaves the "Kibanja" for good. The tenant by occupancy may also just leave the whole land unattended by himself or herself, or family member or agent for a period of three or more years. When a tenant voluntarily abandons or deserts his or her occupancy, the occupant may remove any structure placed by him or her on the land, but not trees and dams. However, he /she may not claim any compensation for the loss of the occupancy. Involuntary abandonment is provided for under section 37(4). This occurs in urban areas where an urban/town or city council condemns a tenant by occupancy's building or orders the building to be demolished. In such instances, the tenancy does not extinguish. However, the land owner and the tenant can amicably come into an agreement on terminating the tenancy by compensating the tenant by a sum as determined by a government valuer.

Termination by Breach/Forfeiture

A tenant by occupancy is supposed to pay to the registered owner an annual nominal ground rent as is determined by a relevant District Land Board and approved by the Minister. This is provided for under section 31(3) as amended by Act 1/2004 of the Land Act. Some district land boards were vigilant and proposed fees to the minister for approval. Others never proposed fees payable. The Minister, by powers granted under the law, set fees for all land, under a Statutory Instrument; The **Land (Annual Ground Rent) Regulation, No. 55 of 2011**

The rent payable is standard as provided, irrespective of the size of the land. A person holding one acre of "Kibanja" pays the same with that who holds five acres of "Kibanja", the rent payable is the same. The only difference is the location as per urban zoning; i.e., in a city, municipality, urban council, town board or rural area. The rent payable is revisable every five years [section 31(8) of the Land Act].

When a tenant by occupancy defaults in payment of ground rent for a period exceeding two years, the registered owner is entitled to serve on him/her notice to show cause why the tenancy should not be terminated. The notice must be in a prescribed form and a copy forwarded to the relevant land committee. If the tenant disputes the notice, he or she may refer the matter to a land tribunal within a period of six months after the date of service. Where the tenant does not challenge the notice within the prescribed period or pay the outstanding rent within a period of one year from

the date of the notice, then the land owner may apply to the land tribunal for an order to terminate the tenancy for non-payment of rent.

RIGHTS OF MAILO OWNER

A registered owner has the following rights:

a. He or she owns the land forever.

b. Can lease, mortgage, pledge or sell the land.

c. Can sub-divide the land for purpose of sale or any other lawful purpose.

d. May pass on the land to any person by will, gift or sale.

e. A right to yearly payment of rent from tenant(s) who are legally on his/her land.

f. A right to demand for the rent from the tenant by occupancy where there is delay exceeding two years or more in payment.

g. A right to apply to court and get an order of eviction where the tenant is in breach of payment of the yearly rent.

h. A right of first option to purchase the interest of a tenant by occupancy.

Duties and Obligations of Mailo Owner

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

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

Rights of an Occupant

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

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

The procedure for application to get this certificate of occupancy is laid out in section 33 of the Land Act. The steps are as follows: -

i. The application is made, in a prescribed form, to the registered owner of the land.

ii. The owner notifies the area land committee.

iii. The land committee sets a date for meeting all parties and the neighbours.

iv. The land committee's decision is sent to tenant and owner.

v. Thereafter, the owner, without undue delay, as long as tenant has paid rent, give his or her consent for acquisition of a certificate of occupancy.

vi. The land committee then sends this form to the district land board, for onward transmission to the recorder for issuance of a certificate of occupancy.

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

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

Duties and Obligations of an Occupant

A tenant by occupancy has the following duties or obligations

a. To know the registered owner of the land.

b. To apply to the registered owner for a certificate of occupancy.

c. To pay to the registered owner the yearly nominal ground rent as set by the boards and approved by the Minister in charge of Lands.

d. To use the land in a good husbandry manner. Examples are: not to excessively cut trees, not to cultivate on slopes without putting terraces, not to destroy wetlands. Landlord and Tenants right to negotiate:

Plausible solutions for Landlords and Tenants

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

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

The introduction of cash crops made the landlords impose a rent on cultivators, which was a simple evolution arising from the commutation into money of the services traditionally due by a peasant

to his overlord. The Busuullu and Envujjo law of 1928 was enacted and put rental conditions and also gave statutory protection of right of occupancy to the tenants.

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

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

Land Sharing

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

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

Buy-out

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

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

Ground rent/Busuulu payment.

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

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

Lease to a "Kibanja" holder

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

Squatters /trespassers are not protected in the law

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

LEASES ON PRIVATE MAILO LAND

Definition of a Lease

A Lease is an interest in land defined in S. 3(5) of the Land Act, where the mailo owner (called a "Lessor") grants to another (called a "Lessee") exclusive possession of land for a defined period commencing on a specific date usually upon payment of a capital sum known as premium and

payment of an annual sum known as ground rent or some other consideration. It is a contract between the lessor and lessee which is freely negotiated.

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

Manner of creation of a Lease

A lease is created either by operation of law or by contract. For purposes of creation of a lease out of mailo land, the mailo owner has, in accordance with Section 101 of the RTA to sign a lease agreement. This is a contract which sets out the particulars of the land, the subject matter of the lease and the terms and conditions of the lease.

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

Rights and Obligations under a Lease Express or Implied Terms

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

Covenants implied by the RTA 115

Under S.102 of the Registration of Titles Act, the following covenants are implied against the lessee in favor of the lessor namely:

i. That the lessee will pay the rent reserved by the lease at the times mentioned in the lease.

ii. That the lessee will keep the leased property in good and tenable repair throughout the term of the lease except if the disrepair is due to earthquake, storm, tempest or reasonable wear and tear.

iii. There are also other covenants implied by S.103 of the RTA in favor of the lessor, namely: that once every year, he or she may at a reasonable time of the day, enter upon the leased land with or without surveyors and workmen to view the state of repair of the property, that in case rent is in arrears for a period of thirty days whether formally demanded or not, or if there are other breaches of the terms of the lease for a period of thirty days, then the lessor can reenter upon and take possession of the leased land, in case of a transfer of a lease, the terms and conditions of the lease

will be binding on the purchaser of the lease as an implied term of the transfer under S.105 of the RTA. Covenants implied at Common Law.

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

a. That the lessee who is performing his or her obligations in the lease will enjoy peaceful possession, use and enjoyment of the property.

b. That the lessor will not derogate from his grant of the lease by engaging in activities that make it difficult or impossible for the lessee to enjoy the leased land.

c. That in case of a lease of developed land, that the premises are habitable and suitable for the leased purposes.

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

a. That the lessee shall pay rent.

b. That the lessor shall pay rates and taxes.

c. That the lessee shall not commit waste by using the leased land in such a way as to diminish its value.

Termination of a Lease.

A lease as set out in the definition is for a fixed period of time. However, it may be terminated before that time expires. We outline in this part the various forms of termination of a lease.

Effluxion of Time

When the term of the lease say of 49 years comes to an end, the lease is terminated automatically. There is no need for the lessor to serve a notice of termination on the former lessee. If the lessee remains on the land after the date of termination, such a lessee is in law a tenant at sufferance whose occupation can be determined anytime. If the lessor gives notice to such a tenant at sufferance to vacate and the notice is not heeded, the tenant becomes a trespasser. Reasonable force can be used to evict such a trespasser. Surrender. The lessee can terminate the lease before its expiry by surrendering back the land to the lessor. The most common form of surrender is by execution of a document (instrument) called a deed of surrender. This deed of surrender can then be registered at the office of titles where the leasehold title was issued and upon registration the leasehold Certificate of Title is cancelled. Forfeiture. In case the lessee is in breach of the terms of the lease for example by say not paying rent or using the land for the purposes other than for leased user, the lessor can terminate the lease by forfeiture. There are two types of forfeiture. The lessor may physically and

peacefully re-enter upon or take possession of the leased land or part of it in the name of the whole. Thereafter, the lessor may apply to the Registrar of Titles under S. 114 of the RTA to note the re-entry on the Land Register and cancel the lease.

In many instances, the lessee may not allow the lessor to peacefully re-enter upon the leased land. In that eventuality, the lessor can only forfeit the lessee through Court. The lessor will file a suit against the lessee setting out the breaches of the lease and seeking orders from Court that the lease be cancelled and possession of the land be given back to the lessor. Court will then determine the matter after hearing the evidence of the lessor and lessee. If Court grants an order of forfeiture, the leasehold certificate of title has to be cancelled. Merger.

The existence of a lease presupposes that there are two persons, the lessor and the lessee, who each have different interests in the same land. The lessor as owner of the mailo retains a reversionary interest in the land to be enjoyed after the expiry of the lease. On the other hand, the lessee enjoys immediate ownership for the specified period of the lease. There are instances where the ownership of the mailo and leasehold interest vest in the same one person. This happens for instance if the lessee buys the mailo interest or vice versa. In that eventuality, the two interests are merged into one ownership. The lease as the lesser interest is merged with the reversion, Upon application, the leasehold certificate of title is cancelled by the Registrar of Titles.

Renewal of Leases.

A lease as already stated runs for a specified duration and comes to an end. All permanent developments like buildings on the land revert to the mailo owner and unless there is a specific agreement in the lease to the contrary, the lessee cannot make any claim of compensation or payment for any such development. It is however possible for the parties to agree and state in the lease that the lessee has an option to renew the lease. Where such an option is provided for in the exiting lease, then it is the lessee's right to have the lease renewed. Normally, there will be provision for notice to be given by the lessee to the mailo owner indicating that the lessee is exercising the option to renew. If the previous agreement details the terms of the renewed lease say as to rent, then those will apply. If there is no such detail provided, the terms of the new lease will be renegotiated by the lessee and the mailo owner. Where there is no provision of an option to renew, a lease can only be renewed by agreement of the mailo owner and the lessee. Here the parties will literally be starting from scratch. The negotiations will have to cover the premium and rent payable, the length of the lease, user and all other necessary terms to be included in the new lease that has to be executed by the parties. If the negotiations for the new lease are done before the current lease expires, then a deed of variation of the existing lease can be executed and registered on the existing leasehold Certificate of Title. If the old lease has already expired, a new lease has to be executed and upon its registration a new leasehold Certificate of Title is issued.

SUCCESSION TO RIGHTS OF LANDLORDS AND OCCUPANTS.

Succession and inheritance to property is governed by the Succession Act, Cap 162 of the laws of Uganda.

In Uganda, land and "Kibanja" are the commonest form of property to the majority of people, especially the common person. In most cultures in Uganda, any person who passes away when he or she is an adult and has property and or children must be succeeded to. For property must move to the successor and the children should have a "mother" or "father.". It is always advisable for every person with property to make a will. A will is a document made by a person during his/her lifetime, directing how his or her estate (assets and liabilities which may include money, properties, shares, debts owing and debts due) should be dealt with after his or her death. A person who makes a will is called a testator. When a person dies when he or she made a will, the situation is called testate. Intestate refers to a situation where a person dies without making a will. When you write a will, you are making an important decision concerning the disposal of your assets. This does not only help your friends and family, but also helps to promote justice in society. A person has a right to dispose of his or her assets to whoever he or she wishes and in whatever proportions he or she considers appropriate. Caution should however be taken to make provision for one's dependants to avoid the will being challenged in a court of law by any of them. The shares need not be equal but reasonable provision must be made for every dependant. Please note that household properties such as cups, jerry cans, beddings and other utensils are not property to be administered.

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

Contents of AWill

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

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

it under intestacy for as long as he or she makes provision of all his or her dependant relatives. The dependant relatives in law are the spouse(s), children and the dependants.

Beneficiaries Spouse

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

Cohabitation is not recognised

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

Children

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

Dependants

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

1. My husband has nally agreed to come to our home for introduction.

2. Now you will enjoy rights as those married in church or Islamic faith

3. Even those celebrated by registrar of marriages

4. You are lucky because you will be recognised as a wife who has rights to family property. Succession law recognises only valid marriages.

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

Once somebody dies leaving property in Uganda, a report of death must be made to the Administrator General. If the person died in a hospital, a medical certificate of cause of death is

always given by the hospital. Where a person dies elsewhere, the family members or closed relatives are obliged to report the death to the sub – county chief where a short death certificate is given.

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

Processes of Succession to Landlords Rights Testate Succession

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

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

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

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

Intestate Succession

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

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

i. Buying a file cover/death report form costing 2,000=at the cash office of the Administrator General

ii. Filling the death report form with the required information and attaching a death certificate or a letter of the relevant local council 1 confirming the death of the deceased, the will of the deceased if any, a written application/petition/complaint regarding how you want to be assisted by the Office of the Administrator General.

iii. Thereafter, a file is opened and allocated to a legal officer who initiates investigations.

iv. The legal officer calls for a meeting of close relatives and friends. This meeting with the administrator general or its agents must take place despite the fact that the family could have conducted an earlier meeting.

v. The legal officer also conducts a meeting of all beneficiaries' close relatives and friends. The administrator general may by letter request that this meeting be held at the Chief Administrative Officer(CAO) or the sub-county chief. Minutes of the meeting are extracted.

vi. After the legal officer has satisfied himself or herself of the authenticity of the applicants and /or beneficiaries, and establish that they are in total agreement, the legal officer may recommend that a certificate of no objection to be issued to enable the person/ people they have agreed on to apply for letters of administration of the estate of the deceased. Alternatively, the Administrator general may apply for the letters of Administration in cases where there are some disagreements within the family. Application for letters of administration is done to court of competent with jurisdiction where the deceased had property.

After grant of the letters of administration, the administrator(s) apply to the registrar of titles to have his or her or their name(s) entered on the register. They accompany the application with a certified copy of the letters of administration, the passport photos and copies of the national identity card of the applicant, and the deceased's certificate of title. The application attracts a registration fee of ten thousand shillings only (10,000=) per title. After entering on the title, the administrator(s) can then distribute it to the beneficiaries by way of transfers. The distribution may involve the administrators sub-dividing the land and separate titles are issued. This then enables each beneficiary to get a separate title.

Processes of Succession to Occupants Rights

The initial process of succession to a "Kibanja" is basically the same as for testate or intestate succession. If the "Kibanja" owner left a will, then his or her wishes are followed, provided the

wishes do not disadvantage the women, children or persons with disabilities. If the "Kibanja" owner dies without making a will, then the family and clan members meet and appoint the heir according to the customs and culture of the deceased. An heir to "Kibanja" can only succeed to the "Kibanja" rights. Many times, however, many of these cases do not end up in court since the land is not registered. Any person aggrieved by the distribution of the clan members can petition the office of the Administrator General for assistance.

MANAGING DISPUTES ON PRIVATE MAILO LAND

Introduction to various disputes

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

Several disputes can exist between claimants to mailo land including:

a. Disputes over boundaries between neighbouring mailo owners.

b. Disputes over ownership over a mailo piece of land as a result of purchase or other transaction, including fraudulent transactions.

c. Disputes over succession to mailo land between family members.

Disputes between mailo owner and occupant.

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

a. Whether the Claimant is actually a lawful or bonafide occupant.

b. What is the exact size of land that the tenant is entitled to.

c. What are the boundaries of the tenant's "Kibanja".

d. Whether the tenant bought or sold his or her "Kibanja" with the mailo owner's consent.

e. Whether the tenant has been paying the annual nominal rent.

f. Whether the mailo owner has refused to accept the nominal yearly ground rent.

g. Whether the mailo owner has sold the mailo without giving opportunity to the tenant to purchase.

h. Whether or not to compensate for the "Kibanja" on top of compensation for the developments on the "Kibanja".

Disputes between occupants

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

a. Who is the actual owner of the disputed "Kibanja".

b. Boundaries of the different bibanja holdings.

c. Succession to a deceased's "Kibanja" including the share of each beneficiary and exact location of the share. For example, the owner of a "Kibanja" dies and the heir (who is not a family member) claims to be owner of such "Kibanja" as against the claims of the children of the former owner

d. Payments over a sold "Kibanja".

e. Rights of widows to their deceased husbands' "Kibanja" as opposed to claims of other family members like the heir and in-laws.

Outline of various Dispute Resolution Mechanisms

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

Judicial Processes through the Courts.

There are various laws under which land disputes can be resolved. These are:-

a. The Constitution of Uganda, being the supreme law

b. The Judicature Act

c. The Land Act

d. The Registration of Titles Act

e. The Physical Planning Act

f. The Land Acquisition Act,

g. The Civil Procedure Act,

h. The Succession Act,

i. The Magistrates' Court Act,

j. Other Statutory Laws

k. Case law

l. Equity and Common law The various Courts and Tribunals .

Under article 129(1) of the Constitution of Uganda. Judicial power is exercised by the following Courts of Judicature.

a) The Supreme Court of Uganda.

b) The Court of Appeal of Uganda.

c) The High Court of Uganda.

d) Subordinate Courts as Parliament may by law establish.

There are two sets of subordinate Courts established under legislation made by Parliament. Under the Magistrate's Courts Act, Cap. 16 Magistrate's Courts are established to handle disputes. These are Chief Magistrate's Courts, Magistrates Grade 1 and Magistrates Grade II.

For purposes of land disputes, Parliament under S.74 of the Land Act (as amended) established Land Tribunals at each District of Uganda. The Land Tribunal handled land disputes of land whose value does not exceed Shs. 50,000,000/=. However, owing to lack of funding, these Tribunals are no longer functioning. All land disputes have to be filed in Magistrate Courts or the High Court. Under the Executive Committees (Judicial Powers) Act, as amended by the Land Act, LCII has judicial powers over land disputes.

Civil Proceedings before the Courts

The majority of disputes over land are those that involve peaceful disputes over ownership, boundaries and other rights. Normally, the disputing parties require the Court to declare and protect their rights or to give them monetary compensation for the violation of their rights. These are civil actions. To start the process, the aggrieved party (Plaintiff) will have to prepare usually with the assistance of a lawyer, Court documents (Plaint) file them in Court. The other party (the Defendant) to the dispute is served the documents filed in the Court and he or she also files a

defence. The parties will then present their witnesses to testify in Court and these parties or their lawyers will address Court on the law. Thereafter, Court will make a judgment in writing.

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a. Whether the Claimant is actually a lawful or bonafide occupant.

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c. What are the boundaries of the tenant's "Kibanja".

d. Whether the tenant bought or sold his or her "Kibanja" with the mailo owner's consent.

e. Whether the tenant has been paying the annual nominal rent.

f. Whether the mailo owner has refused to accept the nominal yearly ground rent.

g. Whether the mailo owner has sold the mailo without giving opportunity to the tenant to purchase.

h. Whether or not to compensate for the "Kibanja" on top of compensation for the developments on the "Kibanja".

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

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b. Boundaries of the different bibanja holdings.

c. Succession to a deceased's "Kibanja" including the share of each beneficiary and exact location of the share. For example, the owner of a "Kibanja" dies and the heir (who is not a family member) claims to be owner of such "Kibanja" as against the claims of the children of the former owner

d. Payments over a sold “Kibanja”.

e. Rights of widows to their deceased husbands’ “Kibanja” as opposed to claims of other family members like the heir and in-laws. Outline of various Dispute Resolution Mechanisms .

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

Judicial Processes through the Courts

There are various laws under which land disputes can be resolved. These are:-

a. The Constitution of Uganda, being the supreme law

b. The Judicature Act

c. The Land Act

d. The Registration of Titles Act

e. The Physical Planning Act

f. The Land Acquisition Act,

g. The Civil Procedure Act,

h. The Succession Act,

i. The Magistrates’ Court Act,

j. Other Statutory Laws k. Case law

l. Equity and Common law The various Courts and Tribunals.

Under article 129(1) of the Constitution of Uganda. Judicial power is exercised by the following Courts of Judicature.

a) The Supreme Court of Uganda.

b) The Court of Appeal of Uganda.

c) The High Court of Uganda.

d) Subordinate Courts as Parliament may by law establish.

There are two sets of subordinate Courts established under legislation made by Parliament. Under the Magistrate's Courts Act, Cap. 16 Magistrate's Courts are established to handle disputes. These are Chief Magistrate's Courts, Magistrates Grade 1 and Magistrates Grade II. For purposes of land disputes, Parliament under S.74 of the Land Act (as amended) established Land Tribunals at each District of Uganda. The Land Tribunal handled land disputes of land whose value does not exceed Shs. 50,000,000/=.

However, owing to lack of funding, these Tribunals are no longer functioning. All land disputes have to be filed in Magistrate Courts or the High Court. Under the Executive Committees (Judicial Powers) Act, as amended by the Land Act, LCII has judicial powers over land disputes.

Civil Proceedings before the Courts

The majority of disputes over land are those that involve peaceful disputes over ownership, boundaries and other rights. Normally, the disputing parties require the Court to declare and protect their rights or to give them monetary compensation for the violation of their rights. These are civil actions. To start the process, the aggrieved party (Plaintiff) will have to prepare usually with the assistance of a lawyer, Court documents (Plaint) file them in Court. The other party (the Defendant) to the dispute is served the documents filed in the Court and he or she also files a defence. The parties will then present their witnesses to testify in Court and these parties or their lawyers will address Court on the law. Thereafter, Court will make a judgment in writing.

In many instances, disputes may be resolved through administrative intervention by several authorities, where there is a boundary dispute for example a Surveyor can be identified to open up the boundaries and if the parties accept his or her report that will settle the dispute. Intervention by local council officials, family elders or clan leaders, the police or the Resident District Commissioner or other civic leader may avert an eviction or other form of dispute. All these interventions are informal but they should not contravene the legal process.

Alternative Dispute Resolution Mechanisms.

Court processes are formal, lengthy and expensive. The ordinary litigation especially widows, children and poor peasants cannot afford the services of lawyers to assist them through the lengthy Court processes. It is therefore necessary to have other alternative ways of amicably resolving disputes other than through court.

Alternative dispute resolution mechanism(ADR) refers to any means of settling disputes outside of the court process and includes negotiation, conciliation, mediation and arbitration. There are a number of advantages of ADR over litigation. It is usually faster and less costly, people have a

chance to tell their story as they see it, it is more flexible and responsive to the needs of the people involved.

Arbitration.

Arbitration is a formal process where parties appoint a neutral person to adjudicate their dispute. The parties present their evidence before him or her and he or she makes a decision (an award) which is filed in Court and enforced by Court just like a Court judgment. This form of ADR is slightly better than Court but it has formalities that make it costly. The best forms of ADR are negotiation, conciliation and mediation.

Negotiation, conciliation and mediation.

These three forms of ADR are all premised on the freedom of the parties to choose how best to resolve their dispute without the hindrance of formal processes. In negotiation, the parties normally sit alone or with their relatives and friends and reach an amicable settlement. In both conciliation and mediation, the parties involve a neutral third party for example and LC leader, a family elder, a religious leader to reach a compromise. No formal documents are filed and there are no other formalities. The parties simply sort out the issue with the mediator of their choice and when they reach an agreement, they sign some documents to evidence the compromise.

This form of ADR is attractive to the common and disadvantaged persons like widows, orphans, the elderly and the sickly who may not afford to engage into complicated and formal court or arbitration forms of dispute resolution. Mediators and conciliators are usually flexible and can meet the parties at their convenience.

PROTECTING RIGHTS OF WOMEN AND OTHER MARGINALISED GROUPS ON MAILO LAND

Constitutional Protection of Marginalized groups.

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

Under article 21(2), the Constitution guarantees that there is no discrimination on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religious, social or economic standing, political opinion or disability. Given this protection, nobody should be treated with discrimination as regards his or her rights to mailo land or a "Kibanja" simply because of his or her gender, age, social standing or any other disability.

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

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

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

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

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

Section 38A of the Land Act, as amended by Act 1 of 2004, provides for security of occupancy of a spouse (a husband or wife) on family land. This means the right for a husband or wife a right to have access and live on family land. Such a husband or wife must be married in a ceremony recognized by the law. The issues of marriage and their validity are discussed in chapter five above.

Spouses must give consent to transactions regarding family land under section 39 of the Land Act as amended. These include sale, exchange, pledge, mortgage or lease family land. This means that if the land or "Kibanja" is registered in the names of the husband, as is family land, then any transaction of sale, exchange, pledge, mortgage of lease must be with the consent of the wife. If registered in the names of the wife, then consent of the husband must be got.

In all their processes under the Land Act, LC's, Committee Members, the Land Boards and other actors should ensure that the rights of the marginalized groups including women, children and the disabled are specifically taken care of and are protected. In the course of resolution of disputes,

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

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

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

WILL FORMAT

THE REPUBLIC OF UGANDA/ THE SUCESSION ACT (CAP 162) Last will of ..... (Names) I, ... (Names) of ..... (Address). This ..... day of ..... (month) ..... (Last will (and revoke all former wills) (or) make this codicil in addition to my former will. 1. I have the said children: - D ..... D ..... D ..... 2. My wife (s)/husband/ I am unmarried; D ..... D ..... 3. I have the said dependents D ..... D ..... 4. I possess the said properties (i.e. Land, shares, vehicles, Bank accounts e.t.c): Description of property: .... 5. The following properties I give to my minor children respectively and they should be managed by their guardian for the purpose of their education, maintenance and upbringing until they reach mature age. A Guide to Peaceful Co-existence on Private Mailo Land - 90 - A Guide to Peaceful Co-existence on Private Mailo Land - - 90 - 90 - (i) ..... Description of Property), For .... (Names) ..... (Description) ..... for ..... (Names) .... a) I appoint ..... (Names) ..... of address .....

..... to the guardian of my children. He shall be responsible for their proper education and upbringing. b) The said properties I give to my dependents .....(relationship) ..... description of the property. c) My properties in ....., I give to my wife/husband, ...(names) 6. I appoint ..... (names) of ..... address to be the executor of my will. 7. I direct that my body be buried at ..... (place) Besides my father's grave in a coffin, dressed up properly, that the burial takes place not later than 2 days after my death, unless it is preserved, and in any case not later than 5 days after my death. 8. I owe people listed below the money mentioned and direct repayment from account No ..... at ..... (bank), that is to say: - a) ..... (names) ..... of ..... (address) ..... (amount) ..... b)..... (names) ..... of ..... (address) ..... (amount) ..... 9. The following people owe me the money mentioned, and I direct collection of that money. A Guide to Peaceful Co-existence on Private Mailo Land - 91 - A Guide to Peaceful Co-existence on Private Mailo Land - - 91 - 91 - a) ..... (names) ..... of ..... (address) ..... (amount) ..... a) ..... (names) ..... of ..... (address) ..... (amount) ..... c) I however forgive the following who are indebted to me: - ..... (names) ..... of ..... (address) ..... (amount) ..... Dated at ..... (place) ..... the day ..... (a month) 20 ..... (Year) first above mentioned. Signed by the said ..... (names) ..... (testator) (Signature or thumb mark) .....

TESTATOR ATTESTATION OF WITNESS

1. In the presence of Name ..... Address .....

Signature .....

2. In the presence of Name .... Address .....

Signature .....

OBJECTION MY LORD

CERTIFICATE OF TITLE (REGISTRY COPY)

CERTIFICATE OF TITLE (OWNERS COPY)

CERTIFICATE OF OCCUPANCY

THE REGISTRATION OF TITLES ACT BLOCK ..... DISTRICT ..... PLOT ..... Mailo/Freehold/Leasehold Register Volume ..... Folio ..... TRANSFER I..... ..... of ..... (Address) ..... Son/daughter of ..... of ....Clan being the registered proprietor of the land comprised in the above Title in consideration of the sum of shillings ..... paid to me by the purchaser on or before the execution of these presents the receipt thereof I hereby acknowledge DO THEREBY TRANSFER all that piece of land (part of the land comprised in the above Title) which is delineated to the plan annexed hereto and thereon edged in red and now Plot number ..... to ..... (herein called the purchaser) of..... (Address) Son/Daughter of ..... of .....clan to HOLD the purchase for all my estate and interest herein. Dated this ..... day of ..... 20.... SIGNED by the said ....

SIGNATURE OF VENDOR In the presence of: Witness: ..... Address: ..... Qualification:.....

SIGNED by the said ....

SIGNATURE OF PURCHASER

In the presence of: Witness: ..... Address: ..... Qualification:.....

BANKS WITH SECURITIES COMPRISED IN MAILO AND FREEHOLD LAND OWNED BY NON-CITIZEN COMPANIES

The Court of Appeal rendered judgment in the case of **BIYINZIKA ENTERPRISES LTD& OTHERS V BIYINZIKA FARMERS LTD & ANOTHER, CIVIL APPEAL NO. 18/2012**and held that where the Articles of Association of a company do not restrict transfer of shares to non-Ugandan citizens, it is deemed a Foreign Company and cannot hold *mailo* land irrespective of the fact that Ugandan citizens have majority controlling interest. The Court further held that where such non-citizens own mailo land, that ownership is an illegality and a nullity. This decision was premised on Article 237(2)(c) of the *Constitution of Uganda*, 1995 and section 40(7) of the *Land Act*, Cap 227 which provide for the definition of a non-citizen for purposes of ownership of land (Section 40(7)) and the land tenure that non-citizens can own (Article 237(2)). This land tenure is explicitly stated to be leasehold.

This Compliance Memo therefore seeks to propose the way forward for banks that have obtained a security interest on mailo or freehold land owned by companies deemed as Non-Citizen Companies.

Land Ownership in Uganda

Article 237 of the Constitution provides that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided in the constitution. This is also provided for under section 2 of the *Land Act*.

Article 237(2)(c) of the Constitution provides that non-citizens may acquire leases in land in accordance with the laws prescribed by Parliament, and the laws so prescribed shall define a non-citizen for purposes of this paragraph. Section 40(4) of the *Land Act* provides that "subject to other provisions of this section, anon-citizen shall not acquire or hold mailo or freehold land". In the case of a company, the company should satisfy the requirements of a citizen company under the *Land Act,* specifically under section 40(7).

Non-citizens can only acquire leases on land for a maximum period of 99 years until renewed under section40(3) of the *Land Act*.

Meaning of a Non-Citizen Company

Section 40(7) of the Land Act defines a non-Citizen as:

(a) A person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship Act;

(b) In the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens;

(c) In the case of bodies where shares are not applicable, where the body's decision-making lies with noncitizens;

(d) A company in which the shares are held in trust for noncitizens;

(e) A company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens.

Therefore, any company that falls within the ambit of (b) and (e) of section 40(7) is deemed to be a non-citizen company and thus cannot own *mailo* or freehold land. However, it is pertinent to note that in *Biyinzika Enterprises Ltd case,* Court held that the 1st respondent was a non-citizen company from the very beginning because its articles did not contain a provision restricting the transfer of shares to non-citizens and, under Article 237(1) of the *Constitution* and section 40(4) of the *Land Act*, it was immaterial the controlling interest was with Ugandans.

Consequences of illegal land ownership to security interests

Where a non-citizen company purchased and registered a tenure other than lease-hold, in the Biyinzika Enterprises Ltd case, the Court held that such transaction was illegal hence null and void. Therefore, it followed that the 1st Respondent in the case could not recover the land which had been fraudulently sold because their purchase of such land was void ab initio. It also follows that all other transactions whose strength/security is the illegal title, for instance, mortgages are void.

In *Formula Feeds & 3 Others v KCB Bank Uganda Limited,* CA No76/2016, the appellants entered a credit facility with the Respondent Bank secured with *mailo* titles registered in names on non-citizens who were Kenyan nationals. Upholding the judgment of the trial court, the Court of Appeal stated that:

"We agree with the finding of the trial Judge. The only challenge remains the mortgage which was illegal because the underlying Mailo land Titles are held in the names of non-Ugandans which is prohibited by the law. Such a non-Ugandan can only hold a lease under the said titles. So a lease not MAILO TITLE should have been issued to the first Appellant since it paid valuable consideration for land. This would avoid an absurdity in this transaction. This is clearly an error /illegality made at the time of registration. There can therefore be no enforcement under the mortgage as it stands ..."

The court added a recommendation of rectification of the certificates of title to cater for the Respondents 'interest in the said property.

However, KCB Bank Uganda Limited filed HCEMA No. 390/2016 for execution of the decree in High Court (Commercial Division) in HCSS No. 289/2014 whereupon the said application was only allowed in part on condition that the 1st Respondent (KCB) disposes off only part of the suit land to realize the equivalent of UGX. 2,159,000,000/= and the Court further ordered that no execution should be made beyond the stated sum.

When the appeal of this decision failed in CA No 76/2016, KCB Bank relied on the High Court decision and, through a bailiff in an execution process, sold the said properties to the3rd Respondent (Southgate Properties (U) Limited) purportedly to fulfil a decree against the Applicants.

In a subsequent application—Formula Feeds Limited & Another v KCB Bank Uganda Limited & 2 Others, Civil Misc. App ln No 208/2020—the Applicants prayed for orders that 1st and 2nd Respondents' purported sale of the 1st Applicant's lands to the 3rd Respondent was illegal and that the same ought to be set aside. The Court held that:

"It cannot therefore be argued that the Applicants lost the appeal and therefore execution by attaching the questioned suit land was lawful. Both parties to this case did not consider this important issue of illegality yet they all concede that the mortgages and debenture are unenforceable.

"The finding of the Court of Appeal shows that the Applicants in this case are indebted but the debt cannot be realized by attachment and sale of the illegally obtained securities which are the subject of this application ... Both the High Court and the Appellate Court, found that the executed mortgages were null and void ab initio *having accrued from an unlawful/illegal registration right from the certificates of title and could not therefore be the basis of a successful execution in the current state."*

It is therefore surprising that despite court's outright decline to order any enforcement accruing from the void certificates of title, Defendant's counsel went ahead to initiate execution proceedings vide *EMA No.390 of 2016 wherein they sought to attach and sale the properties vested in the void certificates of tittle.*

The Court therefore held the registrar of court erred in law and in fact when he issued execution of attachment and sale of the securities whose registration was illegal and mortgages over them declared null.

Further, the Court gave orders that the execution of the decree was illegal and set it aside and made orders for rectification. The Court derived guidance from the judgment of the Court of Appeal which recommended the remedy of rectification of the certificates of title, and held that:

The 3rd Respondent is directed to deliver up all the certificates of title from the impugned sale to this Court for safe custody and submission to the Registrar of Titles to cancel the illegal registration of the 3rd Respondent's entry on the certificate of titles and Register Book and return the same to the Applicants for rectification as their current registration as Mailo Owners is illegal under the law.

PLAUSIBLE PROGRESS

(i) Revision of the bank's security interests

Several companies have been non-compliant with the requirement to have a clause in their articles restricting transfer of shares to non-Ugandans and in turn most of these companies own mailo and freehold titles illegally.

It is therefore upon the bank to conduct searches on the companies that they have entered credit facilities with to ensure that their titles are legally owned by confirming that the companies are indeed citizen companies within the meaning of section 40(7) of the Land Act.

(ii) Applying for rectification

Where the bank discovers that the titles are registered illegally on the basis of the companies being non-citizen companies, the bank's remedy having obtained an equitable interest on illegally owned tenure, is to apply for rectification before the Commissioner Land Registration, to invoke the registrar's power to call for the surrender of the company's illegal interest and obtain a leasehold interest.

In **FORMULA FEEDS & 3 OTHERS V KCB BANK UGANDA LIMITED, CACA NO0076/2016,** the Court of Appeal, while maintaining the illegality and unenforceability of the mortgage because the Appellants owned a mailo interest and yet they were non-citizens, observed that though the mortgage could not be enforced because of the illegality, the remedy available to the Appellants was to invoke the special powers of the Commissioner Land Registration under section 91 of the *Land Act* and apply for the rectification of their title on grounds that it was issued in error and the rectification would be by way of obtaining a leasehold.

This recommendation was later effected in **FORMULA FEEDS LIMITED &ANOTHER V KCB BANK UGANDA LIMITED & 2 OTHERS** (above), in which Court directed delivery of "*the certificates of title from the impugned sale*" to the Registrar of Titles to "cancel the illegal registration ... [and]entry on the certificate of titles and Register Book and return the same to the Applicants for rectification" given their illegal registration as mailo owners.

In terms of who can apply for rectification, this is governed by the *Registration of Titles Act,* Cap 230. Section 156 of the Act provides:

"A proprietor may apply to have hisor her certificate of title amended in any case in which the boundaries, area or position of the land described in it differ from the boundaries, area or position of the land actually and bona fide occupied by him or her and purporting to be so occupied under the title in respect of which the certificate of title was issued, or ***in any case in which the description in the certificate of title is erroneous or imperfect on the face of it****."*

Section 1(l) of the Act defines proprietor as:

"proprietor" means the owner whether in possession, remainder, reversion or otherwise of land or of a lease or ***mortgage*** *whose name appears or is entered as the proprietor of that land or lease or* ***mortgage*** *in the Register Book; "proprietor" also includes the donee of a power to appoint or dispose of that land or lease or mortgage.*

Therefore, having an equitable interest on land by virtue of the mortgage entered on the certificate of title, a Bank is a proprietor within the meaning of the Act and can apply for the rectification of the titles.

The mortgagor, as the(original) owner of the land, can also apply for rectification.

Therefore, in order for banks to obtain legal interest in the land, they should apply to the Commissioner Land Registration for the rectification of illegally registered mailo or freehold titles under section91 of the *Land Act* to bring them inline with the constitution and land law as discussed in this memo.

Any bank having a security interest on illegal *mailo* or freehold land tenures should apply for rectification under section 91 of the *Land Act* in order to rectify their illegal registration into leasehold and have their mortgage effected onto that new leasehold title. The illegality or otherwise of the bank's interest can only be ascertained after the bank has carried out a thorough securities review.

THE PRINCIPLE OF LAW IS ONCE A MORTGAGE, ALWAYS A MORTGAGE

The principle of law is "once a mortgage, always a mortgage" which means that the mortgage shall not make any stipulation which will prevent a mortgagor who has paid principal, interest and costs from getting back his mortgaged property in the condition in which he parted with it. **KIYAGA V SEGUJJA & ANOR (CIVIL APPEAL NO. 37 OF 2010) [2018] UGCA 26 (8 JUNE 2018)**;the principles of common law and equity would be applicable to this case bythis Court by virtue of Section 14(2) (b) of the JUDICATURE ACT, 15 Cap. 13.Equity has always regarded a security interest in land to secure a debt as a mortgage and the right to redeem the land by payment of the debt and interest as an inviolable right of a mortgagor which cannot be taken away by any 20 provision to the contrary in any contract. There must be no clog or fetter on the equity of redemption. This means that, the mortgagor cannot be prevented from redeeming his property **[See: MEGGARY & WADE, THE LAW OF REAL PROPERTY, 6thED. PARA 19-129 CITED IN COMMERCIAL MICROFINANCE LTD VS DAVID EDGAR**

KAYONDO, HCCS NO. 0012 25 OF 2006] It is an old established rule that if money is lent on the security of land, the lender will get security and nothing more. Therefore, if the borrower wishes toredeem the land within a reasonable time he will always be allowed to do so, even though the due date is past. This rule is so strict that not even an express agreement will be allowed to exclude the borrower's right to redeem**. [See: ERIEZA WAMALA vs MUSA MUSOKE (19204929)111 ULR120 at PP120' 121]** In our view, based on the re-evaluation of the facts and evidence on record, we 5 find that the appellant and second respondent intended to create a mortgage and indeed created an equitable mortgage. In para. 3 of their agreements (dated 10/6/97 and 11/8/97), it is expressly provided that: "3. That in case the borrower fails/refuses to pay the lender, the lender shall instead turn to be the owner of PLOT NO. 608 BLOCK 232 in 10 MENGO DISTRICT, KYADONDO COUNTY. This mentioned plot currently belongs to the borrower. All in all, the borrower has mortgaged his plot plus a house built onit" (Emphasis ours). We find that this clause was used as a clog on the equity of redemption available 15 to the appellant arising from an equitable mortgage. From the principles espoused, if money is lent on the security of land, the lender will get security and nothing more. It is trite law that once mortgage always a mortgage. Furthermore, Counsel for the respondent totally misunderstood theholding in **HARJIT SINGH MANGAT VS CHRISTINE LILIAN NAKITTO in HCCS No. 442 of 20 2 0 03** on illegal transactions when it discussed the legal principle of "in pari delicto". No party who is not in "delictum"can benefit from such a transaction. This ground accordingly succeeds. we find that it was wrong and fraudulent for the second respondent to have transferred the suit land, intended to act only as security, into her own names. This was evident from the fact that payments against the loan were being paid even as the transfer was taking place, see also the case of **SAMUEL V JARRAH TIMBER AND WOOD PAYING CORPORATION [1904] AC 324 AND MATAMBULIRE V YOZEFU KIMERA CA 37 OF 1972 (UN REPORTED)**

The maxim 'once a mortgage, always a mortgage' sets out a legal principle applicable to all mortgage transactions. This maxim denotes that a mortgage cannot be made irredeemable and any provision inserted to make it so irredeemable shall be void to that extent and will operate bad in law. The mutual rights of mortgagor and the mortgagee provide for a peculiar position of the parties to the transaction. The Right to Redemption which is available to the mortgagor, provides a right to claim back his property. It is basic right of mortgagor under the mortgage transaction. The mortgage transaction is a secondary transaction to facilitate the principal transaction. It is never intended to transfer the property. The maxim states that the original nature of mortgage transaction never changes. It continues to be a mortgage. Once a mortgage transaction is created then it continues to be a mortgage transaction. The right of redemption is available to him in future. His right of redemption is not defeated for technical reasons. Hence it is regulated by the maxim 'once a mortgage, always a mortgage'. Thus, stating that the true nature of mortgage never changes.

A mortgage is always redeemable. And a mortgagor's right to redeem shall neither be taken away nor be limited by any contract between the parties. The phrase also means that a mortgage would remain a mortgage and it cannot by the unilateral act of mortgagee be converted into a sale. For instance, if no period

was fixed for redemption of a usufructuary mortgage when it was created, mortgagee would not become owner simply for efflux of time due to non-redemption and mortgagor's suit for redemption would be proper.

There are four basic principles to which the law of mortgage is subject to in India which are as follows:

A mortgage in essence is a borrowing transaction, and has to be viewed as such unless contrary is proved. A mortgagor is a person who is in need of money, while the mortgagee is a party who has the money and it is presumed that the conditions that prevent the mortgagor to redeem his property or penalise him are inserted in the contract at the behest of the mortgagee.

Any condition that penalise the mortgagor in the event of non-payment of loan would be termed as a clog on his right of redemption and would be void. Such condition can validly be ignored by the mortgagor and would not be enforced by any court. And a condition that the property would be forfeited in the event of default in payment of money is a penalty.

The Supreme Court has observed in various instances that the doctrine of clog on the equity of redemption is a rule of justice, equity and good conscience. It is a right of the mortgagor to get back the subject of the mortgage and to hold and enjoy the same as he was entitled so to do before the mortgage. If he is prevented from doing so or is prevented from redeeming the mortgage, such prevention is bad in law. If he is so prevented, the equity of redemption is affected by that, and has always been termed as a clog. Such a clog is inequitable. Under Section-60 of the TP Act, it is provided that, at any time after the principal money has become payable, the mortgagor has a right to redeem. Whether a particular condition operates as a clog or not depends upon the facts and circumstances of the case. For example, A condition imposed in the mortgage deed that if the mortgagor is not able to repay the loan by 10 years from the date of execution of the mortgage deed, he would not be entitled to redeem the same and would have to sell the land to the mortgagee, would be a clog on his right of redemption and hence void.

MORTGAGE

A mortgage was described as a conveyance of land or an assignment of chattels as security for the payment of a debt or a discharge of some other obligation for which it is given, as was described in the case of **SANTTLEY V WILDE (1899) 2 Ch. 479**

A mortgage may further be defined as a conveyance of a legal or an equitable interest in property with a provision for redemption. Redemption means getting back property given as security

A mortgage in simple terms is a transaction whereby an interest in land is given as security for the repayment of a loan. The borrower is referred to as mortgager whereas the lender is referred to as the mortgagee e.g. where x, in a dire need of money gives the land title to the bank as security for repayment of the loan, in this case, x is the mortgager and equity bank is the mortgagee.

The deposit of the title deed by x is not a transfer for repayment of the loan it is just security for repayment of the loan and upon discharge of the loan, x is entitled to redeem his property.

A MORTGAGE DEED NOT TO CREATE A TRANSFER OF AN INTEREST IN LAND.

Section 116 of RTA Cap. 230 expressly provides that a mortgage created under the Act takes effect as a security but not as transfer of the mortgaged property.

It provides that a mortgage created under this Act when registered as herein before provided, has effect as a security but shall not operate as a transfer of the land thereby mortgaged and in case default is made in payment of the principle sum and interest secured or any part thereof or in the performance or observance of any covenant expressed in the mortgage or implied in the mortgage and the default is continued for one month or for any such other period as expressly fixed, the mortgagee or his or her transferees may serve on the mortgager or his transferees a notice in writing to pay the money owing on the mortgage or perform and observe the covenant as the case may be.

MORTGAGE IS NOT DEFAULT IN LAND BUT SECURITY FOR REPAYMENT OF LOAN.

Where there is default in repayment or breach, notice must be given to the mortgager. Also, default must have continued for one month.

In the case of **RE FOREST TRUSTEES EXECUTERS AND AGENCY CO. LTD V ANSON (1953) K.L.R 246**

Herring C.J described the effect of a mortgage that a mortgage transfers on the creditor merely a group of powers to secure the money lent. The debtor or mortgager remains the owner of the land subject to fulfillment of his or her obligation under the mortgage agreement. I.e., mortgage does not transfer land but confers security to guarantee the monies lent.

Although a mortgage created under the RTA does not transfer ownership of the land to the mortgagee it creates a distinct interest in the mortgaged land and whoever deals with the land does so subject to the mortgage as an exception to the principle of indefeasibility of title.

CREATION OF MORTGAGES

Sec. 115 of RTA empowers the proprietor of land registered under it to create a mortgage by signing a mortgage instrument in the prescribed form in the 11th schedule to the Act.

Upon registration of the instrument, the land becomes liable as security in the manner set forth in the instrument.

The mortgage is protected by the RTA and whoever deals with the land does so, subject to the mortgage. This is an exception to the principle of indefeasibility of title.

CREATION OF A LEGAL MORTGAGE

A mortgage is defined under **section 1 of the Mortgage Act** to mean any mortgage, a charge, a debenture, loan agreement or other encumbrance, legal or equitable which is registered under the Act.

Creation of a legal mortgage is provided for under **S. 115 of the RTA** which provides that the proprietor of any land under the operation of the RTA may mortgage the land by signing a mortgage deed in the form in the 11th schedule to the Act. **Upon registration of the instrument, a legal mortgage is created**

When the registered proprietor does deposit his certificate of title with intention to create security, accompanied by a memorandum in writing, if he goes ahead to register the instrument, it becomes a legal mortgage.

A legal mortgage is protected by the RTA which provides that whoever deals with the land subject to a mortgage, he takes it subject to that mortgage as an exception to the principle of indefeasibility of title.

This is provided under **Sec. 176 (9) of RTA** which provides that the registered proprietor is protected against ejectment except for a number of cases inter alia the case of a mortgagee as against the mortgager in default.

In equity it is not only the legal mortgage that is considered but an equitable mortgage is also protected under equitable intervention

CREATION OF AN EQUITABLE MORTGAGE

In equity a contract to create a mortgage was treated as a promise by the debtor to execute a legal mortgage when called upon to do so since equity regards as done that which ought to be done. Such an agreement creates an equitable mortgage.

For example, under the doctrine of equity, a deposit of title deed by way of security; whether or not accompanied by a memorandum was regarded as an agreement to execute a legal mortgage and carried as an equitable mortgage.

Sec. 129 of the RTA provides the mode of creation of an equitable mortgage by providing that an equitable mortgage on the land may be made by deposit by the registered proprietor of his or her certificate of title with intent to create security thereon, whether accompanied or not by a note or a memorandum of deposit.

An equitable mortgage just like a legal mortgage creates an interest in land.

An equitable mortgage is registered by causing a caveat to be entered in accordance with **Section 139 of RTA.**

QN: Can a mortgage be created over land which is owned under customary tenure?

Section 8 (2) of the land Act provides that a holder of a customary certificate of ownership of land has a right to mortgage his land.

However, **Section1 (6) of the Mortgage Act** in its illustrative definition of a mortgage talks of a mortgage in land registered under the RTA and the question to be answered is whether a holder of a mortgage in respect to customary land goes without any remedies.

The holder of such a mortgage cannot claim remedies provided under the Mortgage Act and the RTA. He can seek recourse to common law principles coupled with equitable intervention.

In the case of **MATAMBULIREV.Y.KIMERA (1975) HCB 150** it involved mortgage of a Kibanja and the High court held that where the mortgaged land was not registered under the RTA, the applicable law was common law and doctrines of equity.

REMEDIES OF A MORTGAGEE

A mortgagee has a number of remedies where there is breach of the covenants under the mortgage Agreement.

These remedies are cumulative. This means that the mortgagee is free to persue of the remedies or all of them. These remedies include;

1. Mortgagee can sue for breach of covenant
2. Mortgagee can take possession of the mortgaged land
3. Mortgagee can sale otherwise than by foreclosure
4. The mortgagee can appoint a receiver

ACTION FOR BREACH OF COVENANT

The RTA implies certain covenants against the mortgager in every mortgage made under the Act (RTA)

These covenants include;

(a) Payment of the mortgage debt

(b) Maintenance of the mortgage property

Where there is breach of those covenants, the mortgagee can bring an action for breach of contract and this is regulated by the law of contract.

Where an action for breach of personal covenant is successful against the mortgager, the mortgagee may enforce the judgment against the mortgager's assets even though they are not part of the mortgage.

APPOINTMENT OF A RECEIVER

Section 3 of the Mortgage Act provides that a mortgagee can appoint a receiver to enable him reduce or clear the mortgage debt. This applies where the mortgaged land has some income that can be obtained from it.

A receiver is appointed to receive income out of the mortgaged land and is under an obligation to use the proceeds from the land to clear the mortgage debt.

A receiver may still be under an obligation to manage the land by for example making the necessary repairs or improving the land where he is directed in writing by the mortgagee with the consent of the mortgager or with the approval of court.

The receiver may be appointed upon court order where a mortgagee specifically applies to court for the appointment. There are instances where the mortgagee may appoint a receiver without recourse to court if the mortgage agreement expressly reserves the power to do so to the mortgagee.

In the case of **GRINDLEYS BANK LTD V EDWARD BOAZ SCCA No. 23 of 1992** it was stressed that the power to appoint a receiver does not a rise unless the mortgager is in default for a period of at least one month and fails to pay following a written demand notice. In Sec. 116 of the Registration of Titles Act makes it mandatory for the service of a one month notice to the mortgager and the case of **EPAINETOMUBIRU V UGANDA CREDIT AND SAVINGS BANK (1978) HCB 109** it was clearly stated that the demand notice must be served personally to the mortgager.

NB: Here the mortgage debt is payable on demand, the written demand for payment is equivalent to the statutory notice.

Primarily a receiver is employed for the security of the mortgagee. He or she directly receives proceeds from the land instead of the mortgager. After payment of taxes and other on goings relating to the mortgaged land, the Receiver would pay the balance to the mortgagee.

From the legal point of view, the main advantage of the mortgagee appointing a receiver is that although he does the appointment of the receiver to protect his or her interest, the receiver acts as an agent of the mortgager, irrespective of any agreement to the contrary.

The effect of this is that the mortgagee is not liable to the mortgager or secondary mortgagees for the receiver's negligence or willful misconduct. This makes the appointment of a receiver mere advantageous as opposed to entering into possession. The only drawback is that the receiver has to be paid a commission for his/her work out of the income from the mortgaged property.

NB. The receiver's remuneration has priority over any other payment due from the income collected.

POWER OF SALE

This is the most important and common remedy for realization of security under the mortgage agreement.

The right to sell may be exercises without recourse to court where such right is expressly reserved in the mortgage agreement. If the right is not provided for under the agreement, the sale must be conducted with sanction of court as provided under sec. 10 of the Mortgage Act.

The Mortgage Act provides that if a mortgage agreement allows the mortgagee to sell land without reference to court, the sale must be conducted by Public Auction unless the mortgager and subsequent mortgagees, if any consent to sell by private treaty.

The power of sale a rise if the mortgager defaults in payment of the mortgage debt or part of it for a continuous period of one month or such other period as may be stipulated in the mortgage agreement and the mortgager fails to pay after a written demand notice being served on him.

Where there is a provision in the mortgage agreement that the loan is payable on demand, the power of sale arises once the demand is made and the mortgager fails to pay.

In the case of **BARCLAYS BANK LTD V KATENDALUTTU SC 22 OF 1993** the mortgage agreement provided that the debt is payable on demand and that in case of default, the mortgagee has the right to sell the land without court order. He defaulted in payment of the debt. The court further held that if the mortgagee has the power to sell without court order, the court has no power to order some other remedy or postpone the sale. The only way the mortgager could redeem his land is to pay the loan.

The mortgager's right to redeem his land is confined to repayment of the loan and if the mortgagee has the power to sell without the court ordering foreclosure, nothing can stop the sale.

SALE BY FORECLOSURE

Where the mortgage agreement does not power the mortgagee to sell without recourse to court, the mortgagee must seek a court order before he goes on with the sale of the mortgage property.

Sec. 8 of the mortgage act provides that a mortgagee may apply to court to foreclose the mortgager's right to redeem anytime after breach of the covenant to pay.

Unless the debt is payable on demand, an application for foreclosure cannot be entertained UNLESS The mortgager has defaulted to pay for at least one month and a written demand notice has been served on him (Section 116 RTA)

In the case of **SAJJABI V KLAMALA and ANOR (1952) 22 EACA 71** it was stated that when the application is made, the court will assess the amount due and fix a date which must not exceed a period of

6 months from the date of default, within which payment is to be made. If the mortgager fails to pay within the prescribed time, the court must order the mortgager not to redeem the mortgaged property and therefore the mortgager's right to redeem is foreclosed and the mortgagee granted the right to sell the property. Upon grant of a foreclosure order the sale must be conducted in accordance with the provisions of the mortgage Act. **Sec. 9 of the mortgagee Act** provides that the sale must be by Public auction unless the mortgage at the date of the foreclosure agree to a sale by a private treaty and the court approves the terms of the sale.

NB: The sale must not take place until the expiry of at the 30 days from the date of the foreclosure order as provided under Sec**. 9 (2) of the Mortgage Act.**

NB: Where a foreclosure order has been made and the 30 days have lapsed the mortgager loses the right to redeem their property unless if the mortgagee voluntarily agrees.

Sec. 9(3) of the Mortgage Act requires the mortgagee to give reasonable notice not less than 30 days, to the mortgager prior to the sale. The notice must specify the date and place of sale to the mortgager and all subsequent mortgagees.

The object of this appears to give interested parties a chance to attend, observe and participate in the bidding and to seek an injunction against the sale in case any thing has been done in an improper way.

Failure to notify the mortgager or subsequent mortgagees does not render the sale void.

DUTIES OF THE SELLER

The mortgagee is given the power of sale to realize his or her security in the event of default. So once the power of sale has accrued, the mortgagee is entitled to use it for his or her benefit at the time of his choice.

A number of cases have provided that in the exercise of this power the mortgagee does not act as a trustee of the mortgager. As such the mortgagee is entitled to look out for his or her interest and where his interest's conflict with of those of the mortgager, his interests will take priority.

In the case of **CUCKMERE BRICK CO. LTD V MUTUAL FINANCE CO. LTD (1971)CH. 949** the mortgage property was allegedly sold below the market value at a badly attended auction. In an action for damages against the mortgagee, counsel for the mortgager submitted that the sale in the circumstances undervalued the mortgager's property. **Justice salmon** stated that the mortgagee has no duty to speculate as to the most appropriate time to sell. That it does not matter that by waiting, a higher price could be obtained. The mortgagee has the right to realize his security by turning it into money when he likes.

THE REMENDIES OF EQUITABLE MORTGAGEES

The remedies available to an equitable mortgagee may as well be similar to these available to a legal mortgagee.

The only difference is that the equitable mortgagee can only realise his remedies upon a court order. And the remedies available are discretionary.

In the case OF **BACLAY'S BANK CO. LTD V NORTH COTE AND ANORCS 1467 OF 1974 (UNREPORTED)SENKANDI J.** observed that while sec. 138 of the RTA provides for creation of equitable mortgagees by deposit of title deeds as security, neither the RTA nor the Mortgage Act make provision for the remedies available to an equitable mortgagee. Accordingly, his honor felt compelled to look elsewhere for such remedies.

The issue has been covered in the case OF **BARCLAYS BANK V GULU MILLERS LTD (1959) EA 540** where it was held that it would appear that the difference between an equitable mortgage and a legal mortgage as regards mortgagees is that whereas a legal mortgagee may realize his security under the mortgager by exercising most of the statutory powers conferred upon him without recourse to the courts, an equitable mortgagee must of necessity apply to the court for exercise of any of these powers.

Justice Sekandi further stated that the appropriate procedure to follow for an equitable mortgagee seeking to realize his security was in the first instance to sue the mortgager and obtain an order for an account of the outstanding mortgage debt, then he should seek a declaration that he is entitled to a charge on the land comprised in the certificate of title referred to in the memorandum of deposit to secure the amount outstanding, the interests and costs. Thereafter the declaration should be followed by an application that the mortgagee may realize his security by pursuing any or all the remedies provided for in the mortgage act.

The law protects a mortgager through providing him with right of redemption.

EQUITY'S PROTECTION OF THE MOTGAGOR

Equity's protection of the mortgager is summed up in the maxim, **once a mortgage always a mortgage.** The test for a mortgage is substance and not form. This means that whether a transaction is a mortgage or some other transaction, it is a question of substance and not form. As such if parties enter into a contract of sale of land but which is in essence mortgage equity will regard it as a mortgage and all the consequence of a mortgage will follow.

NO DAYS ON THE EQUITY OF REDEMPTION

This means that the court will not permit any attempt by the mortgagee to exclude the mortgager's right to redeem his property.

In the case of **SAMUEL V JARRAH TIMBER AND WOOD PAYING CORPORATION (1904) AC 324** it was clearly stated that:

"Once a mortgage always a mortgage means that no contract between a mortgager and a mortgagee made at the time of creation of a mortgage prevents the mortgager from getting back his security. Any bargain which has that effect is invalid and inconsistent with transaction of a mortgage".

Equity's intervention is premised on the fact that mortgagers are usually in a dire need of money who may willingly accept whatever terms creditors may impact against them e.g., in the case of **MATAMBULIRE V YOZEFUKIMERA CA 37 OF 1972 (UNREPORTED)** the plaintiff, in desperation to go on pilgrimage to Mecca mortgaged his land to the defendant on condition that if the plaintiff failed to pay the loan within the specified period, the defendant would become the absolute owner of the land. After the contractual date of payment had expired the defendant claimed ownership of the land and rejected the plaintiff's subsequent attempt to redeem the same. It was **held** that the plaintiff was entitled to redeem his land until his right to do so was foreclosed by a court order or the land was disposed of in a mortgage sale.

In the case of **GA INVESTMENTS PROPERTY LTD V STANDARD INSURANCE CO. LTD (1964) WAR 264** it was stated that a clause in a mortgage agreement that gives a mortgagee an option to purchase the mortgaged property is a clog because it deprives the mortgager of his right to redeem.

In the case of **SAMUEL V JARRAH TIMBER AND WOOD PAYING CORPORATION** it was stated that it is not a clog if the option is granted in a separate agreement.

A clause in a mortgage contract may provide that the mortgager shall not redeem earlier than the agreed upon date e.g., if the money is to be paid in a period of ten years, and the mortgager wishes to pay off the loan before the expiry of the ten years, the question is whether such a clause is a clog on the equity of redemption.

In the case of **FAIR CLOGH V SWANS BREWERY CO. LTD (1912) AC 565**, the applicant/mortgager trade hotel for a period of 17 years. He a lease to the respondent should not redeem earlier than 6 weeks before his lease had expired and that during the continuance of the mortgage only beer brewed by the plaintiff should be sold on the premises. The defendants brought an early redemption so that he could be released from the restriction to sell only the plaintiff's beer.

The issue was whether a clause postponing redemption was a clog on the equity of redemption. Privy Council held that the clause was a clog because the right to redeem was illusory or valueless.

REPUBLIC OF UGANDA.

IN THE MATTER OF THEREGISTRATION OF TITLEACT, CAP.230ANDIN THE MATTER OF THE LAND ACT CAP.227.

ANDIN THE MATTER OF THE CONSTRACTS ACT, 2010ANDIN THE MATTER OF THE LEASE AF LAND COMPRISEDIN..... (Here in after referred to as the "land")

LEASE AGREEMENT

This lease is made this..... day of.....2022

Between

.....

..... (hereinafter referred to as the "lessee" which expression shall unless context so admits include his/her duly authorized agent's heirs, successors in title executors and legal representatives) on one part

And

.....

..... (hereinafter referred to as the "lesser" which expression shall unless context so admits include his/her duly authorized agent's heirs, successors in title, executors and legal representatives) on the other part.

WHEREAS the lessor is the legal and rightful owner of the land comprised in..... he or she is devious of leasing out the land to the lessee for valuable consideration and on the terms herin agreed in this agreement.

The lease agreement is thus WITNESSETH as follows:

1. CONSIDERATION.

In consideration of the sum of shillings.....paid to the lessor by the lessee on execution of this agreement where of the lessor doth hereby acknowledgement receipt of the some and in consideration of the rent hereby reasoned and of the covenants and conditions herein after contained on the part of the lessee to be observed and performed, the lessor hereby demises unto the lessee ALL the piece of land comprised

in.....(location).....(meaning) for a term of .....Years and on the .....day of .....2022.

1.2. The lessee shill for the duration of the lease (..... years) pay a yearly rent of ..... payable on the first day of January in every year.

2. DUTIES OF THE LESSEE.

2.1. the lessee hereby covenants in the lessor as follows:

a) to observe and perform all the conditions and covenants implied by law in this lease or otherwise herein contained or referred to

b) to maintain the land (existing buildings) in good and habitual conditions

c)not to use or suffer to be used the said land (or buildings there on) for any otherpurpose other them.....except with the prior written consent of the lessor.

d).....

e) .....

3. DUTIES OF THE LESSOR

The lessor hereby covenant with the lessee as follows: -

a) To deliver vacant possession of the land upon execution of this agreement.

b) To desist from interfering with the occupation of the lessee during the subsistence of the lease.

c) .....

4. PAYMENT OF RENT.

The rent referred to in clause 1.2 of this agreement shall be payable at /through..... (Or agreed means)

IN WITNESS WHERE of the parties here to have year first above written.

SIGNED BY the said.....

In the presence of:

1. .....

.....

2. .....

.....

SIGNED AND RECEIVED BY

.....

.....

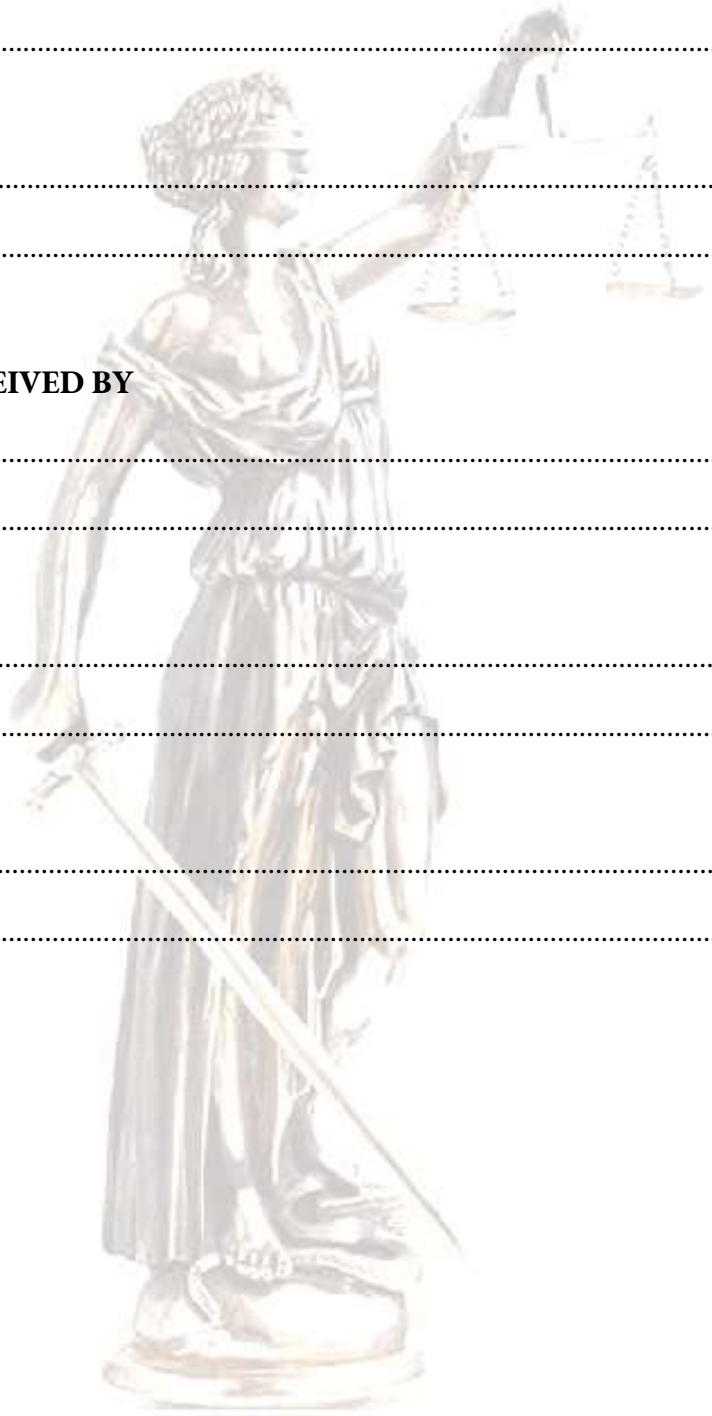
in the presence of

1. .....

.....

2. .....

.....



REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT

CAP. 230

AND

IN THE MATTER OF THE LANDACT, CAP 227.

AND

IN THE MATTER OF THE CONTRACT ACT 2010.

AND

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

AN AGREEMENT FOR THE SALE AND TRANSFER OF LAND

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

Between

JOHN ROYAL BYENKYA, C/O SUI GENERIS & CO. ADVOCATES, P.O BOX 0000, KAMPALA herein after referred to as the "VENDOR" which expression shall unless context so admits include his duty authorised agents, heirs' successors in title executors and legal representatives on one hand

And

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

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

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

This agreement is witenesseth as follows;

1. **CONSIDERATION**

In consideration of the sum of UGX 556.000,000(five hundred and fifty-six million) the vendor agrees to sell and hereby sells and the purchaser agree to buy and here by purchase the land from the vendor

2. **TERMS OF PAYMENT.**

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

3. **DUTIES OF THE VENDOR**

By this agreement, the vendor undertakes as follows: -

a) That he has sought the express consent of the lessor, Uganda land commission to sell the land and will adduce the written consent from the lessor on execution of this agreement.

b) That he has sought the consent of his wife Marianne to sell the land and such consent shall be adduced at execution of this agreement in a form prescribe by law.

c) That the land herein is sold as is free from any encumbrances and third-party rights or claims whatsoever PROVIDED that if there shall arise any claim or anything that shall prevent the purchase from acquiring good title to the land herein sold, the vendor shall fully identify the purchase against any loss and damage suffered by refunding the fall purchase price therein paid plus other movies spent under this agreement.

d) To deliver vacant possession of the land upon evacuation of this agreement.

e) To finish the duplicate certificate of title of the land and copy of the lease agreement between the vendor and Uganda land commission.

f) To sign transfer forms in favour of the purchase upon execution of this agreement.

4. **DUTIES OF THE PURCHASER**

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

5. **DISPUTE RESOLUTION.**

5.1. All dispute arising under this agreement shall be resolved through mediation within seven remaining days from the date when the dispute arose

5.2. The mediator shall be any mediator recommended by the LADER at the request of one of the parties.

5.3. Where the parties fail to successfully resolve the dispute through mediation, the matter maybe brought before the high court of Uganda for resolution.

6. PAYMENT OF FEES RELATING TO THIS AGREEMENT.

6.1. The purchase shall pay all legal and other incidental fees incurred in the execution of this agreement in so far as those fees relate to her duties.

6.2. The vendor shall pay all legal and other incidental fees incurred in the execution of this agreement and conclusion of the transaction.

6.3. For avoidance of doubt, the vendor shall on top of other fees arising from the execution of this duties pay the stamp duty amounting to UGX 7,500,000 or as shall be determined at the point of registration.

7. LAW APPLICABLE.

This agreement shall be governed by the law of Uganda.

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

Signed and delivered by:

JOHN ROYAL BYENKYA

(VENDOR)

In the presence of:

SIGNED AND RECEIVED BY.

KOMUHANGI ACHENG MYA.

(PURCHASER)

In the presence of:

SPOUSAL CONSENT. REGULATION 64 FORM 41

THE REPUBLIC OF UGANDA

THE LANDACT CAP. 227

THE LAND REGULATIONS,2004

CONSENT BY SPOUSE TO TRANSACTION IN LAND

1. Location of the land subject of consent:
    a) Village/zone:
    b) Parish/ward:
    c) Sub county /town: Entebbe
    d) County/division:
    e) District: Mpigi
2. Approximate area:0.231 hectare.
3. Land comprised in: LRV 2694 folio 24 plot 22,

Bugonga ROAD, Entebbe.

4. Use or occupation of land: residential housing.
5. Nature of transaction: sell of the land.
6. I, being the spouse of the owner of the above land and land forming part of family land under the provision of section 39 of the land act, grant consent (not grant consent) to the transaction.
7. Reasons for refusal (if only)

NAME:

DATE:

SIGNATURE:

NECESSARY STEPS TO TAKE TO ASCERTAIN THE VIABILITY OF A GIVEN PARCEL OF LAND

Regulation 2(2) of the Advocates (professional conduct) Regulations S1.267.2 enjoins advocates to conduct matters on behalf of their clients with due diligence.

Further **Regulation 12** of the same instrument enjoins advocates to advise clients diligently and avoid recklessly advising clients to enter into transactions which a reasonable advocate would not have advised the client to enter.

1) Due diligence in a land transaction entail carrying out a search at the registry to establish the actual particulars relating to the land as stipulated on the title **Section 59 of Regestration of Titles Act** provide that the title is conclusive proof of whatever is entered there on. Under **Section 20 (1) of the Regestration of Titles Act**, any person can upon payment of requisite fee inspect the register book.

Therefore, the first step to take is to conduct a search at the respective registries where the various panels of land are registered.

The search fee is UGX10, 000 and the application to cause a search is by formal letter.

2) Having obtained the search results, the purchaser's lawyer should proceed and conduct a physical search on the land. This is to ascertain the existence or not of any encumbrances or interests not reflected on the register. Whereas under s.59 of the RTA, title is conclusive proof of ownership and a reflection of the interest on the land, courts have held that there is a requirement for the purchase to conduct a physical search. In **UGANDA POSTS AND TELECOMMUNICATION V A.K.M. LUTAAYA[5],** the court held that where a purchase buys a panel of land that has other unregistered interests on it, he or she takes subjects to these interests.

Therefore, it is important to carry out a physical search and in the case of

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

3) Having conducted a physical search and established the interests and ownership of the land, it is imperative that the boundaries are opened up. This is intended to ascertain whether the land actually is of the measure reflected on the title or states by the vendor.it also important in caring up with a deed plan for the panel.

[5]**C.A. No.36/1995**

Under **Section 149, of the Regestration of Titles Act,** the registrar may require survey and plans to be made where there is a sub division of the land and the same lodged with his or her office at the applicants cost.

4) Having opened boundaries, must consult with the various planning authorities to ascertain whether or not the intended activities of the client on the land is permissible **Section 3 of the Physical Planning Act, Act No.8 Of 2010**, declares the entire country a planning area and thus permission from the various planning authorities in necessary.

5) Where the land is in wetland, the consent of NEMA must be sought for the intended activity and only upon its grant should the purchaser buy otherwise he/she may not be able to use land.[6]

6) Consent

   1) Where the land is family property as defined by **Section 38(A) (4) of the Land Act (as amended),** then the vendor must acquire the consent of his or her spouse as per **Section 39 of the Land Act and Regulation 64(1) the Land Regulations 2004,** the consent obtained must be in the form prescribed in form 41 of the land regulations 2004 as per reg.64.

In ENID TUMWEBAZE V MPEIRE STEPHEN AND ANSRHCCS (MBARARA) NO.39OF 2010, the court held that any transaction in family land without the consent of the spouse is a nullity and illegal in law and cannot be enforced.

In The Case of **WAMONO SHEM V EQUITY BANK(U) LTD AND CONTANCE WAKYEMBA**[7]**,** the court held that the spousal consent must be in the manner prescribed in form 41in the first schedule of the regulations, 2004 and can only be in that form and in uniting.

   2) Where a lessee seeks to assign or subject his/her lease acquired on former public land, he or she must seek the consent of the district land board or the Uganda land commission.

Regulation 92 of the Land Regulations, 2004

The consent must be in form prescribed under form 53 of the first schedule to the regulations.

OTHER RESTRICTIONS TO DEALINGS IN LAND

a) Citizenship

[6] **Amooti Nyaakama v Nema.**
[7] **MISC, APP. No.600 Of 2012**

Article 237(1) of the Cconstitution provides that all land in Uganda belongs to the citizens of Uganda.

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

Section 40(7) of the Land Act defines anon-citizen as(a) a person who is not a citizen of Uganda as defined by the constitution and **The Citizenship And Immigration Control Act Cap 66** as amended by the **Citizenship And Immigration Control Amendment Act of Uganda, Act No.5 Of 2009.**

b) In case of a corporation body, a corporate body in which the controlling interest lies with noncitizens.

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

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

c) **In the case of bodies** where share is not applicable where the body's decision-making lies with non-citizens.

TERMS OF LEASE GRANTED TO A NON-CITIZEN

Under **Section 40(2),** where the lease is in the excess of five years, it must be registered in accordance with the **Regestration of Titles Act**.

1) The lease granted to a non-citizen cannot be in the excess of 99 years. (s.40(3) of the land act)

Acquisition and holding of mailo and freehold land **Section 40(4**) bars non-citizen from acquiring or holding mailo or freehold. Under **Section 40(6)** where a citizen loses his/her citizenship and they were holding mailo or freehold land, the tenure is converted into lease hold for a period of 99 years.

In the case of **HAJJI YOSUF BAGALYA AND ANOTHER V. DARMONICO PROPERTIES LTD AND ATTORNEY GENERAL,**[8]. The constitution court held that, if a person holding mailo or freehold was found to be a non-citizen, they don't lose ownership of the land but rather the tenure changes to lease hold under **Section 40(6) of the Land Act.**

[8]**Cost. Ref No.20 of 2011**

TENANTS BY OCCUPANCY

Section 1(dd) of the Land Act defines a tenant by occupancy to mean the lawful or bonafide occupant declared to be a tenant by occupancy by section 31

Section 29(1) (a) defines a lawful occupant to mean a person occupying land by virtue of the repealed **Busuulu and Envujjo Law of 1928**, Toro Landlord and tenant Law of 1937, Amgole landlord and tenant Law of 1937.

b) A person who entered the land with the consent of the registered owner and include a purchaser.

c) A person who had occupied land as d customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the lease hold certificate of title.S.29(2) defines bonafide occupant to mean a person who before the coming into force of the constitution had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner 4-12years or more

Tenants by occupancy on registered land enjoy security of occupancy courtesy of S.31(1) of the land Act.

Under **Section 32A (1) of the Land Act**, lawful or bonafide occupants can only be evicted for non-payment of ground rent and this must be with an order of court.

Under **Section 35(2) of the Land Act**, a land owner who wishes to sell the reversionary interest in land must give the first option of buying that interest to the tenant by occupancy

Further **Section 35(8) of the Land Act**, mandates whoever buys land with existing interests to respect those interest.

RESTRICTION ON ASSIGNMENT OF TENANCY BY OCCUPANCY

Under **Section 35(1) the Land Act**, a tenant by occupancy who wishes to assign their interest must give first option of taking the assignment to the owner of the land.

Failure to do so, the tenant commits on offence

The transaction to assign to another person without first option to the landlord is invalid and the tenant forfeits the right over the land and the land shall revert to the registered owner.

Agency in land transactions

Section 1(1) of the Regestration of Titles Act defines a proprietor to mean the owner whether in possession, remainder, and reversion or otherwise of land or of a lease or mortgage whose name appears or is entered as the proprietor of that land or lease or mortgage in the register book.

The provision further states that a proprietor also includes the donee with the power to appoint or dispose of the Landor lease or mortgage.

Under **Section 92(1)** a proprietor of land or lease or mortgage may transfer the same to another. Therefore, only persons considered proprietors can transfer and these are either the persons registered on the title or donees of power of attorney as per **Section (1) of Registration of Titles Act**.

Under **Secton 146(1) of the Registration of Titles Act**, the proprietor of any registered land or lease or mortgage may appoint any person to Act for him or her in transferring the land or lease or mortgage or otherwise deal with it by signing a power of attorney in the form in the 16th schedule to the Regestration of Titles Act.

Section 146(2) requires that every such power of attorney issued be registered under the registration of documents Act within 4months.

Section 147 of the Regestration Titles Act requires that the power of attorney signed by any person under the Act is attested to by at least one witness.

In Case of **FREDRICK ZAABWEV ORIENT BANK AND 50 ORS[9].** A power of attorney was defined as an instrument in writing whereby one person, as principal aperients another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of the principal, an instrument authorising another to act as one's agent or attorney, such power may be either general (full) or special (limited).

Court also held that; the donee of a power of attorney acts as an agent of the donor, and for the donor. He cannot use the power of attorney for his/her own benefits.

A power of attorney must be construed strictly. The authority conferred by a power of attorney is that which is within the four comers of the instrument either in express terms or by necessary implication".

Section 148 of Regestration of Titles Act requires that all parties to the power of attorney sign to it in latin character or has a transliteration into latin character of the signature of any party whose signature is not in latin character and the name of any party who has affined a mark instead of signing.

In **FREDRICK ZAABWE**; the court held that the rationale behind **Section 148** requiring the signature to be in Latin character is to make it clear to everybody receiving that document as to who signatory is so that it can also be ascertained whether he/she had the authority or capacity or capacity to SPM. It is important to note that Death of donor nullifies a power of attorney.

On the 10th July 2007, the Supreme Court of Uganda delivered a ground breaking judgment regarding the nature and effect of powers of attorney especially as regards mortgages, the duty of a mortgagee to a donor

[9]Supreme'Court'Civil'Appeal'no.'4'of'2006 fredrick'j.'k'zaabwe'vs Orient Bank'Limited'&'others

of a power of attorney and on a purchaser for value without notice. On account of some of the findings in the case, we recommend it be kept confidential.

Below is summary of the case.

The Appellant, an Advocate indebted to the Law Council, in the sum of Ug. Shs. 1,000,000/=, gave a power of attorney over his property (comprising his home and office) to a company called Mars Trading Co. Limited (the "Company"), part owned by one of his friends and clients, to enable the Company to borrow money from a bank. In exchange of the power of attorney, the client gave the Appellant a personal cheque to pay to the Law Council. The cheque was dishonoured.

The Company used the power of attorney to mortgage the Appellant's property to Orient Bank (the "Bank") to secure a loan of Ug. Shs. 15,000,000/=, which loan was used exclusively for the business of the Company. The Company defaulted on the loan and the Bank sold the Appellant's property to a third party (the "Purchaser") who evicted the Appellant.

The Appellant filed a suit against the Bank, the Company, the Bank's lawyer, who also acted for the Purchaser, and the auctioneers challenging the mortgaging and sale of his property and alleging fraud on the part of the Respondents. He was unsuccessful in the High Court and in the Court of Appeal.

The Supreme Court reversed the decisions of the lower courts and found that the mortgage and sale of the property were illegal, null and void for the several reasons that we discuss below.

The Power of Attorney

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

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

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

The Bank's liability

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

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

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

Execution of Mortgage

The position in **GENERAL PARTS (U) LIMITED V NPART S.C.C.A NO. 5 OF 1999** that where the signatures to a mortgage are not in Latin character, the mortgage is not valid, was restated and emphasised. Execution in Latin Character means that the name of the signatory should be written out in full next to his/her signature.

In this case, the Company opted by resolution, to have two signatories execute the mortgage deed on its behalf, rather than affix a company seal. This is permissible under the **Registration of Titles Act (Cap.230).** In cases where a company opts to appoint individuals to execute instruments on its behalf instead of using its seal, the appointed individuals are required to execute in Latin character. The mortgage deed did not however bear the names of the signatories to the mortgage, nor their capacity to sign on behalf of the Company. In addition, the witness to the signatures neither disclosed his name nor his capacity to witness instruments as provided by the Registration of Titles Act.

Such irregularity rendered the mortgage invalid.

Further still, the Company executed the mortgage as mortgagor even though it was not the registered proprietor of the property being mortgaged. The mortgage deed ought to have clearly stated that the Company was acting under a power of attorney issued in accordance with the Act. This was said to be a serious irregularity.

Purchaser for value without notice

The Bank, on default by the Company proceeded to sell the property to the Purchaser. At the time of the sale, there was a caveat on the property that had been lodged by the Appellant. The Court held that a purchaser who buys property subject to a caveat cannot claim not to have had notice, the merits or demerits of the caveat notwithstanding and cannot therefore be a bonafide purchaser without notice. The transfer

to the Purchaser was therefore defeated by the fraud and the Court ordered the Registrar of Titles to cancel the transfer and reinstate the Appellant as the registered proprietor of the property.

One worry on this finding is that the Supreme Court condemned the Purchaser unheard and deprived him of property. This goes against fundamental tenets of natural justice. The East African Court of Appeal has held that it would be wrong to deprive a registered proprietor of land in a suit to which he was not party **ADONIA –V-- MUTEKANGA [1970] EA 429.**

The Award

The Appellant was awarded unprecedented damages in the sum of Ug. Shs. 200,000,000/=, interest thereon, costs in the Supreme Court and in the Courts below as well as cancellation of the transfer of his property, or if the Purchaser has already transferred the property to a *bonafide* purchaser without notice, the current market value of the Property, all payable jointly and severally by the Bank and the Company.

Lessons to be learnt

1. We have hitherto advised against accepting powers of attorney for purposes of entering into mortgages on account of such powers being easily forged. This case provides yet another reason for banks to avoid transactions where powers of attorney have been granted.

2. In situations where acceptance of a power of attorney cannot be avoided, it is now imperative that the bank meets with the donor of the powers in order to explain to him/her the nature of the transaction that the power of attorney is going to be used for. The bank also has a duty to ensure that the powers are being used for and on behalf of the donor and not to his/her detriment or for the benefit of the donee of the powers.

3. Execution of documents must be conducted with caution. In all cases, where an individual executes a mortgage, the name of the signatory should appear in Latin character. This does not apply in the case of execution by a company under seal. The witness to the signatures must also indicate his/her name and his/her capacity. Only an officer in the service of the Government of Uganda or Kenya, a justice of peace, an advocate (not lawyer), a notary public, a bank manager, a minister of religion authorised to celebrate marriages within Uganda, a medical practitioner, any literate chief of the rank of a gombolola chief or a corresponding or higher rank, or any other person authorised in that behalf by the ministry by statutory instrument, are authorised to witness instruments and powers of attorney within Uganda.

4. Sales of land must be carried out only after a search on the property has been conducted and the property found to be free of any caveats. If a purchaser consents to registration of his proprietorship subject to a caveat, he must abide the result of any litigation on that caveat.

DUE DELLIGENCE ON LAND TRANSACTIONS IN UGANDA

What is fraud?

The Regestration of Titles Act does not define what amounts to fraud. However, fraud has been defined to mean the intentional perversion of the truth by a person for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. It is a false representation of a matter or fact whether by words or by conduct, by false or misleading allegations or concealment of that which deceives and it is intended to deceive another so that he or she shall act upon it to his or her legal injury.

Fraud has also been defined to cover dishonest dealings in land such as depriving a purchaser for value in occupation of the land of his unregistered interest. It is well settled that fraud means the actual or some act of dishonesty. So literally, fraud refers to any dishonest act that is intended to deprive another person of their interest in land through.

Who is liable for fraud?

Courts require persons who are alleging that they were deprived of their interest in land fraudulently, to specifically plead and strictly prove fraud. As such the party alleging fraud has the burden to prove it and it cannot be inferred from the facts. This is in line with the general principle of the law of evidence that he who alleges must prove.

The position of the law is that fraud must be attributed to the person who becomes registered as proprietor (transferee) of the land. This means that a person registered through fraud is one who becomes registered as proprietor through a fraudulent act by him or to which he is a party or with full knowledge of the fraud.

Fraud attributable to the transferee is actual, imputed or constructive. Fraud must be attributable either directly or by necessary implication, that is the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act. A person becomes privy to a fraudulent transaction either by being an active participant in its perpetration by action or omission, or

when having acquired knowledge of its perpetration by others or third parties, knowingly and wilfully seeks to take benefit from it.

Therefore, where there are a series of subsequent transfers, for the title of the incumbent registered proprietor to be impeachable, the fraud of the previous proprietors must be brought home to him...A fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents.

The principle that fraud is attributable to the transferee actually or by necessary implication requires a mention of some incidents that can result in fraud.

Incidents of Land Fraud

1. **Acquisition of special certificates of titles under false pretense**;

Section 70 of the Registration of Titles Act provides;

'If the duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, the persons having knowledge of the circumstances may make a statutory declaration stating the facts and the particulars of all encumbrances affecting the land or the title to the land to the best of the deponents' knowledge, information and belief; and the registrar if satisfied as to the truth of the statutory declaration and the bona fides of the transaction may issue to the proprietor a special certificate of title to the land, which special certificate shall contain an exact copy of the certificate of title in the Register Book ....'

This section gives a right to anyone who has custody of a title and knows the circumstances surrounding its loss to apply for a special certificate of title. This section has been misused by fraudsters to obtain special certificates of title for other people's properties and eventually transfer them to their names and then sell to third parties.

Due to many complaints and unnecessary litigation, Ministry of Lands, Housing & Urban Development (MLHUD) came up with a strict rule that the applicant of a special certificate of title must be the registered owner who must also avail an LC Letter introducing him/her as the owner of the land and a police letter confirming the loss of the title. In addition to availing this documentation, the registered owner is required to physically appear before the registrar of titles for identification and verification before the application for a special certificate of title is approved.

It is therefore important for any person interested in purchasing land held under a special Certificate of Title to carry out some due diligence around the circumstances regarding the application for and issuance of a special certificate of title.

2. **Administrators/executors transferring land to their individual names or third parties without the consent of the beneficiaries;**

An administrator or executor under the law is the legal representative of the estate of the deceased. As such, he or she is duty bound to administer the estate on behalf of the beneficiaries. An administrator or executor is registered on the titles as a trustee and not as a personal proprietor.

There are many incidents where administrators of estates transfer land that belongs to an estate of a deceased to themselves in their personal capacity or to third parties without the consent of all the beneficiaries or even without the involvement of all the administrators (where there are joint administrators). Whereas it is nearly impossible to ascertain all the beneficiaries of an estate, the duty to conduct due diligence on the property falls on the interested buyer.

When dealing with deceased's estates, the interested buyer must verify the letters of administration/probate with the respective court and obtain consent of the beneficiaries before purchasing the property. However, purchasing such properties is risky because of the uncertainty of the rightful beneficiaries and the risk of the property being caveated by an unknown beneficiary after the purchase.

3. **Forging powers of attorney with intention to defraud;**

Section 146 (1) of the Registration of Titles Act provides;

The proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney....

This Section empowers a holder of powers of attorney to act on behalf of a registered owner. These powers are often misused and forged too. The supreme court decision of **FREDRICK ZAABWE VS ORIENT BANK & OTHERS (SUPRA**) was relied on in **KONDA MATHIAS ZIMULA VS BYARUGABA MOSES & ANOTHER** to cancel a certificate of title where the second defendant had taken the plaintiff's duplicate certificate of title, used forged powers of attorney purported to have been signed by the plaintiff to transfer the suit property into her names and later on into the names of the first defendant.

The above case is just one of many where duplicate certificates of title have been cancelled because they had been issued due to forged powers of attorney. It is therefore important for any one dealing with a donee of powers of attorney to verify with the donor of the powers and confirm if such are valid and if the Donee is acting within his scope.

Most land offices have made it a requirement to have the donor of the powers of attorney appears at the respective registry for identification and to confirm the sale before effecting the transfer of property.

4. **Concealment of true consideration of the transaction;**

In an attempt to defeat payment of stamp duty or paying less of it, most purchasers of land usually disclose the value of the land which is less than the true consideration paid to the seller. Such act of dishonesty amounts to fraud.

Recently the Supreme Court held that undervaluation of the land amounts to fraud.

Instances of concealment of the true consideration of the transactions are rampant. It is important that the intending purchaser fully and truly discloses the true value for purposes of ensuring that such a transfer is not impeached on account of defrauding the Government through the false/under declaration of the land value for purposes of stamp duty assessment and payment.

5. **Double titling of land;**

The existence of more than one title on the same piece of land is an incident of fraud that cannot be missed. This fraud is usually committed within the land registry which is mandated to issue duplicate certificates of title. In most cases, the land registries while acting on forged documents submitted by the clients may erroneously issue more than one title on the same piece of land. Unfortunately, such fraud may only be detected once the true owner raises a complaint with the land office.

In the case of **ST. MARK EDUCATIONAL CENTRE LIMITED VS MAKERERE UNIVERSITY CACA NO. 40 OF 1997** where two certificates of title were issued on the same piece of land, the court of appeal upheld the finding of the high court and noted that the fraud committed was not the type a purchaser or even his advocate could discover during an ordinary search at the registry. The fraud was committed on the register and the register being a Freehold title from which another register of a mailo title was created.

6. **Forging land titles;**

There are many cases where innocent purchasers acquire forged titles from fraudsters only to be surprised at the land registries when they are retained and cancelled on submission to affect a transfer. Many have been victims of such scam. The forged titles appear as authentic as the titles issued by MLHUD. There are reports that this form of land fraud through the issuance of forged documents has been aided by corrupt lands officials as explained by George Musisi, a lawyer at the Foundation for Human Rights Initiative, a charity that offers legal aid services, "When you look at the forged titles, sometimes it even has the seal of the land office".

7. **Illegal removal of caveats;**

Fraudsters have taken advantage of **Sections 140 and 202 of the Registration of Titles Act** which provide for removal of a caveat by the Registrar issuing to the Caveator a notice to show cause why the caveat should not be removed. The notice is sent to the Caveator by post. In most cases, the notices are never posted. As long as there is a receipt from post office, this is evidence enough for the registrar to remove

the caveat on expiry of the 60 days. Unfortunately, the Registrar of Titles cannot be blamed because he/she is following the law.

In reality, communication through postal services is the most archaic mode of communication. Many people use fictitious postal addresses or postal addresses that do not actually belong to them. Whereas the postal services are available, most Ugandans do not utilize them because of the e-communication.

If a Caveator is not vigilant enough to resolve whatever issues that arise from the property or to check on the property more often to confirm if an application to lift the caveat has been lodged, his or her interest will be extinguished without his or her knowledge. Recently the Supreme Court in **SAUL KISIRIBOMBO RUMANDA VS EMMY TUMWINE (SUPRA**) found that the Respondent's caveat had been irregularly removed by the Appellant in connivance with officials in the MLHUD.

It is therefore prudent for Caveators to constantly check on the status of their interests at the land registry with a view to confirm if their caveats are still intact on the land register.

8. **Real Estate Companies/dealers giving Bibanja Holders unreasonable offers**;

Real Estate Companies have a tendency of identifying customary land or unregistered land and entering unreasonable agreements with the squatters by offering them less consideration for their land or forcefully taking over their property. The said real estate dealers will then process the title to the land, subdivide the same and eventually sell to innocent buyers who will never take quiet possession of the land because of the unresolved issues with the squatters.

It is therefore an important duty on the purchaser to have made sufficient inquiries before getting registered on the land. The need for carrying out inquiries has been emphasized by court in various decisions. The position of the law is that, a person who purchases an estate which he knows or should have known to be in occupation and use of another other than the vendor without carrying out the due inquiries from the persons in occupation and use commits fraud. Therefore, the failure to make reasonable inquiries of the persons in possession and use of land or the purchaser's ignorance or negligence to do so forms particulars of fraud. Knowledge of other people's rights or claims and the deliberate acquisition of an interest in the face of such knowledge is fraud.

EFFECT OF FRAUD

We have elaborately explained that fraud is an exception to the indefeasibility of title. This means that once fraud is proven before courts of law, the transferee's title would be cancelled. It was held in the case of **FAM INTERNATIONAL LIMITED AND AHMAD FARAH VERSUS MOHAMED EL FAITH** that

fraud is such a grotesque monster that the courts should hound it wherever it rears its head and wherever it seeks to take cover behind any legislation. Fraud unravels everything and vitiates all transactions".

Conducting due diligence/ search

The first step in acquiring land is to carry out inquiries on the land to ascertain the status of the land in relation to the risk of existing competing and overlapping interests.

There is a famous quotation in the legal fraternity by Okello J. A as he then was in **SIR JOHN BAGEIRE VS. AUSI MATOVU**, emphasizing the value of land property and the need for thorough investigations before purchase;

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

The question of conducting a search is further discussed **in UGANDA POSTS AND TELECOMMUNICATIONS V LUTAAYA** where Court held that a mere search on the register is not enough. The person ought to inquire beyond the register. That the law is very clear that if a person purchases an estate which he knows to be in the occupation of another other than the vendor, he is bound by all the equities which the parties in such occupation may have in the land.

The failure to inspect the land for purposes of being brought under the Registration of Titles Act is a fatal irregularity and the purchaser would be found to have acted fraudulently by processing the title well knowing he had not followed proper procedure. The title could be impeached and cancelled for lack of an inspection report that is so crucial in the process of obtaining a title.

In conducting a search, a prospective buyer must do the following;

1. **Particulars of the land;**

The intending purchaser should be availed with the particulars of the subject land in terms of description. It must have a block and plot, the details of the registered owner, location of the land, the area/acreage etc. The purpose of the particulars is to enable an intending purchaser to cause a search at the relevant land registry to confirm not only the proprietorship but also the existence of a white page/registry file with corresponding particulars like those on the certificate of title. In the recent past, it is now possible to actually compare not just the names but also the physical likeness of the proprietor, as passport size photos are used these days and helps to weed out fraudsters using forged land titles albeit with the same name.

2. **Site visit to the Land/Property;**

A site visit is significant not only because it familiarizes the purchaser with the property in question and the neighborhood that it is located in, but because it offers one the opportunity to gather some information

which may not be accessible through the land registry regarding the history of the property. Some of the information can only be got from the locals around the area who know the owner of the property very well. Physical attributes of land are part of the due diligence that the law expects of one. A search at the registry though critical is not sufficient in itself.

During a site visit, the intended buyer may interact with the LC of the area to confirm ownership of the property and if there are any disputes in relation to the land.

Also, the intending purchaser should find out whether the land is subject to spousal consent or if there are any equitable interests on the land.

3. **Boundary opening;**

Registered land is generally a subject of a specific delineation and specification as to the boundaries and area size.

It is therefore important that an intending purchaser engages a surveyor to ascertain the size of the property and confirm its true description. The intending purchaser must conduct a boundary opening to confirm whether the boundaries are in tandem/consistent with the particulars of the land. This is necessary in case of fraud and also where there is a mistake/error on the title.

4. **Conduct a search at the Land Registry Office;**

This step can often be carried out by the Purchaser's lawyer (if he/she has one) to help confirm the authenticity of the title in question. The search goes on to aid the buyer in ascertaining the right property ownership, its genuineness, establish its existence plus identifying the conditions, pending rates or encumbrances on the title.

It is also advisable to present the land title for the land subject to a sale before a registrar of titles for verification before entering into any agreement. The registrar is able to verify if the title is authentic. It should be noted that newly issued titles bear a QR code which confirms the authenticity of the title once scanned.

With the computerized lands system, the buyer can verify the seller's details at the land registries including his appearance to avoid impersonation.

5. **Appoint a Lawyer to help you through the whole process;**

Lawyers generally have the knowledge to guide the buyer on acquiring good title. They are able to advise on the 'dos' and 'don'ts' of entering land transactions.

6. **Preparation of the sale agreement and transfer of title**;

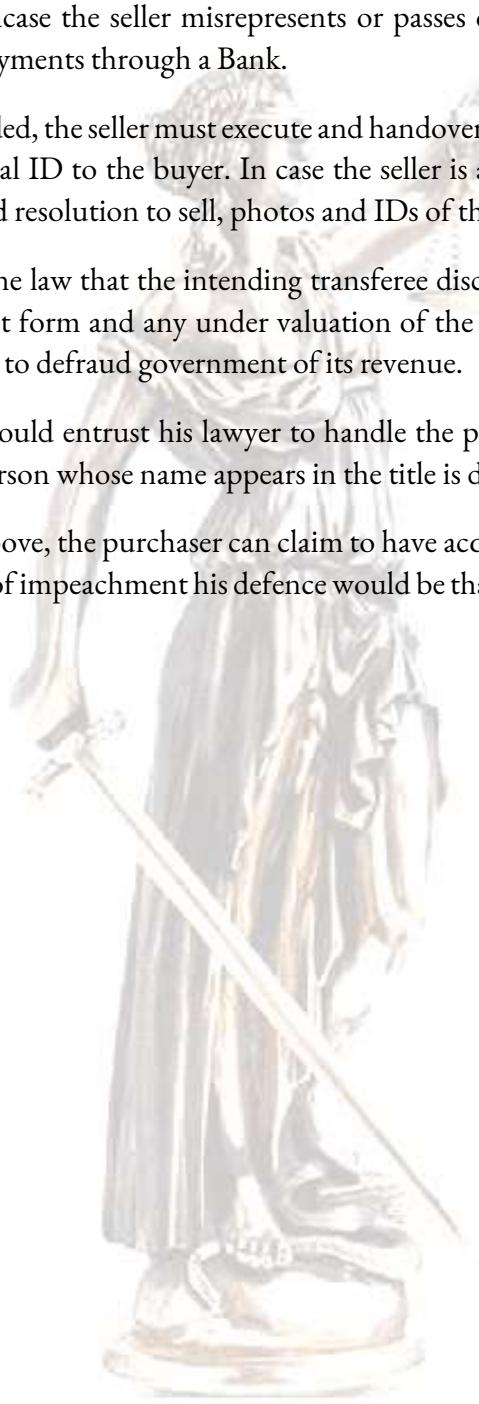
Once the buyer is satisfied with the findings of the due diligence and is ready to proceed with the purchase, a sale agreement has to be prepared by a lawyer, preferably the buyer's lawyer. The buyer's lawyer will ensure that his/her client is protected at whatever cost. The sale agreement must entail among other clauses, a clause on indemnity incase the seller misrepresents or passes on a defective title. The intended buyer is encouraged to make payments through a Bank.

Once the sale is concluded, the seller must execute and handover a transfer form, his/her passport size photo and copy of the national ID to the buyer. In case the seller is a company, it must handover the executed transfer form, registered resolution to sell, photos and IDs of the directors.

It is a requirement of the law that the intending transferee discloses the consideration paid in the transfer instrument and consent form and any under valuation of the property by the transferee may amount to fraud if it was intended to defraud government of its revenue.

The intended buyer should entrust his lawyer to handle the process of transfer of title to his/her names. Upon registration, a person whose name appears in the title is deemed to be a registered proprietor.

Having followed the above, the purchaser can claim to have acquired a valid interest in land that cannot be impeached and in case of impeachment his defence would be that of a bonafide purchaser for value without notice.



POWER OF ATTORNEY 16TH SCHEDULE

REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP.230

POWER OF ATTORNEY

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

Dated this 22nd day of October, 2022.

Signed by:

STEVEN BINSOBEDDE

REGISTERED PROPRIETOR OF LAND COMPRISED IN

BLOCK 217 PLOT 19 BUSOLOSOLO

In the presence of:

SUI GENERIS

ADVOCATE.

PROTECTION OF EQUITABLE AND TRANSIENT INTERESTS IN LAND

The registration of an interest provides the best security against the principle of indefeasibility (**Section 54 and 59 of the Regestration of Titles Act) Section 54** provides that no interest unless registered in the prescribe Manner shall be said to pass or bind the law. However, the RTA makes provision for lodgement of caveats operates as a statutory injunction to the registrar to prevent registration of any dealings which might affect the interest, the subject of the caveat.

In **KAZZORA V RUKUBA**[10] the supreme court held that the doctrine of /is penders (by a pending suit affecting land and registered in the register pending actions acts as a bar to the registration of dealing affecting that land until is dispose of / does not apply in Uganda.

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

In **KATARIKAWE V KATWIREMU AND ANOR CS NO. OF 1973;(1977) HCB 187**, ssekandi J, held that taking possession of title deeds by a purchaser is insufficient to protect an unregistered interest unless a caveat is lodged.

WHO MAY LODGE A CAVEAT?

1) Commissioner for land registration

The **Commissioner for land registration** may lodge a caveat on behalf of the government or a person who is under disability or absent from the country, to prohibit registration of any transaction affecting land that belongs to that person or appears to belong or belongs to government.

The **Commissioner for land registration** may also lodge a caveat to prevent registration of any dealings in any land where there appears to be misdescription of land or boundary or fraud.

[10]CA No.13 of 1993

PRIVATE PERSON.

To lodge a caveat a person must have a caveat able interest over the land as per the decision in **NAMUSISI AND ORS V NTABAZI**[11]According to **Mugumba**[12], a caveatable interest is defined to mean a claim of proprietary or quasi-proprietary nature in the particular land**.** In **KUPER V KEYWEST Construction Pty Ltd**, Co[13]urt held that a person has a caveat able interest in all cases where an injunction could be issued to prevent the proprietor from meanwhile dealing with the land.

Examples of caveatable interests include;

1) A contract of sale

FERNANDEZ V HOUSTEIN (1963)4 FLR 355

2) Lease.

SOUZA FIGUEIRODO AND CO LTD V MOONING HOTEL CO LTD. (1960) EA 926.

3) Mortgage

4) Option to purchase.

RAMYI V RATTANSI (1969) EA 309

5) Claim based on advance possessionS.86 of RTA.

CAVEATS BY SPOUSES.

A spouse may lodge a caveat on family land even if he or she is not the proprietor of the land. **Section 39(7) of the Land Act (as amended).** Under **Section 39(8) of the same Act** the caveat lodged is not affected by the same Act the caveat lodged is not affected by the provision of **Section 140(2) of the Regestration of Titles Act.** The caveat thus does not lapse upon issuance of the notice of withdraw by the proprietor and no reply given within 60days.

CAVEATS BY BENEFICIARIES

These are lodged under **Section 144 of the Regestration of Titles Act** by or on behalf of beneficiaries claiming under a will or settlement. Unlike other caveats, where transactions are barred on the land under

[11]**CS No. 887 Of 1988.**
[12]Principles Of Land Law In Uganda Pg.84
[13]**(1990)3 WLR 419**

Section 141 of the Regestration of Titles Act, for as long as the caveat is in force, transfers and change in proprietorship may be effected while a beneficiary's caveat is in force if: -

1) In the opinion of the registrar the change of proprietorship or transfer is authorized by the will or settlement.
2) Caveator conserts to the registration or doesn't lodge a written protest against the registration within 14days after being served with notice as such caveator.
3) Under **Section 140(2) of the Regestration of Titles Act,** a caveat by or on behalf of a beneficiary doesn't lapse merely because he or she has not replied to a notice of withdraw within 60days.

CAVEATS FORBIDDING THE BRINGING OF LAND UNDER THE REGESTRATION OF TITLES ACT.

Under **Section 20(1) of the Regestration of Titles Act**, any person claiming any estate or interest in land that other leeks to bring under that Act may, before registration of the certificate, lodge a caveat with the registrar in the form in the 4th schedule forbidding the bringing of that land under the Act.

Under **Section 20(2) the caveat in Section 20(1)** must be signed by the caveator or by his agent and it must particularise the estate or interest claimed and the person lodging the caveat shall if required by the registrar support the caveat by statutory declaration stating.

THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA AT JINJA.

CIVIL SUIT NO. OF 2022

1. **NANSIKOMBI BARBRA**
2. **BAGAYA MOSES (suing through his next friend)**

NANSIKOMBI BARBRA PLAINTIFFS

VERSUS

1. **KAWERE AMOS DEFENDANTS**

SUMMONS TO FILE A DEFENCE.

TO:

KAWERE AMOS.

WHEREAS the above-named plaintiff has instituted a suit against you upon the claim of the particulars of which are set out in the copy of the plaint attached here to.

YOU ARE HEREBY required to file a defence in the said suit within 15(fifteen) days from the date of service of this summons on you in the prescribed manner under 0.9 r1 of the civil procedure rules s.1 71-1as amended by S.1 No.33/2022.

SHOULD you fail to file a defence on or before the date mentioned, the plaintiff may proceed with the case and judgment may be given in your absence.

GIVEN under my hand and the seal of this court on this 10th day of October 2022.

DEPUTY REGISTRAR

4. Law reform (miscellaneous) Act, Cap.79.

5. Case Law

6. Any other with leave of court.

Dated at MBARARA on this 10th day of october2022

OBJECTION MY LORD

COUNSEL FOR THE PLAINTIFF

Drawn and filed by:

SUI GENERIS & CO. ADVOCATES

P.O.BOX 0000,

KAMPALA

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL SUIT NO OF 2022

1. NANSIKONBI BARBRA

2. BASAYA MOSES (suing through her Next friend)

NANSIKONBI BARBRA .... PLAINTIFFS.

VERSUS

1. KAWERE AMOS ..... DEFENDANTS

PLAINTS

1. The first plaintiff is an adult Ugandan of sound mind while the second plaintiff is a minor aged 10years suing through his next friend the first plaintiff. Their address for purpose of this suit shall be SUI GENERIS, Law Development centre, LAW FIRM, P.O.BOX 0000 Kampala.

2. The defendant is an adult Ugandan prescribed to be the sound mind and the plaintiff's advocates undertake to effect court process onto the defendant.

3. The first plaintiff's claim against the defendant is for recovery of UGX 140,000,000 being dependency lost, general damages, special damages of UGX 10,000,000 being money spent on burial arrangements and the cost of the suit. The cause of action arose as hereunder: -

   a) That on the 17/9/2022

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL SIUT NO OF 2022

1. **NANSIKOMBIBARBRA**
2. **BAGAYA MOSES (suing through his next friend)**

NANSIKOMBI BARBRA..... PLAINTIFF

VERSUS

1. **KAWERE AMOS..... DEFENDANTS**

SUMMARY OF EVIDENCE

The plaintiff will adduce evidence to show that as a result of the defendant's driver's negligence they lost dependence amounting to UGX 140,000,000 have incurred costs totalling to UGX 10,000,000 in burial expenses of the deceased and continue to incur other expenses in medical bills for the second defendant.

LIST OF DOCUMENTS

1. Traffic accidents report
2. Notice of intention to sue
3. Medical expenses receipts from quality health care
4. Receipt detailing burial expenses from Uganda funeral services
5. Any other with leave of court.

LIST OF WITNESSES

1. AIP Bagola a Traffic Police Officer at Namtumba Police Station.
2. Joseph Mugerewa an eye witness when the accident happened.
3. Other with leave of court

LIST OF AUTHORITIES

1. The Constitution of The Republic of Uganda
2. The Road Traffic and Safety Act.
3. The Evidence Act, Cap.6

The nature of the title under which the claim is made and also delivered a perfect abstract of the title to that estate or interest.

Section 20(3) requires that a clear address is included for purpose of sense relating to the caveat.

Section 21(1) requires the commission for land registration to suspend any further acts relating to bringing the land under the Act once the caveat is lodged until the caveat is withdrawn, or has lapsed or until an `order of court is made

Section 21(2) allows the applicant (person bringing land under the act) if he deens it fit to summon the caveator to offend before the H.C to show cause why the caveat should not be removed.

LAPSE OF CAVEAT

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

Lapse of caveats in Section 139

Under **Section 140(2)** the caveat lapse upon the caveat giving a 60 days notice to the caveators of the intention to have it withdrawn. The caveator if he wishes to have it extended may apply to court for such order and the court may require him/her to deposit a certain sum to indemnify the parties affected by the caveat should court find at a later stage that he/she had no caveatable interest.

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

OBJECTION MY LORD

CAVEAT

REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP.230

CAVEAT FORBIDDING REGISTRATION OF CHANGE IN PROPRIETOR OR DEALING WITH ESTATE COMPRISED INBLOCK 217 PLOT 19BUSOLOSOLO.

TO THE COMMISSIONER FOR

LAND REGISTRATION.

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

I appoint SUI GENERIS, LAW DEVELOPMENT CENTER, P.O. BOOX 0000, KAMPALA, UGANDA as the place at which notices and proceeding relating to this caveat may be served.

Dated this 20th day of October,2022

PANTALEO OFWONO

CAVEATOR

Signed in the presence of

SUI GENERIS

ADVOCATE.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP. 230.

AFFIDAVIT IN SUPPORT OF THE CAVEAT FORBIDDING REGISTRATION OF CAHNGE IN PROPRIETOR OR DEALING WITH THE ESTATECOMPRISED IN BLOCK 217

PLOT 19 BUSOLOSOLO

I PANTALEO OFWONO, C/O, SUI GENERIS, P.O.BOX 0000, KAMPALA UGANDA, do hereby take solemn oath and state as follow: -

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

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

PANTALEO OFWONO

OBJECTION MY LORD

DEPONET

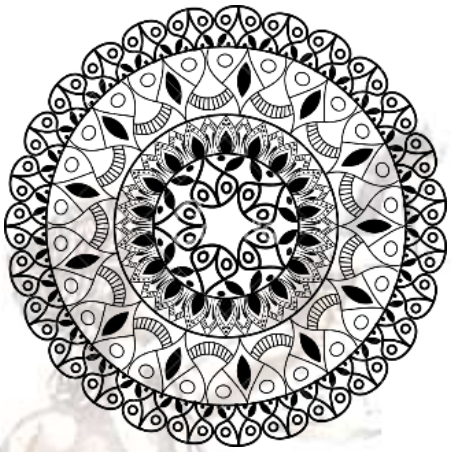
Before me

COMMISSIONER FOR OATHS

Drawn and filed by:

SUI GENERIS,

P.O.BOX 0000, KAMPALA, UGANDA.



CO-OWNERSHIP

Co-ownership of land is where 2 or more persons concurrently own an interest in land. Each co-owner is entitled to the simultaneous enjoyment or use of the land claiming not a separate portion but a mutual right in the whole. Co-ownership maybe in joint tenancy or tenancy common.

Joint Tenancy

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

FOUR UNITIES

1. **Unity of possession**: - Means that each co-owner is entitled to an undivided possession of the whole of the co-owned land and none holds any part separately to the interest of each joint.
2. **Unity of interest:** - Means that the interest of each joint tenancy must be identical in nature and duration. e.g there cannot be a joint tenancy where are co-owner has a lease hold interest in the land and the other a freehold or where one co-owner is entitled to a greater share of the rent from the land than the other.
3. **Unity of time**: - Means that the interest of each joint owner must vest at the same time.eg if A and B together purchase the land and the land title is conveyed is conveyed to them, there is unity of time because the title vest in them at the same time.

4. **Unity of title**: - Means that the co-owner title must derive from the same act or document. If they acquired the land by inheritance, it will have been under the same will.

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

TENANCY IN COMMON.

Tenants in common hold land in individual shares. Each tenant in common has a distinct share in the property. what makes the co-owner is that they all have shares in a single piece of land though the land is not yet physically divided amongst them. **Doctrine of survivorship doesn't apply here**

CREATION OF CO-OWNERSHIP UNDER THE RTA.

These are created by registration pursuant to **Section 54 &92 of Regestration of Titles Act** joint tenants or tenants in common respectively. The instrument shall state that the transfer is made to the transferees "as joint tenants" if they are to hold the property as such. If they are to hold it as tenants in common, the instrument should state likewise and the proportion in which the land is held.

Under the RTA, where the instrument of transfer to 2 or more persons is registered without specification of the nature of the co-ownership, the proprietors are presumed to hold in joint tenancy. In **RE: FELEY; PUBLIC TRUSTEE V FOLEY (1952) N2LR 702** court held that its objective is to make registration conclusive, so far as it concerns 3rd parties who act in reliance on the registered instrument. However, as between the registered proprietors, the presumption was rebutters e.g., in **CALVERLEY V GREEN (1984)155 CLR 242,** evidence may be adduced to show that though the parties were registered as joint tenants, in equity they own the land in tenancy in common.

DISTINCTION BETWEEN LEASES AND LICENCES.

A licence is permission to enter another land for some specified purpose which otherwise would be trespass. **GOLDSACK V SHORE (1950) KB 708.**

The main distinguishing feature between lease and licence is that a lease creates an. interest in land while a licence does not. This arises from the grant of exclusive possession to the lessee which is not the case in licences. The legal consequence of this distinction is that a licence unlike a lease only binds the licence and the licensor, but not other persons dealing with the land. **RUNDA COFFEE ESTATE LTD V UJAGER SINGH (1966) EA 564.**

REQUIREMENT FOR REGISTRATION OF A LEASE.

Under S.54 of the RTA, no instrument unit registered in the manner prescribed can pass on an interest in the said land. Under S.101 of RTA, a lease in excess of 3years must be registered and so is a lease providing for a shorter term with a perpetual option to review. **In POPATLAL HIRJI V L.H. LAKHAI AND 60(EA) LTD (1960) EA 437**. It was held that a sublease fir one year, which was renewable annually at the option of the tenant was lease in excess of 3 years and therefore subject to the statutory form. Under **Section 40(2) of the Land Act**, a lease of 5 years or more acquired by a non-citizen must be registered in accordance with the Regestration of Titles Act.

UNREGISTERED LEASE

A lease which does not comply with the requirement for registration merely operates as a contract between the parties**. SOUZA FIGUERIDO AND CO.LTD V MOORINGS HOTEL CO. LTD (1960) EA 926.**

However, inequity failure to register does not render the lease void because equity treats as done that which ought to be done. Such a lease is referred to as an equitable lease as was stated in the case of **WALSH V LONSDALE (1882) 21 CHD 9.**

REMEDIES FOR BREACH OF COVENANTS IN A LEASE

Tenant/lessee

They may seek any appropriate remedy under the law of contracts /torts.

a) Breach of covenant for quiet possession

Land lord

Lessee could sue for damages and an injunction restraining the landlord. **DHARAS & SANS LTD V ELYS LTD (1963) EA 573.**

Damages

Landlord can bring an action for damages for breach of a covenant. **In NATIONAL AND GRINDLEY'S BANK (K) LTD V P.T PUMATER (1965) EA 648**, tenant breached a convener to deliver up the premises in good order and condition on terming of the lease. it was held that the landlord was entitled to damages equal to the amount in many by which the premise had been depreciated by the breach.

1. **mesne profits**

Where upon the lease being determined and the tenant remains in possession, contrary to the landlord's wishes, the landlord may claim damages for boss of mense profits **KAMANYIRE V STANDARD BANK (U) LTD (1977) H 82.**

The action for recovery of damages of mense profits is four in the law of trespass to land and it's for recovery of damages suffered by the landlord for being kept out of possession.

2. **Distress for rent.**

This is an ancient common law remedy of self-help by which the landlord may enter the leased premises If rent is in arrears and confiscate any goods found on the premises of the value of the outstanding rent. **In MUSUMBA VHAJI KASAKA & MBARARA AUCTIOM MART (1971) I URC 222, the** court emphasized that the remedy of distress isonly available to a landlord where rent is in arrears.

- A landlord has no right to sell the property confiscated without an order of court
- Once a landlord determines the lease, they cannot distress their former tenant's personal effects. For you to acquire the remedy of distress you must establish a landlord tenant relationship.

3. **Forfeiture / re entry**

This is the termination of a lease before the term expires. Under **Section 103(b) of the Rehgestration of Titles Act**, a landlord may exercise the right of re-entry where: -

a) Rent or any part of it has been in arrears for the space of 30 days although no formal /legal demand has been made

b) Breach of or non-observance of any of the covenants expressed in the lease or by law declared to be implied in the lease for a period of 30 days

PROCEDURE FOR RE-ENTRY

The procedure is not provided for under any law. However, the following may be done.

1) **Issue a notice of noncompliance.**

Should the notice not be allowed to and the non-compliance continues for 30 days the landlord can do physical/ constructive re-entry.

2) **Re-entry:** the re-entry according to the decision of supreme court in **ERUKANA KIWE VADER, SLCA NO. 2 OF 2002,** the re-entry may be through physical possession of the land by the landlord or constructive possession by placing an agent or the land as the case was in the facts of the case where the landlord the appellant placed a tenant in the house.

    - Forfeiture cannot be effected by written notice unaccompanied by actual physical re-entry/ constructive re-entry **KASSAJA V REGISTRAR OFTITLE, MISC. APP NO.517 1993**
    - The Supreme Court in **ERUKANA KUWE V VADER** noted that successful re-entry effectively determines the lease.

3) **Registration of re-entry.**

Under **Section 114 of the Regestration of Titles Act,** the landlord should apply for registration of re-entry on the register. The application is by formal letter to the commissioner for land registration.

Where the registrar refuses to register the re-entry that does not mean the lease continues to subsist. As noted in **LUGOGO COFFEE CO (U) LTD V SING COMBINED COFFEE1976HCB 12,** the re-entry determines the lease and the refusal of registrar to register the re-entry do not affect the re-entry.

The referral to H.C is for it to determine the lawfulness of the re-entry and where the re-entry is found to have been unlawful; the lessee is entitled to damages.

RELIEF FROM FORFEITURE.

A lessee who believes, the lessor is in the process of effecting the re-entry (this is before it's effected), the lessee may apply under **Section 25(1) of the Judicature Act** for relief from the forfeiture. It must be for only non-payment of rent (as the reason for forfeiture **Justice Mulenga in ERUKANA KUWE V VADER.**

In the case of **BILLSON & ORS V RESIDENTIAL APARTMENT LTD, (1992) I ALLER 141**, the House of Lords held that with reference to similar provision, that the provision does not preclude the lessee from applying for relief even where the lessor has re-entered the land. Where 3rd party interests have been created as was in **KIWANUKA MUSIS V SEGANE (1973) EA 561,** where by the time of application

the landlord had leased the land to another tenant, the court declaimed to grant the relief. Often the relief is granted where the landlord can be compensated for any loss occasioned by the breach.

SURRENDER OF A LEASE.

This occur where before the expiration of the lease, the lessee gives up the possession of the land to the lessor. Under **Section 108(1) of the Regestration of Titles Act,** the lease may be determined by operation of law or by agreement. Instances where a lease may be surrendered by operation of law include

(1) Where the lease grants and the lessee accept a fresh lease commencing before the current lease expires. **STEPHEN KALANI VS SATWANT KAURSUPREME COURT CIVIL APPEAL NO. 22 OF 1995**which argued the effect of non-registration of Surrender of a lease and Declaration of lnterest in land before departure persuant to the Expropriated Property Act.

(2) Where the tenant abandons the premises and the landlord re-enters them. **MARIANO V KOMAKECH WALTER &ORS.**

Under **Section 108 (2) of Regestration of Titles Act,** the registrar must enter in the register book a memorandum recording the date of such surrender **Section 108(3)** is to the effect that upon such entry in the register book the estate and interest of the lessee or his/her transferee shall vest in the lessor or the proprietor of the revisionary interest at the time. Where the surrender is by agreement, such agreement must be executed by the lessee and the lessor or their transferees.

OTHER WAYS OF TERMINATING A LEASE.

Effluxion of time

The cease automatically terminates then the duration lapses. If the tenant remains in possession without consent of dissent of the landlord, they become tenants of sufferance. **SINGH V CRODLEY (1942) 20 KLR 57.**

Where tenants remain in possession with the consent of the land owner, a tenancy of will is implied unless or until some other interest is created. **NOOR HASSAN V MUKIIBI, CA NO. 103 OF 1997(1978) HEB 162.** In **STANLEY & SONS LTD V ALIBHAI (1963) EA 594**, it was held that a demand for rent after expiration of the lease implies a tenancy at will.

In **BWEYA STEEL WORKS LTD V NATIONAL INSURANCE CORPORATION (1985) HCB 58**, it was noted that both tenancies at will and at sufferance become periodic a regular basis accept if. The period may be weekly, monthly and yearly.

Merger

This is the opposite of surrender. In this case the lessee acquires the reversion from the lessor. The merger is completed by the appropriate entry in the register book.

CONDITIONS AND COVENANTS IN A LEASE AGREEMENT.

The terms of the lease may be expressed either as conditions or covenants.in the case of Lugogo coffee (u) ltd v sing defined as a term which is the essence of the lease agreement whose breach of which entitle the innocent party of terminate the lease. On the other land, a covenant is a term of a lease agreement whose breach does not warrant the innocent party to terminate the lease unless the agreement expressly gives that right.

Covenants implied under the Regestration of Titles Act are provided under **Section 102 & 103 of the Regestration of Titles Act**. At common law certain come were implied against the landlord e.g quiet enjoyment.

In **OPINYA V MUKASA, CA, NO. 167 OF 1964** the landlord sought to evict the tenant by removing the roof from premises. It was held that this was breach of quiet environment.

LICENSES

In the case of **RADAICH V SMITH (1959) 101 CLR 209**, a licence is permission given to a licencee to enter the licensor's land for some specified purpose or purposes which otherwise would be trespass.

There are various types of licences i.e bare licences, a licence coupled with an interest, a contractual licence and a licence protected by estoppel.

1) **A bare licence**. Such a licence may be expressly given or implied is granted without valuable consideration e.g., an imitation of a friend to stay on it may become in evocable where a proprietor estoppel has been created. The licence can be revoked anytime with reasonable damages.

2) **A licence coupled with an interest.**

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

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

3) A contractual licence.

This is granted often the terms of serve contract which restricts the licensor's right to revolve it. The contract according to the court in **TANNER V TANNER (1975) I WLR346,** the contract may be express or implied.

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

4) Licence by estoppel.

CONDITIONS AND COVENANTS IN A LEASE

(1) Implied covenants for quiet enjoyment.

In **BUDD SCOTT V DANIEL (1902) 2 K.B**. court held that the relationship of landlord and tenant automatically implies a covenant for quiet enjoyment by the lessor. The covenant is broken if the landlord or any one claiming under them does anything which interferes with the tenant's title or possession. In **SOURTH WORKS LBC V MILLS (2001) I A.C**. I at to the court held that there is no requirement that the interferer is direct or physical, nor should the acts complain of support on action in mesne

Where there is a breach, the court in **BRANCHETT V BEANE (1992) 3 ALLER 910 at 917**, held that the lessee is entitled to an award of damages for breach assessed according to normal contractual principles. the tenant may also seek an injunction.

(2) Obligation not to delegate from this grant.

In **PALMER V FLETCHER**[14], the court held that it is a principle of general application that a granter must not derogate from his grant. In **SOURTHWORK LBC V MILLS (2001) I A.C I**, the court stated that the obligation binds not only the granter himself but persons claiming under him.

To constitute a derogation from grant there must be some act rendering the premises substantially less fit for the purposes for which they were let as per the decision in **ALDIN V LATIMER, CLARK MUIRHEAD & CO [1894]2 CH 437**

[14](1663) I LEV. 122

LAND LORD AND TENANT LAW

The provisions in the Landlord and Tenant Act, 2022 legalize the ordinary day to day tenancy relationships between landlords and tenants. The Act streamlines the rights and duties of a landlord and a tenant in order to maintain a good tenancy relationship.

The **Landlord and Tenant Act, 2002** ("the Act") is a new addition to the laws of Uganda. It was assented to by H.E. the President on April 12, 2022 and it was passed into law in June 2022. The Act repeals the Rent Restrictions Act, Cap 231, and its objective is to consolidate the law relating to renting of premises and regulate the relationship between landlords and tenants by providing for the responsibilities of landlords and tenants when renting premises. This Compliance Memo looks at some key provisions of the Act as well as the obligations and compliances that landlords and tenants need to adhere to when renting premises in Uganda.

Key Provisions of the Act Landlord and Tenant

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

Making Tenancy Agreements

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

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

Significant Highlights of the Act

- A tenancy agreement can be oral, written, in the form of a data message or implied by conduct. Where the consideration is more than 500,000 Uganda Shillings, it should be in writing or data message to be enforceable.
- Before executing a tenancy agreement, landlords should obtain a valid identification card from the tenant for purposes of identifying a legal person and improve data storage.

- Rent denominations should be in Uganda shillings unless there is a contrary agreement. This maintains the value of the Ugandan currency.
- The Act restricts payment of more than three (3) months in rent in advance for one month unless the tenant opts to do so in writing.
- Landlords are prohibited from increasing rent at a rate of more than 10% annually.
- Landlords are required to give notice of 90 days in case of a rent increment.
- Under fixed-term tenancies, rent stays the same until the term is finished unless there's a contrary agreement.
- The Landlord is permitted to charge a security deposit that doesn't exceed one month's rent.
- Taxes are to be paid by the Landlord.
- Distress for rent is abolished, and instead, the Landlord is encouraged to apply to the court to recover unpaid rent and reasonable costs.
- There's a restriction to the right of entry of premises which requires the Landlord to give 20 hours notice before visiting the premises.

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

The Act protects the tenants in so many ways;

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

The Act provides that a tenancy agreement can be in writing, by word of mouth, partly in writing and partly by word of mouth. In form of a data message or implied from the conduct of the parties provided that

where the parties execute a tenancy agreement, the landlord-tenant relationship between the parties shall be governed by the terms of the tenancy.

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

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

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

Terms and Conditions in a tenancy

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

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

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

(**ii) Duty to keep premises in repair**.

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

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

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

(iv) **Utility charges.**

A tenant is liable to pay for all their utility charges in respect of the supply or use of electricity, gas, oil and similar services in respect of the tenant's occupation of rented premises that are separately metered, except

the installation costs and charges in respect of the initial connection of the service to the rented premises which shall be paid by the landlord. The landlord shall also be responsible to pay all charges in respect of utilities that are not separately metered. The landlord and tenant may agree on the contribution to be made by the tenant in respect of utilities paid by the landlord.

Duties and obligations of landlords and tenants

The Tenant shall—

(a) Not use the premises or permit the use of the rented premises for any unlawful purpose.

(b) Not use the rented premises or permit the use of the rented premises in any manner that causes a nuisance by interference with the reasonable peace, comfort or privacy of any occupier of neighbouring premises.

(c) Take care not to damage the rented premises or the common areas. A tenant who becomes aware of any damage to the rented premises or the common areas shall immediately give notice to the landlord specifying the nature of the damage

(d) Keep the rented premises in a reasonably clean condition, except where the landlord is responsible under the tenancy agreement for keeping of the premises in that condition.

(e) Not install any fixtures or make alteration to premises without the consent of the landlord.

The Landlord shall—

(a) Take all reasonable steps to ensure that the tenant has quiet enjoyment of the premises during the tenancy.

(b) Not refuse to rent premises to a person on the grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Rent

(i) Rent in advance.

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

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

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

(iii) Recovery of rent arrears.

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

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

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

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

EXAMPLE

Brief facts

Joan Nansambu is the registered proprietor of the Mailo land comprised in Kyadondo Block 237 Plot 294 at mutungo. The 10-acre panel of land is undeveloped and Jane Mbei has no money to invest in the development of the land. She has offered the land to Sunny Estate ltd a company whose majority shareholder is John Soren a British citizen. the company shall occupy the land for 100yearseffective 20th Jan, 2020 and develop a thirty (30) house estate with each house of an estimated cost of shs. 100,000,000 and no other development shall be permissible without Mbei's written consent. During this period the

company will pay an annual fee of UGX 4,000,000 and Lump sum of UGX 30,000,000 before21st January 2020.

Issues

1. Whether parties (A) can enter into a legally binding relationship.
2. What are the necessary documents and procedures to effect the relationship in one above if any!
3. What remedies are available to Jane in the event of default on any terms of the lease?
4. What remedies available to the company in the event that she is about re-enter onto the land.
5. What are the forms, procedures and necessary documents for surrender?

Issue: Whether the parties in (A) can enter into a legally binding relationship.

Under **Article 26(1) of the Constitution** every person has a right to own property individually or in association with other subject to the existing laws.

In our facts Jane is the registered Mailo owner while Sunny Estate Ltd wants to develop the land. Sunny Estate Ltd is a non-citizen by virtual of **Section 40(7) of Land Act**

a) Which defines a non-citizen to include the cooperate body in which the controlling interest lies with non-citizen **Section 40(8) (a) Land Act** defines controlling interest. This means in case of a company with share such as Sunny Estate where the majority shares are held by persons who are not citizens. Since John Soren, a British citizen is the majority shareholder in Sunny Estate, and then it's a non-citizen.

Under **Article 237(2) (c) of the Constitution.** A non-citizen can only acquire lease in land but not a mailo or freehold interest. **Section 40(4) Land Act** re-emphasizes this position.

Section 3(5) of the Land Act defines what leasehold tenure is **Section 3(5) Land Act** stipulates the essential requirement of a lease inter alia exclusive possession, duration and payment of rent. **Section 40(2) of the Land Act** is to the effect that any lease in excess of 5 years to a non-citizen must be registered in line with the provision of the Regestration of Titles Act.

Under **Section 54** of the Regestration of Titles Act no unregistered instrument can pass on an interest in land the Regestration of Titles Act **Section 101** further states that any lease in excess of 3 years must be registered.

Therefore, the parties, Jane and Sunny can enter into a lease agreement and hearings creates the lease, go ahead and registers the same at the registry as per the provision of S.92 of the RTA.

Requirements of company

1) Board resolution that the company can acquire the land
2) Due diligence.

THE REPUBLIC OF UGANDA
IN THE MATTER OF REGISTRATION OF TITLES ACT CAP.230
AND
IN THE MATTER OF THE LAND ACT CAP.227
AND
IN THE MATTER OF THE CONTRACTS ACT,2010.
AND
IN THE MATTER FOR THE LEASE OF LAND COMPRISED IN KYADONDO BLOCK 237PLOT 294 AT MUTUNGO
(Herein after referred to as "the land")

LEASE AGREEMENT

This lease agreement is made this 25th day of November 2022

Between

Joan Nansambu whose address for purposes of this lease agreement shall be SUI GENERIS, , P.O.BOX. 0000, KAMPALA (hereinafter referred to as the "lesser" which expression shall unless context so admits include her duly authorised agents, heirs, successors in the title, executor and legal representatives) on one part.

And

Sunny Estate limited of P.O. box 73, kampala (hereinafter referred to as the "lease" which expression shall unless context so admits include its duly authorized agents' successors in title and legal representation on the other land.

WHERE AS, Joan Nansambu is the registered proprietor of the land and she is desirous of leasing the land to the lessee

AND WHERE AS Sunny estate limited is willing to acquire a lease over the land on the condition s and covenant stipulated in this agreement.

It is therefore agreed as follows:

The lease.

1.1. Subject to and in accordance with the conditions and covenants of this agreement, lessor hereby lets to the lessee and the lessee agrees to take possession of the land.

1.2. The land is let to the lessee and lessee takes the same subject to all easements, restrictions, reservations, covenants and agreement to which the land may be subject to as of the lease of commencement date.

1.3. The lessee hereby agrees to take the land except as otherwise expressly set forth herein as is and to assume all responsibilities pertaining to land as of the commencement date of this lease and these responsibilities shall survive until the expiration or termination of this agreement.

2. Duration

2.1. This lease period shall commence on the 20th day of January,2020 (herein referred to as the commencement date) and shall last for a period of 99years from the commencement date (hereinafter referred to as the initial lease period)

2.2. The lease period shall be automatically renewable for another 49 years upon expiration of the initial lease period at the sole instance of the lessee

2.3. Where the lessee is not desirous of exercising the option of renewal, it shall provide a written notice to the lesser stating that the lease shall terminate at the end of the initial lease period.

2.4. The notice referred to in clause 2.3 shall be given not later than 1 year to the expiration of the initial period.

3. Consideration

3.1. In consideration for a sum of UGX30,000,000 (thirty million Ugandan shillings) which is to be paid before the commencement date of this lease, the lesser agrees to party with the exclusive possession of the land. The lessee shall assume the same.

3.2. The lessee shall continue to pay a yearly fee of UGX 4,000,00 (four million Ugandan shillings) which figure shall be subject to revision upward every 5 years in an amount not exceeding 20% of the yearly amount payable at the time (hereinafter as rent reserved).

3.3. The yearly fee referred to in clause 3.2 shall be payable not later that the 20th day of January of each year for as long as this agreement remains in force.

4. Lessor's obligations and undertaking.

4.1. The lesser undertakes to deliver vacant possession of the land on the commencement date of this lease.

4.2. The lessor undertakes to offer exclusive possession of the land to the lessee subject to this agreement.

4.3. The lessor shall also render any other assistance to the lessee as may be reasonably required to start up the business for which the lease is acquired

No derogation from the grant.

5. Powers of the lessor

5.1. The lessor may with or without some years, workers or other once every year during the term at a reasonable time of the day, enter upon the leased property and view the state of repair of the property.

5.2. In any case the rent or any part of it is arrears for a period of 30 days, although no legal or formal demand has been made for payment of that rent or in case of a breach or non-absence of any of the covenants expressed here under or by law declared implied in this agreement and the breach continues for 30 days, the lessor or transferees may re-enter upon and take possession of the land.

6. Covenants by the lessee

6.1. The lessee undertakes to pay rent reserved under this agreement.

6.2. The lessee undertakes to keep and yield up the land and any attachments erected there on in good and tenantable repair, damages from any natural clamity including but not limited to earth quakes and floods, and reasonable wear and tear expected.

6.3. The lessor will occupy and develop the land by setting up a 30-house estate with each house being of an estimated value of UGX 100,000,000.

6.4. The houses referred to in clause 6.3 shall be constructed to completion within 3 years from the commencement date.

6.5. The lessor shall not carry out any other kind of use or development on the land other than that stated in clause 6.3 except with the express written consent of the lessor.

6.6. The lessee shall not sublet the land except with the written consent of the lessor however there shall be no requirement for written consent where the lessee is obtaining tenants to let the house stated in clause 6.3.

6.7. The consent stipulated in clause 6.6 shall be obtained from the lessor upon payment of a consent fee equivalent to 1% of the value of such portion of the lessee's interest being sublet at such material time.

7. Dispute resolution

7.1. Any dispute arising out this agreement and the arrangement herein created shall be resolved through mediation within 14 days from the date on which the dispute arose.

7.2. The mediator shall be any mediator recommended by LADER at the request of either party.

7.3. Where the parties fail to successfully resolve the dispute through mediation, the matter may be brought before the high court of Uganda.

8. Law applicable

This agreement shall be governed by the laws of Uganda in force at the time.

IN WITNESS WHERE of the parties hereto their signatures here under on this 25th day of November, 2022.

Signed by (lessor) Signed by (lessee)

Joan Nansambu, JOHN SOREN (DIRECTOR)

In the presence of in the presence of

Namukasa Maria Rose **Gukiina Patrick**

OBJECTION MY LORD

ADVOCATE ADVOCATE

Drawn by

SUI GENERIS & CO. ADVOCATES
P.O.BOX. 0000, KAMPALA
UGANDA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 01 OF 2022.

SUNNY ESTATE LIMITED..... APPLICANT

VERSUS

JOAN NANSAMBU.....RESPONDENT

NOTICE OF MOTION

(Under S.25(1) of the judicature Act Cap 13, section 98 of the civil procedure Act Cap.71, order 52 rule 1of the civil procedure Rules 51 71-1 (as amended)

TAKE NOTICE that this honorable court shall be moved on the.....day of .....2022 at ..... O'clock in the fore or afternoon or soon thereafter as counsel for the applicant can be heard on the application for orders that:

1. The application be granted relief from forfeiture for non-payment of rent.

TAKE FURTHER NOTICE THAT the grounds of this application are set out in the affidavit of john Soren, the director of the applicant, attached here with, but briefly they are:

a) That the applicant undertakes to pay the respondent the outstanding rent arrears.

b) That the applicant undertakes to pay the responder any costs and damages incurred.

c) That it is in the best interest of Justice that this honourable court grants this application.

Dated at Kampala this 25th day of November

.....

COUNSEL FOR THE APPLICANT.

Given under my hand and seal of this honourable court this 25th day of November 2022.

.....

Registrar

Drawn and filed by

SUI GENERIS & CO ADVOCATES
LAW FIRM
P.O.BOX 0000, KAMPALA
UGANDA

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS CAUSE NO 1 OF 2022.
SUNNY ESTATES LIMITED..... APPLICANT
VERSUS
JOAN NANSAMBU .....RESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE MOTION

I, JOHN SEMEI OF SUI GENERIS & CO-ADVOCATES, P.O.BOX. 0000, MBARARA, do solemnly swear and state as follows:

1. THAT I am a male adult Britton of sound mind and managing director of Sunny estates limited the applicant in this matter and swear this affidavit in that capacity.
2. THAT Sunny Estates limited is the leasehold registered proprietor of land comprised in Kyadondo Block 237 Plot 294 at Mutungo. (Attached to this affidavit is the leasehold title marked annexure)
3. THAT on the 23rd day of November 2022, Joan Nansambu, the respondent communicated an intention to evict Sunny Estates limited from the land. (Attached to this affidavit is the letter from mannered annexure)
4. THAT Joan Nansambu is intending to evict Sunny Estates limited for non-payment of annual ground rent.
5. THAT Sunny Estates limited has been going through financial difficulties which have hindered it from fulfilling its obligations.
6. THAT Sunny Estates under takes to pay all outstanding rent arrears and any damages and costs incurred by the respondent as a result of the default.
7. THAT this affidavit is deepened in support of the notice of motion.
8. THAT I certify that whatever I have stated above is true and correct to the best of my knowledge.

SWORN AT MBARARA on this 23rd day of November 2022 BY THE SAID James Semei,

DEPONENT

BEFORE ME

COMMISSIONER OF OATHS

Drawn and filed by

SUI GENERIS & CO ADVOCATES

LAW FIRM

P.O.BOX 0000, KAMPALA

UGANDA. `

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE REGISTRATION OF TITLE ACT CAP. 230
IN THE MATTER OF THE CONTRACTS ACT,2010
AND
IN THE MATTEER OF THE LEASE COMPRISED IN KYADONDO BLOCK 237 PLOT 294 AT MUTUNGO
(Hereinafter referred to as "the land")

DEED OF SURRRENDER OF THE LEASE.

This deed made this 25th day of November 2022.

BETWEEN

Joan Nasambu of SUI GENERIS & CO – Advocates, P.O.BOX 0000 KAMPALA. (Hereinafter referred to as the "lessor" which expression shall unless context so admits include her duly authorized agents, heirs, successors in title executors and legal representatives) on one part

AND

Sunny Estates limited of P.O.BOX 73, Kampala (hereinafter referred to as the "lessee" which expression shall unless context so admits include its duly authorized agents' successors in title and legal representatives) on the other hand.

WHEREAS the lessor and lessee entered into a lease agreement on the 25th day of November 2022 running for 99 years with effect from 20th January 2020 and the same duly registered and a lease hold title issue.

WHEREAS the lessee in line with the covenants of the lease has constructed 20 housing units of the covenanted 30, the lessor is desirous of taking over the 20 housing units and the lessee ceases any further works on the land.

It is therefore agreed as follows

1. Consideration

    1.1. In consideration of the sum of UGX 2,000,000,000 (two billion Uganda shillings) lessee surrenders the lease on the land with all developments therefore to the lessor.

    1.2. The lessee shall pay the sum in clause 1.1. Within two weeks from the date of execution of this deed and in any case not later than on the 15th day of December 2022.

2. Duties of the lessee

2.1. The lessee shall deliver the land with all the developments there on not later than by the 15th day of December 2022.

2.2. The lessee shall also deliver up the duplicate certificate of title pertaining to the lease not later than by the 10th day of December 2022.

IN WITNESS WHERE OF THE PARTIES have agreed and appended their signature on the date first motion above.

Signed by (LESSEE) Signed by (LESSOR)

Joan Nansambu

MANAGING DIRECTOR

In the presence of

SUI GENERIS

ADVOCATE

You lodge the following documents with the registrar

- Surrender deed
- The lease certificate of title
- The duplicated certificate of Joan

VARIATION DEED

Under **Section 101 of the Regestration of Titles Act**, a lease is created by agreement and thus its terms may be varied by the express agreement of the parties in another agreement entered to vary the terms of the earlier agreement.

In this case since the change was in respect of the user clause, the lessee must seek the express consent of the lesser or risk being in breach of the lease which would entitle the lessor to repudiate the lease.

Further since the lessee is changing from a residential purpose to an industrial purpose, they need to seek approval from: -

a) The physical planning authorities under **Section 33(1) of the Physical Planning Act.**

b) The NEMA Act Cap. 153.

Having obtained the consent from the two, they must prove to enter into negotiations with the lessor which if successful will culminate into the signing of a variation deed in respect to the user clause.

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE REGISTRATION OF TITLES OF ACT CAP. 230 AND
IN THE MATTER OF THE LAND ACT CAP. 227
AND

IN THE MATTER OF THE CONTRCTS ACT 2010
AND
IN THE MATTER OF THE LEASE COMPRISED IN LEASEHOLD REGISTER
(Hereinafter referred to as the "land")

VARIATION DEED

This variation deed made this 28th day of November, 2022

Between

Joan Nansambu of SUI GENERIS, P.O.BOX 0000, KAMPALA. (Hereinafter referred to as the "lessor" which expression shall unless context so admits include her duly authorized agents, heirs, successors entitle, executor and legal representatives) on one part.

And

Sunny Estates limited of P.O. Box 73, Kampala (herein referred to as the "lessee" which expression shall unless context so admits include its duly authorized agent's successor in title and legal representatives) on the other hand.

WHERE AS the lessor and lessee entered into lease agreement on the 22nd day of November, 2022 over the above-mentioned land running for a period of 99 years with effect from 20th January 2020 and the same was duly registered and a leasehold title to the same issued.

WHEREAS the lease agreement among other clause restricted the use of the land to construction of 30 residential houses and other use whatsoever expect with the express consent of the lesser.

WHEREAS the lessee has constructed 20 of the said 30 residential houses but is cash constructed to construct the other 10and is desirous of converting to 20 constructed houses into a factory for the manufacture of drugs of all types and intravenous fluids and has acquired a licence from national drug authority.

WHEREAS the lessor is open to the conversion and agrees to the conversion of the user of the land.

1. Clause..... of the lease agreement is varied to provide that the lease shall use the land for the manufacture of all types of drugs and intravenous fluids as licenced by the national drug authority and shall not use the land for any other purpose except with the express permission of the lessor.

IN WITNESS WHEREOF THE PARTIES have varied the terms of the lease agreement and appended their signature on the date first mentioned above.

Signed by (LESSOR) Signed by (LESSEE)

Joan Nansambu

MANAGING DIRECTOR

In the presence of

SUI GENERIS

ADVOCATE

EXAMPLE

Brief facts

Mukama Mulunji is the registered proprietor of land comprised in LRV 13 Plot 59 Martin Road Kampala.the land has a number of people on it. There Sam Okei who sells second hand clothes in its yard displayed on the ground. MTN which sought the permission of Mulunji to construct a Kiosk in the yard from which it operates a telephone booth and pays to Mulunji UGX 300,000.

Martin Groceries and New sounds let two steps on the premises and pay a monthly sum of UGX 500,000. Martin Groceries and New sounds have both defaulted in rent since July 2018 and December 2018 respectively and have not paid despite Mulunji issuing a notice of demand in Jan 2022. Alice Atin EVERY EVENING seeks on to the land to cook and sell food to people in the neighbourhood. Rude boy Bonaparte has forcefully taken over Mulunji's apartment (6) on the land, lives in one and has let out the rest and carry UGX 400, 00 per month from each.

Issues.

1. Whether Mulunji can lawfully evict the parties on his land.
2. Whether Mulunji can recover for the rent arrears on the other money he would have earned from the occupation in the circumstances.
3. What is the forum, procedure and necessary document for recovery of the money owing and to lawfully evict parties in the circumstances?
4. Whether mulunji can convert the land from lease hold to freehold.
5. What is the procedure and necessary documents to successfully convert the land from leasehold to freehold.

ISSUE 1.

Refer to notes on licences and periodie tenants.

Issue 2.

Mulunji can distress for rent in arreas and also recover mense profits from bonaparte.

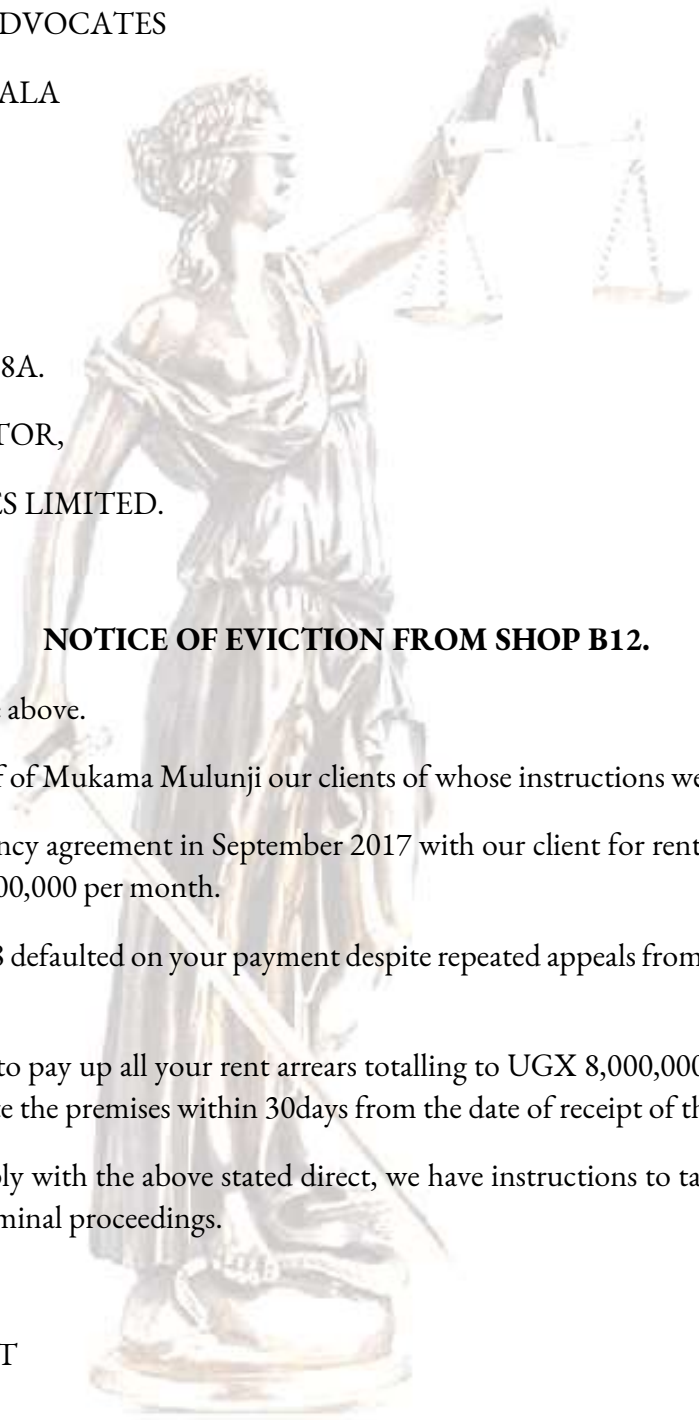
Refer to Distress for rent and mense profits.

Issue 3

Necessary documents.

- Notice of eviction
- Notice of termination
- Notice of termination
- Notice of intention to sue
- Ordinary letter for distress to the magistrate.
- Ordinary plaint. (High court is the forum).

NOTICE OF EVICTION TO PERIODIC TENANTS.



SUI GENERIS &CO ADVOCATES

P.O.BOX 0000, KAMPALA

UGANDA

23rd November, 2022

Our Ref: KK/AJL/60/18A.

MANAGING DIRECTOR,

MARTIN GROCERIES LIMITED.

Dear sir/madam,

NOTICE OF EVICTION FROM SHOP B12.

Reference is made to the above.

We act for and on behalf of Mukama Mulunji our clients of whose instructions we address you as follows.

That you entered a tenancy agreement in September 2017 with our client for rent to shop B12n in which you were to pay UGX 500,000 per month.

That you since July 2018 defaulted on your payment despite repeated appeals from our client for you to do so.

You are hereby ordered to pay up all your rent arrears totalling to UGX 8,000,000 for the 16 months you have defaulted and vacate the premises within 30days from the date of receipt of this notice.

Should you fail to comply with the above stated direct, we have instructions to take court actions against you in both civil and criminal proceedings.

Yours

MUGARURA VICENT

PARTNER

(SUI GENERIS & CO ADVOCATES)

NOTICE OF TERMINATION TO THE LICENCES. CONTRACTUAL LICENCES

FIRMDI &CO ADVOCATES.

P.O.BOX 0000, KAMPALA

UGANDA

23rd November, 2022

Our Ref: KK/AJL/60/18A.

THE MANAGING MANAGER

MTN (U) LTD.

Dear Madam,

NOTICE OF TERMINATION OF LICENCE.

Reference is made to the above.

We act for and on behalf of MUKAMA MULUNJI our client on whose instructions we address you as follows.

That you entered into an agreement with our client on the 23rd of September 2022 permitting you to construct a Kiosk on his land comprised in LVR 151 FALIO 13 PLOT59 Martin Road Kampala.

That whereas you have not breached the agreement our client is desirous of developing the land and thus involves clause 12 of the agreement which allows either party to terminate the agreement with 3 months written notice to the other of the termination.

This is to inform you therefore that our client will terminate the agreement within 3 months from the date of receipt of this notice.

Yours

SUI GENERIS (PARTNER)

SUI GENERIS & CO ADVOCATES.

EASEMENTS

An easement as a right attached to a particular piece of land that either the owner of that land either to use the land of another person in a particular manner or to restrict that other persons' use of his/her land to a certain extent.

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

ESSENTIAL FEATURES.

a) **There must be in existence a dominate and a serviette land.** In **MAKUMBI (MRS. E) AND ANOTHER V PURAN SINGH GHANA & ANOTHER**[15], the court stated that an easement cannot exist in "gross". A right cannot be an easement unless it is connected with a dominant land that belongs to the person to whom the right was given.

In **HILL V TUPPER**[16], the court held that a public right of way is not an easement precisely because the right is dedicated to the public at large irrespective of connection with any dominant land.**HILL V TUPPER** (1863) was an **English land law case which did not find an easement in** a commercial agreement, in this case, related to boat hire. Here, the agreed "exclusive" right was held not to be benefitting the land itself, but just for the business. It could not therefore be enforced directly against third parties competing.The Basingstoke Canal Co gave Hill an exclusive contractual licence in his lease of Aldershot Wharf, Cottage and Boathouse to hire boats out. Hill did so regularly. Mr Tupper also occasionally allowed customers to use his boats by his Aldershot Inn to bathe or fish in the canal. Hill wished to stop Tupper from doing so. He sued Tupper, arguing that his lease gave him an exclusive easement and so a direct right to enforce it against third parties (rather than mere licence)

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

[15](1962)EA 331
[16](1866) 2 H & C 121

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

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

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

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

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

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

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

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

In **RE ELLERIBOROUGH PARK**[17], the court stated that it's a requirement for an easement that the dominant and serviette land must be owned and or occupied by different persons.

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

Severally things are encompassed here;

1) There must be a capable grantor and grantee. In **NATIONAL GUARANTEE MANURE CO V DONALD**[18] the court noted that a statutory corporation with no capacity to grant an easement cannot grant an easement.

2) Right granted must be capable of reasonable definition e.g., right to a new in **BROWNE V FLOWER (1911) 1 CH. 219** held to be incapable of reasonable definition and thus not capable to being an easement.

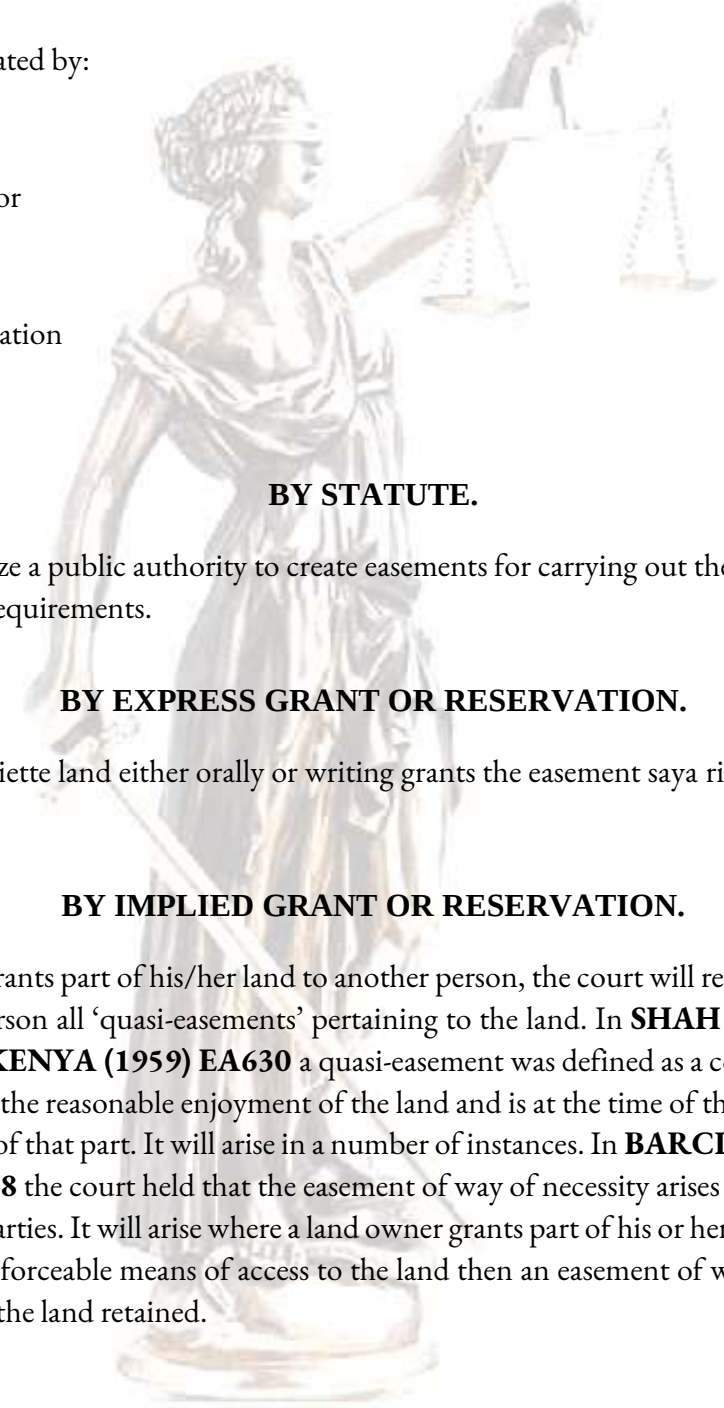
3) Right granted must be within the general nature of right capable of existing as easements e.g., right of which to light, to support, and to water.

[17](195603 ALLER *667*
[18](1859) 4 H & C

CREATION OF EASEMENTS

Easements may be created by:

- Statute
- Express grant or
- Reservation
- Implied reservation



BY STATUTE.

A statute may authorize a public authority to create easements for carrying out their activities. These need not have all essential requirements.

BY EXPRESS GRANT OR RESERVATION.

The owner of the serviette land either orally or writing grants the easement saya right of way to the owner of a dominant land.

BY IMPLIED GRANT OR RESERVATION.

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

AN EASEMENT OF NECESSITY WILL NOT ARISE WHERE;

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

2) As was stated in **MIDLAND RLY CO V MILES (1886) 33 CHD 632**, the necessity for access must exist at the time of the grant and not merely arise later.

3) In Barclays Bank V Patel, the court stated that the owner of the serviette land is not entitled to compensation because he or she must have envisaged the necessity way at the time of conveyance.

INTENDED OR IMPLIED EASEMENT

An easement that is required to carry out the common intention of the granter and the grantee will be implied even though it is not expressly reserved or granted in the conveyance. In **WONG V BEAMOUNT PROPERTY TRUST LTD (1965) 1 QB 173, WHERE** the previous owner of the building. The basement for restaurant business with lessee having to ensure that he meets the health stame when he sought to construct a ventilation duct at the bae, the house and the lessor refused, the court held that gives the use for which the land was granted, the business will be carried out at all in the manner contemplated by the parties without the installation of a ventilation system by a duct.

EASEMENTS ACQUIRED BY LONG TERM USER OR PRESCRIPTION

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

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

(1) The claimant must prove exercise by him or her of the allowed right for at least 20years.

(2) Right must not have been exercised with force e.g., if at one time in the 20 years the owner of the serviette land blocked the access and it was forcefully-established.

(3) Right must have been exercised openly and not secretly.

ACCESS TO A PUBLIC ROAD

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

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

REGISTRATION OF EASEMENTS

There is no express provision requiring the registration of easements. **Section 60 of Regestration of Titles Act** stipulates that a statement in a certificate of title that a person name in the certificate is entitled to an easement shall be conclusive evidence the he or she is entitled.

Therefore, easements are entered on the register by endorsing their existence on both the title of the dominant land and serviette land.

However, under **Section 64(2) of Regestration of Titles Act** registration/ endorsement make no difference because the section states that easement created by enjoyment or user or subsisting over or upon any land constitutes to an exception to indefeasibility.

EXTINGUISHMENT OF EASEMENTS

An easement maybe extinguished by: -

(1) Express agreement of the parties where the owner of the dominant land expressly releases the serviette land from the easement. Waterloo V Bacon (1866) LR2 EQ.

(2) By merger where the dominant and serviette can come into a common ownership and occupation, the easements affecting the land are merged and extinguished. **BUCKBY V COLES (1814) 5 TAUNT 311.**

(3) By abandonment by the dominant owner. **JAMES V STEVENSON (1893) AC 167**. The abandonment may be expressly but often it's implied from the acts or omissions of the beneficiary.

PROFITS A PRENDRE

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

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

ADVERSE POSSESSION

At common law, as was stated in the case of **ASHER V WHITLOCK (1865) LR1QBI.** The court further stated that a person who is in possession has a title which is good against the whole even except a person with a better claim.

The acquisition is owing to the provisions of the limitation Act however the same

Under **Section 5 of the Limitation Act**, no person can make an entry or bring an action to recover land after the expiration of 12 years from the date the cause of action accrued to a land owner when a stranger entered into adverse possession of their land.

For one to be an adverse possessor they must have acquired in **E.R IVES INVESTMENT LTD V HIGH (1967) QB 379, Lord Denning MR** said that a licence from the owner negates the otherwise adverse quality of possession enjoyed by a claimant. Thus, were owe is a caretaker or occupied the land as a servant of the land, the limitation time does not run in their favour irrespective the period they remain in possession.

PROVING ADVERSE POSSESSION.

Under Section 59 of the **Regestration of Titles Act** the certificate of the title is conclusive proof of ownership and any person with such title having their names entered there on is deemed to be in possession of the land. Thus, a person with no documentary title claiming ownership on the basis of adverse possession must according to the case of **POWELL V MC FARLANE (1977) 38 P& CR 452.** The court further noted that factual possession entails exercise of sufficient physical control over the entire land and this can

be established by proof e.g., using the land for accommodation, cultivation or grazing animals or generally dealing with the land as on owner might be expected to.

In **BUCKINGHAM CITY COUNCIL V MORAN (1969) 2ALLER 225**, the court stated that to prove adverse possession. In **BLIGH V MARTIN (1968)1 WLR 804**, the court held that intention is assessed on a case per case basis. It is not required to prove that the squatter consciously intended to exclude the true owner, rather.

RUNNING OF TIME.

S.6(1) of the Limitation Act Provides that the right of action arises on the date of the dispossession which is the date upon which the adverse possessor entered the land according to the decision of the high court in **NAMBALU KINTU V KAMISA (1975) H.C.B**

EFFECT OF LAPSE OF TIME (LIMITATION)

Section 16 of the Limitation Act provides that upon laps of the limitation period, the title of the person who has been disposed is extinguished.

VESTING ORDERS IN ADVANCE POSSESSION

Under **Section 78 of the Regestration of Titles Act** any person claiming that they have acquired a title by possession toland registered under this Act, they may apply to the registrar for an order vesting theland in him or her for on estate in fee simple or other estate claimed.

The application according to **Section 79 of the Regestration of Titles Act** must be in writing and in the form prescribed in the 6th schedule. It must be signed by the applicant, attested by at least one person subject to **Section 147 Regestration of Titles Act**, supported by a statutory declaration of the person signing it and accompanied by a survey plan.

Upon receipt of the application, the registrar under S.80 should cause the gazetting of the applicate at the applicant's expense and issue any other persons as they deem fit with notices.

The applicant **under Section 82 Regestration of Titles Act** must cause the notice to be served by posting it in a conspicuous place on the land or at such a place as the registrar direct.

Upon lapse of 3 months and not more than 12 months, unless there a caveat forbidding the registrant the resistor must grant the application altogether or in part **Section 83 Regestration of Titles Act**.

Under **Section 87 Regestration of Titles Act** upon lapse of the time appointed in **83 Regestration of Titles Act**, the registrar if commenced the applicant has acquired title by possession will cancel the existing

certificate of title and any other instrument entered therein and issue to the applicant a new certificate of title.

APPLICATION.
REPUBLIC OF UGANDA
REGISTRATION OF TITLES ACT
IN THE MATTER OF AN APPLICATION FOR
A VESTING ORDER
IN THE MATTER OF THE LAND SITUATE
TO THE REGISTRAR OF TITLES
WAKISO ZONAL OFFICE

Dear Sir,

APPLICATION FOR VESTING ORDER UNDER S. 79 OF RTA

I, Mwebe Kassim, C/O M/S SUI GENERIS, ADVOCATES, P.O.BOX 0000 KAMPALA, apply for a vesting order vesting in me all that piece of land being in Bulemezi Block22 Plots No.391 and 392 at Kikyusa which is delimited and coloured red upon the plan numbered 2984 in the schedule to this application for an estate free from encumbrances and I declare;

1. The particulars upon which my possession on which the claim is based are that;
    a) I came on the land in 1979 upon the return of my late father from exile aged 11 years at the time.
    b) That I occupy plot No. 391 fully which measures about 322 acres and Plot No.392 which measures 120 acres, I occupy only acres of it.
    c) That may late father, mother and siblings have all since died and been buried on the land.
    d) That since we settled on the land having found it unoccupied, the registered proprietor has not challenged our stay on the same.

2. That there are no documents or evidences of title affecting such land in my possession or under my control other than those include in the schedule to this application.
3. That there are no mortgages or encumbrances registered on the above-mentioned title except the following. (If any list them).
4. That except as afore said I am not aware of any mortgages or encumbrance affecting the land or that any person other than myself has any estate or interest in the land.

5. That the names and addresses so far as known to me of the occupiers of all lands contiguous to the land are as follows: -

Abweeh Stella of P. o. box 1111, Kampala.

6. That the present value of the land, including all improvements on it, does not exceed shs. 1,000,000,000.

Dated this 28th day of November 2022.

Made and signed at Kampala by Mwebe Kassim.

MWEBE KASSIM

(APPLICANT)

In the presence of

SUI GENERIS

ADVOCATE.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE REGISTRATION OF TITLE ACT CAP.230
AND
IN THE MATTER OF THE STATUTORY DECLARATION ACT CAP.222
AND
IN THE MATTER OF LAND COMPRISED IN BULEMEZI BLOCK 22 PLOT 391 AT KIKYUSA.
AND
IN THE MATTER OF AN APPLICATION FOR VESTING ORDER.

STATUTORY DECLARATION

I, Kassim Mwebe of C/O M/S SUI GENERIS & CO. ADVOCATE, P.O.BOX 0000, KAMPALA do hereby solemnly declare and state as follow: -

1. THAT I am a male adult Uganda of sound mind with capacity to make this declaration.
2. THAT I am the occupant of the at Bulemezi Block 22 Plot No. 391at Kikyusa.
3. THAT I have been occupying the said land since I was 11 years old upon my father's return from exile in 1979 after the liberation war.
4. THAT I fully occupy the whole of land which measure 392 acres.
5. THAT my siblings and my parents lived, died and were buried on the same land. (Attached is a copy of the grave yard marked annexture "A")
6. THAT I currently reside in the residential house with my family and we dwell on the said land using the other part of it for commercial farming.
7. THAT the said land was registered in the names of Abwoch Stella of P.o. Box. 1111 Kampala and no knows her whereabouts, neither has she lived claim on the land in the last over 40 years we have lived on the land and nor can she be traced from 1979.
8. THAT I have been informed by my lawyers of SUI GENERIS & CO ADVOCATES that the laws of Uganda prove me as the occupant of such land having been in possession of the same for over 12 years in interrupt.
9. THAT I believe the information of my lawyers and it's in that regard that I apply to be registered as the proprietor of the land.

10. THAT I hereby affirm and declare that what i a have stated here in above is true and correct to the best of my knowledge, information and believe

DECLARED at Kampala by the said KASSIM MWEBE this 28th day of November 2022.

DEPONENT

Before me

COMMISSIONER FOR OATHS

Drawn by:

SUI GENERIS& CO ADVOCATES

P.O.BOX 0000 KAMPALA

UGANDA

VESTING ORDER WHERE THERE IS A COMPLETE TRANSFER AND IS IN POSSESSION BUT NO TRANSFER EFFECTED.

Under **Section 167 of the Regestration of Titles Act** the registrar can make a vesting order in case were there was a complete purchase. The registrar must satisfy him or herself that: -

a) The land was sold by the proprietor.

b) The whole of the purchase money was paid.

c) The purchaser has/ those claiming under him have entered and are in possession of the land.

d) A transfer was never executed for reason that the transferor died or residing out of jurisdiction or cannot be found.

Where the registrar satisfies themselves as to the above, the registrar shall make a vesting order and may make an order as to payment of such other additional fee in respect of assurance of title and the applicant shall pay all other required fees; stamp duty, perusal fees, registration fees.

Necessary documents.

(1) Formal letter applying for the order.

(2) Evidence /proof of death (where transferor is deceased).

(3) Sale agreement.

(4) A statutory declaration.

(5) Deed plan.

Court application

SUI GENERIS & CO ADVOCATES

P.O.BOX 0000, KAMPALA

UGANDA

28TH NOVEMBER, 2022

Our Ref: KK/10/2022/AB

Yours Ref:

THE REGISTRAR OF TITLES,

WAKISO MINISTERIAL ZONAL

OFFICE.

Dear Madam,

APPLICATION FOR A VESTING ORDER UNDER SECTION 167 OF THE RTA.

We refer to the above.

We act for and on behalf of our client MUTWE KEZIRO on whose instructions we address you as follows:

That our client entered into an agreement of sale of land with Muganda Ronald the registered proprietor of the land comprised in Bulemezi Block 22 Plot No.19 Kalule. (Attached is the agreement of sale.)

The sale agreement was in respect of the afore mention land and our client paid a purchase price of UGX 1000,000,000 in full consideration for the land.

That no transfer was signed in favour of our client because the duplicate certificate of title had been misplaced at the time of execution of the sale agreement.

That a month later, Muganda Ronald sent his to deliver to our client the duplicate certificate of the title and a message requiring our client to make arrangements to see him sign a transfer in respect of the land.

That unfortunately, before the transfer could be signed in his favour, Ronald died (attached is the copy of Ronald Muganda's death certificate.)

We therefore pray on behalf of our client that you issue a vesting order under section 167 of the RTA that the land comprised in Bulemezi Block 22 Plot No.19 at Kalule vests and be registered in our clients' names.

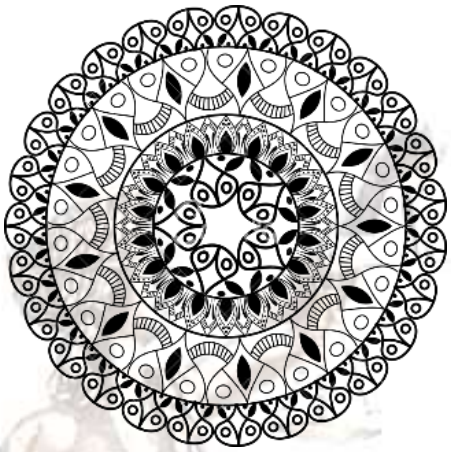
OBJECTION MY LORD

Yours faithfully

SUI GENERIS (PARTNER)

SUI GENERIS &CO ADVOCATES

- Attach all the documents referred to in the letter and a duplicate certificate.
- Pay all the requisite fees



CONVERSION OF LAND FROM LEASEHOLD TO FREEHOLD.

Leases on public land acquired before 1998.

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

a) The leasehold is authentic and genuine.

b) That there were no customary tenants on the land at the time of acquisition of the lease

c) That if there were any customary tenants at the time of acquisition whose tenancy was disclosed, those tenants are duly compensated.

d) All development conditions and covenants have been complied with.

e) The conversion is limited to 100 hectares and an area in excess will only be converted if the board has verified and is satisfied that it is desirable in the public interest that it should be converted.

Procedure

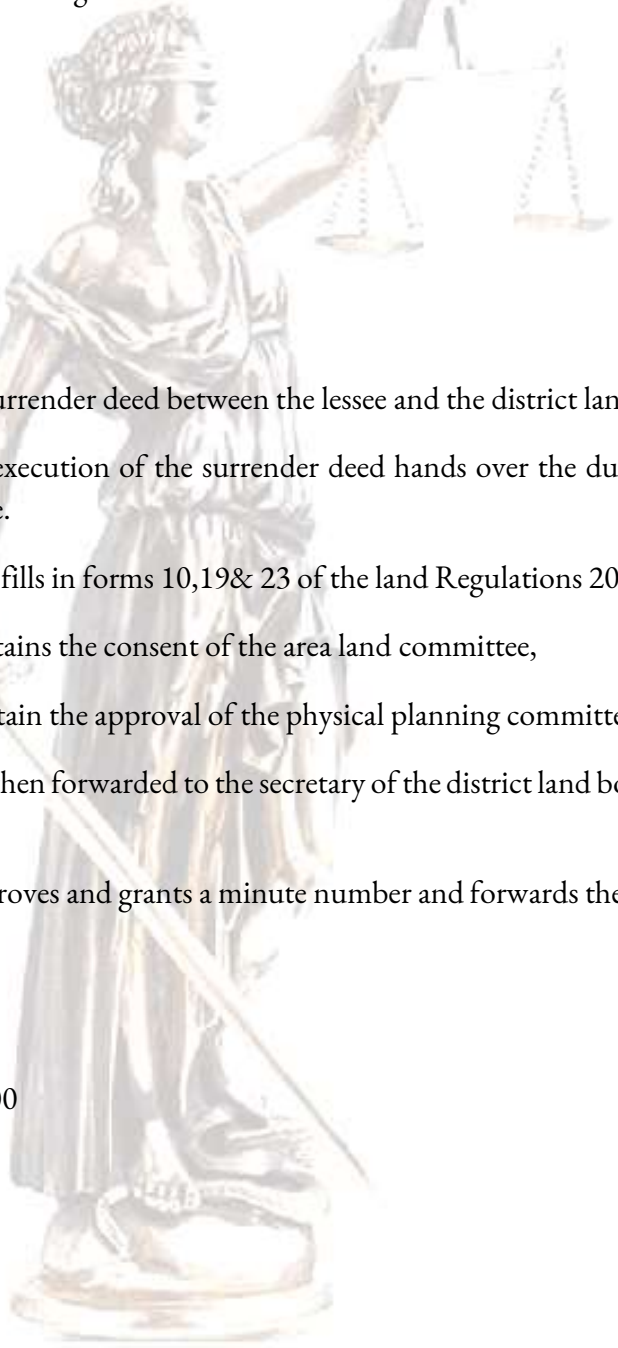
(1) The lease holder fills in form 5 in the first schedule to the land Regulation 2004.

(2) The form must be commissioned by a commissioner of oaths.

(3) The form is then delivered to the secretary of the district land board who forwards it to the senior land officer for perusal.

(4) The senior land officer forwards the same to the board which analyses the application as guided by **Section 28(1) of the Land Act.**

(5) Where the board grants the application, a minute is issued to it and endorsed on it and the same forwarded to the land Register office to effect the conversion.



Fees payable.

Rural area- UGX 40,000.

Urban area- UGX 100,000.

Post 1998

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

(2) The lessee on execution of the surrender deed hands over the duplicate certificate of the title of the lease.

(3) He or she then fills in forms 10,19& 23 of the land Regulations 2004.

(4) The person obtains the consent of the area land committee,

(5) Proceeds to obtain the approval of the physical planning committees.

(6) The forms are then forwarded to the secretary of the district land board who forwards them to the board.

(7) The board approves and grants a minute number and forwards the same to the land office.

Fees payable.

Registration fees – UGX 10,000

Assurance – UGX 20,000

Issuance – UGX 20,000

FRAUD IN LAND TRANSACTIONS

Indefeasibility of title

This means that once a person is registered a proprietor of an estate or interest in land, the government guarantees that his or her title cannot be divested or attacked by rival claims to the land except as prescribed under the **Regestration of Titles Act**.

The principle is enshrined under **Section 59, 64 and 181 of the Regestration of Titles Act.**

The principle was intended to serve two purposes: -

1. To protect title of the registered proprietor from unregistered interests.
2. To save persons dealing with registered land from the trouble and expenses of going behind the register book in order to investigate the validity of the possible rival claims to the land, and thus simplify expedite the process of transfer.

In **LWANGA V THE REGISTRAR OF TITLE, MISC-CAUSE NO.7A OF 1977 (1980) HCB 24**, applicant's father brought the suit land but didn't effect transfer. A one Katumba through forgery which he was later convicted for transferred the land into his names and then to a one Salongo. The applicant sought to impeach Salongo's title. Odoki that Salongo was a bonafide purchaser for value, therefore under **Section 189 (now 181)** his title couldn't be impeached or cancelled not withstanding that he acquired his title from a fraudster. He further observed that of the paradoxes of registered conveyance is that the registration obtained by fraud is void. It is capable of becoming a good root of title to a bona-fide purchase for value.

Exceptions to the principle of indefeasibility of title.

Pursuant to **Section 64 of Regestration of Titles Act** the act guarantees indefeasibility of title subject to the following except.

a) Encumbrances notified on the folium.

Under **Section 64 of Regestration of Titles Act**, a registered proprietor takes his or her title subject to estate or interests which are endorsed on the Register book and certificate of title at the time of purchase e.g., mortgages.

b) The estate of a proprietor claiming under a prior instrument of title.

Under **Section 64** of **Regestration of Titles Act**, the title of a registered proprietor is not indefeasible as against the interest of another proprietor claiming the same land under a prior registered title. In **NKOJO AMOOTI V KYAZZE & 2 ORS (CIVIL SUIT 536 OF 2012) [2013] UGHCLD 85**

c) **Land included by wrong description**.

Section 64 of the Regestration of Titles Act stipulates that the title of a registered proprietor is not absolute as regards any portion of land that may have been included in his or her certificate of title by wrong description of parcels or boundaries. However, the exemption will not apply where the land is transferred to a bonafide purchaser for a value. Thus, if by time the action for ejection is brought the land is already transferred and registered in the name of an innocent purchaser for value, the bonafide purchaser acquires good title. Also refer to the case of **WESTERN AUSTRALIA FRESH FOOD AND ICE CO. V FREECORN (1904) 1WAR 22.**

d) Public right of way and easements.

e) Adverse possession

f) Failure to obtain spousal consent for family land.

Section 39(4) of the Land Act, any transaction entered into by a bonafide purchaser but in respect of family land and the spousal consent was not obtained. Such a transaction is void and the bonafide purchaser's only remedy is to recover from the person who sold to them their consideration.

g) **Interests of tenants by occupancy**.

Tenants by occupancy enjoy security of occupancy and can only be evicted for non-payment of ground rent. Stipulated in the Act.

h) Failure to conduct due diligence. See bonafide purchaser.

i) Right in personam.

The exception through not founded in the Act is a judicial in road established in the case of **FRASER V WALKER (1967) I AC 569 AT 585**. The pricy council stated that the principle of indefeasibility of title in no way denies the right of a plaintiff to bring against a registered proprietor a claim in personam founded in law or in equity, for such relief as a court acting in personam W/C grant.

In **ADONIA V MUTEKANGA (19700) EA 429 at 433** the East African court of appeal stated that although the concept of the sanctity of the register runs through the Act, it is clear that the legislature intended to reserve to the high court the power to enforce fiduciary obligations.

According to **Megarry & Wade: The Law of Real Property, P.113,** a claim in personam is a personal obligation of legal or equitable nature assumed by a registered proprietor before or after registration of his or her title. Unlike a right in rem, which is enforceable against the world a right in personam is only enforceable against a person who was a party to the obligation.

In **MOTTY TURINAWE AND 4 ORS V EPHRAIM TURINAWE S.C.C.A. NO.10 OF 2018**, the first respondent was an engineer with KCCA and was offered the option to purchase the KCC house he occupied. He did not have the money and entered into an agreement with the 2nd respondent in which the 2nd respondent bought the house through him. She paid to him 70million while the offer from KCC was for 52 million. The respondent paid for the house, had it transferred to him and he subsequently transferred to 2nd respondent. The appellant convinced a suit alleging the land was family land.

FRAUD

Section 64 of Regestration of Titles Act stipulates that the title of a registered proprietor is indefeasible except in case of fraud.

WHAT IS FRAUD?

An act of dishonesty, breach of trust, misrepresentation which is not innocent

The Supreme Court decision of **FREDERICK J. K. ZAABWE VERSUS ORIENT BANK & 5 OTHERS; SCCA NO. 4/2006**; for the defined fraud;

"Fraud, according to Black's Law Dictionary means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him/her or to surrender a legal right and fraudulent means acting willfully and with specific intent to deceive or cheat, ordinarily for purposes of either causing some financial loss to another or bringing about some financial gain to oneself".

This case further defined fraud to mean;

"Anything calculated to deceive, whether by a single act culmination, or by suppression of truth, or suggestion of what is false, whether it is by a single, direct falsehood or the innuendo by speech or silence, word of mouth, or look or gesture ..... a generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling an any unfair way by which another is cheated...."

Examples

• Forgery

• Uttering a false document

• Obtaining registration to defeat an unregistered interest

• Deliberately refusing to find out the truth

• Under declaration of value to deny government revenue

Section 190 of the Registration of Titles Act provides and describes

FRAUDULENT ACTS THAT AMOUNT TO OFFENCES IN LAND TRANSACTIONS.

- If any person willfully makes any false statement or declaration in any application to bring land under the operation of this Act
- Or in any application under Part V of this Act (Person claiming title by possession. A person who claims that he or she has acquired a title by possession to land registered under this Act may apply to the registrar for an order vesting the land in him or her for an estate in fee simple or the other estate claimed)
- or in any other application to be registered under this Act as proprietor of any land, lease or mortgage, or suppresses or conceals or assists or joins in or is privy to the suppressing, withholding or concealing from the registrar of any material document, fact or matter of information, or willfully makes any false affidavit or signs any false certificate required under the authority or made or signed in pursuance of this Act,
- or if any person in the course of his or her examination before the registrar willfully and corruptly gives false evidence, or if any person fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or instrument
- or of any entry in the Register Book or of any erasure or alteration in any entry in the Register Book, or knowingly misleads or deceives any person herein before authorised to require explanation or information in respect to any land or the title to any land under the operation of this Act in respect to which any dealing is proposed to be registered,
- that person commits an offence and is liable on conviction to imprisonment for a period not exceeding three years or to a fine or to both such imprisonment and fine; and any certificate of title, entry, erasure or alteration so procured or made by fraud shall be void as against all parties or privies to the fraud.

The Supreme Court of Uganda, on 19th September 2019, ruled that under declaration of consideration and failure to disclose developments on land during the process of valuation for purposes of transfer amounts to fraud that renders a land transfer void.

Delivering the lead judgment of the Court in **SCCA NO.8 OF 2018 BETTY KIZITO VS DAVID KIZITO KANONYA & 7 OTHER**S, Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, with whom all the other 4 Justices agreed ruled that the law requires that true consideration in land transfers must be declared in view of Section 92(1) of the Registration of Titles Act.

Her Lordship approved as good law the 1982 High Court decision of **SAMUEL KIZITO MUBIRU & ANOTHER VS G.W. BYENSIBA & ANOTHER** WHICH held that a buyer is not a bona fide purchaser where he inserts a lesser figure on a transfer form as consideration than he actually paid. She unequivocally held that concealment of true consideration amounts to fraud.

Section 136 of the Registration of Titles Act states that;

Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any registered land, lease or mortgage shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which that proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice actual or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

Section 59 of the Registration of Titles Act provides that a Certificate of title by a registered person is conclusive evidence of ownership of land described therein and once a person is registered as proprietor of land, his title is indefeasible except for fraud.

Section 176 (c) of the Registration of Titles Act states that a registered proprietor of land is protected, save for fraud 'fraud'.

Section 77 of the Registration of Titles Act is also pertinent. It provides as follows: -

"Any Certificate of title, entry in the Register Book, procured or made by fraud shall be void as against all parties or privies to the fraud."

CAN A CERTIFICATE OF TITLE BE CANCELLED FOR FRAUD?

Yes, it can be cancelled if strictly proved before a court of law, the burden to prove the alleged fraud however falls on he who alleged it (Per **Section 103 of the Evidence Act**).It is trite law that fraud must be strictly proved. The standard of proof in fraud is higher than in ordinary Civil Suits but not beyond reasonable doubt.The Plaintiff alleged that the suit property was fraudulently transferred. The law as stated in Section 101 of the Evidence Act provides that:"Whoever desires Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."

The burden of proving fraud therefore lies on the Plaintiff**: See MILLER V MINISTER OF PENSIONS [1947] 2 ALLERL 372, 373.**

Since the allegation is about fraud, the law requires that proof must be almost to the criminal standard of beyond reasonable doubt: **SEE KAMPALA BOTTLERS LTD. VS DOMANICO (U) LIMITED, SUPREME COURT CIVIL APPEAL NO. 22 OF 1992.**

In a judgment delivered on the 25th day of April 2019 in the case of **HILDA WILSON NAMUSOKE & 3 ORS V OWALLA'S HOME INVESTMENT TRUST (E.A) LIMITED** Supreme Court Civil Appeal No. 15 of 2017, the Supreme Court held that the commissioner of land registration does not have powers to cancel a certificate of title on the ground of fraud. Prior to this judgement, the powers of the Commissioner of Land Registration with specific regard to cancelling certificates of title due to fraud were unclear.

Under the Registration of Titles Act Cap 205 (1964 edition) the Registrar of Titles (now Commissioner of Land Registration) had powers to cancel a certificate of title on the ground that it was acquired through fraud. This position was confirmed in the case of **EDWARD RURANGARANGA V MBARARA MUNICIPAL COUNCIL SUPREME COURT CIVIL APPEAL NO. 10 OF 1996.**

However, under **the 1998 Land Act as amended by the 2004 Land (Amendment) Act,** these powers to cancel a certificate of title acquired through fraud were removed from the Registrar. Courts did not uniformly apply the new position of law. While in some cases such as **SULAIT SSEMAKULA V COMMISIONER LAND REGISTRATION & ORS**; **C.R PATEL V THE COMMISSIONER LAND REGISTRATION & ORS**, among others courts held that the Registrar of Titles did not have such powers, others insisted on interpreting the provision of the law broadly to include fraud. This application of the law caused confusion and debate until the Supreme Court's decision In **HILDA WILSON NAMUSOKE & 3 ORS V OWALLA'S HOME INVESTMENT TRUST (E.A) LIMITED**,

The Supreme Court in an appeal arising from **HILDA WILSON NAMUSOKE & 3 ORS V OWALLA'S HOME INVESTMENT TRUST (E.A) LIMITED** unanimously held that the Commissioner of Land Registration does not have powers to cancel a certificate of title on the ground of fraud. The court reasoned;

1. That upon amendment of the Land Act, all the other grounds which empowered the Registrar of Titles to cancel a certificate of title were imported into the land Act save for fraud. The Supreme Court held that the absence of fraud in the new provision was deliberate.

2. That an allegation of fraud is so serious in nature and is required to be specifically pleaded and strictly proved before a court of law.

3. That whereas fraud is not authorised by the law and is therefore an illegality, fraud is a very special type of illegality.

4. Finally the Supreme Court decided that the Court of Appeal erred in relying on its decision in the case of Edward Rurangaranga which was an authority that expounded a statutory provision that was no longer law at the material time.

In **KAMPALA BOTTLERS LTD V DAMANICO LTD, S.CC.A NO.22 OF 1992,** Wambuzi, CJ stated that it is well established that fraud means actual fraud are some Act of dishonesty.

Fraud is the intentional perversion of truth to induce another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

Says Hon Mr. Justice Bashaija in the case of **WESTERN UGANDA IMPORTERS AND DISTRIBUTERS LTD V MUHASA IVAN MPONDI, KASESE DISTRICT LAND BOARD AND COMMISSIONER FOR LAND REGISTRATION CIVIL SUIT NO. 0014 OF 2014.**

EFFECTS OF FRAUD.

Once the fraud on the part of the registered proprietor is established, then his or her title is liable to be impeached pursuant to **Section 177 of the Regestration of Titles Act**. In **MUDIIMA ISA AND 50 ORS V ELLY KAYANJA AND 20 ORS H.C.C.S NO. 232 OF 2009,** Justice Bashaija K. Andrew stated that once the registered proprietor title has been impeached, the remedy lies in **Section 177 of the Regestration of Titles Act,** which empowers the court to direct the registrar of title to cancel the registration of the impeached proprietor from the register book.

WHAT CONSTITUTES FRAUD?

In **F.J.K ZAABWE V ORIENT BANK AND 50** others court held that the conduct of a party calculated to deceive, whether by a single act or combination or by suppression of truth is dishonest and amounts to fraud.

FRAUD MAY BE ACTUAL, CONSTRUCTIVE OR IMPUTED.

Fraud is said to be actual where the registered proprietor engaged in a dishonest act during the process of execution the transfer e.g

(1) forgeries

(2) Under declaration of the value of the land.

In **MUDIIMA ISA & 5ORS V ELLY KAYANJA & 2 ORS H.C.C.S NO.232 OF 2009,** the defendants had declared that the suit land measuring about130 acres in the suburbs of Kampala city had been purchased for only UGX 10 million. Evidence was led to show that the cost of an acre in the area was between 15million to 25 million. The court held that the defendants had intentionally undervalued the land with the intention of cheating government of the fax revenues payable on such transaction and therefore their title was void because of fraud.

In **SAMUEL KIZITO MUBIRU AND ANOR V W. BYENSIBA AND ANOR H.C.C.S NO.513 of** 1982 where the PLAINTIFF inserted shs.500,000 in the sales agreement as purchase price for land when in fact he paid shs. 2,400,000. The court held inter alia, that the mode of acquisition of the title in question was tainted with fraud and illegality because bona-fide included without fraud or without participation in wrong doings. That by the PLAINTIFF undervaluing the suit land; the design was to defraud the government of its revenue by way of paying less stamp duty.

Court further held that by public policy any transaction designed to defraud the government of its revenue is illegal, and that the effect of the illegality was to prevent the plaintiff from recovering under a contract which he seemed illegal was therefore void because of fraud.

However, where the under declaration was innocent, the same amount to fraud and the court won't impeach the title except on other reasons. The purchaser will be required nonetheless to pay the difference.

CONSTRUCTIVE FRAUD.

The registered proprietor is considered to have been constructive fraudulent per the decision in **VIVO ENERGY (U) LIMITED V SHIRE PETROLEUM COMPANY LIMITED AND 2 ORS H.C.C.S NO.8 OF 2016** if they had. **Justice Mubiru** stated that constructive notice applies if a purchaser knows facts which made it imperative to seek an explanation because in the absence of an explanation it was obvious that the transaction was probably improper.

The court further stated that, a purchaser is put on constructive notice where he/she required knowledge of circumstances which would put an honest and reasonable man on inquiry and yet he/she did not undertake the necessary inquires.

Where a person wilfully abstains from inquiry to void notice, such a person cannot claim to have acted in good faith. The fraud in such a case would be ascribed to them. In **DAVID SEJJAKA NALIM V. REBECCA MUSOKE. C.A NO.12 OF 1985**, court held inter alia that if it is shown that a purchaser's suspicions were aroused and that he abstained from making inquiries for fear of leaning the truth, the case is very different and fraud may be properly ascribed to him.

In **NABANOBA DESIRANTA AND ANOR KAYIWA JOSEPH ANOR H.C.C.S NO.496 OF 2005** cited in **MUDIIMA ISA AND 5 ORS V ELLY KAYANJA AND 2 ORS,** opio aweri j stated that

as the law stands a person who purchases an estate which he knows to be in occupation of another person other than the vender is not a bonafide purchaser without notice. He further held that the defendants failed to make reasonable inquires of the persons in possession and as such their ignorance or negligence formed particulars of fraud.

Okello JA in **SIR JOHN BAGEIRE V AUSI MATOVU CA NO.07 OF 1996**, emphasized the value of land and the need for thorough investigations before purchase and he held that lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations not only of the land but of the sellers before purchase.

IMPUTED FRAUD.

Justice Mubiru in **VIVO ENERGY (U) LIMITED V SHIRE PETROLEUM COMPANY LIMITED AND 2 ORS (Supra)** stated that at common law, imputation charges a principal with the legal consequences of knowledge of a fact known by an agent when knowledge of the fact is material to the agent's duties to the principal and the principal's legal relations with 3rd parties. The knowledge of the agent in handling the transaction, whether actual or constructive is imputed to the principal. Therefore, the actual or constructive fraud of an agent is imputed on the principal.

The registered proprietor must be party or privy to the fraud.

According to **Section 77 of the Regestration of Titles Act**, any certificate of title entry, removal of encumbrance or cancellation in the register book procured or made by fraud is void as against all parties or pricies to the fraud.

The fraud must be driven to the fransferee whose title the person seeks to impeach. In **KAMPALA BOTTLES LTD V DAMANICO (U) LTD S.C.C.A NO.22 OF 1992,** wambuzi CJ held that fraud must be attributable to the transferee whose title one seeks to impeach. It must be attributable either by guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.

PLEADING OF FRAUD

Platt J.S.C in **KAMPALA BOTTLES LTD V DAMANICO (U) LTD S.C.C.A. NO. 222 OF 1992** stated that fraud is a very serious allegation to make and it always wise to plead it properly giving the particulars of the fraud alleged. In this case the plaintiffs had not pleaded the alleged fraud and court found that the defendants could be held guilty for fraud whose particulars were never pleaded.

BURDEN AND STAND OF PROOF.

Wambuzi J.S.C in **KAMPALA BOTTLES LTD V DAMANICO (U) LTD (SUPRA)** held that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters, the burden lies on he who alleges the fraud.

DOCTRINE OF BONA-FIDE PURCHASER FOR VALUE

The doctrine of bonafide purchaser entitles a purchaser a bonafide purchaser in some situation to retain ownership a given pancel of land or enforce any other interests on the land against persons who could otherwise assert superior right. As was held by odki j in **LWANGA V THE REGISTRAR OF TITLES, MISC CAUSE NO.7A OF 1977 (1980) HCB 24**, once the registered proprietor is established to be a bonafide purchaser for value, under **Section 189 (now 181)** his/her title cannot be impeached or cancelled notwithstanding that he acquired his or her title from a fraudster. The doctrine of bonafide legitimizes an otherwise void transaction for fraud and thus the bonafide purchaser for value obtains good title irrespective of the fraud. The defence is provided for under **Section 181 of RTA.**

ELEMENTS OF THE DOCTRINE OF BONAFIDE PURCHASER FOR VALUE.

These were laid out in **SEMPA MBABALI V KIDZA AND ORS (1985) HCB 46**, and they include the following.

- Registered interest.
- Acquisition of the interest was in good faith.
- Interest was acquired for valuable consideration.
- Purchaser had no notice of any other interests.

REGISTERED INTEREST. (DOCTRINE IS ONLY A DEFENCE)

Under **Section 181 of Regestration of Titles Act** the doctrine of bonafide purchaser is only a defence and not a remedy in an action of ejectment or an action for recovery of damages on grounds of fraud or error. In **NDIMWIBO SANDE AND 3 ORS V ALLEN PEACE AMPAIRE C.A.C.A NO.65 OF 2011**, the respondent sought to rely on the doctrine of bonafide purchaser as an equitable relief. The respondent instituted a suit for trespass and breach of contract. The appellant contended that the suit land was part of her late father's estate and Nantandu had only fraudulently held out as the owner when she sold the land to the respondent. The respondent contended that she was a bonafide purchaser it values without notice of the fraud of the Kibanja, the suit land having purchased the same from Nantunda. The court of appeal held that: "it appears clearly to us that the doctrine of bonafide purchaser for value without notice is a statutory defence available only to the person registered as proprietor under the Regestration of Titles Act. it is not an equitable remedy although its history stems from the common law. It would not even quality as a remedy for it is only a defence by a person registered as proprietor under the Regestration of Titles Act".

In **HANNINGTON NJUKI V WILLIAM NYANZI H.C.C.S NO. 434/ 1996**, the court held that for a purchaser to successfully rely on the defence of bona-fide purchaser he or she must inter alia prove that he or she holds a certificate of title since the defence is a statutory defence under the RTA.

INTEREST WAS ACQUIRED FOR A VALUABLE CONSIDERATION

The purchaser must have paid valuable consideration for the land and not one who received the land as a result of the operation of the law e.g., through interest succession. The consideration maybe monetary or in money's worth and there is no requirement for such consideration to be adequate.**Section 181 of Regestration of Titles Act** only applies to save the innocent buyer from loss on the theory that the purchaser has given quid pro quo in reliance upon an ostensibly perfect title and he should be protected insofar as he/she has paid.In, court held that a registered proprietor who acquires title by way of a gift (volunteer) isn't a bonafide purchaser for value and therefore his title is not protected under **Section 184 (now 181)** of the **Regestration of Titles Act**.In **GABRIEL RUGAMBWA AND ANOR V EZIRONI BINTU BWAMBALE**,[19] court defined a purchase to mean to buy and there must be an exchange of money. A person cannot acquire land as a gift or through inheritance and seek protection of a bonafide purchaser.

[19]HCCS 359 (1992)

PURCHASER MUST HAVE ACTED IN GOOD FAITH.

To satisfy this element, the threshold is that they must not have acted dishonestly to defeat any other interest brought to their notice. The house of lords of the United Kingdom in the case of **MIDLAND BANK TRUST CO. LTD V GREEN**[20], discussed what amounts to good faith under the doctrine of bonafide purchaser for value. In this case, a father had granted an option over the land to his son, but it hadnot been registered. The father later tried to frustrate the option of conveying to his son by conveying to his wife for 400pounds. The land was worth 40,000 pounds. When the son found out about it, he sought to exercise the option and then sue his father and his deceased mother's estate for specific performance. As well as for damages for conspiracy by his parents.

The respondent argued that his mother was not a bona fide purchaser for value as the consideration paid was way lower than the nominal value of the land and thus not in good faith. On the question of good faith, the court stated that; the words "in good faith" relate to the existence of notice, but genuine and honest absence of notice..... the requirement at good faith necessitates the enquiring into the purchaser's motives and state of mind.The above holding of the house of lords lends credence to the decision in **KATARIKAWE V KATWIREMU (1977) HCB 187,** cited with approval in **KAMPALA DISTRICT LAND BOARD V. VENANSIO BABWEYAKAAND OR'S**, in which the court held that although mere knowledge of unregistered interests cannot be imported as fraud **(Section 136 of Regestration of Titles Act)** under the Act where such knowledge is accompanied by a wrongful intention to defeat such existing inters that would amount to fraud.

NOTICE OF ANY OTHER INTERESTS ON THE LAND.

Constructive fraud as illustrated in the **case of NANTEZA NABETA V KONDE (CIVIL SUIT 391 OF 2010) [2020] UGHCLD 2 FURTHER MORE IN NABUKENYA V BWOGI (CIVIL APPEAL 290 OF 2017) [2019] UGCA 33**the court considered whether there was constructive notice on the part of the respondent's father. The court held that a person a transaction would be robbed of honesty and truthfulness where the buyer did not conduct a physical search of the land before purchasing it. The court was satisfied that the respondent's father carried out a search in the land office and had the land surveyed before purchasing it. The court accordingly concluded that the respondent's father did not have constructive notice of the fraud but his title was subject to the appellant's right of occupancy.

[20](no.1) (1981) AC513

Section 136 of the Regestration of Titles Act, read together with **Section 64(1) of the Regestration of Titles Act** limit the notice under **Section 181 of the Regestration of Titles Act**, to actual notice of the interests entered on the register.

Under **Section 136 of Regestration of Titles Act**, actual or constructive notice to the purchaser of the existence of unregistered interests on the land does not amount to fraud or dishonestly.

However, as the court held in **KATARAKAWE V KATWIREMU (1977) HCB 187** where such knowledge is accompanied by a wrongful intention to defeat such existing interest that would amount to fraud.

Plaint on fraudulent transfer of land.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO 28OF 2020

MYA ACHENG..... ..... PLAINTIFF

VERSUS

1. **THE EXECUTRIX OF THESTATE OF THE LATE MOSESKONGOLE**
2. **COMMISSIONERLANREGISTRATION..... DEFENDANTS**

PLAINT

1. The plaintiff is a female adult Ugandan of sound mind whose address of service for purpose of this suit shall be SUI GENERIS & CO ADVOCATE, P.O.BOX. 0000, KAMPALA.

2. The first defendant is the executrix of the will of the late Moses Kongole and the plaintiff and her advocates undertake to effect court process on her.

3. The second defendant is an officer of government charged with the powers and responsibility to maintain and effect changes on the land register and is being sued in that capacity.

4. The plaintiff's claim against the defendants jointly and or severally is for:

a) A declaration that the purported transfer of the land comprised in Kydondo Block 244 Plot no. 367 at Muyenga to the first defendant is ruel and void for fraud.

b) A declaration that the plaintiff is the rightful owner of the suit land.

c) An order of cancellation against the second defendant ordering the second defendant to cancel the first defendant's name on the certificate of title.

d) An order directing the second defendant to reinstate the plaintiff as the registered proprietor of the suit land.

e) A permanent injunction restraining the defendant from interfering with the plaintiff's ownership, proprietorship and possession of the suit land.

f) General damages for all the inconveniences suffering and mental anguish suffered by the plaintiff.

g) Costs of the suit be provided for.

5. The plaintiff's cause of action against the first defendant is for fraudulent transfer of the suit land.

6. The facts constituting the cause of action arose as follows.

a) The plaintiff was the registered proprietor of the suit land.

b) She developed it with a double storeyed house which is valued at UGX 950,000,000.

c) The deceased, Moses Kongole was a brother to the plaintiff and the plaintiff entrusted him to keep the title deed to the suit land.

d) At all material times the suit property was rented out and the plaintiff collected the rent.

e) Sometime in November 2011, Moses Kongole forged Mya's signature and transferred the suit property to himself and stated that he paid consideration of UGX 200,000.

f) Upon Kongole's demise on the 10th August 2022, his will was read out to family members and he had appointed Harriet Bobone the executrix of his will and also sole beneficiary of his estate which included the suit property.

g) The plaintiff brought it to the first defendant's attention that she was the lawful proprietor of the suit land but the first defendant insisted the suit property was part of the estate.

h) The first defendant went on obtain probate of the will of Moses Kongole and effected a transfer to herself.

Particulars of the fraud.

7. The particulars of the fraud perpetrated by the first defendant are as follows.

    a) The deceased moses kongole forged the signature of the plaintiff and effected a transfer to himself.

    b) In the transfer of consent, the deceased declared the value of the suit land as being UGX 200,000,000 yet the suit property is valued at UGX 950,000,000

    c) In the transfer from the deceased stated that there were no developments on the land yet the plaintiff had at the time erected a two storeyed house on the land.

    d) When the defendant was informed that the plaintiff had an interest in the suit property, she ignored the same, went on to obtain probate and cause a transfer to herself as executrix.

8. The plaintiff avers that as a result of the actions of the defendant stated above, she has suffered great inconvenience and mental anguish.

9. The plaintiff issued a notice of intention to sue but the defendant refused to give it heed.

10. The cause of action across in Kampala, within the jurisdiction of this honourable court.

WHEREFORE, the plaintiff shall pray for that judgement be entered in her favour against the Defendant for: -

a) A declaration that the plaintiff's is the legal and the rightful owner of the land comprised in Kyandondo Block 244 plot no. 367 Muyenga.

b) A declaration that the defendant fraudulently obtained the title.

c) Cancellation of the certificate of title of land comprised in Kyandodo block. 244 plot no.367.

d) An order directing the commissioner land registration to reinstate the plaintiff as the registered proprietor on the certificate of title of the suit land.

e) General damages.

f) Costs of the suit.

Dated at Kampala on this 28th day of January 2020.

M/S SUI GENERIS & CO ADVOCATES.

COUSEL FOR THE PLAINTIFF.

Drawn & filed by:

M/S SUI GENERIS& CO ADVOCATES

P.O.BOX 0000,

KAMPALA, UGANDA.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO 28 OF 2020.

MYA ACHENG..... PLAINTIFF

VERSUS

HARRIET BOBONE.....DEFENDANT

SUMMARY OF EVIDENCE

The plaintiff shall at the trial adduce both oral and other evidence to prove that the suit land belongs to her and does not form part of the estate of the late Moses Kongole's estate and that the same has been fraudulently and illegally transferred into the names of the defendant.

The plaintiff shall further prove that the defendant without any lawful justification denied the plaintiff the suit land.

List of witness

1. The plaintiff
2. Any other witness with leave of court.

List of documents

1. Transfer deed
2. Certificate of title.
3. Any other with leave of court.

List of Authorities.

1. The 1995constitution of the republic of Uganda.
2. The registration of the title Act Cap. 230.
3. The land Act Cap 227.
4. The succession Act Cap.
5. Any other authority with leave of court.

OBJECTION MY LORD

Dated at KAMPALA on this 28th day of January 2020.

M/S SUI GENERIS &CO ADVOCATES

COUNSEL FOR THE PLAINTIFF

FUNCTION AND GENERAL POWERS OF THE COMMISSIONER FOR LAND REGISTRATION (CLR)

Appointment

The **Commissioner for Land Regestration** is appointed pursuant to Section 3(1) of the Registration of Titles Act.

Functions of the Commissioner for Land Regestration

1) Under **Section 3(1) of Regestration of Titles Act**, the **Commissioner for Land Regestration** has the charge and control of the office of title (registry)

2) Under **Section 37(1) of the Regestration of Titles Act**, the **Commissioner for Land Regestration** is charged with the maintenance of the register book. This entails, making entries and cancellations on the Register book.

General power of the Commissioner for Land Regestration.

1) Power to call for duplicate certificate of title.

Under **Section 73 of the Regestration of Titles Act**, the **Commissioner for Land Regestration** may for purposes of rectifying or cancelling any certificate or where the original is lost or obliterated call on the person in possession of the duplicate to produce it.

2) Power to issue vesting orders

3) **pursuant to Section 78 of the Regestration of Titles Act** where a party has acquired a resistible interest by adverse possession and under **Section 167 of** the **Regestration of Titles Act** where there is a complete purchase but transfer has not been effected because the transferor in dead or cannot be found.

4) Power to lodge a caveat on behalf of government or a person who is under disability or absent from the country to prohibit registration of any transaction affecting land that belongs to that person or appears to belong or belongs to government under **Sction 170(a) of the Regestration of Titles Act.**

5) Power to correct errors.

The CLR under **Section 91(4) of Land Act (As amended)** has the power to correct errors in the register book or in the entries made in it or errors in the duplicate certificates or instruments.

6) Power to cancel certificates of titles

Pursuant to Section 69 of the **Regestration of Titles Act** (old law) the **Commissioner for Land Regestration** had power to cancel certificates of title on grounds of error, illegality, fraud and wrongful description

In **RURANGARANGA EDWARD V MBARARA MUNICIPAL COUNCIL & ORS () [1997] UGHC 4 the** then supreme court held that the **Commissioner for Land Regestration** had the power to cancel a certificate of title on grounds of fraud among others.

However, under **Section 91(2) of the Land Act (as Amended)** the powers of the **Commissioner for Land Regestration** to cancel a certificate of title are limited to the following instances where a certificate of title or instrument: -

a) Is issued in error

b) Contains a wrong description of land or boundaries.

c) Contains an entry or endorsement made in error.

d) Contains an illegal endorsement.

e) Is illegally or wrongfully obtained or

f) Is illegally or wrongfully retained.

In **HILDA WILSON NSMUSOKE & 3 ORS V OWALLA'S HOME INVESTMENT TRUST (E.A) LTD, SCCA NO 15 OF 2017** the court held that the absence of fraud in the new provision was deliberate and therefore took away the authority of the **Commissioner for Land Regestration** to cancel or certificate of title on the basis of fraud without referring the matter to a court. The court stated that the commissioner's action is rightly limited to actions for "errors" or "illegalities" that do not require the rigors of a full trial where fraud would be established before a title is impeached.

Court further stated that whereas fraud is an illegality it is a very specific type of illegality and not one of those envisaged under **Section 91(2) of the Land Act**.

Section 91(2) of the Land Act envisages illegalities not rooted in fraud such as an illegality arising under **Section 39 of the Land Act and Section 40 of the Land Act** but not fraud.

The omission of fraud under **Section 91(1) of the Land Act** is in line with the judicial principle that allegations of fraud are so serious in nature that they require to be specifically pleaded and strictly proved before a court of law. Given, its gravity, the standard of proof is above a mere balance of probabilities though not necessarily beyond reasonable doubt.

Section 91(6) Land Act Power to remove encumbrances.

Pursuant to **Section 168 of Regestration of Titles Act**, if the **Commissioner for Land Regestration** is satisfied that any encumbrance notified on any certificate of title has been fully satisfied, extinguished or otherwise then the **Commissioner for Land Regestration** can remove the encumbrances.

Section 91(7) Land Act Issuance of certificate of title

Under **Section 38 of the Regestration of Titles Act**, the CLR issues certificates of title for land brought under the operation of Act, under **Section 70, Regestration of Titles Act**. The **Commissioner for Land Regestration** is empowered to issue special certificates where the duplicate is lost or obliterated. Under **Section 72, Regestration of Titles Act**, **Commissioner for Land Regestration** is empowered to issue substituted certificates of title where the original is missing.

REPLACEMENT OF CERTIFICATES OF TITLE

DUPLICATE CERTIFICATE

Under **Section 70 of** the **Regestration of Titles Act**, where a duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, a person can apply to **Commissioner for Land Regestration** to have a special certificate issued in the place of the duplicate certificate.

The special certificate must contain an exact copy of the certificate of title in the register book and of every memorandum and endorsement on it.

The certificate must also contain a reason why a special certificate was issued, the **Commissioner for Land Regestration** must also notify in the register book the issuing of the special certificate and the date of issuance and why it was issued.

EFFECT OF SPECIAL CERTIFICATE

Under **Section 70 of the Regestration of Titles Act**, the special certificate of title is available for all purpose and uses for which the duplicate certificate of title which is lost destroyed or obliterated would have been available.

In **KONDE MATHIAS ZIMULA V BYARUGABA MOSES & ANOR HCCS. NO66 OF 2007**, court stated that in view of **Section 70 of the Regestration of Titles Act**, once a special certificate of title is issued on application by the registered proprietor, it becomes a replacement for the lost or destroyed

certificate of title is found, the registered proprietor must seek its reinstatement and the CLR must call for the surrender of the special certificate for purposes of cancellation.

PROCESS OF ACQUISITION OF A SPECIAL CERTIFICATE OF TITLE

(1) Draft a formal letter to the **Commissioner for Land Regestration** requesting for issuance of a special certificate of title with the reasons clearly indicated e.g., lost or obliterated.

(2) Depone and Statutory Declaration affirming the facts stated in the letter.

(3) Pay the necessary fees i.e., registration fees of UGX 15,000 UGX 10,000 as stamp duty, UGX 5,000 for the application and 5,000 for the SD.

(4) Present the documents to the MZO office where the land is situated. The documents must all have photo copies and these are presented with the originals together with to passport photographs.

The photocopies are stamped "received" and returned to you the applicant.

(5) The applicant must cheek with the MZO office after 5 working days to pick a letter to the Uganda Gazette for notification of the public on the impending issuance of a special certificate of title.

(6) Applicant on receiving the letter to the Uganda Gazette proceeds to pay the gazetting of UGX 200,000 and lodge the letter with Uganda printing and Publishing Corporation for notification in the Uganda Gazette.

(7) After 30 days notification, the applicant presents a receipt for the Gazette to the MZO for confirmation of publication.

(8) The MZO certifies the receipt and Gazette notice and proceeds to issue a special certificate.

(9) After 10days, the applicant on presenting of the photocopy stamped "received" collects the special certificate of title and the photocopy is stamped "Returned" on completion.

Documents fees payable

(1) Letter of application - Registration fees-10,000

(2) Statutory Declaration -Stamp Duty-10,000

(3) Gazette Extract - Gazette fees – 200,000

(4) 2 passport photographs

(5) Receipts of payment.

LETTER OF APPLICATION FOR SPECIAL TITLE

SUI GENERIS & CO ADVOCATES

P.O.BOX 0000, KAMPALA

UGANDA

Date: 28th /01/2020

TO THE COMMISSION LAND REGISTRATION

MINISTRY OF LANDS, HOUSING AND URBAN

DEVELOPMENT-CENTURY BUILDING.

P.O.BOX 7096 KAMPALA

Dear Sir,

RE: APPLICATION FOR A SPECIAL CERTIFICATE OF TITLE FOR LAND COMPRISED IN KIBUGA BLOCK 3 PLOT NO. 142 SITUATE AT MENGO.

We act on behalf of Mr. BENJAMIN RUBAGANO on whose behalf we address you as follows.

Our client Mr. BENJAMIN RUBAGANO is the registered proprietor of land comprised in Kibuga Block 3 plot no. 142 situated at Mengo.

Mr. Dominiko Mapapa's duplicated certificate in respect to the land was obliterated as a result of Kwette pouring on it.

We therefore, hereby pray that a special certificate be issued in respect of the land.

SUI GENERIS

COUNSEL FOR THE APPLICANT.

STATUTORY DECLARATION.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OFTITLE ACT CAP.230

AND

IN THE MATTER OF THE STATUTORY DECLARATION ACT CAP. 22

AND

IN THE MATTER OF A STATUTORY DECLARATION BY DOMINIKO MAPAPA.

STATUTORY DECLARATION

I, BENJAMIN RUBAGANO C/O SUI GENERIS & CO ADVOCATESP.O.BOX 71117, KAMPALA do solemnly and sincerely declare that:

1. I am a male adult Ugandan of sound mind and capable of making this declaration.
2. That I am the registered proprietor of land comprised in Kibuga Block 3Plot no.142 situate at Mengo.
3. That the land has no encumbrance registered against it whatsoever.
4. That the duplicate certificate of title has been damaged and completely obliterated when Kwette poured on it.
5. That as a result of the damage, the entries on the title are no longer visible.
6. That the entries I have stated herein are what is reflected on the now obliterated duplicate certificate.
7. That I make this solemn declaration conscientiously believing it to be true in accordance with the statutory Declaration Act.

SWORN BY THE SAID BENJAMIN RUBAGANO on this 28th day of Jan 2020.

DEPONENT

BEFORE WE

Original certificate (white page)

Under **Section 72 of the Regestration of Titles Act**, here the white page is lost or destroyed or so obliterated as to become illegible the **Commissioner for Land Regestration** may cause a copy of it to be prepared.

The copy made must be endorsed with all such entries as were upon the original so far as they can be ascertained from the records of the office and other available information.

Section 73 empowers the **Commissioner for Land Regestration** to call for the production of the duplicate for purposes of inspection in case of loss, destruction or obliteration of the original corticate of title.

The **Commissioner for Land Regestration** must sign a memorandum upon the copy made stating that if is an original & as far as is known what has happened to the original.

The copy must then be bound up in the Register book from the day when it's signed and used in place of the original for purposes of dealings.

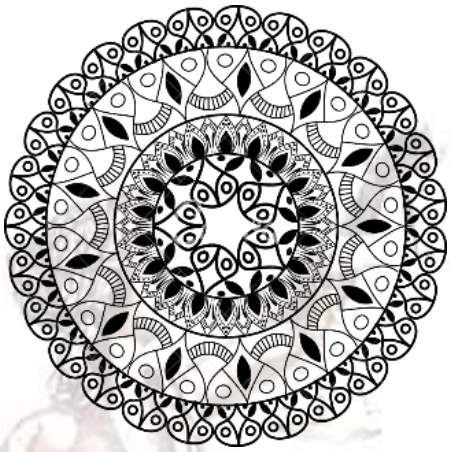
Procedure for notifying **Commissioner for Land Regestration** of lost, obliterated or destroyed original.

(1) A formal letter notifying the **Commissioner for Land Regestration** that the original certificate of title was obliterated destroyed or is lost and that a copy is made.

(2) Depone on SD to company the application.

(3) Submit the letter accompanied with the SD, 2 passport photos and the duplicate certificate. You must make photo copies and these are stamped received and returned to the applicant.

ISAAC CHRISTOPHER LUBOGO



CONDOMINIUM PROPERTY

The common property of the condominium is owned by all the unit owners as tenants in common in shares proportional to the unit factor this means that if one owns fifty percent of the total units comprised in a condominium, and then he or she also owns fifty percent of the common property.

Section 2 of the Condominium Property Act, 2001 defines Condominium to mean a system of separate ownership of individual units of which are designated for common ownership solely by the owners of those units.

A condominium or 'condo' is a building structure divided into several units that are separately owned and which are surrounded by common areas that are jointly owned by all owners of the units. The common areas may include the compound, staircase, hallways and amenities such as a swimming pool, children's play area and gym. The difference between an apartment building and condominium is entirely based on ownership.

The term condominium is an invented Latin word as a result of joining two words 'con' and 'dominium'. From its Latin origin, the term can be loosely translated as co-ownership. The plural of the term is either condominiums or condominia depending on the writer. For this paper, I shall use 'condominiums.

Condominiums in Uganda are regulated by a number of laws including general laws on land, taxation, ordinances of the area where the condominium maybe located but specifically **by the Condominium Property Act of 2001 and Condominium Property Regulations of 2002. The Regulations were amended in 2012.** In this paper, I shall briefly discuss aspects of the Condominium Property Act and Regulations.

A condominium status of any building or planned building starts with registration. Before registration however one must first obtain approval of the Condominium plan from the relevant local authorities. The considerations for approval differ depending on location but include legitimate architectural drawings and civil structural plans.

After obtaining approval from the local authorities, the next step is to apply for registration of the condominium plan with the registrar of titles. The condominium plan may be registered as one whole in respect of the entire development or as a phased plan at the developer's discretion.

Upon registering the condominium plan, the registrar closes the part of the land register relating to the parcel of land described in the plan and opens a separate part for each unit described in the plan. The Registrar then issues new certificates in respect of each unit upon payment of the prescribed fee.

The certificate of title issued in respect of a condominium unit has the same effect as a certificate of title issued for land under the **Registration of Title Act Cap.230.** Therefore, the certificate of title is transferable through sale and transmittable upon death as part of the unit owner's estate.

The registered condominium plan is very important because unit owners' interests are limited to only what is registered. As such in addition to the Certificate of title, an intending purchaser of a condominium unit ought to specifically examine the condominium plan before concluding a sale transaction.

After acquiring a unit, a unit owner who desires to sub-divide his or her unit or consolidate two or more units may only subdivide or consolidate after obtaining approval of the local authorities of the area where the condominium is located. After obtaining the approval, he or she is also required to register with the Registrar of titles a modified condominium plan relating to the unit intended to be subdivided or consolidated.

A condominium property is developed for a particular use which is commonly residential but it may also be for non-residential purposes such as shops or warehousing. Therefore, any unit owner who intends to change the use of his or her unit will require a unanimous consent by all unit owners and approval by the local authorities. If the change intended will result in a modification of the condominium plan, then the owner has to submit to the Registrar a modified condominium plan.

The common property of the condominium is owned by all the unit owners as tenants in common in shares proportional to the unit factor. This means that if one owns fifty percent of the total units comprised in a condominium, then he or she also owns fifty percent of the common property. Key to note however is that although the tenants in common hold distinct and independent interests in the common area, according to the law their interest is undivided and as such there are no demarcations or boundaries drawn in favour of each unit owner.

By law, the unit owners are required to constitute themselves as a 'corporation'. The corporation is thus composed of all unit owners who may at inception include the developer. Vital to note is that the obligation

to convene the first corporation meeting is on the developer and there are strict timelines within which the meeting ought to be convened.

The corporation like a company has perpetual succession with capacity to sue and be sued although the Act specifically provides that the Companies Act does not apply to the formalization of the corporation.

The corporation is supposed to make by-laws for the management of the units and the common property. The said by-laws are binding on all unit owners and violation or breach of the by-laws by a unit owner would result in a fine and in case of non-payment of the fine the unit owner maybe sued by the corporation for civil penalties.

The corporation is also supposed to elect a management board from amongst themselves. The management board has the obligation to convene a general meeting of the unit owners at least once every year. The voting rights of a unit owner at a meeting are dependent on the unit factor thus every unit owned confers a vote. The management board then elects a managing Agent to deal with the day today running of the corporation and condominium.

The Act also provides for sharing of common property by two or more corporations and in such a case, each corporation is obligated to contribute to the maintenance of the common property.

Where it becomes impractical to continue with the condominium status, it can be terminated. The first step to terminating is a unanimous resolution by the corporation. After the resolution, the corporation then applies to court for an order terminating the condominium. The court will only make an order terminating the condominium if it is satisfied that it is just and equitable for the condominium to be terminated.

After obtaining the order of court terminating the condominium, the Corporation is obligated to immediately file with the Registrar of Titles a notice of termination.

Upon receipt of such notice the Registrar makes notification to that effect on the condominium plan and upon making such notification, the owners of the units in the plan are entitled to the earlier parcel as tenants in common in shares proportional to the unit factors.

An investment in a condominium property just like any other real estate investment is undoubtedly a prime investment for anyone to make. Therefore, an investor whether as developer or unit owner ought to understand and follow the Condominium Properties Act and Regulations because they are filled with mandatory provisions that cannot be derogated from and strict timelines within which specific actions must be done?

Act 4 condominium property Act 2001 the condominium property act, 2001 is an Act to**An Act to provide for the division of buildings into units and common property**; to provide for individual

ownership of units. This should be read and applied with the **Condominium Property Regulations**, **2002 No.29**

CREATION OF A CONDOMINIUM PROPERTY.

Under **Section 3(1) of the Condominium property Act,** a proprietor or developer of an existing or planned building can divide the building into two or more units by registering with the Registrar a condominium plan in accordance with the Act.

The plan must be presented for registration in quadruplicate and must indicate the number of units into which the building is divided **Section 3 (2) Condominium property Act.**

On application for registration of a condominium pan the Registrar must pursuant to **Section 4(1) of the condominium property Act,** close the part of the Register relating to the parcel described in the plan and open a separate part for each unit described in the plan and upon the payment of the prescribed fee, issue a certificate of title in respect of the unit.

Pursuant to **Section 5(2) of the Act**, a certificate of title issued in respect of a unit comprised in condominium plan is deemed to be issued under the RTA and all registration techniques, procedures and practices applicable under the RTA apply to such certificate of title as per **Section 5(1) of the Condominium property Act.**

Under **Sectrion 5(3) of the Condominium property Act**, the registered proprietor of the unit can sell, transfer, lease, charge or otherwise deal with the unit in the same manner and form as land held under the **Regestration of Titles Act**.

CONDOMINIUM PLAN.

Under **Section 10 (1) of Condominium Property Act**, the plan must have;

a) Its heading must describe it as a condominium plan.

b) A delineation of the external surface boundaries of the parcel and the location of the building.

c) A drawing illustrating the units and distinguishing the units by numbers or other symbols

d) The boundaries of each unit must be clearly defined in the plan.

e) The approximate floor area of each unit.

f) A schedule specifying in whole numbers the unit factor for each unit in the parcel.

g) Statements containing such particulars as are necessary to identify the title to the parcel.

   (i) Signed by the proprietor.

h) The address at which documents are to be served on the relevant corporation.

Under **Regulation 6 of the Condominium Property Regulations 2002 (as amended) S.1 NO. 29of 2002**, the plan must be drawn in waterproof ink, on tracing or such other material that is of a size and nature as prescribed by the commissioner for survey.

WHAT MUST ACCOMPANY THE PLAN

Pursuant to **Section 11(1) of Condominium Property Act**, the plan must be accompanied by:

a) A certificate of a registered surveyor or to the effect that the structure shown on the plan is within the external surface boundaries of the parcel which is the subject of the plan and if there are projections beyond those external boundaries that an appropriate easement has been granted as an appurtenance of the parcel.

b) A certificate of a local authority to the effect that the proposed division of the local authority in accordance with any enactment regulating building construction.

Where the condominium plan relates to building or structure that is to be brought under the operation of the Act the plan must be accompanied by a certificate of an architect registered under the Architects registration Act to the effect that the units indicated in the plan correlate with the existing structure.

RIGHTS OF THE UNIT OWNERS

COMMON PROPERTY

All unit owners have a right to the common property which they hold as tenants in common in shares proportional to the unit factors for their respective units. **Section 79(2) of the Condominium property Act.**

Section 2 of the Condominium property Act defines common property to mean that part of the condominium property which does not belong to any specific unit and includes but is not limited to the land on which the property is situated, support structures, infrastructure and services.

EASEMENTS.

Under **Section 16 of Condominium property Act,** every unit owner, upon registration of a condominium plan has in their favour:

a) An easement of the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support.

b) An easement for the shelter of the unit by the common property and by every other unit capable of affording shelter.

c) An easement for the passage or provision of water sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services.

4. Right to vote during corporation meetings.

Under **Section 24(1) of Condominium property Act** the voting rights of the owner of a unit are determined by the unit factor of the unit.

However, where such owner's interest is subject to a registered charge, the power of voting is exercised by the charge first entitled in priority where their resolution required is a unanimous resolution. **Section 24(2) (a) of the Condominium property Act.** Section 25 states the voting right where the owner is incapable.

THE CORPORATION

Under **Section 20 (1) of Condominium property Act**, upon the registration of the condominium plan, a corporation in respect of the building must be constituted.

The corporation operates under the name "the owner condominiums plan No....."

MEMBERSHIP.

Under **Section 20(3) of Condominium property Act** the membership of the corporation is comprised of the owner of the units in the parcel.

LEGAL PERSONALITY.

Under **Section 20(4) of Condominium property Act**, the corporation is a legal person with perpetual succession and a common seal and can sue and be sued in its corporate name.

FUNCTIONS.

These are stipulated under **Section 21 of the Condominium property Act** and these include inter alia:

a) To manage the common property

b) To keep the common property in a state of good repair.

c) To establish and maintain a fund for administrative expenses sufficient, in the opinion of the corporation for the certain, management and administration of the common property and for the payment of any insurance premiums rent and discharge of any other obligation of the corporation.

d) To determine from time to time the amounts to be paid for purposes above.

e) To insure and feel insured buildings and other improvements on the parcel against fire.

- Enforcement of its bye-laws and the managements and administration of its movable and immovable property and the common property **Section 21(2) Condominium property Act.**
- By special resolution acquire or dispose of an interest in immovable property **Section 21(4) Condominium property Act**
- The board is mandated to hear complaints from aggrieved members of the corporation**. Section 21(6) Condominium property Act.**

MEETINGS OF THE CORPORATION.

Pursuant to **Section 28(1) Condominium property Act** aboard shall once in each year, convene an annual general meeting of the owners.

Under **Section 28(2) of Condominium property Act,** the first annual general meeting of the owner is to be called within 3months after the election of the board.

The board referred to in **Section 28 Condominium property Act** is constituted **under Section 27 Condominium property Act** and must be within: -

a. 90 days after the day that 50% of the units are sold.

b. 180 days after the day that the first unit is sold.

Whichever is sooner?

The meeting of the corporation appointing a board is commenced by the developer.

Termination of condominium status property.

The status may be terminated in two instances: -

1. Under **Section 48(1) of Condominium property Act,** the status maybe terminated by a unanimous resolution.

Section 2 of Condominium property Act defines a unanimous resolution as a resolution supported by all owners of units.

2. Status may also be terminated under **Section 48(2) Condominium property Act** where the corporation an owner of a un registered charge of a unit or a purchaser under an agreement for sale of a unit makes an application to court to have the condominium status of the property terminated.

PRIORITY TO SITTING TENANTS.

In **NIWAGABA & FOR ORS V OWNERS OF CONDOMINIUM PLAN NO.0026, AND** IN **KAMPALA DISTRICT LAND BOARD & ANOR V NATIONAL HOUSING AND CONSTRUCTION CORPORATION S.C.CA NO.2 OF 2004** court held that sitting tenants should be given the first priority to by buy land if it is being sold.

Power of corporation to evict unit owner

In **YORK CONDOMINIUM CORPORATION NO. 137 V. HAYES (ONTARIO SUPERIOR COURT)** the court declined to order a violet owner to sell her unit, stating that such an order should be reserved for most egregious cases. In this case, the unit owner engaged in physical assaults, verbal abuse, threats and intimidation against other unit owners.

PEARSON V. CCC NO.178 – The court considered whether a condominium corporation could recover as common expenses the legal costs it incurred for legal advice related to the defence of unsuccessful Small Claims Court actions commenced by an owner. In this case, although the declaration clearly stated that legal expenses incurred by the corporation in taking an action against an owner could be recovered in the same manner as common expenses, there was nothing in the declaration that permitted the condo corporation to claim indemnification for its legal costs in defending an action. As a result, the condo corporation's lien was declared invalid. This case emphasizes the importance of reviewing the indemnification provisions in the declaration to determine what costs are lienable.

YORK CONDOMINIUM CORPORATION NO. 137 V. HAYES – The court declined to order a violent owner (who was also a director) to sell her unit, stating that such an order should be reserved for the most egregious cases. In this case, the unit owner engaged in physical assaults, verbal abuse, threats and intimidation against other unit owners. Surprisingly, however, the court determined that this behavior did not constitute a most egregious case.

TORONTO COMMON ELEMENT CONDOMINIUM CORPORATION V. WILLIAM STASYNA NO. 1508 – A condo corporation was successful in its application for compliance with Section 98 of the Condominium Act against a number of unit owners who had installed patios and planted shrubs on the common element's walkway abutting their backyards. However, the court only awarded costs on a partial indemnity basis because the condo corporation declined to mediate, even though mediation is not required under the Act for non-compliance with the Act. Based on this case, any decision by a condo corporation not to utilize mediation/arbitration should not be made without careful consideration.

HAKIM V. TORONTO STANDARD CONDOMINIUM 1737 – The unit owner had parked his commercial vehicle in the underground garage, even though this was contrary to the height restriction contained in the corporation's declaration. After the Corporation attempted to enforce compliance, the owner took the position that the corporation's conduct was oppressive and unfair. The unit owner's claim for oppression was unsuccessful. The court determined the proper test for assessing the corporation's conduct and intention was an objective test looking at the best interests of the corporation as a whole and not the best interests of the individual unit owner.

BOILY V. CARLETON CONDOMINIUM CORP. NO. 145 – The court determined that the board of directors had acted in *bad* faith when it attempted to renege on a settlement agreement previously made with a group of requisitioning owners. The court ordered that the legal costs of the group of owners be paid by the corporation, but specifically ordered that the legal costs incurred to enforce the settlement were to be paid by the board members individually, without any re-allocation to the condominium owners. Because of the court's finding of bad faith by the board members, there would likely be no directors and officers' liability insurance proceeds to cover those costs for the directors.

JONES V. TSIGE – While not a condominium case, this case has relevance for condo corporations, as it established a new common law tort of invasion of privacy, where the cause of action is called "intrusion upon seclusion." In this case, a bank employee had improperly accessed personal information of her spouse's ex-wife. Condominium corporations and property managers who have access to the personal information of unit owners, such as banking information, arrears, information about tenants and residents in the unit, or even personal information about an employee or property manager, should take great care in securing the privacy of this information.

WATERLOO NORTH CONDOMINIUM CORP V. SILACSHI – This case indicates that a condominium corporation may have the ability to force an owner to undo an unapproved change to an exclusive use common element (such as a balcony), even if many years have passed since the change was made, and even if the change was made by a previous owner. The court held that where there is a breach of a statute (such as the Condominium Act), the Limitations Act does not apply.

PERPER V. YRCC 860 – In this case, two owners circulated to other unit owners a letter and a requisition that the judge determined contained false and misleading information about the financial state of affairs of the corporation. Because of this, the judge concluded that the requisition was invalid and the board was not in breach of the **Condominium Act** by not holding the meeting that was requisitioned.

TSCC 1633 V. BAGHAI DEVELOPMENT LIMITED – In this case, the corporation's declaration and rules prohibited use of the common elements, including sidewalks, for anything other than ingress and egress. The owner of the unit and the owner's tenant, the operator of a grocery store, maintained that the lease agreement specifically allowed the tenant to display wares in the common element sidewalks and that the corporation had allowed such displays for five years and had, in the past, entered into agreements to this effect. The Court of Appeal rejected the claim by the owner/tenant that the corporation's application was barred by the **Limitations Act**, and that the corporation's enforcement efforts were oppressive. Although the corporation spent $200,000 on the proceedings, the court only awarded costs in the amount of $100,000.

MTCC 744 V. BAZILINSKY – This case dealt with a condo corporation's attempt to recover its legal costs relating to its efforts to have a unit owner comply with the no pet provisions in the declaration. (Apparently, the owner had clandestinely kept a parrot in the unit). Although the corporation incurred legal fees in excess of $41,000, it was only awarded costs in the amount of $6,500. The judge said that although **Section 134(5) of the Condominium Act** entitles the Corporation to recover costs incurred in obtaining a compliance order (which will be added to common expenses for the unit), this section "is not an invitation to counsel to aggressively work on a file or unreasonably build up costs."

Further more In **HAKIM V TORONTO STANDARD CONDOMINIUM 1737,** the unit owner had parked his commercial vehicle in the underground garage even though his was contrary to the height

restriction contained in the corporation's declaration. After the corporation attempted to enforce compliance, the owner took the position that the corporation's conduct was oppressive and unfair the unit owner's claim for oppression was un successful. The court determined the proper test for assessing the corporation's conduct and intention was an objective test looking at the best interest of the corporation as a whole and not the best interests of the individual unit owner.

CONDOMINIUM BOARD RESOLUTIONS

In **CANDA INC V CARLETON CONDOMINIUM CORPORATION, 375, 2016**, the court held that condominium board decisions are entitled to the same level of deference as those of business corporations as per the long standing "business judgement rule. The court will not interfere or second guess a condo board decision so long as the board acted fairly and reasonably.

In this case the appellant who was a unit owner of parking spaces sought to rent the parking units out on hourly basis and asked for permission from the board to approve changes. The board declaimed to approve the changes except if he hired a security guard. Appellant sued on grounds of oppression.

CONTESTED LAND TRANSACTIONS.

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

Effects of a contract of sale of land.

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

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

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

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

1. **Risk.**

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

2. **The vender as trustee.**

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

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

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

Where time is of the essence.

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

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

(1) The parties expressly stipulated in the contract that it shall be so.

(2) If, in a case where one party has been guilty of undue delay, he is notified by the other that unless performance is completed within a reasonable time, the contract will be regarded as broken.

(3) If the nature of the surrounding circumstances or of the subject matter makes it imperative that the agreed date should be precisely observed.

SUMMARY OF CONDOMINIUM LAW

Housing is a fundamental human right which is essential to every individual, family and community's wellbeing as envisaged in **Article 25 of the United Nations Universal Declarations of Human rights**. The 1995 Constitution grants land ownership rights solely to citizens of Uganda.

Foreigners cannot own land freehold. They may, however, obtain leases for 49 or 99 years. Foreigners can either rent/lease from citizens or from the Government.

Condominiums (condos) are the fast-emerging concept that Ugandans are embracing despite the fact that the Condominium laws were passed enacted almost twenty years ago. Condos in Uganda are regulated by **Condominium Property Act No. 4 of 2001** enacted on 23rd February 2001and Condominium Property Regulations the regulations enacted on 26th April 2002. Condominium refers to a system of separate ownership of individual units in a multiple unit building, the individual units of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those units.

The purpose of the act and regulations are to provide for the division of buildings into units and common property: to provide for individual ownership of those units by issuance of certificates of title in relation to the units as tenants in common; and to provide for the use and management of the units and common property and for the connected matters.

For a uther look see the **United Nations Universal declaration of Human Rights 2 Article 26(1) & (2) 237 of the Constitution of the Republic of Uganda** See also section 1 of the Condominium Act of No. 4of 2010178

Salient Features of the Condominium law.

a) Division of building into units Section 2, requires that a proprietor or developer of condominium property to divide the property into units and must have a condominium plan which shall be presented for registration in quadruplicate and shall indicate the number of units into which the building is divided and if the plan is to be developed in phases, the developer shall indicate a time table for the development of the various phases.

b) Creation of title for each unit Section 4 of the Condominium Act provides that every purchaser of condominium property be issued with a certificate of title for the unit purchased accompanied with the respective condominium plan and sale agreement because it is upon this that the transfer is effected in the purchasers names.

c) Common property 4 Sunday Monitor of 24th November 2019 5Condominium Act of No. 4of 2001 6 Supra Section 6 provides for common property which does not belong to any specific unit and which is used in common by the owners of the units and includes land on which the property is situated, support structures, infrastructure and services. In other wards this is property/ common area that is shared by the unit holders and tenants share this property in equal proportion.

And therefore, the parties shall use this common property equally and also contribute equally for the maintenance of common property.

d) Boundaries of the unit Section 11 provides for boundaries of the unit are described by reference to the floor or ceiling or where a wall located within a unit is load bearing wall, the only portion of that floor, wall or ceiling as that case maybe that forms part of the unit, the boundary shall be the finishing material that is in the interior of that unit including any lath and plaster, paneling, gypsum board panels, flooring material or coverings or any other material that is attached, laid, glued, or applied to the floor, wall or ceiling as the case may be.

e) Rights of owners of common property Section 14 provides for the rights of owners of common property to include support, shelter and protection: passage or provision of water, drainage, gas, electricity, garbage and air; passage or provision of telephone, radio & television services and any other service of whatever nature. Each unit holder shall has a right to full, free and uninterrupted access and use of light through or from any windows, doors or other apertures existing at the date of registration of condominium plan.

f) Liability of the unit owner Section 18 provides that owner of a unit shall only be liable in respect of any interest entered on the condominium plan in proportion to the unit factor for his or her unit.

g) Management and Use of Condominium Property Section 19 provides for the establishment of a corporation which is responsible for the enforcement of its bye laws and the control, management and administration of its movable and immovable property and the common property. This corporation shall have perpetual succession and a common seal and shall sue or be sued in its corporate name. Suffice to note is that Companies Act shall not apply to this kind of corporation.

It seems that such corporation is yet to be established formally.

Emerging trends in condominium property

• Many Ugandans are slowly tapping into condominium property because of access to knowledge on mortgages concept. Banks have tapped into the Ugandan market which has helped Ugandans access this knowledge.
• Some banks have specialized in ensuring that Ugandans have access to reasonable credit to purchase homes. An example of such bank is Housing Finance Bank Uganda which has specialized in Mortgage financing.
• Most of the people who are purchasing condominiums are Ugandans who live diaspora having realized that Condominiums are less labor intensive. Challenges in the condominium sector
• Many Ugandans on the other hand have not fully embraced the concept of condominiums as they feel cheated owning units because the houses are in space. They have not yet fully grasped the concept housing in space. Ugandans still believe in the concept of having large compounds.

• Interest rates on Mortgage to secure condos remain very high, the current Bank of Uganda Central Bank Rate (CBR), interest rates gravitate between 10% and 9%. 11 Supra however this has not translated to a reduction in commercial bank lending rates still high ranging from 21% to 24% per annum. Although the low CBR would means that commercial banks to follow suit and cut lending rates; The weighted average lending rate for local currency mortgage loans was 22.6% in 2018, up from 20% a year earlier, according to the Bank of Uganda. The average lending rate for foreign currency-denominated residential mortgage loans was 11.3% in 2018, up from just 7.2% a year ago. The average lending rate for foreign-currency denominated loans for land purchases was 9.3% in 2018, up from 9% a year earlier. Because of these very high interest rates, it is not surprising that Uganda´s mortgage market remains very small. Properties are usually sold in cash. The mortgage market is tiny - only 1.2% of the country´s GDP, unchanged in the past three years, but up from 0.3% of GDP in 2002. Housing Finance Bank dominates Uganda´s mortgage market, with 55% of the total mortgage portfolio, followed by Stanbic Bank, Standard Chartered Bank, DFCU Bank, KCB Bank and Centenary Bank.

• For the developers, the tax on the materials is quite high and the developers end up pushing it to the final consumer and in the long run pushes the cost of the condominiums high which makes it very expensive to purchase.

• One of the biggest challenges in the housing sector is a lack of a regulating authority. This creates a vacuum, negotiation of lending rates, leads to incoherence in managing the various properties etc.

• Real estate players decried the widespread corruption in the system, which delays approval processes, thus affecting their effort to deal with the housing deficit in the country.

Goal number eleven of the Sustainable Development Goals (SDGs) seeks to Make cities and human settlements inclusive, safe, resilient and sustainable through, among others, ensuring access for all to adequate, safe and affordable housing and basic services and upgrade slums and enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries. It is the projected that the urban population is likely to double from 20% to 40% of the total Uganda population by 2040

There is increase in urban population in the urban areas especially Kampala which is currently estimated to have a population 3.2 million14 people and a minimal area of land-owning condominium property would be the most viable option to save on space in the city. Growing the condominium property sector should therefore be a government priority, through outreach to urban population on the need to take up condos; setting up a central governing structure of condominium property and access to affordable financing of the condos.

Other comparable condominium sales.

Ideally, using sales within the building would be the best solution for determining thelisting price of a unit, which will work very well in the case of new developments orbuildings with high sales activity. However, with resale of condominiums, you mightneed to look outside the building as well in order to find comparable sales. In this case, you can use our advanced filtering options in order to get results that arerelevant: unit size, year built or other criteria that you may find useful based on your

Subject propertys characteristics. As for the area to include in your search, you cango by radius, neighborhood or even draw your own area on the map with our polygontool, which will give you the flexibility of selecting the exact area you wish toconsider.

Active condos for sale inventory.

After having looked at recently closed sales of similar units, the same approach shouldbe taken with active for sale listings. This will help you determine how market supplyand demand can be used to determine the

value of your unit. You definitely need tobe aware of the competition the listing will get once on the market, while also findingthose elements that will make your listing stand out among the others. You can run your search on

By first selecting your main options: location, property type, unit size, and a price range to include, omong other things, there are some additional criteria you can enter for better filtering of theresults, for example theyear built, the listing date, or whether there‟s an upcomingopen house scheduled. You can even search by a keyword (pool, gym, view, etc.) in order to look at howunits with similar amenities are priced.

Other factors that might influence the price.

Besides looking at recent sales and active for sale listings, there are other elementsthat may influence the sale price of units. Other elements such asthe view, exposure, building amenities and fees.

After adjusting the valuation based on these elements and taken intoconsideration any improvements that have been made to the condo unit.

The property's proximity to the subway: this can make a significant differencein pricing since areas that have seen huge price increases often follow thesubway map. In order to help you quickly determine how the unit stands in thisrespect, we have created a Subway Accessibility Map.The school district the property is zoned for, which you can also view on ourmaps. Browse through our collection of school proximity and districts here.Pre-foreclosure and foreclosure activity in the areaas it may affect the healthof the market and have a negative influence on the sale price of a property.

Other potentially attractive community features such as bike facilities, publicfacilities or parking availability in the area. It is also useful to be aware of anyissues that might negatively impact the sale, for example toxic sites or crimeincidents in the area. Look through our full maps collection here and choosethose that might be of interest in your case.

Condominium is a new trend in Uganda and realtors say it is a concept worth adopting and investing in, especially in the town setting, where land is increasingly expensive and diminishing.

In simple terms describes a condominium as one of a group of housing units where each homeowner owns their individual unit space, and all the dwellings share ownership of areas of common use.

Condominiums in Uganda are regulated by **Condominium Property Act No. 4 of 2001 enacted on 23rd February 2001and Condominium Property Regulations enacted on 26th April 2002.**

The Condominium Property Act 2001 describes a condominium as a system of separate ownership of individual units in a multiple unit building, the individual units of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those units.

The Condominium Property Act 2001 allows for one to have a land title for a specific housing unit or condo within a building. This means that under the Condominium Property Act of 2012, property developers or companies engages in the construction of apartments and sell them as is and give the buyer a title or certificate for the property the same way you would sell a stand-alone house on a plot of land.

Under this setting, legal say, there use of and access to common facilities, for example, swimming pools, elevators fire extinguishers, security, gardens, parking lots, cleaning of common areas, garbage collection services and controlled by the association of owners that jointly represent ownership of the whole condominium.

Rights of owners of common property

Section 14 provides for the rights of owners of common property to include support, shelter, and protection: passage or provision of water, drainage, gas, electricity, garbage, and air; passage or provision of telephone, radio & television services, and any other service of whatever nature.

Each unitholder, the act says has a right to full, free, and uninterrupted access and use of light through or from any windows, doors, or other apertures existing at the date of registration of the condominium plan.

Liability of the unit owner

Section 18 provides that the owner of a unit shall only be liable in respect of any interest entered on the condominium plan in proportion to the unit factor for his or her unit

Management and Use of Condominium Property

Section 19 provides for the establishment of a corporation that is responsible for the enforcement of its bye-laws and the control, management, and administration of its movable and immovable property and the common property.

This corporation, the act states have perpetual succession and a common seal. Legal experts also add Companies Act doesn't apply to this kind of corporation. It seems that such a corporation is yet to be established formally.

The 1995 Constitution as pointed out hereinabove Article 26 recognizes the right to own property by all persons either solely or in association with others subject to the law. **Article 26 (2)** further **27 United Nations Declaration of Human Rights UDHR-1948: 28 H.** Onaria (Supra) 29 International Convention on civil and political rights and International Convention on Economic Rights (Articles 14, 18(a) and 16 respectively.

General comment no. EC/04/2000 report of special Rapporteurs on adequate housing as a component of the right to adequate standard of living EC/CN4/2005-March/2005 with periods ranging above 5 years to 49 and 99 years but not in Fee tails of Mailo or Free holds held in perpetuity.

Convention on Elimination of all forms of Discrimination against Women provides a safeguard that no person shall except in accordance with the law and subject to adequate compensation be compulsorily deprived of any land or property. To this end, as noted subject to the Law no actions and Foreigners can acquire land as determine fee tails under leasehold. (**According to M/S Spectrum Real-Estates solutions)**

As already noted, Condominium properties in Uganda are regulated by the Condominium Property Act 2001 and the varied regulations made thereunder, until recently the law was amended by the Condominium Property Amendment Act, 2012 which now allows developers or companies to engage in the construction of apartments and sell them as is and give the buyers condominium certificates of titles as units of individual ownership. In its long title, Parliament clearly stated hereinbelow, its thus pertinent that as a real estate legal practitioner, dispute arbiter, or real estate developer has a clear understanding of the condominium property law. The long title states "An Act to provide forte Division of building into units and common property to provide for individual ownership of those units by the issuance of the certificates of titles in relation to the units provide for ownership in common use, management of the units and common property and matters connected therewith." Creation of Condominiums

> Existing Building and new developed Units: 32 **Article 237 (3) of the Constitution of the Republic of Uganda.** Also see **Section 3 (5) of the Land Act**, **Cap 227 as amended.**
>
> Under **Section 3 (1) of the Act**, a proprietor or developer or planned buildings may divide the building into 2 or more units by registering with the registrar who according to the interpretation section is the commissioner of land Registration, a condominium plan in accordance with the law, and under **Section 12 (1) and (2)** a boundary of the unit is the floor wall and ceiling measured against the beam and the finishing material of whichever descriptions, including doors and windows.
>
> B) **Section 3 (2) - (5)** set out the procedure of converting an existing building Inter-alia that;
>
> i) The plan shall be presented for registration with the Registrar in quadruplicate and to indicate the number of units into which the building is divided.
>
> ii) Developer while developing the plan is required to indicate whether the plan will be developed at once or in successive phases.
>
> iii) Where the plan is to be developed in phases, it shall be known as a phased condominium plan.

v) Where it's a phased condominium plan **Section 3(5**) obligates the developer to indicate the timetable at which development of the various phases shall be undertaken.

c) Under **Section 10 (1),** it's the requirement of the law that the condominium plan must conform to certain requirements, and where under 10(2) it includes residential units, it shall to the satisfaction of the Registrar include delineations of the boundaries of the areas that are to be leased or used by each individual, unit owner and collectively with others as a unit Factor covering the common property, to this End the plan shall Inter-alia conform to: -

i) It's heading to be described as a condominium plan.

ii) A clear indication of the deterioration of the external surface boundaries of the parcel and the location of the building about them.

iii) The plan should include a drawing illustrating the units and distinguishing the units by numbers or other symbols.

iv) The boundaries of each unit are clearly defined in the plan.

v) The approximate floor area of each unit is clearly shown in the plan.

vi) The plan is accompanied by the statement containing such particulars as are necessary to identify the title to the parcel.

vii) The plan is signed by the proprietor with an address on which documents relevant to the corporation can be served in accordance with section 54 of the Act.

As noted above, every plan once put together as above, the developer is mandated under **Section 10C(h)** to ensure that the plan is accompanied by the certificates referred to under section 11of the Act, these are: -

a) A certificate of a registered surveyor confirming that the structure shown on the plan or any envisaged projections are on appropriate appurtenance of the parcel including all easements indicated thereon, otherwise that it fits well.

b) A certificate of the local authority (as you may know under **Section 3 of the Physical Planning Act No. 16/2010,** the whole of Uganda was declared a planning area)

Showing that the proposed structure or division of the structure has been approved by the local authority (read physical planning Board) in accordance with the law regulating building construction.

c) Notably, it needs to be emphasized that where the proposal is in respect of the Condominium plan that is to be brought under the operation of the Act, the plan shall, before it is registered, be accompanied by a certificate of an Architect registered under the Architects....

d) Forms: **Regulation 6** prescribes forms I part 2 of the second schedule as the form of the application.

Common property and Governance of the condominium and easements properties in Uganda

The Physical Planning Act 2010, Section 3 thereof declared the entire country a planning area and the act applies to the entire country in all aspects (**section 11(3)(a) and (b)** of the Constitution confirming the architectural and integrity of the proposed plan or indicating that the intended units indicated on the plan correlate with the existing structure.

a) **Section 2 of the Act** defines common property as that part of the Condominium property that does not belong to any specific unit which is used in common by the owners of the unit and which includes without prejudice to the general effect of foregoing the land on which the property is situated, support structures and services, and under section 6, it doesn't belong to any specific unit but held in equal proportion to all the unit owners who are bound to pay for its maintenance.

b) proprietorship of a Condominium property is in a 3-Fold Legal relationship first as an individual owner of a unit, second a joint co-owner of the common property of the scheme, and thirdly as an automatic member of the Association to whom the Management and Administration of the scheme are entrusted with the duty to equitably use, enjoy and ensure that common parts of the building and the facilities are maintained adequately and regularly.

c) It is advisable that a planning Board local authority shall on inspecting the building or proposed structure site in which a permit is sought may deny/refuse to issue a certificate if the building or structure does not conform to the law and or only issue the plan to the buildings or structures that conform to the existing Law. "Ideally the system should provide for sharing of many amenities in the form of common Elements which the unit owners might not be able to afford. The Tyranny of the settlement laws individually in exchange for sharing of common expenses: in reality, however, the microcosms of condominium governance mirror the operations of large-scale democracies: there are often power struggles and the Governmental representatives are often changed when they lose touch with their constituents or exceed their authority and or abuse their taxing and spending powers.

d) Common elements generally includewalkways, driveways, lawns and gardens, lobbies, elevators, parking areas, recreational facilities, storage areas, laundry rooms, stray ways,

plumbing, electrical systems, and, the portion of walls, ceiling, and floors and he argues that some parts of the common areas like sewer lines may be designated for the exclusive use of one or more of the individual unit owners in which case these may be termed as limited common elements. He cites the following examples: -

a) Parking space

b) Balconies

c) Roof gardens/roof tops

d) Storage lockers/backyards.

e) Usually, at titling, the common areas shall be included in the unit factor and the unit area at titling stage as we shall discuss herein below, thus M. Robert Goldstein argues that when valuing for the sale of the (See the Income Tax Act and the Local Government (property rates) Regulations) (See Raphael Muwonge (2017) understanding Condominium property regulations in Uganda):

A valuer's Perspective. Robert Goldstein (2007) valuations of Condominiums and corporations: Condominum property, the valuer must take into account beyond the interior of the unit being valued, the common property comprised in the registered Condominium plan affecting the unit in question to ensure that shares in common with the proportional unit factors are considered when dealing with the respective units.

Management of Condominium property

Under Section 20, it establishes upon registration of a Condominium Plan, in respect of an existing building or structure or a corporation which shall interalia include; -

a) Operate as a Condominium plan No ___
b) Consist of persons who own units in the parcel to which the plan relates.
c) Have a perpetual succession and a common seal and can sue in its corporate name.

The major functions of the corporations under section 21 Inter-alia include but are not limited to:- enforcement of its bye-laws, keeping the common property in a state of good repair, establish and maintain a fund for the administrative expenses determined by the corporation for purposes of maintaining the common property, payment of insurance premium, rent property rates, and or discharge of any further obligation: under **Section 21C(6)** the board shall also hear complaints from aggrieved members of the corporations.

The Corporation under **Section 21(d**) is further charged with further ensuring levies of contributions on the portions of unit entitlement, undertake necessary external improvements on the property, comply with

directives of local authorities or planning board in respect of any building or improvements on it, submit new plans in case of any alterations or to the Condominium plan.

As regards to the external general appearance of the buildings and the common areas, the corporation is enjoined under **Section 20(3)** to keep the property in a good state of serviceable repair and properly maintain the immovable properties of the corporation and shall comply with the directives of the local authorities on proposed repairs like KCCA directive on paving and painting.

Under **Section 30, 39** the corporation is empowered to make rules to provide for the management of the units and the property of the corporation which rules may be amended or revoked by a special resolution; the law envisages all those unit owners and their defendants or licensees entertained on the Condominium propertyenter as guests or for any reason of whichever description, are to be bound by the rules of the corporation.

Management Agent and Easements.

All Condominium corporations are under **Section 50(1)** required on application by the corporation or owner of a unit to appoint a managing agent. This Agent is under **Section 21 (5)** a representative of the board who attends to the day-to-day management of issues that may arise within the condominium property; these may include simple fixes like plumbing works.

As regards Easements part iii of the Act, **Sections 15 to 19** are very elaborate on what amounts to easements in Condominium properties as already highlighted hereinabove. These range from rights incidental 39 **Condominium properties Act,** 2001 under **Section 21 (4).**

A corporation may by a special resolution, acquire or dispose of an interest in immovable propertyto owners of the common property under **Section 15(1) (a)-(d**) which among other things include support, shelter, protection, passage or provision of water, sewerage, drainage, Gas-electricity, garbage, and air, they also include allowing passages that enable ICT and communication like telephone, radio and television services because of the use of digital migration systems that we adopted by Uganda in 2013 like decoder cables and ICT wires which every unit owner must ensure that his other co-owners are afforded reasonable support to use and enjoySection 16 sets out easements in favor of a unit owner which are deemed by law to accrue to the unit owner on registration of the Condominium plan, and these are structured to include an easement of the subjacent and literal support of the unit by the common property by every each other unit capable of affording support, easement of passage44 or provision of water, artificially heated or cooled air and other services by either means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent which these pipes, wires, cables on ducts are capable of being used in connection with the enjoyment of the unitbefore buying condominium consider one should consider if its location is favorable for his or her daily routines, for example, she contends that one should know how long will take you to reach your workplace, church, and school if you have children. When you buy a condo, there will be particular places around your complex that might be important.

Under **Section 15(3),** it's provided that the rights of easements created under this section, shall carry on with them all the other ancillary rights necessary to make them effective as if they were easements. (See **Section 16(b) & (c) of the Act. 45**),

Things to consider before opting for a condominium. Condominium Properties and Occupiers liability: The Act limits the occupier's liabilities 46 of a unit owner as against; the unsuspecting entrants unto the Condominium property, the owner of a unit shall only be liable in respect of an interest entered unto on the Condominium plan in proportion to the unit factor of his or her unit.

Uganda has no specific law and or statute on occupier's liability. Most times we rely on common law48therefore this means that the common law principle of "slip and Fall incidents" are applicable in respect of private unit owners but also as against the condominium corporation where the corporation fails to maintain the main common areas and other condominium corporation properties in a reasonably safe condition, it is liable for damages or injuries that a person incurs on-premises.

Raring of petty animals like Dogs and cats may be permissible within the condominium corporation rules though many have placed restrictions on dog ownership, many occupants like pets, as such, many breeders of these animals in high-end condominiums have posted breaches that border on nuisance issues such as barking and sniffing. Occupier's liability is a field of Fort law, where an occupier of property either through ownership or lease has a duty of care to protect his entrants on the premises; liability usually arises from accidents caused by the defective or dangerous condition of the premises. 48 Section of the **Judicature Act Cap 16 and Section 10(10) of the Magistrates Courts Act** allows the application of common Law in Uganda.

ELBAUM-VS-YORK CONDOMINIUM CORPORATION 50 NO. 67, the Ontario Supreme Court of Justice 2014 heard that Albaum, a unit owner was walking on a common element when another unit owner's dog which was unattended to attacked her causing her to sustain injuries, the condominium corporation by-laws had posted signed that dogs were to be leashed at the owner's "risk" the plaintiff alleged that the Condominium Corporation and unit owners had failed to create and or adequately enforce rules that would require that dogs are kept on a leash and that unit owners control their pets at all times when on common elements thus endangering by-passers. Court held as follows: "Court found both the unit owner and the condominium corporation liable under occupier's liability; the victim's action was maintainable against both the dog owner and the condominium corporation."

The lesson from the above case is that condominiums should ensure that they put in place and implement rules concerning pet animals; dogs and other dangerous animals that regulate the safe handling of dogs on the common elements by the unit owners otherwise the corporation will most likely not escape liability.

As regards pools and recreation facilities in condominiums, these at times can fun until an accident occurs, the other trouble shooting area is the influence of drugs, alcohol, and the now new normal ways of 51 Case in point was conversed in **MACKAY VS METROPOLITAN TORONTO CONDOMINIUM**

CORPORATION NO. 985 unit owners fell victim to an intense smell of cigar smoke in their unit and prompted a nuisance claim alleging that the condominium corporation had bleached its duty to maintain the common elements and to repair common elements after smoke contamination, court agreed that smoke originating from the steps and air leaks in the unitsliving in the face of a global pandemic, as shall be discussed, because of the attractive nature of these recreational facilities if not well guarded with attendants and posters to warn users adequately of the risks with clearly marked signage and properly maintained facilities.

On the 19th March 2021 in **RE: HALTON CONDOMINIUM CORPORATION NO. 77 VS VILY MITROVIC**, Facts were that Two condo owners were refusing to wear a face mask while on the interior common elements of their condominium corporation contrary to the Red zone restrictions implemented by the corporation to fight Covid 19, security footage showed these unit owners walking, using and enjoying the common areas without wearing face masks, or in some cases wearing it around their neck or below their noses, on their part, these two unit owners claimed that they were exempt from wearing masks on account of a medical condition but refused to provide evidence of the same. **Gibson J**. held as follows: - "whereas court takes judicial notice that the current global pandemic has resulted into a significant number of deaths, every occupant of the Red zone Halton's corporation unless medically exempted was bound to wear a mask within the Condo building and that the mask policy and that the corporation must insist on all residents to mask up in order not to put the other residents in undue risk." and transmission was a nuisance and amounted to abuse of the right to a clean and health environment.

Under **Article 237(3) of the Constitution, 1995 and Section 5(3) of the Land Act Cap 227,** names 4 forms of tenure and of the 4, 3 are registered and titled under the registration of titles Act by way of Freehold title, leasehold title and Mailo titles.

Fire and safety, whereas the Act is silent on Fire and Safety, however using the mischief rule of statutory interpretation in respect of **Sections 15 to 19 of the Act**, and using the "sui generies rule" one can comfortably assert that whoever causes fire among the Unit Holders is responsible for the fire safety in the unit.

In a related case in the **CITY OF TORONTO-VS-YORK CONDOMINIUM CORPORATION NO. 6**, the facts are that a fire started in a condominium unit that did not have a smoke alarm. Both the unit owner and the Condominium Corporation were charged for failure to have a smoke alarm/detector under the fire code Act. It can therefore be asserted that an owner of a particular unit who puts the lives of other occupants or their authorized guests may not escape claims under occupiers' liability.

Effect of Registration of the condominium plan on the existing title

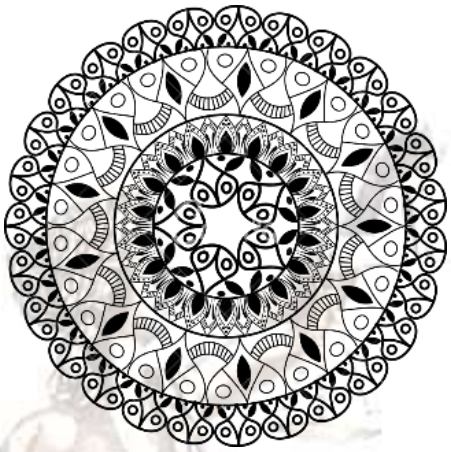
As highlighted hereinabove, under **Section 3(2), 10(1),** and **Rule 6**, 55 of upon approval and presentation of a condominium plan and being presented in quadruplicate clearly indicating the number of units into which the building is divided and with a clear indication of the waterproof ink on tracing linen or polyester film or such other materials that are of a size and nature approved by the commissioner Land Registration is expected to examine these documents to his/her satisfaction, the plan must be accommodated by the other certificates as discussed hereinabove.

Upon being satisfied with the presented application, under **Section 5(1)** the Registrar shall in line with **Section 5(1)** close the part of the Register relating to the parcel described in the plan and upon a separate part for each of the unit described in the **55 Condominium Property Regulations no. 29 of 2002** plan and shall upon the payment of the prescribed fee issue a certificate of the title in respect of each unit.

Certificate of title issued under this Act, though not a form of Tenure reserved under the constitution shall under **Section 5(2**) be deemed to have been issued under the Regestration of Titles Act and it's for all purposes and intents conclusive evidence of ownership, indefeasible and only void for fraud under **Section 77** and illegality under **Section 97 of the Land Act**, the condominium title takes the **form I of Schedule II** as preferred in the third schedule.A proprietor of a condominium title shall under **Section 5(3)** be at liberty to transfer, lease, charge, or otherwise deal with the unit in the same way as land held under the **Regestration of Titles Act;** and he can also create 3rd party interests under **Section 6(1) and (2**) which upon lodgment for registration shall be entered as encumbrances on the unit's certificate of title and also endorsed as a separate part of the certificate of title in so far as and or to the extent of the unit factor.

Subdivision of the unit, under **Section 8(1)** it's possible for a unit owner with the approval of the local authority to subdivide the unit or consolidate his/her unit by registering with a registrar of titles a Condominium plan relating to the unit intended to be subdivided or consolidated, and in the application, he is required under **Section 8(2)** to clearly, highlight the intended major necessary modifications to a subdivision and or consolidated units and upon acceptance of the registration of the Land Act Cap 227 as amended by Act No.1 of 2004, **SEE CK PATEL VS COMMISSIONER LAND REGISTRATION & 2 OTHERS (HCCS 87 of 2009).** Modifications, the original condominium unit shall be canceled and replaced with the newly issued plan.

The Law allows change of use of the unit under **Section 9(1 -3) of the Condominium Property Act.** however, this is subject to the unanimous approval to consenting to a change by the corporation. The change in use must be endorsed by the planning authorities before the registrar entertaining it on the Register and where the change in use results in modifications to the Condominium plan, the user shall move the Registrar to register a modified condominium plan of the condominium plan that had originally been registered under Section 3. Notably also is **Section 49** termination of condominiums either upon effluxion of the lease period in case of condos seated on leases or upon the developer wishes as such and having all the units vested in him, this is achieved by presenting a notice of termination under the prescribed form as set out under regulation 24, which is form number 1 in the 5th schedule to the regulations.



MORTGAGES

Documents to be on file.

Company

- Resolution to borrow
- Power of attorney
- Search result from company Regulation.
- Certificate of incorporation.
- Particulars of Directors (form20 of company Act)
- Individual
- Marriage certificateStatutory Declaration.

General

- Search at land Registration (search certificate)
- Credit worthiness. (Credit references bureaus report)
- Feasibility report
- Boundary opening report.

- Valuation report.
- Duly executed mortgage deed.
- Loan after letter
- Guarantorship undertaking duly signed.
- Identification Cards of borrowers and guarantors
- Photographs of borrowers
- Receipt of payment of stamp duty.

RIGHT OF A MORTGAGOR / REMEDY.

- Discharge of mortgage upon repayment (**Section 14Mortgage Act, 2009 (Act 8 of 2009)**
- Right of redemption
- Residue on the sale of mortgaged property.
- Right to review the loan agreement which is banish on him

OBLIGATIONS OF A MORTGAGER.

- Delivery of a certificate of title
- Obligation to repay sums
- Keep the mortgage premises in good conditions
- Obligation to pay taxes, rates and charges on the mortgaged property.

RIGHT OF A MORTGAGEE/ REMEDIES

- Right to foreclose on default

- Enter possession on the land
- Repayment of principal sum and interest
- Appointment of a receiver
- Lease the mortgage property.

MORTGAGE DEED AND LOAN AGREEMENT

1. According to the **Commissioner for Land Regestration,** directive **of 2013** a mortgage deed should not exceed 4 pages.

- Therefore, all other terms relating to the sums advanced and the like can be contained in a loan agreement which is incorporated into the mortgage deed.
- Mortgage deed should more relate to the security.

2. Mortgagee should entail the following: -

a) Description of the property

b) Mode of payment.

c) Loan account

d) Currency of repayment.

e) What amounts to default?
f) Remedies on default
g) Jurisdiction (law applicable & country)
h) Principal sums &interest
i) Rights &obligations of either party
j) Right of redemption
k) Notices
l) Insurances

PERFECTION OF MORTGAGES

PROPER EXECUTION

GENERAL PARTS V N PART should be in Latin character and **ECON CONSTRUCTION & ENGINEERING LTD V GINO COMMERCIAL BANK LTD & ANOR (2003) EA 426**. An execution of a mortgage by a company entails, sealing the mortgage in the presence of a qualified witness when a company executes a document it cannot witness itself.

PAYMENT OF STAMP DUTY

Section 2 of Stamp Act. In **JUMA V HABIB (1978) EA 128** of mortgage deed is an instrument liable for stamp duty of failure to pay stamp duty renders the deed inadmissible

REGISTRATION OF DEED UNDER RTA.

Section 54 & 59 of Regestration of Titles Act

Registration of the charge at the company Registry.

Section 105 of the Companies Act. This should be within 42 days

PROCEDURE FOR REGISTRATION

1. Payment of stamp duty
2. Lodgement at the land registry
3. Payment of Registration fees & perusal fees
4. Mortgage entered on the encumbrance page of the title as an encumbrance

MORTGAGING MATRIMONIAL PROPERTY

Section 39 of Land Act prohibits the mortgaging or pledging of any family land without the consent of the spouse.

Section 5(1) of the Mortgage Act, requires that before matrimonial property is mortgaged, the document used for the mortgage should be signed by the mortgager & the spouse residing in that matrimonial home which would amount to consent.

Section 5 (2) (a) Mortgage Act, 8 of 2009further imputes an obligation on the mortgage to take reasonable steps to ascertain whether an intending mortgagor is married & whether the property to be mortgage.

under **Section 5(3) Mortgage Act,** the duty is discharged if the mortgage obtains a marriage certificate issued in accordance with the laws of Uganda & in the absence of it, a statutory declaration from the spouse or spouses of the mortgagor as proof of marriage

Pursuant to **Section 6 (1)** of the **Mortgage Act,** the Mortgage must satisfy the selves that the consent of a spouse referred to in section 5 is an informed & genuine consent

Section 6 (1)(a)(i) Mortgage Act, stipulates that the consent is informed & genuine if the mortgagee explained to the spouse of an applicant for a mortgage in the presence of an independent person, the terms and conditions of the mortgage which is being applied for.

Under Section 6(1) (a) (ii) Mortgage Act, if in writing advised the appliance for a mortgage that he/she should ensure that his/her spouse or spouses receive independent advice on the terms of conditions of the mortgage being applied for.

Section 6(1) (b) requires that the spouse provides a signed & witnessed document to the effect that they have received independent advice on the mortgage & assented to the terms and conditions or that they have notwithstanding the advice from the mortgage waived their right to take independent advice independent person is defined in **Section 6(2) of the Mortgage Act,** to mean: -

- Any officer of government
- A justice of the peace
- An advocate
- A notary public
- Bank Manager
- A Minister of any religion authorized to celebrate manages
- A medical Practitioner

In **WAMANO SHEM V EQUITY BANK & ANOR, HCMA NO.6 OF 2012**, Justice Madrama held that the consent required of a spouse when mortgaging a matrimonial home should be informed the property is matrimonial property by first establishing whether the mortgagor is married

In **ENID TUMWEBAZE V MPEIRWE STEVEN & ANOR HCCS NO.39 OF 2010**, court nullified the sale of matrimonial property due to lock of spousal consent before the said land was mortgaged

Section 39 (4) of the Land Act emphasis that the doctrine of bona-fide purchaser for value is not applicable to family land & thus the purchaser is not protected

VARIATION OF MORTGAGES

Section 12 of the Mortgage Act,

a) Interest Rate

May be varied pursuant to **Section 12(1)** by serving a notice on the mortgagor which notice must give a mortgagor not less than 15 working days, state the new rate of interest and state the responsibility of the mortgagor to take to ensure that the new interest rate is paid to the mortgager

b) Variation of amount secured

This pursuant to **Section 12 (2) Mortgage Act,** and is effected by execution of memorandum stating the increment or decrease.

The memorandum as per **Section 12 (5) Mortgage Act,** must be endorsed or annexed to the mortgage instrument &operates to vary the mortgage in accordance with the terms of the memorandum.

The memo must be registered and thus in case of an increase stamp duty must be paid on the increment which is 0.051 of the increment

Registration fees must also be paid

c) Variation of term /currency

This is pursuant to **Section 12(3) Mortgage Act,** is effected by execution of memo stating the new term or currency & must be signed by the current mortgagor and by the mortgagee.

d) Variation of covenants, conditions and powers

the variation should not impose any significant greater burdens on the borrower than those set out in S.17 by a memo which is signed by the current mortgages remedy for mortgagor where mortgagee diverts from

terms review of the terms under **Section 34 of the Mortgage Act,** court has the power to review certain mortgages on the application by the persons stated in **Section 35 Mortgage Act,**

Section 35(1) Mortgage Act, lists, the mortgagor or mortgagee, spouse or mortgagor, trustee in bankruptcy, receiver or liquidator of the mortgagee or by a surety

RELIEF FROM FORECLOSURE

GUARANTOR

Section 68 of the Contracts Act 2010 (Act 7 of 2010) defines a contract of guarantee to mean a contract to perform a promise or to discharge the liability ofa 3rd party in the case of default of the 3rd party which may be oral or written

Under **Section 70 of Contracts Act 2010 (Act 7 of 2010)** is to the effect that anything done or any promise made for the benefit of a principal debtor may be sufficient consideration to a guarantor to give a guarantee

EXTENT OF LIABILITY

As per **Section 71 (1) of the Contracts Act 2010 (Act 7 of 2010),** the liability of a guarantor shall be to the extent to which a principal debtor is liable unless otherwise provided by a contract.

Section 7 (12) Contracts Act 2010 (Act 7 of 2010), further states that the liability of a guarantor takes effect upon default by the principal debtor in **BANK OF UGANDA V BANCO ARAB ESPANOL SCCA NO.23 OF 2000***,* court held that once a principal debtor defaults, the guarantor has a duty

RIGHTS OF A GUARANTOR

Under **Section 81, Contracts Act 2010 (Act 7 of 2010**), where a guarantor as a result of default by the principal debtor, performs the debtor's obligation, the guarantor assumes all rights which the editor has against the principal

under **Section 28(1) Contracts Act 2010 (Act 7 of 2010)** a guarantor is entitled to the benefit of every security which a creditor has against a principal debtor at the time a contract of guarantor is entered into

whether the guarantor knows of the existence of the security or not.S.82(2) Contracts Act 2010 (Act 7 of 2010), stipulates that where a creditor losses or parts with the security without the consent of the guarantor, the guarantor is discharged to the extent of the value of the security The right to indemnity by the principal debtor under **Section 85 (1) & (2) Contracts Act 2010 (Act 7 of 2010**),

DISCHARGE OF A GUARANTOR

1. Where the lender & the principal vary the underlying contract without the consent of the guarantor. **Section 14 of Contracts Act 2010 (Act 7 of 2010),**
2. Where the principal debtor is released or where the act or omission of the creditor discharges the principal debtor **Section 75 Contracts Act 2010 (Act 7 of 2010),**
3. Where creditor does any act which is inconsistent with the right of the guarantor or omits to do any act which his/her duty to the guarantor requires him/her to do **Section 80 Contracts Act 2010 (Act 7 of 2010),**

REMEDIES AVAILABLE TO A MORTGAGE IN CASE OF BREACH

In **MICHEAL OJATUM CHMA V JOSEPH MATOVU, HCCS NO.823 OF 2000**, Court stated that a mortgage is free to purchase anyone or all the remedies provided for under the mortgage Act.

NOTICES

Under **Section 19 (4)** of **Mortgage Act, 2009Act 8 of 2009**, a default warranting a notice to be served on the mortgagor must have subsisted for 30 days from the date when the obligation to pay become due.

A demand notice requiring the mortgagor to pay all sums due within 21 days should be issued pursuant to **Section 19 (3)** of **Mortgage Act, 2009Act 8 of 2009**

In **GENERAL PARTS (U) LTD V N PART, SCCA NO.5 OF 199**, court held that the demand must be unequivocal and must require the mortgagor to clear all sums due and state the consequences of failure to do soIf there is noncompliance, the mortgagor must issue a 45 warning days' notice requiring the mortgagor to rectify the default as per **Section 19 (2) of Mortgage Act**. The flow of the above notice as laid down in **Section 19 of Mortgage Act** was emphasized by **Wejuli J** in **BISONS CONSULT INTERNATIONAL LTD V DTB HCMA NO.429 OF 2022.**

SERVICE OF THE NOTICES

In **MUBIRU V UGANDA CREDIT AND SAVINGS (1978) HCB 109**, the mortgagee must ensure that the mortgagor is served personally and evidence is obtained, if personal service can't be effected the mortgagee must obtain from registrar direction for substituted service.

In **EPAINETI MUBIRU V UGANDA CREDIT AND SAVINGS (SUPRA)** Court further held that the service of notice is mandatory and the mortgagor should be served personally.

REMEDIES.

These are provided for under **Section 20 of Mortgage Act.**

1. Appointment of a receiver.

Section 2 of Mortgage Act, defines a receiver to mean a receiver, or a manager, or a receiver and a manager I respect of any land, and includes any person appointed as a receiver. **Under Section 22(1) of Mortgage Act,** its implied in every mortgage that the mortgagee has power to appoint a receiver of the income of mortgaged land.

A notice of 15 working days must be given to the mortgagor before appointment of a receiver as per **Section 22(2) of Mortgage Act,**

The appointment of a receiver must be in writing signed by the mortgagee. (**Section 22(3) of Mortgage Act,** In **GRINDSLAY BANK V EDWARD BOAZ SUPREME CIVIL APPEAL NO.23 OF 1992** court emphasized that the instrument of appointment of a receiver must be signed by the mortgagee and no other person. In this case it was signed by the mortgagee's layers, court found the appointment of a receiver null and void.

The receiver as per **Section 22(6) of Mortgage Act** is deemed to be an agent of the mortgagor.

The receiver pursuant to **Section 22(7) Mortgage Act** has the power to demand and recover all the income in respect to which he or she was appointed receiver.

The receiver disburses the monies received in the order of priority as laid down in **Section 22 of the Mortgage Act.**

2. Mortgagee's action for money secured by the mortgage.

This is provided for under **Section 21 of the Mortgage Act.**

3. Mortgagee's power of leasing

Section 23(1) of the Mortgage Act, stipulates that unless otherwise provided in the mortgagee deed, a mortgagee can grant lease in respect of the mortgaged land or any part of it. Before leasing however, the mortgagee must pursuant to **Section 23(2) of the Mortgage Act,** serve a notice on the mortgagor of at least 15 working days.

Under **Section 23(3) Mortgage Act,** the lease must reserve the best rent that can reasonably be obtained having regard to the circumstances of the case, be for a term not exceeding 15 years or the length of the term of the mortgagee whichever is the shorter.

4. Entering into possession of the mortgaged land

Pursuant to **Section 24(1) of Mortgage Act,** after serving a notice of 5 working days, the mortgagee may enter into possession of the whole or a part of the mortgaged land.

Under **Section 24(2) of Mortgage Act**, possession is effected by

a) Entering and taking physical possession of the land to which reasonable force may be applied.

b) Asserting management / cannot over the land i.e., receiving rent payable on the property.

c) Court orders.

All monies received during possession must be disbursed as per **Section 22(9) of the Mortgage Act,**

5. Power of sale

Under **Section 26 (1) of Mortgage Act,** a mortgage may exercise his or her power to sell the mortgaged land where the mortgagor is in default & remains in default at the expiry of the period given to rectify

A notice to sell the mortgaged land must first be served on the mortgager and the sale must proceed after 21 days from the date of the service **Section 26 (2) Mortgage Act,**

Under **Section 26(3) Mortgage Act,** the notice must be served on the mortgagor any of their spouses in respect of a matrimonial home, a surety, the independent person under the Act and in case of customary land, the children and spouse

DUTIES OF A MORTGAGEE EXERCISING A POWER OF SALE.

Under **Section 27 (1) of Mortgage Act**, mortgager exercising a power of sale owes a duty to the mortgagor or surety if any to obtain the best price for the land in the circumstances

This is also emphasized in the case of Cuckmere Brick v Mutual Finance.Here the sale is by public auction, under **Section 28(2) Mortgage Act,** the mortgagor must publicly advertise in advance of the sale by auction. The advert must include a colour picture of the mortgaged property in a newspaper of wide circulation in the area concerned and must specify the place, of the auction and the date of the auction, being no earlier than 30 days from the date of the first advert.

Note: pursuant to **Section 28 (1) (d) Mortgage Act,** the sale always be by public auction except if the mortgagor consents to a sale by private treaty

ADJUSTMENT OR STOPPAGE OF A SALE

The mortgagor may apply to court or any other interested party for adjustment of a sale by public auction if they have reasonable cause. However pursuant to **Regulation 13(1) of the mortgage regulations, 2012**, he/she must deposit a security 30% of the forced sale value of the mortgaged property or outstanding amount

Failure to comply with the same entities of mortgage to proceed with the sale. In **PETER KISAWUZI V DFCU (U) LTD CA CIVIL APPLICATION NO.6 OF 2016** Court held that the provisions of **Regulation 13** are mandatory

VALUATION OF PROPERTY.

Under **Regulation 11(1) of Mortgage Regulations,** the mortgagee must before sell the property to ascertain the current moment value & the forced sale value.

Under **Sub- Regulation 2**, the valuation report should not be made more than 6 months before the date of sale

DEPOSIT BY PURCHASER

Under **Regulation 14 (1)** the person declared purchase on the fall of the hammer must within one working day pay a deposit of at least 30% of the purchase amount should they default, the property must be resold **Regulation 19(2).** The balance upon payment of the deposit should be paid within 21 working days (14(3) Failures to pay within the 21 working days the property may be resold to the second highest bidder or re advertised.

TRANSFER OF PROPERTY AFTER SALE

Upon payment of the full purchase price, the mortgagee must execute instruments of transfer of the property in the name of the purchaser or the person named purchaser **(Regulation 15)**

Mere irregularities in conducting the sale by public auction do not initiate the sale**. (Regulation 16)**

PROTECTION OF THE PURCHASER

Under **Section 29 of the Mortgage Act,** A purchaser in a sale effected by a motgagee acquires good title except in a case of fraud, misrepresentation or other dishones conduct on the part of the motgage of which the purchaser has actual or constructive notice.

A purchaser is not-

(a) Answerable for the loss, misapplication or non-application of the purchase money paid for the mortgaged land:
(b) Obliged to see to the application of the purchase price or
(c) Obliged to inquire whether there has been a default by the mortgagor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper r regular.

REMEDIES OF EQUITABLE MORTGAGES

In **BARCLAYS BANK (U) LTD V NORTH COTE & ANOR HCCS NO.1467 OF 1974**, the court held that the difference between an equitable mortgage and a legal mortgage may realize his security under a mortgage by exercising most of the statutory powers conferred upon him without recourse to the courts, an equitable mortgage must apply to the courts for exercise of any of these powers

NATURE OF MORTGAGES

Section 8 (1) (2) & (3) of Mortgage Act.

In **ERISA WAMALA V MUSA MUSOKE (1920) 3 ULR 120** court held that a mortgage is always security and not a transfer. A provision that property would revert to lender when certain event occurs is void. In **MUHINDO ENTERPRISES V GREENLAND BANK HCCS NO.125 OF 1987,** court held that a mortgage is a mere security for payment of a debt and does not operate as a transfer

LEGAL MORTGAGES

Is a mortgage that is registered as provided under **Section 3 (4) of the Mortgage Act,** it's created by a deed which is then registered as an in encumbrance on a certificate of title

Section 54 and 59 of the Regestration of Titles Act.Registration fees and perusal fees are payable

Advantages

1. Rights are automatic e.g sale without recourse to court
2. 3rd party is put on notice of the legal interest
3. Creates rights in rem and priority over all subsequent mortgages

EQUITABLE/INFORMAL MORTGAGES

Defined in **Section 2 of Mortgage Act.**

Section 3 (5) of Mortgage Act, is to the effect that unregistered mortgage shall be enforceable between the parties.

These can be created on registered land & on unregistered land.

They are created according **to Section 3 (8) of Mortgage Act,** when the holder of registered land deposits any of the following;

i. The certificate of tithe to the land
ii. A certificate of customary of ownership

iii. A lease agreement

iv. Any other document agreed upon to secure the sums

In **BARCLAYS BANK D.C.O V GULU MILLERS (1959) EA 540** court held that under the doctrines of equity a deposit of title deeds by way of security whether or not accompanied by a memo was equivalent to an agreement to execute a legal mortgage

In **SIMON KATO BUGOBA V S. KIGOZI & MBABALI HCCS NO. 05437 2004**, court noted that the law provides that an equitable mortgage of land may be made by the registered proprietor of his/her certificate of the title with intent to create security therefore whether or not accompanied by a note or memorandum.

Whether they are more than to registered properties both must deposit the certificate or consent. In **DE SOUZA FIGUERIDO V TALBOT & ANOR, (1961) EA 167**, to executors were registered as proprietors of the suit property, but only one deposited the certificate as security for a loan. It was held that the deposit was ineffective to create an equitable mortgage.

Originating summons

THE REPUBLIC OF UGANDA
THE HIGH COURT OF UGANDA AT KAMPLA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. (A.S) OF 2020
IN THE MATTER OF KIBUGA BLOCK 9 PLOT 698 AT KAGUGUBE
AND
IN THE MAATTER OF AN EQUITABLE MORTGAGE OVER THE ABOVE PROPERTIES IN FAVOUR OF M/S BAACLAYS BANK
AND
IN THE MATTER OF AN APPLICATION FOR FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY
BETWEEN

BARCLAYS BANK (U) L.T. D .....PLAINTIFF (MORGAGEE)

VERSUS

PETER JJEMBA KAGGWA .....DEFENDANT
(MORTGAGED)

ORIGINAL SUMMONS

(Under section 3(5) of the Mortgage Act, 2009Act 8 of 2009, and 0.34 r 4 of the Civil Procedure Rules)

TO THE DEFENDANT

Whereas the above property was by way of deposit of the duplicate of the title mortgaged to Barclays via Peter Jjemba Kaggwa the registered proprietor of the said property

And where as the said Barclays did not lodge a caved on the above property and on the above basis hereby does apply to this honourable court for determination of the following questions namely:

i. Whether the defendant /mortgage having failed in spite of repeated demands to pay to the plaintiff the sums advance by Barclays Bank which as of 6th March 2020 stood at Ug.500,000,000 should be foreclosed of its rights to redeem the mortgaged property.

ii. Whether the plaintiff should be permitted to sell the mortgaged land upon foreclosure in accordance with the law.

iii. What other remedies are available to the plaintiff, if any in the circumstances of the case.

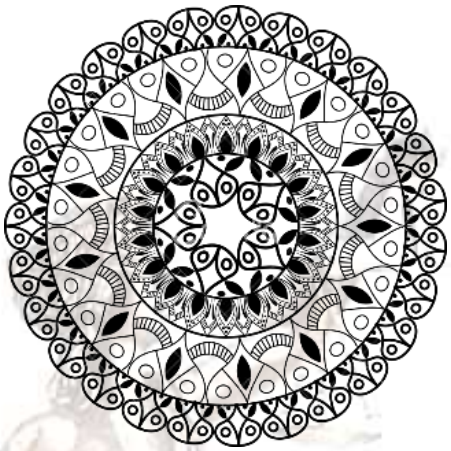
iv. Whether the plaintiff/mortgage should be granted the costs of this suit

You are hereby required if you desire to be heard upon the determination only of the said questions to appear personally or by Advocate on the ..... of .....2020 at 9 ..... O'clock or soon thereafter when this court will proceed to make such orders whether by way of declaration or otherwise as the court may think fit and expedient

TAKE FURTHER NOTICE that these originating summonses are supported by the affidavit of Tumusiime Henry which is herewith attached that shall be read and relied on at the leaving

Dated at Kampala this 6th day of March 2020

Given under my land and this seal of the High Court this ..... of August 2009



EXPROPRIATED PROPERTIES

WHAT IS EXPROPRIATED PROPERTY?

Section 2 of the Expropriated Properties Act Cap. 87 definition expropriated properties to include: -

Any property or business which was:

a) Vested in the government and transferred to the departed Asians property custodian Board under the Assets of department Asians Act.

b) Acquired by the government under the properties and businesses (acquisition) decree 1973.

c) In any other way appropriated or taken of by the military regime except property which has been affected by the provision of the repealed National Trust DECREE, 1971.

In **ONAPA V PUNJANI (1995-98)2 EA 266, KCC** granted to the respondent a 3-year lease over a plot for purposes of constructing a house thereon. The lease was to run up to m1st October 1972. The court was invited to decide whatever the property was expropriated property and thus the expropriated properties Act applies. The Supreme Court held that the property affected must have been rested in the property affected must have been rested in the government when the lease agreement for a lease or any other specified tenancy was still in force. In the circumstance there was no lease or agreement for a lease to rest in government when the respondent left Uganda in February 1973 therefore the property did not fall under the operation of Act.

WHO IS A DEPORTED ASIAN?

Section 1(b) of the Expropriated Properties Act Cap. 87 defines departed Asia to mean any Asian who left Uganda on after the 9TH day of august,1972 in such manner as necessitated the taking over in public interest of any property or business or she left in Uganda.

WHO IS A FORMER OWNER?

A former owner is defined under **Section 1(c) of Expropriated Properties Act Cap. 87** to mean and include any person who was either the registered owner or proprietor of any real or movable property in Uganda or was a share holder in a business or enterprise registered in Uganda and who was either expelled or forced to free from Uganda during the period of the military regime or was in other way disposed of the property or business and anybody who is the legal heir or successor of that person.

LEGALITY OF TRANSACTIONS IN EXPROPRIATED PROPERTIES.

Section 2(2) (a) of Expropriated Properties Act Cap. 87 nullified all purchase transfers and grants of any dealings ofn whatsoever kind in such properties.In interpreting this section, the court in **GOKALDAS LAXIMAIDAS TANA V SISTER ROSEMARY & DEPARTED ASIANS PROPERTY CUSTODIAN BOARD (1994-95) HCB 53** held that section 2(2) (a) of the Expropriated Properties Act Cap. 87 nullified any of the transactions entered mentioned therein, if the transactions was effected between the times when the property was first vested. In government by the Assets of Departed Asian decree 1973 and the time when the act of 1982 came into force namely on 21st Feb 1983. That provision of the act has a retrospective effect and nullified all the categories of transactions and dealings entered into in regard to expropriated properties in the period between expropriated by the decrees of Idi Amin on the EPA as correctly pointed out by Oder J Expropriated Properties Act Cap. 87 nullified sale, notwithstanding that the bank as mortgagee had carried out a sale or transfer. The mortgage sale fell under any other dealings.

EXPIRED LEASES.

Regulation 13 of the expropriated properties (repossession and disposal) (NO.1) Provides that for purposes of **Section 2(2)(b)** of every expired lease, agreement 4 a lease or tenancy shall be deemed to continue, after the prop has been dealt with in accordance with the act, for further period of two years or a period equivalent to the expired period of lease, agreement 4 lease or tenancy at the time of expropriation of the property whichever is the greater period.In **REGISTERED TRUSTEES OF KAMPALA INSTITUTION V DAPCB SCCA NO. 21 OF 1993.**

OBJECTIVE OF EXPROPRIETED PROPERTIES ACT CAP 87 EXPROPRIATED PROPERTIES ACT CAP. 87 (EPA).

The objective was fundamentally to return the properties to the former's owners. In **MBALE GROWERS TEA FACTORY LTD V NOORALI MOHAMMED & REGISTRATOR OF TITLES HCCS NO.65 OF 2005**, court held that the EPA is a noble and laudable legislation enacted for rectifications. It endeavours to put right a monstrous wrong committed against a section of property owners in Uganda by a notorious regime. In **REGISTERED TRUSTEES OF KAMPALA INSTITUTE V DEPARTED ASIANS PROPERTY BOARD SCCA NO. 21/93,** Platt JSC, held that the aimed at returning property 2 owners.

RESTRICTION ON TRANSFER OF REPOSED PROPERTY.

Section 8 of the Expropriated Properties Act Cap. 87 provides that any reposed property could not be sold or otherwise disposed of without the written consent of the minister until after 5 years from the date of the transfer.

In **HARBING MANZOOR V SERWAN SINGH BAHRA HCCA NO.151/95,** before acquiring repossession certificate of defendant purported to sell his property to the plaintiff who sued for specific performance. Defendant argued that the defendant could not have passed on good title to the plaintiff without the minister's consent. Court upheld the defendant's argument & held that the defendant had not reposed his legal interest and therefore could not pass on title he purported to sell.

COMPENSATION FOR DEVELOPMENTS ON LAND.

Section 12 of Expropriated Properties Act Cap. 87 deals with compensation. **Section 12(2**) makes the owner of the property who repossess responsible for paying for the value of any improvements on the property to the person who had effected such improvements **Rule 8 of the Expropriated Property (repossession and disposal) regulations, 1983,** stipulates that any person with an interest of whatever description in any property or busty affected by the Act other than a claim for repossession could within any 90 days for commencement of the Act lodged such claim with the verification committee by writing to the chairman Under **Section 12 (1) & (3) of Expropriated Properties Act Cap. 87**, the government is liable to pay compensation to a person or body, which property or business had been transferred to any person or body for value & such property or business was returned to the former owner or otherwise dealt with in accordance with the **Expropriated Properties Act Cap. 87.**

In **HABRE INTERNATIONAL CO. LTD V EBRAHIM ALARAKIA KASSAM & OTHER**[21], the appellants sued the respondents in the High Court claim 70,000,000/= as compensation for the developments on the property formerly owned by the respondents. The appellants acquired property from DAPCB after the Asians were expelled from Uganda in 1972. The suit premises were destroyed. In 1985, and the appellants constructed new structures and the premises. The respondents offered 10,000,000 as compensation. The appellants won the case in the high court, on appeal by the respondents to the Court of Appeeal, the appellant lost, hence the appeal by the SC had among other to deal with the question of whether the high court had the jurisdiction to deal with the matter.

Karokora JSC held that since the appellants could not proceed under the Act, to get a refund, claim for compensation such as after the 90 days had expelled from the competent jurisdiction hence the appellants were right to file the claim in the high court which under the constitution has unlimited jurisdiction.The compensation payable according to **Section 12(4) of Expropriated Properties Act Cap. 87** is the purchase priceless the derived or which ought to have been derived from the property or business from the date of such transfer **Section 12(6)** provides that such compensation must be paid over such a period and in such a manner as the minister may determine or negotiate with the person or body to be compensated.

The above provisions were a subject of litigation in **PYARALI ABDUL RASUL ISMAIL V EDRIAN JIBO, COST. CASE NO.01 OF 1997**. The court held that the provisions should be read in light of **Article 274** so as to conform to **Article 26(2)** of the constitution which requires prior, fair and adequate compensation.

The court stated that for compensation to be reasonable, it must be assessed at the market value at the Day of Judgment or at the time of trial

The court distinguished between **Section 12 (2) and Section 12(4)** he stated that **Section 12(2)** covers compensation for improvements on the property while **Section 12(4)** caters for compensation of the property as originally purchased.

APPEALS FROM MINISTER'S DECISION

Under **Section 15(1) of Expropriated Properties Act Cap. 87** an aggrieved person may appeal the decision of the minister to the high court.

[21]SCCA No. 4 of 1999

OBJECTION MY LORD

PROCEDURE.

Regulation 15 of the Expropriated Properties (Repossession and disposal) (no.1) Regulations provides that the rules of civil procedure governing the institution of suits in the High Court apply to appeals under **Section 15 of Expropriated Properties Act Cap. 87**

In **MOHAM MUSISI KIWANUKA V ASHA CHAC... C.A NO.14 OF 2002,** court held that the appeal against the decision of the minister was not a judicial appeal. The challenges of the suit may be done in an ordinary civil suit. The appeal is therefore by way of ordinary plea to the High Court

LAPSE OF 30 DAYS IN WHICH TO APPEAL

In **HABRE INTERNATIONAL CO. LTD V EBRAHIM ALARC KASSAM**[22], the court held that the power under the Act does not take away the High Court's original jurisdiction & the person can contest the minister's decision in the high court even after 30 days have elapsed.

In **MULOWOZA & BROTHERS LTD V N. SHAH SCCA OF 2010,** Tumwesigye JSC held that: - "it would in my opinion be a great injustice if the minister's decision had the effect taking away the right of ownership of land under the Act the affected party could not bring an action in court to contest it because 30 days had elapsed. This couldn't be the intention of parliament when it enacted for Act. The period of limitation for land matters under limitation Act is 12 years. Where the days have lapsed, one may apply to extend the time.

SUMMARY OF EXPROPRIATED PROPERTY LAW IN UGANDA

In August 1972, president id Amin announced an economic war which realized the expulsion Asians from Uganda. A number of properties belonging to these Asians were expropriated from the government and placed under the management of the departed Asians property custodian Board.

After idi Amin's dictatorial regime, a number of legislations were enacted under which most of the properties belonging to the former Asians were either returned to the former owners or sold off.

ASIANS ECONOMIC DORMINANCE

The Asians first made serious presence in Uganda in the aftermath of the construction of the Uganda railway where a number of them worked as laborers. After the construction of the railway, most of them got devoted to a life of commerce.

[22]SCCA No.4/1999

By the mid 1940s, the Asians had established themselves as a dominant force in the retail trade, cotton ginning, produce buying, transportation, and import and export trade. All the major towns including trading centers had Asians as the dominant trading community and real property owners.

The Africans largely dealt in peasant farming and laboring on plantations, factories, shops owned by the Asians and Europeans. There was no significant African presence in commerce or industry.

Overtime, discontent grew among the African communities and they started agitating for a more significant share in the economy in terms of cotton ginning, coffee curing, marketing of their agricultural produce and participation in commerce. They started organizing strikes and trade boy cots.

The colonial government responded to these agitations by several measures like the setting up of corporative movements to enable Africans engage in organized production and marketing their produce e.g., in 1949 the LINT MARKETING BOARD was set up to handle all cotton exports and to ensure a more descent return to the farmers.

In 1950, the Uganda credit and savings bank was setup with the object of facilitating loans to Africans in furtherance of agriculture, commerce, building and co-operative societies.

Other measures included the setting up of the Uganda development corporation in 1952 to facilitate the industrial and economic development in Uganda.

A provision was further made under the **Acquisition of Ginneries Ordinance** for the government to compulsorily acquire privately owned ginneries and sell them to the Africans.

To accelerate urban development, a National Housing Corporation was set up in 1964 to undertake the development, building and management of housing estates. Special programmes were initiated especially in Kampala, Ntinda, Naguru, Kiswa, Nakawa etc

Agreements were entered into for the sale of houses upon deferred terms of payment for a period not exceeding 20 years or for grant of leases for such houses.

All the aforegoing measures made tremendous contribution to the integration of Africans in the economy but the dominance of Asians in commerce and industry still remained. It remained a contentious political issue in the country and between Uganda and great Britain since most of the Asians were British citizens.

In 1969 a Trade Licensing Act was enacted with one of its objectives being to limit the operational area of the non citizen traders. The minister was empowered from time to time by statutory order to declare any trading centre to be an area in which a person who is not a citizen of Uganda is prohibited from trading.

In pursuance of these powers a number of statutory orders were made to prohibit non citizens from trading in most rural trading centers. The Act further made it illegal for any person who is not a citizen of Uganda

to trade outside any city, municipality or town or to trade in prohibited goods. This law put pressure on the Asian Trading community in the city or large urban trading areas.

By 1969 there were open political calls to Britain to take its citizens. So, this explains the expulsion of the Asians by President Idi Amin in 1972.

Thousand of properties belonging to the Asians were expropriated by government after the expulsion. However, after Amin's fall a number of legislations were enacted under which most of the properties were either returned to the former owners or sold off.

According to **section 2 (1) of the Assets of departed Asians decree of 1973** which provided that every departing Asian leaving Uganda had to declare his assets in forms PRO1 and PRO 2 specified in the schedule to the decree.

The departing party had to state all his assets and liabilities including these relations to any business interest and give the minister such other particulars and information relating to such assets and liabilities as the minister would require.

According to sec. 4(1), any assets declared by the departing Asian who failed to prove his citizenship at the time and in a specified manner, it automatically vested in the government without any further authority. In other words, Sec, 4 automatically transferred land to the government. This means that there was no need for government being entered on the certificate of title before claiming ownership of such property.

All such assets vested in the government and the decree transferred them to the **Departed Asians Property Custodian Board.**

The Board in this case had the power to take over and manage assets transferred to it by virtue of sec. 13 of the decree. The Board was further obliged to discharge liabilities on the property and it could sell or otherwise deal with such assets in the same way as a departed Asian could.

However, the **Expropriated Properties Act of 1982**, following agitation internationally and nationally was enacted to provide for the transfer of properties and businesses acquired or otherwise expropriated during the military regime to the ministry of finance and to make provision for the return to former owners or disposal of the same by government or to provide for other matters connected to that property like claims for interest.

Section 19(a) of the Expropriated Properties Act 1982 defined expropriated property to include any property or business which had vested in the government and transferred to the departed Asians custodian board. In the same Act, the property shall from the commencement of the Act remain vested in the government and managed by the ministry of finance.

To note further, by virtue of **Section 19(2)** of the Act any purchase, grant of or dealing of whatever kind in such property or business were nullified.

IN THE CASE OF VICTORIA TEA ESTATES LTD V JAMES BBEMBA CIVIL APPEAL 49 OF 1996 it was held that once it is proved that property was expropriated it becomes the statutory property of government and any dealings in it are nullified.

Under this law the minister was empowered to manage any property or business vested in government.

Section 3 of the Act provided that any former owner of property or business vested in the government could within 90 days of commencement of the Act apply to the minister in writing for the repossession of the property or business.

Under **Section 7 of the Act** the property could not be sold or otherwise dealt with without the written consent of the minister or after 5 years from the date of the transfer.

EXPROPRIATION UNDER THE EXPROPRIATED PROPERTIEES ACT CAP 87

The Expropriated Properties Act (EPA) Cap 87 makes provision for the following properties to remain vested in government and to be managed by the ministry of finance. Section 2 of the EPA gives a list of these properties and they include.

- Properties acquired by the government under the properties and Business acquisition decree of 1975.
- Properties which were in any other way appropriated or taken by the military regime, save property which had been affect by the previsions of the repealed National Trust Decree of 1971.

REVESTING OF PROPERTY IN THE GOVERNMENT AND NULLIFICATION OF DEALINGS

The departed Asians decree vested property of the departed Asians under the control of the departed Asians custodian Board. However, the expropriated properties Act vested the property in the ministry of finance which was to manage it on behalf of the government.

As such Sec. 2 (2) of EPA Cap 87 provided that all purchases, transfers, grants or other dealings of whatever kind of such properties were nullified.

The rationale for this nullification was to ensure that all the expropriated properties remained vested in government and to ensure that they could be dealt with under the Expropriated Properties Act.

Such expired or terminated leases were deemed to have continued in force and to continue until the property had been dealt with under the expropriated properties Act.

The regulations provided that leases were deemed to continue after the property was dealt with under the Act for a further period of 2 years or to a period equivalent to the unexpired period or lease at the time of expropriation, whichever was the greater period.

This nullification interfered with a number of transactions which had been concluded by the departed Asians property custodian Board in respect of these properties. As such any purchases, leases on such property were nullified.

Re-entries by lessers on expropriated leasers were also nullified and such forfeited leases reinstated to be dealt with under the act.

The nullification was intended to be retrospective i.e. It affected these dealings that had taken place before the Expropriated Properties Act 1982. This principle was expounded in the case of **VICTORIA TEA ESTATES LTD V JAMES BBEMBA AND AMOR CIVIL APPEAL NO. 49 OF 1996.** The court of appeal reconsidered the true import of sec 1(1) and 9(2) of the EPA in view of the purported re-entry by a lesser registered on 29th may 1991 and a certificate of repossession issued in respect of the same property on 28th November 1981. The court held that since the government in 1973 expropriated the suit property, it followed that the Act of 1982 applied to it and the suit property became the statutory property of the government until the minister of finance dealt with the property as provided for by Act No. 19 of 1982.

Any other purported dealing with such property were null and void. The minister would deal with the expropriated property in a number of ways e.g., he would return it to the former owners or government if interested, would sell or dispose of the property in any other manner.

RE-POSSESSION BY FORMER OWNERS

Section 4 of the EPA Cap. 87 authorizedformer owners of expropriated property to apply to the minister in a prescribed form to repossess their property within 90 days of the commencement of the Act.

The minister could issue a certificate of repossession if satisfied with the merits of the application and the property is one in which government did not wish to participate (sec 6 EPA)

Section 7 further provides that a certificate of repossession is sufficient authority for the chief registration of Titles to transfer title to the former owners.

A certificate authorizing repossession is in accordance with the 2nd schedule of the expropriated properties (repossession and disposal) regulations of 1983.

JOINT VENTURE BETWEEN THE GOVERNMENT AND THE FORMER OWNER

Section 5 (1) of the EPA provides that where government is interested in property which a former owner has applied to repossess the minister notifies the applicant of the government's interest, the government invites the former owner to enter into a joint venture company. It is incorporated and the minister issues a certificate transferring the property or business to the company in accordance with sec. 5(2) of EPA.

SALE BY THE MINISTER

The minister, under section 6 may make an order that the property be sold in the following circumstances.

1. Where the former owner fails to apply for repossession within the prescribed time.
2. Where the minister is not satisfied with the merits of an application
3. Where negotiations for a joint venture fail.
4. Where a former owner fails to physically return and reside in Uganda within a period of 120 day from the date of repossession.

DISPOSAL IN ANY OTHER MANNER

Section 9 (1) of EPA provides that the minister may order any other form of disposal of the expropriated property depending on the circumstances of the property at hand e.g., he may order that the property be subdivided into separate titles; each to be leased to a particular person. He may revert the property to the planning authority for re-planning and order the authority to compensate the former owner.

In other instances, the minister may order the resale of the property to purchasers whose purchases had been nullified.

The Expropriated Properties Act provides for compensation under certain circumstances.

Section 10(2) provides that where the property is returned to a former owner or transferred to a joint venture company or retained by the government, the former owner of the company or the government is obliged to pay for the value of any improvements of such property to the person who effected such improvements.

Section 10 (3) further provides that where the property has been transferred to any person for value and it is subsequently returned to a former owner or otherwise dealt with under the Act, the government is liable to pay compensation to such person.

The compensation payable to such a person is the purchase price paid for the property less the income derived or which ought to have been derived from the property on the date of the transfer.

APPEALS

Section 11 of the EPA provides that persons aggrieved by any decisions made by the minister under the Act have a right to appeal to the high court against the minister's decision from the date of communication of the decision.

NB

Sec. 14 of the EPA provides that a person has no right to sue the government for damages arising from any loss, damage, waste or the deterioration of any property or business which occurred before the coming into force of the Act.

ENVIRONMENTAL CONSERVATIONS

Public Trust Doctrine

The objective 13 of the national objectives and Directive principles of state policy in the constitution postulates that: the state shall protect important natural resources including land, water, wetlands, minerals, oil, fuel and flora on behalf of Uganda.

Further Article **237(2) (b)** of the Constitution state that: the government or a local government as determined by parliament by law, shall hold in trust for the people & protect, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and tourist purposes for a common good of all citizens.

In light of the above, **Section 44(4) of the Land Act** is to the effect that the government or a local government shall not lease out or otherwise alienate any natural resource referred to in the section. The section further retaliates what **Article 237 (2) (b)** postulates.

Whereas government cannot lease or alienate any natural resource owing to the public trust doctrine, it can under **Section 44 (5) of the Land Act** grant concession or licenses or permits in respect of natural resources holds in public trust for the public

In **ADVOCATES COALITION FOR DEVELOPMENT AND ENVIRONMENT V A.G (2004) HCMC NO.100**, the court citing **Section 44 of the Land Act** stated that the government or local government may grant concessions or licenses or permits in respect of natural resources with authority from parliament and with conservation from the local community in the area or district where the reserved land is situated.

Procedure to obtain a permit /license

1. Notify the lead agency of intended land use
2. Carry out Enviromental Assesment. **Section 38 of National Forest and Tree Planting Act No.8 of 2003** requires a person intending to undertake a project or any activity which may or is likely to have a significant impact on a forest to undertake an Enviromental Assesment

Pursuant to **Section 111(1) & (2) of National Environment Act**, the developer has the duty to carry out the Enviromental Assesment and ensure its quality by ensuring that the competent persons are employed to conduct it in accordance with the National Environment Enviromental Assesment rules.

3. Submit Enviromental Assesment report to NEMA for approval

Sale by Court

SALE WITHOUT TITLE BEING DEPOSITED IN COURT

Section 48 of the Civil Procedure Act postulates that no sale of immovable property can take place without a certification of the title deposited with court

In **ROSEMARY ELEANOR KARAMAGI V ANGOLIGA MALOMOUND**, **Misc Application No. 733 of 2005**, the executive had been conducted without the certificate of the title of the property

being deposited in court. The Court nullification the sale and stated that an elaborate procedure laid down in the law had not been complied with.

Expired Warrant in **MAKUBYA ENOCK V BULAIMU MUWANGA HCMA NO.1689 OF 2013**, court held that an expired warrant is of no legal force and must be renewed before it could be relied upon.

FAILURE TO DO DUE DILIGENCE

A purchase ought to carry out due diligence or else risk having their transaction set aside.

In **SIMBA (K) LIMITED & 60RS V UBC, SCCA NO. 03 OF 2014** the court rejected the 5th appellant's defence of bonafide purchaser for value without notice and held she was of the fraud. Court stated it was indeed inconceivable that the 5th appellant could part with such a huge sum of money without carrying out a search in the lands registration to verify the ownership of the said land. It was a sale arising out of a court case. They had to verify the history of the court case & scrutinize all the relevant documents before parting with the huge sum.

HOW TO CHALLENGE A SALE AFTER EXECUTION

The sale can be challenged under **Section 34(1) of the Civil Procedure Act. In SINBA (K) LIMITED & 5 ORS V UBC,** the Supreme Court emphasized that an application brought under **Section 34(1) of Civil Procedure Act** is what suffices to challenge a sale and no need to bring a fresh suit

Forum

Court which issued the order being executed

Documents

- Notice of a motion
- Affidavit

Procedure

- Draft the notice of motion & affidavit
- Pay requisite fees \lodge the notice of motion and the Affidavit in court

- Effect service
- File an affidavit of service

PROCESS FOR GETTING A CERTIFICATE

1. Application
2. Land committee issues a notice which issues for 14 days then it sit to hear any claims on land
3. Then forwards to physical planning committee on approval forwards the same to District
4. District land officer forwards to District Land Board
5. Upon approval they forward to M20
6. It received
7. Land officer checks the minutes on the file
8. Forwards to intake clerk

Records names

All information on applications

9. Pass to scanning clerk who scans all files on the application
10. Forwarded to physical planner to check for compliance
11. Goes back to land officer for review called initial review
12. Goes to senior staff survey or who gives instruction to surveyor
13. Surveyor presents findings which are entered in the system and a deed plan generated

INTERESTS IN LAND

- How do you acquire an interest

- What restrictions exist in the acquisition of interests
- how do minors transfer their interests in land
- Tenure
- Characteristics

VARIOUS TYPES OF CERTIFICATES

- What is an instrument
- What is different part of a certificate of title
- What does it mean to have an instrument number
- What is the essence of attaching a deed plan
- Whose signature must appear on the deed plan
- What advice do you render where there is no signature
- What is the essence of minute number on a lease title
- When a lease title has no lease agreement to it what is the effect

Follow up

- Types and feature of various tenures
- Interpretation of various entries on a land title
- Approach questions from not an academic view but rather from an advocate point of view what legal steps are necessary to complete the purchase of the land

The instruction given are covered under the advocate task and the advocates (professional conduct) regulations

Steps

1. Conduct a search in accordance with S.201 of RTA

UPTC V LUTAAYA and the recognition of other interest in the constitution (lawful & bona-fide) there is a requirement for a physical search

2. The issue of non-citizen holding freehold & write to NEMA & to find out if the land can be used for the intended purposes see **LAKESIDE V SAM ENGOLA** AND **FORMULA FEEDS & 3 ORS V KCB**
3. Physical planning authorities for permission and to see whether the lands are available. (See also **Section 5 of Physical Planning Act Cap. 286), Section 3 of Physical Planning Act Cap. 286,** all the country is a planning area. **Section 33 (1) of Physical Planning Act Cap. 286**, you require a permit before commencement of any activity
4. Find out seller's marital status, Seek that consent from the spouse
5. Seek consent from the leaser in respect to the lease land
6. The customary land, enquire from the neighbours, who owns the land. See **Section 27 of the Land Act**
7. The tenants by occupancy then the periodic tenants Consent
8. Whether the property rates have been paid

Find out from the Kampala District Land Board

- Nature of sell of land is governed by the law of contract.
- Description of land
- Any rights enjoyed by the property as casements
- Consideration

Define an instrument (when dealing registration)

Section 84 of Regestration of Titles Act contents of anotice

Section 59 of Regestration of Titles Act certificate to be conclusive evidence of title.

Section 92 of Regestration of Titles Act form of transfer

See FRANCIS NTABAZI V KASHIFA

Section 147 & Section 148 Regestration of Titles Act attestation of transfer

Fees to be paid

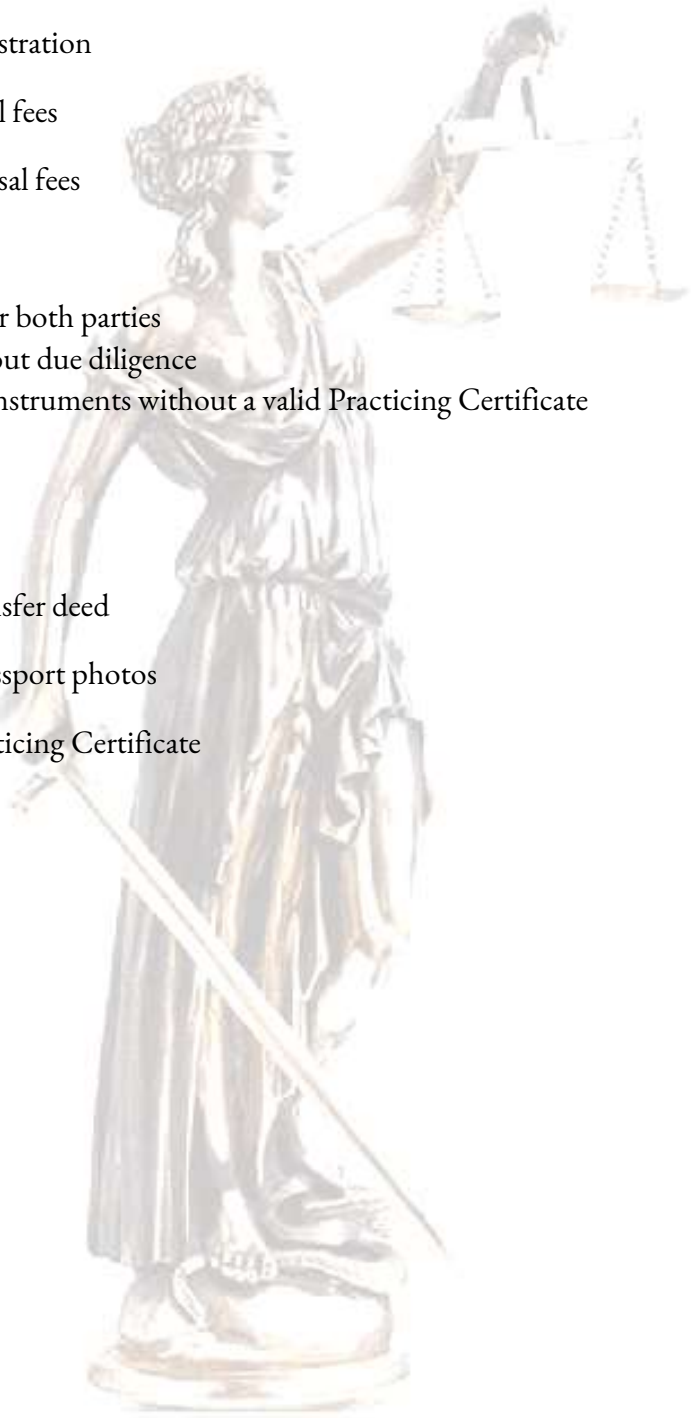
- Search fees
- Lodgment
- Registration
- Legal fees
- Perusal fees

Ethical consideration

- Being counsel for both parties
- Failure to carry out due diligence
- Witnessing the instruments without a valid Practicing Certificate

Documents to lodge

- Transfer deed
- 2 passport photos
- Practicing Certificate



EXAMPLE

BRIEF FACTS

Major Allan Nkusi who just received his retirement terminal benefits from UPDF is interested in acquiring properties of Brenda Komugabe, land comprised in LRV 1289, Folio 15, Plot No Misc 437, Ntinda-Kampala developed with the commercial house in occupation of her tenants, land in her children's names comprised in Kyadondo Block 83, Plot 818 Bubale.

Further still, he intends to buy other pieces of land from Brenda Komugabe using his company, Reach the Rich Ltd to wit FRV 98, Folio 27, Plot 11 Kyotokyamandwa partly used by Brenda's family for cattle, sheep, goats rearing and the other 20 acres being in use for subsistence and commercial farming and the other remaining part being in exclusive use of Bitumen Byekwaso who inherited it from his late father 40 years ago. There is also land comprised in Kyandodo Block 224, plot 620, Kisugu, developed with a residential house in occupation of Brenda Komugabe's entire family.

ISSUES

What steps a vendor should take to lawfully sell land in the names of minors?

What remedies are available to a vendor where the buyer fails to complete the purchase price and what is the procedure of invoking those remedies?

What interest did Nkusi obtain on paying a deposit to and how can the interest be protected?

What steps should be taken to enable Nkusi obtain legal interest in land on death of a vendor?

What are the steps an administrator of an estate should take to lawfully sell the land registered in the names of the deceased?

What is the pertinent document needed to handle transactions on behalf of Nkusi?

How can a beneficiary's interest be protected?

LAW APPLICABLE

- Constitution of Uganda of 1995.
- The Registration of Titles Act, CAP 230.
- The Land Act, CAP 227 (as amended)
- The Land Regulations of 2004 (as amended);

- The Succession Act Cap 162;
- The Contact Act, No.7 of 2010;
- The Stamps Act Cap 342 (as amended); 8.
- The Registration of Documents Act Cap 81.

RESOLUTION.

1. After concluding the purchase of the land at Kisugu Major Nkusi is now interested in purchasing the land comprised in Kyadondo Block 83 Plot No.818 Bubale. The parties have agreed on purchase price of shs. 80 million payable in four equal monthly installments.

Advise the Vendor on the steps that she would have to take to enable her to ultimately lawfully transact in this land.

Important to that land comprised in Kyadondo Block 83 Plot no. 818 is registered in the names of Brenda's children. Therefore, Brenda cannot sell in her owns because she is not the registered proprietor of the land thus the rules that govern selling land that belongs to minors come into play.

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

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

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

However, since the procedure to get legal guardianship for purposes of dealing with a minor's property is not provided for under the Children Act as amended, the application should be brought by way of notice of motion. The application is brought ex parte by way of notice of motion pursuant to **Article 139(1) of**

the Constitution of the Republic of Uganda, 1995, **Sections 3, 4, and 5 of the Children Act; Section 98 of the Civil Procedure Act** and **Order 52 rules 1 and 2 of the Civil Procedure Rules.** The application must be supported by an affidavit in support.

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

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

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

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

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

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

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

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

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA FAMILY DIVISION

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

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF PHYLIS KOKU AND FILLIAN

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

NOTICE OF MOTION

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

The applicant is seeking the following orders;

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

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

Costs of this application provided for.

The grounds of the application are that:

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

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

That the applicant is the sole provider of the minors

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

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

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

Dated at Kampala this .....day of 2018

.....

Counsel for the applicant

SUI GENERIS &Co. Advocates

Given under my hand and seal of this court this.....day of 2018

.....

REGISTRAR

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA FAMILY DIVISION

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

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

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

AFFIDAVIT IN SUPPORT

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

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

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

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

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

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

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

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

Sworn at Kampala this .....day of 2018

.....

ISAAC CHRISTOPHER LUBOGO

DEPONENT

BEFORE ME

..... COMMISSIONER FOR OATHS

DRAWN AND FILED BY

SUI GENERIS & CO. ADVOCATES

P.O BOX 0000 KAMPALA

EXAMPLE

2. Assuming that having lawfully entered into the transaction in (i) above and after paying the first installment, the purchaser has failed to pay the balance of the purchase price.

The vendor has the following remedies where the purchaser fails to pay the balance of the purchase price.

Where the purchaser has paid part of the purchase price, he obtains an equitable interest in the property.

LYSAGHT V EDWARDS (1876) 2 CH D 499 Sir George Jessel MR, in delivering his judgement said:

"The moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase- money, a charge or lien on the estate until the purchase- money is paid, in the absence of express contract as to the time of delivering possession"

The above position was reiterated in **OSUMAN V HAJJI HARUNA MULANGIRA SCCA NO. 58 OF 1995** and approved in **KAGUMYA GODFREY VS NTALE DEO HCCS 298 OF 2004** stating the doctrine of sale to be referred to as where the vendor becomes in equity a trustee for the purchaser of the estate sold and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate of the security of that purchase money and a right to retain possession of the estate until the purchase money is paid.

The case of **ISMAIL JAFFER AKKUBHAI & OTHERS VS NANDAKAK HARJIVAN KARIA & ANOTHER SCCA 53/95 REPORTED IN (1996) KALR 109** is very clear that in a deal of immovable property, upon payment of a deposit, property passes to the purchaser who acquires an equitable interest in the property and the vendor becomes the trustee who holds the property in trust for the purchaser. The legal title remains with the vendor until the final payment when the legal title passes to the purchaser.

The remedies available to a vendor where the purchaser fails to pay the remaining balance of the purchase price.

RESCISSION OF CONTRACT.

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

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

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

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

The principles governing rescission were articulated in **BUCKLAND VS FARMER & MOODY (1978) 3 ALLER 929 AT 938. Halsbury laws of England, Vol. 9 (1).** Re-issue, paragraph 989 cited in **SIHIRA SINGH SANTOH VS FALULU UGANDA LTD HCCS NO. 517 OF 200**4 AS follows:

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

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

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

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

Therefore, the vendor in the instant case should rescind the contract de futuro, that is, to sue for damages for any loss he must have suffered as a result of breach.

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

In KAGUMYA GODFREY VS NTALE DEO HCCS 298 OF 2004 court emphasized the importance of communicating the decision to rescind the contract. It was held that the Defendant failed to prove to court during the hearing how far he had tried to contact the Plaintiff/purchaser for the balance due and owed him. Instead, the Plaintiff did prove how he tried to contact the Defendant in order to pay the balance

of the purchase price. In fact, it would have been different if the Defendant had done what the Plaintiff did in moving all corners tracing for the Defendant for his payment. As it is evident, it is apparent that the Defendant was playing monkey tricks to ensure that the deadline for payment of the balance was over to enable him reclaim the property on the basis of breach of terms and conditions of sale.

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

VENDOR'S ACTION FOR THE PRICE

A second remedy available to the disappointed vendor is an action for the purchase price.

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

held that It is trite law that where land is bought and any substantial amount is paid on the sale price whether possession has passed on the purchaser or not, the vendor is always entitled to the balance on the sale price and not repossession of the land even if the balances are not fully paid. The vendor can therefore sue for the balance on the price.

Damages.

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

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

DEMAND NOTICE

Our Ref: ..... **Date:** 18th October 2018

TO: MAJOR ALLAN NKUSI

P.O. BOX 495

KAMPALA

Dear Sir,

RE: **Demand Notice/Notice Of Intention To Sue**

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

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

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

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

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

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

Yours Sincerely,

_____

For: M/s SUI GENERIS ADVOCATES

c.c Our Client

EXAMPLE

An interest in land can be legal or equitable. A legal interest is an interest in land that was recognized and protected by the common law courts. It can also be defined as one which is notified as an encumbrance on the folium of the certificate of title. An equitable interest is one that is recognized and protected by the court of equity even though at law the interest was not recognized or it can be defined as an interest that is not registered.

In **JOHN KATARIKAWE V WILLIAM KATWIREMU & ONCEZIFORO BAKAMPATA (1977) HCB.187**

Ssekandi.J. held that though in a contract of sale of land an unregistered instrument of transfer is not effective to transfer title, the purchaser acquires an equitable interest in the land, which is enforceable against the vendor.

The case of **ISMAIL JAFFER AKKUBHAI & OTHERS VS NANDAKAK HARJIVAN KARIA & ANOTHER SCCA 53/95 REPORTED IN (19960 KALR 109** is very clear that in a deal of immovable property, upon payment of a deposit, property passes to the purchaser who acquires an equitable interest in the property and the vendor becomes the trustee who holds the property in trust for the purchaser. The legal title remains with the vendor until the final payment when the legal title passes to the purchaser.

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

held that It is trite law that where land is bought and any substantial amount is paid on the sale price whether possession has passed on the purchaser or not, the vendor is always entitled to the balance on the sale price and not repossession of the land even if the balances are not fully paid.

Major Nkusis interest in land is an equitable interest. He can protect this interest by lodging a caveat to that effect. In **KATARIKAWE V KATWIREMU AND ANORTHER (SUPRA)** Ssekandi.J. held that taking possession of title deeds by a purchaser is insufficient to protect an interest unless a caveat is lodged.

A caveat acts as a statutory injunction to the registrar to prevent registration of any dealings, which might affect an alleged interest of the person lodging it (the caveator) caveat. A caveat forbids registration of any person as registered proprietor or registration of any instrument affecting the applicant's interest on the land.

A caveat is provided for under **Section 139of the Registration of Titles Act** which provides that Any person claiming any estate or interest in land under the operation of this Act may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the

intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.

In **MUSISI V GRINDLAYS BANK SCCA 5/1986** court held that **Section 139of the Registration of Titles Act** requires that no dealings in the land should be done while there is a caveat prohibiting the same.

SENTONGO PROCEDURE &COFFEE FARMERS LTD Vs ROSE NAKAFUM MUYIISE; HCMA NO. 690/1999. Arach Musoke T, stated that for a caveat to be valid, it must have protectable interests, legal or equitable to be protected by the caveat, otherwise the caveat would be invalid

Subsection 3 of Section 139 Regestration of Titles Act further provides that the person lodging such caveat shall, if required, support the caveat by an affidavit, stating the nature of the title under which the claim is made, and may withdraw any such caveat.

Since Nkusi has already paid the first two installments out of three, he has an equitable interest in the land and should lodge a caveat to protect such interest.

To lodge a caveat, the applicant must have in his or her possession

- Two sets of embossed documents duly witnessed by an advocate and signed by the person who is placing the caveat and dated.
- A statutory declaration (affidavit) signed by the deponent and a commissioner for oaths Two pass port photo graphs of the person placing the caveat.
- The applicant presents the full set of original documents and a photocopy of the same to the office of the titles for processing .The photo copy is stamped, received and returned to the applicant.

The applicant checks with the office of tittles after 10 working days to confirm entry of the caveat upon the registration.

He has to be in possession of the following documents

- Caveat
- Affidavit
- Set of passport photographs
- General receipts of payment.

Pay fees of 10,000 under 22nd schedule Regestration of Titles Act, and also a stamp duty of 10,000 under item 19 of the Second Schedule of the Stamp Duty Act 2014 as amended in 2016.

A CAVEAT

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP, 230

AND

IN THE MATTER OF THE LAND COMPRISED IN FRV 98 FOLIO 27 Plot No..11,Kyotoyamandwa. REGISTERED PRORIETOR; BRENDA ARIKO

CAVEAT To: The Registrar of Titles.

Kampala City Council Authority.

TAKE NOTICE that I, Major Nkusi , claim an equitable interest in the land comprised in the above folio , and I forbid the registration of any person as transferee or proprietor of land of any instrument affecting the estate or interest until after notice of such registration given to me at the address here after mentioned or unless I consent in writing there to(as the case may require).

I appoint SUI GENERIS and Co. Advocates, P.O.BOX 0000 KAMPALA, UGANDA as the place at which notices and proceedings relating to this caveat may be served.

Dated this 20th day of October 2018.

.....

For SUI GENERIS AND CO.ADVOCATES

COUNSEL FOR THE SAID CAVEATOR

Drawn and Lodged for Registration By.

SUI GENERIS AND CO, ADVOCATES

P.O.BOX 0000 KAMPALA.

AFFIDAVIT IN SUPPORT

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP, 230 AND

IN THE MATTER OF THE LAND COMPRISED IN FRV 98 FOLIO 27 Plot No..11, KYOTOYAMANDWA

REGISTERED PRORIETOR: BRENDA ARIKO.

AND

IN THE MATTER OF A CAVEAT FORBIDDING REGISTRATION OF ANY CHANGE IN PROPRIETORSHIP OR ANY DEALING WITH ESTATE OR INTREST.

AFFIDAVIT IN SUPPORT OF A CAVEAT

I, Major Nkusi do solemnly and state an oath as follows:

That am a male adult Ugandan of sound mind with an equitable interest in the captioned land and I make this declaration in that capacity.

That the above-described land was sold to me by the **Brenda Komugabe Ariko** (copy of sale agreement marked annexture A)

That I would like to register a caveat over the above land to protect my equitable interest their in.

That I swear this affidavit in support of a caveat for bidding the registration of any person as transferee or proprietor of the said land and any instrument affecting the said interest until after notice of such registration is given to me at the address mentioned in the caveat or unless I consent in writing thereto.

I CERTIFY that what is stated herein above is true and correct to the best of my knowledge.

OBJECTION MY LORD

Sworn at Kampala this 20th day of October 2018.

By the said:

Major Nkusi Deponet

.....

Before me

.....

COMISSIONER FOR OATHS

Drawn and filed by

Sui generis and co.advocates

P.o.box 0000

Kampala

EXAMPLE

Assuming instead that Major Nkusi having paid off the entire purchase price in the transaction outlined in (iii) above and taken possession of the land, Brenda sadly passes on without signing any transfers in favour of Major Nkusi, though she had put him in possession the land and her husband is willing to handover the duplicate certificate of title and is willing to hand it over. **Advise the purchaser on the steps that he could take to obtain the legal interest in the land.**

APPLY FOR VESTING ORDERS.

I would advise the purchaser to apply for a Vesting. Osborne's concise law dictionary defines a vesting order as an order of a court under which property passes as effectually as it would under a conveyance.

Under **Section 78 of the Registration of Titles Act Cap. 230**, a person who claims that he or she has acquired a title by possession to land registered under this act may apply to the registrar for an order vesting the land in him or her for an estate in fee simple or other estate claimed.

Section 79 Regestration of Titles Act provides for the form of application.

Every application under **Section 79 Regestration of Titles Act** shall be

- in writing in the form or to the effect of the Sixth Schedule to this Act, and shall include the several particulars mentioned or referred to in that Schedule;
- signed by the applicant, or in the case of a corporation by a person authorised in that behalf in writing under the seal of the corporation;
- attested by at least one witness being a person mentioned in that behalf in section 147; (d) supported by a statutory declaration by the person signing it that the several statements in it are true; and
- (e) Accompanied by a survey plan (with field notes) of the land.

Section 81 Regestration of Titles Act: provides that Registrar should advertise the application in the Gazette at the applicant's expense.

Section 82 Regestration of Titles Act: Applicants shall cause notice to be served

Section 83 Regestration of Titles Act: After a period not more than 12 months may register the application unless the caveat has been lodged forbidding the same.

Section 87 Regestration of Titles Act provides that after the expiration of the time appointed, the registrar if satisfied that the applicant has acquired a title by possession to the land may:

(a) cancel the existing certificate of title and any instrument, entry or memorial in the Register Book altogether or to such extent as is necessary; and

(b) issue to the applicant or person entitled to receive it a new certificate of title for an estate in fee simple or the other estate acquired in the land by the applicant free from all incumbrances appearing by the Register Book to affect the existing title, which have been determined or extinguished by such possession and free from any easement notified as an incumbrance which has been proved to the satisfaction of the registrar to have been abandoned.

Also, under **Section 167 of the Regestration of Titles Act.** the registrar has power to make a vesting order in cases of completed purchases.

In **RE IVAN MUTAKA [1980] HCB 27:** it was held that in order to invoke and rely on S.167 of the RTA and before the court can make a vesting order, the applicant must prove the following; a) There was a sale of land,the land was registered under the RTA, the whole purchase price was paid, the purchaser is in possession of the land, entry and possession have been acquiesced by the vendor, transfer has never been executed, the vendor cannot be obtained by reason of death or residing outside the Jurisdiction or cannot be found.

It was further stressed in **RE: AN APPLICATION BY THE TRUSTEES OF LUGAVE CLAN (1960) EA 322 (HCU**) THAT if the applicant has never taken possession of the land, they cannot be awarded a vesting order. Also, in **ADONIA V MUTEKANGA (1970) EA 429, it** was held that a vesting order can only be made where the purchaser takes possession of the land and his entry has been acquiesced by the vendor.

Application for vesting order

There is no procedure for the application under Section 167 Regestration of Titles Act One applies to the registrar by formal letter and attaches a statutory declaration.

VESTING ORDER

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 230

IN THE MATTER OF APPLICATION FOR A VESTING ORDER

The Principal Registrar of Titles

.....

Dear Sir/ Madam,

I Nkusi Allan of ....., apply for a vesting order in all that piece of land comprised in FRV 98 FOLIO 27, Plot NO. 11, Kyoto kyamandwa which land is delineated colored red upon the plan numbered .....in the schedule to this application for an estate free from incumbrances and I declare;

That in 2018, I purchased the said land from one Brenda Komugabe Ariko of Kyaddondo.

To date I have been in possession of the said land and have enjoyed possession unchallenged by the registered owner.

That there are no documents and any other evidence affecting such land in my possession and under my control other than those ascertaining my rights on the land.

There are no mortgages or encumbrances registered on the above-mentioned title or land description.

That however, the seller to date has not been able to execute or sign transfer forms in my favour due to her death.

That i have a sale agreement in my possession.

Dated at Kampala this 20th day of October, 2018.

Name and signed by .....

In the presence of .....

STATUTORY DECLARATION

(Pursuant to Section 79(a) and (d) of the Regestration of Titles Act)

I Nkusi Allan do hereby solemnly declare and state on oath that the above is true and correct information of the best of my knowledge.

And I make this solemn declaration consciously believing the same to be true in accordance with the statutory declaration Act Cap 22.

Dated at Kampala this 20th day of October, 2018.

By the said Nkusi Allan.

.....

Deponent

Before me;

.....

Commissioner for oaths.

EXAMPLE

Assuming further that Brenda having passed on, her husband, Harry Ariko, has now obtained Letters of Administration over Brenda's estate and is desirous of selling off the land comprised in LRV 1289 Folio 15 Plot No. Misc.437, Ntinda, Kampala.

Advice him on the steps he would have to take to enable him lawfully sell that land. The administrator must apply for transfer of land into his name.

Section 270 Succession Act Cap 162 provides that an executor or administrator has power to dispose of the property of the deceased, either wholly or in part in such manner as he or she may think fit.An administrator is therefore entitled to registration as the proprietor of the estate of the deceased.

Section 134(1) Regestration of Titles Act, A person registered as administrator or executor of a deceased may get registered as proprietor of any land on application to the registrar and upon that entry being made that executor or administrator shall become the transferee and be deemed to be the proprietor of such land.

In **SHOKALATI ABDULLAH DHALLA VS SANDRUDIN SCCA no. 32/1994; held;** FOR

AN Administrator to transfer lands (even to the beneficiaries) he or she must first get registered as proprietor before transfer land.

Procedure

The instrument used is a formal letter applying for registration of the administrators.

To it must be attached a certified copy of the letters of administration and passport photographs and copies of identification documents of the applicants.

The applicants must submit to the registrar the duplicate of title to enable the registrar of titles to make the sought entries.

Registrar receives the application and gives it an instrument number.

He cancels the name of the deceased from the register and in his place registers the administrators of the estate as proprietors on both the original and duplicate certificate of title pursuant to **Sections 134 of the Regestration of Titles Act, Cap 230.**

Once registered has power to deal with the land but must act bonafide. And **Section 134(4) Regestration of Titles Act.** provides that no registration fees are payable.

EXAMPLE

Assuming on the other hand that having purchased, fully paid up for and got registered as the proprietor of **Kyadondo Block 244 Plot No.620, Kisugu**, Major Nkusi has now been contracted by the United Nations to train officers serving under UNISOM in Somalia and has to leave immediately. However, he wants to immediately sell off that land at a profit, and from the proceeds purchase the land comprised in **LRV1289 Folio 15, Plot Misc.437, Ntinda, and Kampala.** He is due to leave the country next week for a continuous period of four years but would want the transactions to proceed even in his absence. He has asked you to advise on and handle these transactions.

Furnish the advice and draft the most pertinent document that you would need and use to handle the transactions in his absence.

Major Nkusi can have his interests catered for through **powers of attorney.**

The supreme court of Uganda in Frederick **JK ZAABWE V ORIENT BANK AND 5 OTHERS (SCCA NO.4 OF 2006)** quoted the Black's Law dictionary, defining power of attorney as an instrument in writing whereby one person, principal, appoints another, his agent and confers authority to perform certain specified acts or kinds of acts on behalf of the principal. Such power may be general (full) or special (limited).

This is provided for under the Registration of Titles Act, **Section 146(1)** which is to the effect that, the proprietor of any land under the operation of the **Regestration of Titles Act** or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in the Sixteenth Schedule to this Act. This therefore gives the powers of attorney legal effect and implies that the donee of the powers of attorney for Major Nkusi can transact on behalf of Major Nkusi in his absence.

For the power of attorney to have effect in law, it should be registered in accordance with the

Registration Of Documents Act as provided for under **Section 146(2) of the Registration of Titles Act cap 230** and if so, registered within four months after the date thereof shall be presumed to be in force at the time of its registration unless a revocation of that power of attorney has been previously registered under that act but nothing in this act shall diminish the force and effect of any power of attorney if registered after the expiration of that period of four months.

Under **Section 147 of the Regestration of Titles Act cap 230,** powers of attorney are duly executed when signed by a person and attested by any witness falling within the ambit of **Section 147** and in Uganda these are; any officer in the service of the Government of Uganda or of Kenya;

- a justice of the peace;

- an advocate;
- a notary public;
- a bank manager;
- a minister of religion authorized to celebrate marriages within Uganda;
- a medical practitioner;
- any literate chief of the rank of a Gombolola chief or a corresponding or higher rank; or
- any other person authorized in that behalf by the Minister by statutory instrument; and without the limits of Uganda, either a notary public or else the mayor or other chief officer of any city or municipal corporation within the United Kingdom of Great Britain and Northern Ireland or the Republic of Ireland.

The officer administering the government of, or the judge of any court of record in, any Commonwealth country;

A Foreign Service officer or a diplomatic representative of any Commonwealth country at any foreign place;

A police magistrate, resident magistrate, stipendiary magistrate or special magistrate in any Commonwealth country;

The manager or accountant of any branch of any bank incorporated under the law of the United Kingdom of Great Britain and Northern Ireland or the Republic of Ireland; and any other person authorized in that behalf by the Minister.

Powers of attorney have to be strictly construed and this principle was ably laid out by the supreme court of Canada in **POWIS AND BRYANT VS LC QUEBEC BANK 1892 AC 170 AND FURTHER IN SIDPA VS UGANDA REHABILITATION DEVELOPMENT FOUNDATION HCCS NO 199/1993** which held inter alia that a contracting party is bound to inquire into the extent of the agent's authority.

SALIENT FEATURES OF A POWER OF ATTORNEY

- name of person giving the power of attorney/donor/principal
- name of person given powers of attorney/done/agent
- capacity of person giving powers of attorney
- purpose and object
- Date and signatures of donor, donee and witness.

NOTE: under **Section 148 Regestration of Titles Act,** No instrument or power of attorney shall be deemed to be duly executed unless either

(a) the signature of each party to it is in Latin character; or

(b) a transliteration into Latin character of the signature of any party whose signature is not in Latin character and the name of any party who has affixed a mark instead of signing his or her name are added to the instrument or power of attorney by or in the presence of the attesting witness at the time of execution, and beneath the signature or mark there is inserted a certificate in the form in the Eighteenth Schedule to the **Regestration of Titles Act**.

FREDRICK J.K. ZAABWE V ORIENT BANK LTD

HELD. Per **KATUREEBE, JSC.**

In my view, the rationale behind section 148 requiring a signature to be in Latin character must be to make clear to everybody receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. When the witness attesting to a signature merely scribbles a signature, without giving his name or capacity, how would the Registrar or anyone else ascertain that that witness had capacity to witness in terms of section 147 of the Registration of Titles Act? **Held** that where the signatures to a mortgage are not in Latin character, the mortgage is not valid.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 230

POWER OF ATTORNEY

I, **Maj. Allan Nkusi** appoint SUI GENERIS ADVOCATES my attorney to sell to any person **Kyadondo Block 244 Plot No.620, Kisugu**, and use the proceeds to purchase the land comprised in **LRV1289 Folio 15, Plot Misc.437, Ntinda, Kampala**

ALSO, to exercise and execute all powers which now are or shall hereafter be vested in or conferred on me as a lessor or mortgagee under the Act

AND for me and in my name to sign all such transfers and other instruments and do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given and for recovering all sums of money that are now or may become due or owing to me in respect of the premises and for enforcing or varying any contracts, covenants or conditions binding upon any lessee, tenant or occupier of the lands or upon any other person in respect of the same and for recovering and maintaining possession of the lands and for protecting the lands from waste, damage or trespass.

Dated this .....day of .....20.....

Signed by .....in the presence of .....

EXAMPLE

Brenda having passed on, one of her elder children Bosco is opposed to the sale of any of her properties for fear that his father, Harry, may use the proceeds to marry another woman. Bosco has come to you seeking that you protect his interests (if any) and those of his siblings.

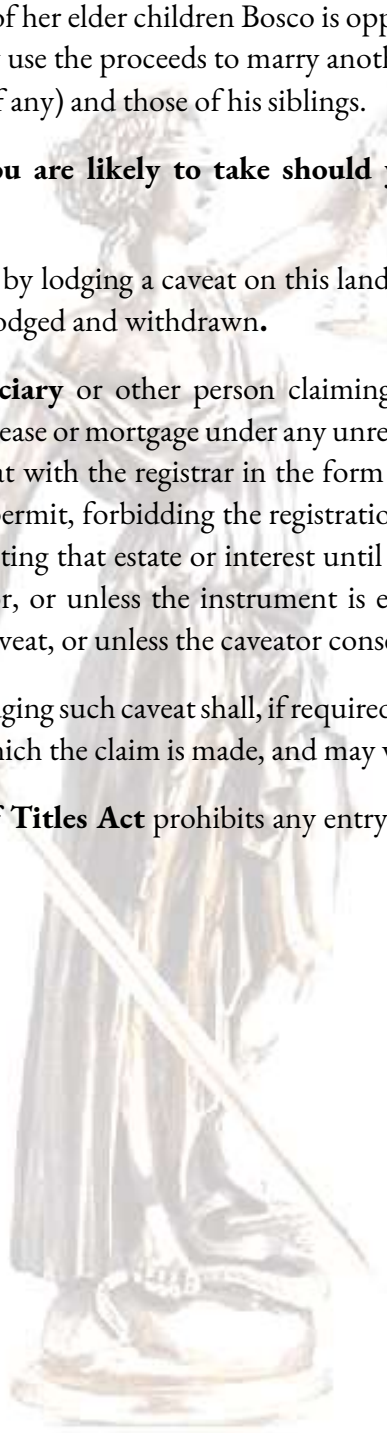
Advise him on the steps you are likely to take should you accept the instructions. Draft the requisite documents.

Bosco can protect his interests by lodging a caveat on this land. Sec. 139 of the Registration of Titles Act provides that a caveat may be lodged and withdrawn**.**

Section 139 (1) Any **beneficiary** or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.

Section 139(3) The person lodging such caveat shall, if required, support the caveat by an **affidavit**, stating the nature of the title under which the claim is made, and may withdraw any such caveat.

Section 141 Regestration of Titles Act prohibits any entry to be made in the Register book while the caveat continues to be in force.



THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP 230

AND

IN THE MATTER OF LAND COMPRISED IN LRV 1289 FOLIO 15 PLOTS NO 437 NTINDA NAKAWA DIVISION, KAMPALA DISTRICT.

CAVEAT

To:

The Registrar of Titles

Land Registration Kampala

TAKE NOTICE THAT I,BOSCOof Kisasi, Kawempe, Division Kampala district, Tell No

070000000 claim an interest as the beneficiary of land described above, and forbid the registration of any person as transferee or proprietor of land or any instrument affecting the said land or interest until after notice of such registration is given to me at the address hereinafter mentioned or unless such instrument be expressed to be subject to my claim or unless I consent in writing thereto. I appoint **M/sSUI GENERIS Plot339, Makerere.**

P.O. Box 0000, Kampala, Uganda, as the place at which notices and proceedings relating to this caveat may be served.

Dated at Kampala this .....22..... day of ...OCTOBER 2018

..... BOSCO CAVEATOR

Signed in the presence of: .....**.....**

ADVOCATE

M/s SUIGENERIS AND COMPANY P.O.BOX 0000, KAMPALA.

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP 230
AND

IN THE MATTER OF LAND COMPRISED IN LRV 1289 FOLIO 15 PLOTS NO 437 NTINDA NAKAWA DIVISION, KAMPALA DISTRICT.
AND
IN THE MATTER OF A CAVEAT FORBIDDING REGISTRATION OF ANY CHANGE IN PROPRIETORSHIP OR ANY DEALING WITH ESTATE OR INTEREST

AFFIDAVIT IN SUPPORT

I, **BOSCO** of SUI GENERIS, Law Development Centre (LDC) Plot 339, Kagugube Road, Makerere P.O. Box 0000, Kampala, Uganda, do hereby make Oath and swear as follows:

THAT I am a male adult Ugandan of sound mind with capacity to swear this affidavit.

THAT I am a son and beneficiary to the estate of the late Breada Komugabe, Ariko the proprietor of land in LRV 1289 Folio 15 Plots No 437 Ntinda Nakawa Division, Kampala District which was left as part of estate of my said late mother.

THAT the Late Bender Komugabe Ariko left no will and i have come to larn that my father has obtained title to the said property and is planning to dispose it off without my consent as a beneficiary.

THAT I suspect that there is a third party that might benefit from the sale of this property without my consent.

THAT I pray that the said land be protected from any transaction without my notice.

THAT I swear this affidavit in support of the lodgment of a caveat on LRV 1289 Folio 15 Plots No 437 Ntinda, Nakawa Division, Kampala District

I CERTIFY that what is stated herein above is true and correct to the best of my knowledge.

SWORN at Kampala by the said

BOSCO .....

This.....22ND..... Day of ..... 2018 **DEPONENT**

Before me:

.....

MAGISTRATE / COMMISSIONER FOR OATHS

Drawn & filed by:

Sui generis, legal aid clinic,

Makerere kagugube, P.O Box, 112 Kampala

EXAMPLE

BRIEF FACTS

Muzamir Mudde is interested in acquiring two parcels of land whose certificates of title show that one is under Mailo Tenure (A) and the other Leasehold tenure. Part of **Property A** measuring about 25 decimals is developed with four blocks of old dilapidated structures. The rest of the land is vacant. Muzamir intends to establish a beef processing plant on the land. The project is intended to break even in the fifteenth year of its operation. Muzamir wants to own this land together with his two wives, Michelene Bontue', a French national who has three children with Muzamir and is contributing one half of the start-up capital for the project and Aisha Nakazibwe, a Ugandan, who stays at home typically as a housewife and has nine children with Muzamir.

On the other hand, **Property B** is fully developed with a storied commercial building and is fully occupied. The ground floor is occupied by a pharmacy, a restaurant, salon and a dentist clinic respectively each paying 1.5M per month paid 3 months in advance. The 1st floor is occupied by BETAFRICA limited paying USD 4000 annually, payable in 2 equal installments in advance. The 2nd floor is fully occupied by Crane school of tourism paying 6M annually payable in advance of every 2 years. The 3rd floor is occupied by the relatives of the executive directors of Style Real Property Limited and they do not pay any rent

ISSUES

1. What is the meaning and implications of all the salient entries on and features of the Certificate of Title of Property B?
2. Which pertinent inquiries and steps ought to be made or undertaken to ensure viability of the respective transactions?

d) What steps would be undertaken to obtain a proprietary interest in the respective parcels of land?

3. What steps Muzamir would have to be undertaken to immediately lawfully obtain physical possession of the whole of Property B from the various persons currently in possession?
4. What further steps Muzamir would have to take in order to lawfully establish and implement his personal venture in Property B if such venture is a Hospital whose business break-even period is projected to be 20 years?
5. What steps Muzamir would take to address default in rental payments by each of the tenants in Property B assuming that he took over as landlord and retained them in the premises.?

6. What steps Muzamir's Lessor would have to take to effectively terminate the Lease in the event that Muzamir defaulted on the terms of the lease for a substantial period of time?

7. What steps Muzamir would have to take to retain the property in the event that his Lessor has written to him terminating the lease in property B and is preparing to evict Muzamir for non-payment of rent?

8. Whether Muzamir can eventually convert the acquired interests into another tenure and, what steps would he have to take?

9. What are the forums, procedures and documents necessary?

LAW APPLICABLE

1. Constitution of Uganda of 1995
2. The Registration of Titles Act CAP. 230;
3. The Land Act CAP 227(as amended)
4. The Physical Planning Act of 2010, No. 8 of 2010;
5. The National Environment Act CAP 153;
6. The Public Health Act CAP 281;
7. The Stamps Act CAP 342;
2. The Judicature Act CAP 13;
3. The Distress for Rent Act CAP 50;
4. The Civil Procedure Act CAP 71;
5. The Common Law;
6. The Land Regulations of 2004 (as amended);
7. The Distress for Rent (Bailiffs) Rules SI 68-1;
8. The Civil Procedure Rules SI 71-1.

RESOLUTIONS

What is the meaning and implications of all the salient entries on and features of the Certificate of Title of Property B?

Section 1 of the Registration of Titles Act Cap 230 defines a "certificate of title" to mean a certificate of title issued by the registrar under this Act.

A certificate of title is a document signifying ownership.

Section 37 provides for the Register Book.

(1) The registrar shall keep a book, to be called the "Register Book" and shall register in it certificates of title, and shall enter in such manner as to preserve their priorities the particulars of all dealings and matters affecting the land by this Act required to be registered or entered.

(2) **The registrar may**

(a) Keep the Register Book, or any part of it, in such loose-leaf or other form as he or she may consider appropriate;

(b) Keep the Register Book in parts, each relating to a district, county, subcounty or other convenient area.

(3) Every person whose name is entered in the Register Book as proprietor of any land, or any interest in land, or as a caveator, or as entitled to receive any notice, or in any other capacity, shall furnish to the registrar a place of address in Uganda.

Section 38 provides for the contents of a Certificate of title.

(1) Certificates of title shall be in one of the forms in the Third Schedule to this Act and shall be in duplicate.

(2) One of the certificates shall be registered in the Register Book, and the other original (hereafter called the duplicate) shall be issued to the person entitled to it.

(3) Each certificate of title shall constitute a separate folium of the Register Book.

(4) Where the Register Book is kept in parts under **Section 37(2) (b),** the registrar shall

(a) File each certificate in the appropriate part of the Register Book, by reference to the location of the land in respect of which the certificate is registered; and

(b) Enter upon the certificate a reference to the block and plot number of the land in respect of which the certificate is registered, as shown on a plan approved by the commissioner of lands and surveys.

(6) Where the registrar has entered upon a certificate a reference to the block and plot number under subsection (5), references in this Act to a volume or folium of the Register Book shall be construed as references to that block or plot number, as the case may be.

Section 46 provides for Effective date of registration; the duly registered proprietor.

(1) Subject to **Section 138(2),** every certificate of title shall be deemed and taken to be registered under this Act when the registrar has marked on it

(a) The volume and folium of the Register Book in which it is entered; or

(b) The block and plot number of the land in respect of which that certificate of title is to be registered.

(2) Every instrument purporting to affect land or any interest in land the title to which has been registered under this Act, shall be deemed to be registered when a memorial of the instrument as described in section 51 has been entered in the Register Book upon the folium constituted by the certificate of title.

Section 51. Memorial defined.

Every memorial entered in the Register Book shall state the nature of the instrument to which it relates, the time of the production of that instrument for registration and the name of the party to whom it is given and shall refer by number or symbol to the instrument, and shall be signed by the registrar.

Section 59. Certificate to be conclusive evidence of title that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.

Section 64. Estate of registered proprietor paramount except for fraud.

Entries and features of certificate of title to Property B.

The land in Property B is registered under the lease hold register under the Registration of Titles Act Cap 230.

Lease hold is one of the land tenure systems provided for in the constitution under article 237(3) (a) and **Section 2 (d) of the Land Act Cap 227.**

Under **Section 1(s) of the Land Act** "leasehold land tenure" means the holding of land for a given period from a specified date of commencement, on such terms and conditions as may be agreed upon by the lessor and lessee, the incidents of which are described in section 3, and includes a sublease;

Section 3(5) of the Land Act provides for leasehold tenure system as a form of tenure

(a) Created either by contract or by operation of law;

(b) The terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between the parties;

(c) under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period

defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending;

(d) usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for services or may be free of any required return;

(e) under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of a freehold owner as are appropriate and possible given the specific nature of a leasehold tenure.

Leases are classified into fixed term and periodic leases.

A fixed term lease is a lease whose duration is fixed by the parties at the onset so that once the term expires; the lease comes to an end. For example, a lease for 12 months or 49 years is a fixed term lease and it expires at the end of the term. A periodic lease is a lease which continuously renews from one term to another until terminated by the proper notice served by either party as was held in **PRUDENTIAL ASSURANCE CO LTD V LONDON RESIDUARY [1992] 3 ALL ER**

Essential Features of A lease

At common law, a lease has two basic features.

1. Certain duration

2. Exclusive possession.

Though a lease is normally granted for monetary consideration, this is not an essential feature. S 3(5)(d) Land Act states that a lease may be created even where there ‘s no requirement for rent payment.

Duration

At common law, a lease can be of any duration but a lease must have a certain or ascertainable beginning and ending before it takes effect. Otherwise, it is void as a lease. The classical example of the application of this rule is in **LACE V CHANTLER [1944]1 ALL ER 305;** The plaintiff during the 2nd world war sublet a house to the defendant for the duration of the war. It was held that the lease was void for uncertainty of duration because at the time, the purported lease took effect it was neither certain nor ascertainable when the war would end.

In HARVEY V PRATT (1978) 2 ALL ER 786 held;

In order that an agreement for a lease shall be valid there must be, among other essentials, agreement on the date of commencement of the term; and in the absence of this date validity will not be given to the agreement either by implication that the term shall begin within a reasonable time or by taking the date of the agreement as the date of commencement

Per Lord Denning, It is settled beyond question that, in order for there to be a valid agreement for a lease, the essentials are that there shall be determined not only the parties, the property, the length of the term and the rent, but also the date of its commencement. This document does not contain it. It is not sufficient to say that it can be supplied by an implied term as to reasonable time.

In DR. ADEODANTA KEKITINWA & 3 OTHERS VS. EDWARD MBUDO WAKIDA CACA 3/97.

Mpagi Bahigeine quoted; Lord Green M.R in an earlier case of **LACE V CHANTLER (1944) 1KB 368 AT 370,** which neatly wraps up the legal position "The habendum in a lease must point out the period during which the enjoyment of the premises is to be had, so that the duration, as well as the commencement of the term, must be stated. The certainty of a lease as to its continuance must be ascertainable either by the express limitation of the parties at the time the lease is made, or by reference to some collateral act which may, with equal certainty, measure the continuance of it, otherwise it is void. If the term be fixed by reference to some collateral matter, such matter must either be itself certain . . . . or capable before the lease takes effect of being rendered so. The important words to observe in that last phrase are the words before the lease takes effect.

Exclusive possession

Section 3(5) of Land Act defines a lease as a form of tenure under which a landlord grants or is deemed to grant exclusive possession of the land. Thus, exclusive possession is the most important consideration of a lease and is what distinguishes a lease from a mere license. In **STREET V MOUNTFORD [1985] 2 ALL ER 289;** The test whether an occupancy of residential accommodation was a tenancy or a licence was whether, on the true construction of the agreement, the occupier had been granted exclusive possession of the accommodation for a fixed or periodic term at a stated rent, and unless special circumstances existed which negatived the presumption of a tenancy, a tenancy arose whenever there was a grant of exclusive possession for a fixed or periodic term at a stated rent.

ENTRIES AND FEATURES OF CERTIFICATE OF TITLE

The front page shows the law under which the land was registered, and the tenure system. This land is registered under the Regestration of Titles Act in the leasehold register hence it is under the leasehold tenure system.

It also shows the volume number and folio whose importance is to help in identifying the piece of land on the register. **Section 38 (3) and (6) Regestration of Titles Act**. In this certificate the land is found in the leasehold register volume 1866 folio 17.

The front page of the certificate of title displays a description of land. It gives the plot no, location of the land, and district as required under **Section 38(5) of the Regestration of Titles Act**. The land is on plot 77 Nakawa (commercial area) in the district of Kampala. The size of the land is 0.389 hectares. All these are for purposes of properly situating the land in that even if a person was to carry out due diligence, they would know where the land is and easily locate it by searching at the registry of lands.

The next description on the certificate of title is the term of the lease that is for 47 years running from 1st August 1988 subject to the implied conditions and covenants under the **Registration of Titles Act Cap 230** and the lessee is bound by any encumbrances if any entered in the encumbrance register **Section 3(5) (c)** requires a lease to be for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending;

The next feature is the **proprietorship** of the lease. The lease according to the certificate belongs to Shiv Construction Company Ltd. **Section 59 Regestration of Titles Act** a person whose name appears on the title is the owner of the property.

There is a provision of a column for inserting the date the lease was registered and the time the entries were made in the register. This lease was registered on 17/8/1990 via instrument no 244832 and is signed by the registrar. This is in compliance with **Section 46(2) and Section 51 Regestration of Titles Act.**

The most important feature of this title is that a lease agreement between the lessor and the lessee must be attached on the register. As such the lease in question was made on the 1st day of August 1990 16th under the Public Land Act and the rules between City Council of Kampala as the lessor and Shiv Construction Company as the lessee.

The lease agreement contains or stipulates the terms and conditions under which the lease is granted. That the lease of the demised premises is granted on a consideration of rent which is reserved subject to covenants and conditions to be observed by the lessee.

One of the conditions is that the lessee will hold land for 4 years running from 1st August 1988 by paying a yearly rent of 5000 shillings in two equal half year payments with an advance on 1st January and the other half on 1st July

The second paragraph provides for observance of covenants and conditions implied by law. However, the lessee is supposed to erect a building whose value is not less than 50million shillings in accordance with plans and specifications to be approved by the lessor.

Paragraph 4 stipulates that where the building covenant is complied with and without any other breach, the lease shall be enlarged to 47 years automatically running from 1st August 1988 as if it was originally granted for 47 years.

The deed is signed by both parties whose seals are affixed and attested to.

The next element of the title is the **deed plan** which shows the accurate location of the land and the easements on the land and other physical features like swamps on the land. The main purpose of the deed plan is to show location basically of the premises.

The next pertinent issue is the page for **encumbrances** on the title. The lease is encumbered by a Sublease granted to Styles Real Property Ltd for 15 years from April 2017 for 85 million to be paid annually.

b). which pertinent inquiries and steps ought to be made or undertaken to ensure viability of the respective transactions?

Rule 2(2) of the Advocates Professional Regulations S1. 267-2 provides that an advocate shall exercise due diligence at all times when handling client's matter.

Rule 12(2) further provides that an advocate shall not advise a client to enter into a transaction which he knows a reasonable advocate would not advise them to enter as not being in their best interests.

The client is required to carry out due diligence and specific inquires in order to ensure that the various properties he intends to acquire are legally purchased. In case of any claim from any persons, he would be able to raise the defence of bonafide purchaser for value without notice.

Particulars of the land

The intending purchaser should be availed with the particulars of the subject land in terms of description. It must have a block and plot, who is registered on the title, location of the land, how many acres etc. The purpose of the particulars is to enable an intending purchaser to cause a search at the relevant land registry to confirm not only the proprietorship but also the existence of a white page with corresponding particulars like those on the duplicate.

UGANDA BROADCASTING CORPORATION V SINBA K LTD & ORS (CIVIL APPLICATION 12 OF 2014) [2014] UGCA 12 (27 March 2014)

Court found that the purchaser did not make a search at the land registry to ascertain the proprietorship of the property the subject of sale. It was held that she had a duty and obligation to ascertain the proprietor of the property even before attempting to bid for it. Had she done so she would have found out that the property she was bidding for did not belong to the respondents. At least she was on full notice. It appears that she actually was well aware of the fact that the respondent was not the registered proprietor but she went ahead to buy the property anyway. She cannot turn around and contend that she is an innocent purchaser for value without notice.

SEARCH.

Section 201 of the Registration of Titles Act Cap 230 provides that any person may, on payment of the fee for the time being payable in that behalf, inspect the Register Book during the hours and upon the days of business.

Subsection 2 further provides that the registrar, on payment of the fee for the time being payable for a certified copy, shall furnish to any person applying for it a certified copy of any certificate of title, caveat or registered instrument affecting land under the operation of this Act; and every such certified copy signed by the registrar and authenticated by the seal of the office of titles shall be received in evidence in any court or before any person having by law or by consent of the parties authority to receive evidence as prima facie proof of the original certificate of title.

In the case of **FATHER NARSENSIO BEGUMISA AND ORS V ERICK TIBEBAGA SCCA NO 17/2002**. Court opined that the purchaser must carry out all due diligence by cross checking the title at hand /examine the certificate of title and all its pages to ensure that all the pages reflect the essential features of a valid certificate of title.

The intending purchaser, should therefore after having examined the certificates of title, conduct a search at the land registry to confirm the particulars.

- In regards to location, whether the cover page corresponds with part that provides for the Block Number, County, District, and Plot Number.
- The purchaser should ensure that the seal and the stamp of the registrar of titles is valid.
- Easements on the physical land should be checked thoroughly in part I and the Deed plan print.
- The signature of the purported vendor and name and other previous owners. The name of the current owner should correspond with the vendor. Encumbrances on the title should be brought to the attention of the client.
- The procedure is that you write a formal/ordinary letter to the registrar of titles.
- The fees payable on the application letter is 10,000 payable to URA under the Registration of Titles (fees) (amendment) Rules 1998

SPOUSAL CONSENT.

Also, the intending purchaser should find out whether the land is subject to spousal consent or if there are any equitable interests on the land.

Section 38A of the Act as amended gives every spouse security of occupancy on family land which means a right of access to and a right of residence therein. It provides that every spouse shall in every case have the right to use the family land and to give or withhold his or her consent to any transaction referred to under

Section 39 which may affect his or her rights. Family land is defined to mean land on which is situated the ordinary residence of a family and inclusive of where the family derives sustenance.

Section 39 (1) of the Land Act Cap. 227 as amended by the Land Amendment Act No. 1 of 2004 prohibits the mortgaging of family land except with the prior consent of a spouse.

ALICE OKIROL VS. GLOBAL CAPITAL SAVE 2004 LIMITED HCCS NO. 149/2010; HELD; The requirement for spousal consent is intended to provide security of occupancy on family land unless a spouse consents to doing away with it. That in the absence of written spousal consent to mortgaging the property in issue for the amount stated in the mortgage, the mortgage created over it is void

If the land is family land, then consent of spouse must be availed in writing. The Certificate of Title of Property A is in the names of Douglas Tomusange and was registered in 1978. It is important to find out if Tomusange is married and if so whether the property is family property for purposes of spousal consent.

PHYSICAL VISIT AND OPENING OF BOUNDARIES

The person must verify the authenticity of the certificate of title presented by the vendor. This is because the registry of land is authorised under the law to create a special certificate of title where the duplicate is misplaced, destroyed or obliterated. Where a special certificate is issued a white page indicates so and the title itself contains the words 'special certificate'

A certificate of title must contain the particulars of the land that correspond with the ground. It is therefore important for the intending purchaser to cause a boundary opening to confirm whether the boundaries are in tandem/ consistent with the particulars of the land. This is important in case of fraud and also where there is a mistake/error on the title.

NARSENSIO BEGUMISA AND ORS V ERIC TIBEBAGA (CIVIL APPEAL 17 OF 2002) [2004] UGSC 18, the appellants pleaded that they were rightful customary owners of the suit land, which was different from, and was located about 2-3 kilometres away from the land described in the certificate of title. **Court found that** Block 53 Plot 9 was in Masya parish, and that the suit land was not surveyed, and that it was located in Block 59 in Kijubwe parish. Court **held** that the significance of that evidence lies in the elementary principle of the land registration system under the RTA, namely that a certificate of title relates to only one parcel of land.

Therefore, an intending purchaser should undertake a physical visit to the land /physical search to ensure that the particulars of the title reflect onto the land otherwise regarded as boundary opening. One ought to discover the following;

What is on the land?

Inquiry from the locals, local authority to ensure that the respective pieces of land belong to Brenda Komugabe.

Check with the planning Authority and find out the use under which that land is put. It may be a road reserve. **Section 3 of the Physical Planning Act**, the whole of Uganda is a planning area. **Section 33 of the Act** a person cannot carry out a project within a planning area without obtaining development permission from the physical planning committee.

Check with NEMA whether such land is put under use by the authority; such land may be declared on wet land.

The client wants to establish a beef processing plant in the area. He needs to find out whether such project can be situated in that area. He will also be required to get an environment impact assessment in respect of the beef processing plant under **Section 19 and 20 of the National Environment Act Cap 153.** Under the third schedule to the Act abattoirs and meat-processing plants require environment impact assessment.

Consult a surveyor in clarifying and verifying the dimensions, measurements etc on the land in question to be very sure of what your client is going to buy. **Section 2 of the Survey Act Cap 212** provides that the commissioner of lands and surveys at any time may authorize the carrying out of any topographical survey or of any other survey specifying the local limits of the area affected. **Section 149 Regestration of Titles Act,** the registrar may require a physical survey of the land.

The purchaser should further find out third party rights (equitable interests) in the land such as leases, bonafide occupants among others.

The facts show that Property B has a commercial building which is fully occupied; it should be found out what are the terms of their different tenancies. Further the certificate of title of property B shows a subsisting sublease for 15 years. The facts do not clearly tell whose tenants are the persons in occupation, either of the lessee or sub-lessee.

It was further stated in **DAVID SEJJAKA NALIMA —VS- REBECCA MUSOKE, SCCA NO**. 12/85 that where a party abstains from making inquiries for fear of learning the truth about a property he is purchasing, that party may be found not to be a bona fide purchaser for value and fraud may be properly ascribed to him

The certificate of title of property A shows that it is a mailo land. There is need to ascertain the presence of any bonafide occupants on the property since they are protected under **Article 237(8) and Section 1, 29 and 31 of the Land Act.**

KAMPALA DISTRICT LAND BOARD V NATIONAL HOUSING AND CONSTRUCTION CORPORATION CA. NO. 2 OF 2004 where it was held that a bonafide occupant was given security of tenure and his interest could not be alienated except as provided for by the law.

The question of conducting a search is further discussed In **UGANDA POSTS AND TELECOMMUNICATIONS V LUTAAYA CA 36/1995** where Court held that the mere search on the register is not enough. The person ought to inquire beyond the register. That the law is very clear that if a person purchases an estate which he knows to be in the occupation of another other than the vendor he is bound by all the equities which the parties in such occupation may have in the land.

SIR JOHN BAGAIRE V AUSI MATOVU CACA NO. 7 OF 1996 AT PAGE 26 Court emphasized that it is vital to carry out a search as due diligence to establish ownership before purchase. It was held that "lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations not only of the land but of the seller before purchaser"

In **GRACE MANJERI NAFULA V BRIG ELLY KAYANJA AND ANOR HCCS NO. 136 OF 2011** court found that the defendant was required to inquire from the occupants of the premises on the suit as to what their interest was in the suit land. He did not; either for fear of knowing the truth or in order to intentionally defeat the plaintiff's interest in the land. In either case, it would amount to actual fraud.

Court then quoted the case of **NABANOBA DESIRANTA & ANOTHER VS. KAYIWA JOSEPH & ANOTHER, HCCS NO. 496 OF 2005** quoting the case of **UP&TC VS. ABRAHAM KATUMBA [1997] IV KALR 103,** it was held that as the law now stands a person who purchases an estate which he knows to be in occupation and use of another other than the vendor without carrying out the due inquiries from the persons in occupation and use commits fraud. Further citing **TAYLOR VS. STIBBERT [1803 – 13] ALL ER 432**, the court held that the failure to make reasonable inquiries of the persons in possession and use of land or the purchaser's ignorance or negligence to do so formed particulars of fraud

Citizenship of Muzamir Mudde; it is important to ascertain the citizenship of client since non-citizens in Uganda can only own a leasehold of 99 years but can't own mailo or freehold as stated under S. 40 of the Land Act.

Therefore, in order to be bonafide purchasers for value without notice it is pertinent to carry out a physical search and ascertain any third-party rights in the land.

What steps would be undertaken to obtain a proprietary interest in the respective parcels of land?

TORRENS SYSTEM

To distinguish it from the other systems of land transfer, the Torrens system has two main elements as; title by registration, and indefeasibility of title. The two are interdependent and essential to the system.

1. **Title by registration:**

Section 54 of the R.T.A provides; No instrument until registered in a manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act, or to render such land liable to any mortgage. But upon such registration, the estate or interest comprised shall pass... or be liable to the .... conditions set forth in the instrument or by this Act...

Section 92 (2) is to the effect that upon registration of the transfer of the estate, all powers, privileges, thereto shall pass to the transferee and the latter shall there by become the proprietor.

It follows from the foregoing that in the Torrens system title does not pass by execution of the documents only but by the execution and registration thereof.

LUMUVS LINDO MUSOKE

(Title does not pass until a transfer is affected)

The plaintiff, a registered proprietor of land, sold it to the defendant, who paid part of the consideration. The plaintiff duly executed the documents of transfer, but on presentment for registration, it was found that the land was burdened with a caveat lodged by a third-party, and so it could not be registered. The defendant nevertheless, proceeded to collect rent from the tenants, contrary to the agreement that vested such rights in the plaintiff until registration of the transfer documents. The plaintiff thus sued for trespass and asked for an injunction to restrain the defendant.

It was held that according to sec 51 (now Sec 54) R.T.A, there had been no registration of the transfer documents of title and therefore the land still belonged to the plaintiff. That the agreement did not transfer any interest to the defendant. It merely gave him a contractual right entitling him to bring an action for damages or specific performance. The defendant's acts therefore amounted to trespass.

According to **Mugambwa (supra),** the learned judge erred in finding trespass since the primary requirement of trespass to land is that the plaintiff should be in actual possession of the land at the time of the defendant's action, and as the plaintiff had simply rented the premises, he was not in possession. However, a contrary judgment was arrived at in **MOYA DRIFT FARM LTD V THEURI [1973] EA 114 which is examined under indefeasibility of title.**

ZIMBEVSKIMANZA

One piece of land was sold to two persons. The later purchaser had his title registered. The lower court had found for the respondent contending that although his title was not registered, it prevailed over that of the appellant. This respondent had lodged his agreement for registration but had been unsuccessful because it bore the wrong certificate number. The appellants had the right number and had successfully been registered.

Per AINLEYJ,

".... The appellant can only be ousted from the land if it be shown that he obtained registration by fraud, his own, not the seller's. The onus of proving this fraud lies on the respondent, and it is a heavy one ...In fact the respondent was not the owner of the land when the appellant registered his statutory transfer. No man can become the owner of land until a statutory transfer of the land to him has been registered.

A stringent application of the element of title by registration can be seen in;

BUSULWA VS TEXAS

One Ssebugulu deposited title deeds affecting the suit land with the present respondents, as security for a loan made by the respondent to his company. The respondents, unaware of any transactions between the appellant and Ssebugulu had a caveat registered as they had a right to do so. Meanwhile, the applicant, a native, had just completed a purchase of the suit land from Ssebugulu and was still seeking a completion of the transfer to him. On discovery of the caveat he sought to have it removed.

Held: The position in law is very clear. I very much regret that it cannot assist the applicant. No dealing with Mailo land can pass any interest until such dealing is registered. The applicant, from circumstances beyond his own control, has not registered his interest and I therefore cannot assist him.

Considering the rigid requirements of registration, what then isthe effect ofunregistered instruments?

IN SOUZA FIGUERIDO VS MOORINGS HOTEL

The respondent, a registered proprietor of land, entered a contract to lease the suit properties to the applicants, for a period in excess of three years. The lease was not registered contrary to the law. The appellants entered onto the land and left before the expiry of three years. Whenhe sued for rent arrears, the appellants maintained that since the lease had notbeen registered. It was void and they were not bound to pay the arrears.

It was heldthat there was nothing in the Act, whichrendered such instrumentsineffectual as contracts betweenparties. There is nothing to show that an unregistered document purporting to be a lease for more than three years is void..... It can operate as a contract inter parties and can confer on intending lessee a right of specific performance and to the intending lessor aregistrable lease. On the facts of the case, it was therefore held that appellants were boundunder contract to pay the rent arrears. Reference was made to the learned authors of **KERR on Principles ofAustralians Land Titles.**

"... an instrument in statutory form, until registration operates as a contract interparties... the mere execution of a registrable instrument transfers no interest in the landbut merely gives a right in personum ..."

Can it however be said that the instrument creates an "equitable interest/lease?"

Sir Kenneth O'Connor denied this fact, on Grounds that the R.T.A, creates no interest whether legal or equitable through an unregistered instrument.

However, in **JOHN KATARIKAWE VRS. WILLIAM KATWIREMU & ANOTHER – HCCS 2/73.,** it was maintainedthat in suchcircumstances. The purchaser acquires an equitable interest in the landenforceable against the vendor.

In the Australian case of **CHAN V. CRESDON PTY. LTD (1989) 168 CLR 242,** itwas held that it is not the instrument which creates such equitable interest, but rather the contract itself. Reference was made to **ISAACS j in BARRY V HEIDER - [1914] HCA 79 - 19 CLR 197**

"...denying effect to an Instrument until registration does not touch whatever rights arc behind it and parties have a right to have such interest registered. That right, according to the accepted rules of equity is an estate or interest in land."

From the foregoing, it is maintained that antecedent agreement will be effective in accordance with the principle of equity to bring into existence an equitable interest or estate in land. It should further be noted that at common law, once an unintendedlesseeenters into possession under unregistered lease. A tenancy at will is created and they are bound to pay rent if it falls due.

2. **Indefeasibility of Title**

According to Mugambwa (supra), it means that once a proprietor of an estate or interest in land, the government guarantees that his/ her title cannot be divested or attacked by rival claims to the land except as prescribed under the RTA. According to Professor WALLAN, "The Torrens system in Australia", though the term indefeasibility of title is not referred to in the R.T.A, its meaning and scope can be obtained from mosaic of sections and these include; sec 59 (Certificate to be conclusive evidence of title, sec 64 Estate of registered proprietor is paramount) ,sec 181 which protects a bonafide purchaser for value who obtained

the land from one who was registered through fraud or error, from ejectment or action for damages, and sec 176, which, except for a few exceptions, protects the registered proprietor against any action for ejectment or damages. Thus, production of the certificate of titleby one in his or her name is deemed an absolute bar against any legal action subject to a few exceptions in the R.T.A.

The whole purpose of the indefeasibility principle was designed to protect title of the registered proprietor from unregistered interests and to save persons dealing with registered land the trouble of going behind the register book to investigate the validity of title and possible rival claims to the land.

KARIM VS CHIEF REGISTRAR OF TITLES

The applicant sought to restrain the registrar of titles from interfering with her quiet possession of land, as the registered proprietor thereof, she had received a letter from the respondent asking her to return the land title as she had been erroneously registered as proprietor. That following the recovery of the original file affecting the suit land, some caveats which forbade any transfers of title without notice to the caveator had been discovered.

It was held that the applicant had acquired good title and she should be spared the quiet enjoyment, having got the title bonafide and for good consideration. Further that the registrar should remove the caveats she had placed on the applicant's title unilaterally without giving her the chance to be heard.

DAVID ACAR V. ALFRED ACAR ALIRO [1982] HCB 60,The respondent applied for a lease of land under the R.T.A. The appellant who claimed an interest complained to the parish chief but did not lodge a caveat. The land was surveyed and a certificate granted to the respondent. The appellant refused to vacate the land.

It was held on appeal that, anyone claiming an interest in land being surveyed with a view to bring it under the operation of the R.T.A, must lodge a caveat. The complaint to the village chief did not absolve him from the law, and as he had done nothing within the Iaw to stop it, the certificate granted to the responded was conclusive evidence that the person named therein, was the registered proprietor. ' .

LWANGA V REGISTRAR OF TITLES (MISCELLANEOUS CAUSE 7 OF 1977) [1980] UGHC 1 After the deceased's death, k fraudulently caused the deceased's land to be transferred into his name. He later sold the land to S an innocent purchaser for value, who registered as proprietor. K was convicted of fraud and the suit property was ordered to be transferred into the applicant's names which the registrar refused to do hence this suit. **It was held** that S was a bonafide purchaser and as he was registered. His title was indefeasible not withstanding K's fraud. It was noted that though a paradox, registration obtained by fraud is sufficient to pass title to a bonafide purchaser.

EXCEPTIONS TO THE INDEFEASIBILITY TITLE RULE

1. **Fraud**

This is by far the most important exception to the indefea1ibility of tile. Section 64(1) of the RTA is to the effect that the title of the registered proprietor is paramount except for fraud. Fraud is not defined in the act, but it's meaning may be attained by a study of case law.

THE ASSETS COMPANY LIMITED V MERE ROIHI AND OTHERS (NEW ZEALAND) Lindley held that fraud in the Torrens System meant actual fraud as opposed to constructive fraud. In **WAIMIHA SAWMILLING CO VAS WAIONE TIMBER COMPANY (1926) AC IO6** fraud was described as,

"...If the designed object of a transfer be to cheat a man of known existing right that is fraudulent.

The fraud must be that of the person whose title is sought to be impeached but not that the persons from whom he obtained title. Thus, in **KAMPALA BOTTLERS LTD VS. DAMANICO (U) LTD JUDGMENT · SUPREME COURT CIVIL APPEAL NO. 22 OF 1992 ·**, the trial judges had found fraud on part of the appellant on grounds that; someone, in the land's office and the chairman of the town clerk had failed to notice the error in the appellant's title. WAMBUZI CJ expressed these sentiments on appeal;

"...With respect, these verges on constructive fraud..... it was not shown that the appellant was guilty of any fraud or that he knew of it..."In **HOTEL INTERNATIONAL LTD VS. THE ADMINISTRATOR OF THE ESTATE OF THE LATE ROBERT KAVUMA SUPREME COURT CIVIL APPEAL NO. 37 OF 1995**

It was found that as there was no caveat by the respondent on the register, the appellants could not be accused of fraud in respect to the respondent's registered interest. Similarly, in

SHAH VS MODERN SWEET MART (1956-57), the purchaser of land, fully aware of the defendants' unregistered 7-year lease on it, proceeded to register as the proprietor. In a suit for vacant possession, the defendants pleaded notice and fraud 'It was held that section 146 RTA strictly forbade the application of equitable principles and that the plaintiff was not bound by the defendants' lease.....

However, in **JOHN KATARIKAWE VRS. WILLIAM KATWIREMU & ANOTHER – HCCS 2/73, Ssenkandi J** said that although mere knowledge of unregistered interests cannot be imputed as fraud coupled with a wrongful intention to defeat such claims would suffice as fraud. Thus, in this case the plaintiff purchased land from the first defendant but there was no transfer effected in his favour. The plaintiff never the less took possession and effected many improvements on the said land. Mean while the first defendant transferred the land to the second defendant, who was his brother-in-law. It was found that as the plaintiff had openly carried out improvements on the land and the fact that the two defendants were closely related were sufficient grounds to prove connivance by the defendants to defraud the plaintiff. That the second defendant's title had therefore been obtained through fraud.

In **LUSWESWE –VS- G.W. KASULE & ANOR CIVIL SUIT NO. 1010 OF 1983 (UNREPORTED)** The plaintiff was the original registered proprietor of adjacent pieces of land, A and B. On A, he had a house and had constructed a drive way through land B to the house on land A. In the 1970s, he was arrested. His property including the certificate of title were looted. When he applied for replacements, he discovered that title to land B' had been registered in the second defendant's name, who alleged he had bought it from the first defendant. The plaintiff sought to have the title struck out on grounds of fraud It was found that the circumstantial evidence pointed strongly to the fact that the second defendant was involved in the fraud. first because there were no records of the purported instruments of transfer from the plaintiff to the first defendant and from the latter to the second defendant. Secondly, there was evidence of a search by the defendant of the register book to discover who owned the house on plot A, a drive way to which passed through plot B. Moreover, he had proceeded to occupy the house on plot A, yet he knew he had no right to do so.

In JANDU V/S KIRPAL & ANOTHER 1975 EA 225, SINGH j was of the view that the ingredients of fraud were three-fold;

Proved knowledge, the existence of some unregistered interest, and knowingly and wrongfully defeating that interest. On burden of proof, Oder CJ in **ISMAIL JAFFER ALLIBHAI AND 2 OTHERS VS. NANDLAL HARJIVAN KARIA AND ANOTHER JUDGMENT. CASE NUMBER. SUPREME COURT CIVIL APPEAL NO. 53 OF 1995.** said that although the standard may not be as heavy to require proof beyond reasonable doubt, something more than a mere balance of probability is required.

Other Exceptions (within the Act)

2. **Encumbrances notified on the folium.** The register book is like a mirror. What you see is there and what you do not see is not there.

3. **The title of a registered proprietor is not indefeasible as against that of another registered proprietor claiming the same land**. Sec 64 RTA is to the effect that the registered proprietor may hold the land subject to encumbrances notified on the folium but free from all other encumbrances, except the estate of a person claiming the same land under a prior registered certificate of title. This may have been occasioned through a mistake at the registry. In such a case the rules as to priority of registered interests will apply.

4. **Land included in the certificate by mistake.** 'This is included in section 64(1) RTA. See Black locks Vs JB developments *(under bonafide purchaser for value below)*

5. Sec 64(2) of the R.T.A is to the effect that title of a registered proprietor may also be subject to public rights of way and casements.

6. **Adverse possession**, under the same section, may affect a registered proprietor right. According to the Limitation Act, if an owner does not eject an intruder for 12 years, he/he loses title to such

intruders. Accordin to the Kenyan case of **KISEEMAWEU VS KIU RANCHING & CO-OPERATIVE SOCIETY (1982)** the period of adverse ownership starts running from the time the squatters begin to live on the land, and not from the time the proprietor is registered as the owner. Thus, the court found for the appellants who had lived on the land since 1933.

Per PLATT J, On the proprietor's title in relation to that of the adverse posesser.

" However absolute and indefeasible the title is, it is lost forever"

7. An interest of a tenant on land which is neither adverse nor registered is also protected thus; in **UGANDA POSTS AND TELECOMMUNICATIONS-V- A.K.M LUTAAYA CA NO36 OF 1995** it was held that the respondent's registered leasehold was subject to appellant's title acquired by possession with the consent of the landlord prior to the leasehold.

8. There are also some overriding statutory exceptions on the indefeasibility such as the access to Roads Act, which empowers a land owner without access to a road to apply for a court order for a right of way over the registered proprietor's land.

THE LAND ACT protects a tenant by occupancy by providing that such tenants deemed to be the tenant of the registered proprietor. The Act further subjects the right of the land owner to environmental laws such as The Forest Act.Judicial powers can also limit the indefeasibility of title. **FRAZER V WALKER (1967) 1 AC 569 - LAW CASE SUMMARIES**

The Privy Council maintained that the Torrens system in no way limited the power of court to act on a claim in personum against a registered proprietor founded in law or in equity. .

Other exceptions include; leases, licenses, and other authority granted by the minister, unpaid rates, taxes, and charges. The registrar's powers under the land Act to correct errors and supply omissions in register book is yet another exception to the absolute title.

PROTECTION BY CAVEAT.

Caveats are provided for in PART VII of the R.T.A.

A caveat acts as a statutory injunction to the registrar to prevent registration of any dealings which might affect the interest or subject of the caveat.

In JWR KAZOORA V MLS RUKUBA (CIVIL APPEAL 13 OF 1992) [1993 ...

it was pointed out that in Uganda, a pending suit affecting land does not bar continuation of dealings with such land. That therefore the best way to protect one's interest would best be achieved through a caveat or an injunction.

In **JOHN KATARIKAWE VRS. WILLIAM KATWIREMU & ANOTHER – HCCS 2/73**; it was said by SSENKANDI J that taking possession of deeds is insufficient to protect an unregistered interest, unless a caveat is lodged thereafter. According to **KASIFA NAMUSISI AND ORS V FRANCIS MK NTABAAZI (CIVIL APPEAL 4 OF 2005) [2006] UGSC 1** to lodge a caveat one must have a caveatable interest.

Municipal District of Concord v Coles - [1905] HCA 35

In the above case it was argued acaveatable interest is defined as a claim of a proprietary or quasi proprietary nature of interest in a particular piece of land. Examples of caveats include; claims under wills, leases, mortgages etc.

BOYES VS GATHURE (1969) EA 385 ; Court rejected a caveat because it did not properly identify the interest claimed as prescribed by the relevant statutory provisions.

MUTUAL BENEFITS LTD VERSUS PATEL AND ANOTHER [1972]1EA 496 A caveat prohibiting all dealings in land was held to go beyond what was necessary to protect a leasehold interest.

HUBER CO. V. DESOUZA, 86 P.3D 1022

In the above case **,** the appellant entered into a sublease agreement with the respondents, and on entering into possession, he expended some money on repairing house. He then lodged a caveat purporting to be an equitable mortgagee in the sublease agreement. It was held however that the agreement referred only to a sublease and did not refer to the appellant as an equitable mortgagee hence his caveat as a mortgagee was un founded.

A caveat may be lodged by not only the private party but by the registrar as well, on behalf of government or a disable person. Section l7O (a)

It must be noted that lodging a caveat does not serve to prove title but rather maintains the status quo, until the ultimate title ids determined. lt follows from the foregoing that the duration of a caveat envisaged by the Act is only for a limited period.

In **ODONGO OCHAMA V RAJAB (CIVIL APPEAL 119 OF 2018) [2021] UGHCLD 16,** where a caveat was for twenty years, court observed that a caveat was only meant to be a temporary measure and was not intended to give an everlasting protection in the sense that the caveator should be hulled sleeping over his caveated interest perpetually.

Unfortunately, the Act does not stipulate a time limit within which a caveat should expire. It merely provides that it shall lapse automatically; when withdrawn by the caveator, and where the proprietor applies

for its removal and the caveator does not commence legal proceedings or apply for extension of the caveat within sixty days of notification of such application.

Section140 (1) of the Act empowers courts at any time revoke caveat at the instance or the caveatee where the caveator fails to show reasonable cause why the caveat should not be removed.

Wrongful lodgment of a caveat may occasion loss the owner and court may order compensation to such owner by any person who enters a caveat without reasonable cause.

LEASES

Section 3 (5)of the land Act provides for the mode of creation of a lease. It may be created by contract i.e.; parties mutually agree to creation of a lease and agree to terms of the lease. Lease may be created also by operation of the law. This is where the law provides for the holding of such form of tenure by a prescribed class of people.

For example, **Section. 40(3) of the Land Act** provides that Non citizens can only be granted leases for 99 years.

The Act further provides that the terms and conditions of the lease may be regulated by the law to the exclusion of any contractual agreement reached between the parties.

The RTA presumes a number of conditions and covenants between the Lessee and Lessor, though not specifically agreed upon between the parties.

For example, it is presumed that the Lessee will pay rent reserved by the lease to the times mentioned in the lease and it is implied that the Lessor may, with or without surveyors or workers once in every year at a reasonable time of the day enter upon the leased property and view the state of repair of the property.

See **Sec. 101 of RTA to Sec. 105** Provides a number of implied covenants between Lessor and Lessee. A lease Binds parties to it as well as successors in title of the parties.

A leasehold tenure is defined as a form of tenure whereby one person called a Lessor grant to another (Lessee) a right to exclusive possession of land for usually but not necessarily a period defined directly or indirectly by reference to a specific date of commencement and a specific date of ending.

The lease is granted, usually but not necessarily in capital sum known as premium or for both rent and a premium. And it may be in return for services or may be free for any required services.

CLASSIFICATION OF LEASES

Leases may be classified into fixed term and periodic leases.

A fixed term lease is one whose duration is fixed by the parties at commencement of the lease i.e. It may be a lease for 12 years, 49 years, 100 years etc. such that upon the expiry of the agreed period, the lease comes to an end.

A periodic lease is one which continuously renews from one term to another e.g., it may run on a weekly basis, monthly basis or a yearly basis depending on the Agreement between the parties.

A periodical lease terminates by proper notice being served by either party as was stated in the case of **PRUDENTIAL ASSURANCE COMPANY LTD V LONDON RESIDUARY (1992) 3 ALL ER 504.**

The further classification of Leases which may not fall under the above-mentioned bracket is: A tenancy At will and a tenancy at Sufferance.

A tenancy at Will was defined in the case of **BWEYA STEEL WORKS LTD V NATIONAL INSURANCE CORPORATION (1985) HCB 58** to mean a person who enters into possession of the Landlord's premises as a tenant without specification of the terms of the tenancy e.g., where x, the owner of Nabukeera Plaza allows Y to occupy his premises without the specification of the terms upon which Y is holding the premises. Y becomes a tenant at will and this means that he is in occupation of the premises at the mercy of x who can terminate the tenancy without giving Notice to Y.

However, should a tenant at will begin payment of rent on a regular basis e.g., if he pays rent on a monthly or yearly basis the tenancy becomes a periodic tenancy.

A tenancy at sufferance was defined in the case of **HASSAN V MUKIIBI (1978) HCB 162** where it was stated that a tenancy at sufferance is implied where a former tenant remains in possession of the rented premises after the expiry of the period fixed by the owner.

Just like a tenancy at will, a tenancy at sufferance can be terminated at any time without Notice.

ESSENTIALS OF A LEASE

The common law position somehow differs in so far as the essential features of a lease are concerned as opposed to the statutory position. The common law position requires 2 essential features i.e., Certainty of duration and exclusive possession whereas the land Act cap 227 provides that the lease may not be for a defined period and as such the only essential feature under the Land Act is exclusive possession.

Exclusive possession connotes non interference from anybody including the land lord. While a lessee enjoys a right to exclusive possession of a land, a lesser enjoys only a reversionary interest.

A leaseholder cannot deny the landlord a right to obtain a mortgage on the same piece of land. The leaseholder can be paid off and a mortgage can be created or a mortgage can be created subject to the expiration of the leasehold interest. The leaseholder can be paid off if the landlord attaches the property, on

execution, the property can be sold off and the Lessee can be paid off while the bank becomes the new landlord.

There is no law that obliges a landlord to renew the lease, he can refuse to renew it and no cause of action can accrue.

RIGHT TO EXCLUSIVE POSSESSION

Section 3(5) of the Land Act defines a Leaseholdtenure as a form of tenure under which the landlord grants or is deemed to have granted a tenant or lessee exclusive possession of land.

This is the most essential feature of a lease and this is what distinguishes a License from a lease.

A grant of exclusive possession is the right to enjoy the rented premises to the exclusion of anyone else; the landlord inclusive. Where the landlord interferes either directly or indirectly, with the enjoyment of the land or rented premises, then no lease can be talked about because of the violation of the right to exclusive possession which is mandatory under a leasehold tenure.

To establish whether or not an occupier enjoys the right to exclusive possession depends on the intention of the parties. Hence circumstances of a particular case come into play.

The intention of the parties can objectively be determined from the terms of the agreement between the parties and the surrounding circumstances.

An express statement purporting to grant the right to exclusive possession is neither necessary nor conclusive of the occupier's legal state. The extent of control over land retained by the landlord determines whether the occupier has exclusive possession or not.

In the case of **DESAI V COOPER (1950) KLR 32** it was stated that if the landlord retains general control over the rented premises, it is strongly believed that there is an interference with the right to exclusive possession and to that extent the occupier is a mere licensee as opposed to being a lessee.

In the case of **CITY COUNCIL OF KAMPALA V MUKIIBI (1967) EA 368** the plaintiff leased certain premises to the defendant without a right to Sub let without their consent. The defendant allowed same hair dressers to use the premises paying a daily fee. The plaintiff sought to terminate the lease on ground that the defendant parted with possession and therefore breached the tenancy agreement.

The court found that although the defendant allowed hair dressers to use the premises subject to payment of a daily fee, he did not give them exclusive possession of the premises,

Sir UdoUdoma CJ observed that a point of great importance which supports the case for the defendant is that he never at any time parted with possession of the premises, he was always in change of the Key, it was his Practice to always open the premises and admit or let in the hair dressers. At the end of the business in

the evening after collection of his dues he used to lock the premises and retain the keys. It is clear from evidence that the hair dressers could only make use of and occupy the premises with permission of the lessee. In other words, the hairdressers could not use the premises in the absence of the lessee. Hence there was no right to exclusive possession for the hair dressers. They were not lessees not sub-lessees.

CERTAINITY OF DURATION

At common law a lease must be for a defined duration i.e. Having a specified date of commencement and agreed upon date of ending.

However, **section 3(5)(c**) of the land act provides that a lease is usually but not necessarily for a period defined directly or indirectly by reference to a specific date of commencement and a specific date of ending. As such per this provision a lease may be created even if for a non defined duration.

In the case of **LACE V CHANTLER (1944) 1 ALL ER 305** the plaintiff, during the 2nd World war Sub-let a house to the defendant for the duration of the War. It was held that the lease was void for uncertainty of duration because at the time the purported lease agreement took effect, it was not certain for what period it will be in effect.

A number of cases have been decided in such a way that they attempt to relax the rule that a lease must be for certain duration.

In the case of **ANSALT V ARNOLD (1888) 2 ALL ER 147**

The respondent grated the appellant a right to occupy his premises rent free for an indefinite period. The agreement was subject to the provision that the respondent will terminate the arrangement if they require the land for redevelopment by giving a 3 Months notice. The notice had to be accompanied by a certificate from a reputable developer stating that the respondents were ready to develop the land.

The court of Appeal held that the circumstance under which it was granted could be clearly determined and ascertained i.e., by giving a 3 Months notice of the termination and notification of the developer.

This case can be distinguished by the case of **PRUDENTIAL COMPANY LTD V UGANDA RESIDUARY** where the classical common law rule of certainty of duration of a lease was emphasized that a lease must be of a certain or ascertainable time i.e., the exact time the lease must take effect must be clearly stated.

N.B The statutory position in Uganda is very clear that a lease may be for a defined or a non defined time.

As such certainty of duration is not one of the essential requirements for the validity of a lease.

LICENSES

A license is a permission given by the occupier of land which allows licensee to do an act which would otherwise be a trespass e.g., a lodge in a house or permission to till one's land. For instance, where x has 5 Acres of unutilized land, he authorizes Y to use the same for the growth of maize, the relationship between x and Y is that of a licensor and a licensee. No interest is created but a user right.

The major difference between a license and a lease is that whereas a lease creates a right to exclusive possession, a license does not. The licensee is only given permission to utilize the premises but may be utilized together with the landlord. For example, the permission to the pleasure boats, one has permission to take a boat ride in association with others, while not enjoying it to the exclusion of others.

TYPES OF LICENSES

There are four types of licence: Bare licence; licence coupled with an interest, a contractual licence and a licence protected by estoppel.

1. Bare licence

A bare licence is a licence granted without valuable consideration. It is the simplest form of licence. For example, an invitation of a friend to come over to your house for dinner is a bare licence.

Because a bare licence is without consideration, it may be withdrawn at any time by the licensor even in the middle of the dinner. An action of trespass would lie against a licensee if he/she remains on the land after the licence is revoked.

2. Licence coupled with an interest.

A licence coupled with an interest is a licence to enter upon a licensor's land for the specific purpose of taking something that forms part of the land or is upon the land.

Such a licence is irrevocable whilst the grant remains in existence and may be assigned, provided it is disposed of with the interest to which it is annexed. Where a licence involves a right to enter and take something that forms part of the land or of the soil for example minerals, gravel, timber or clay, the grant is a *profit prendre* i.e., the right to enter another's land to take something off the land, such as gravel, sand, things that grow on the land such as timber and grass.

It also entails the right to catch fish or hunt wild animals on the land. A profit prendre constitutes an interest in land and it binds subsequent purchasers of the land to which it applies. This principle was fortified in the case of **SETTLEMENT FUND TREES V NURANI (1970) EA 562**

In contrast, a licence to take away goods on the licensor's land does not constitute an interest in land. The licensee has a right in the chattel which is on the land, and a licence to enter the land to take away the chattel.

3. Contractual licence.

A contractual licence is a licence granted for a valuable consideration. At common law, a contractual licence, like any other contract does not bind third parties and its burden does not run with the land. A contractual licence may be revoked, though, if revoked in breach of the contract, the licensor would be held liable in damages. At common law, a contractual licence does not bind third parties even if they bought the land with notice of the licence. This principle was illustrated in the case of **KING V DEVID ALLEN & SONS BILLPOSTING LTD (1916)2 AC 54**

4. Licence protected by estoppel

A licensor may be estopped from revoking a licence in certain circumstances. Where **Ouma** a land owner, by his conduct leads **Teki** to believe that he would obtain an interest in land, and on the basis of this belief Teki alters his position to his detriment, equity may arise in Teki's favour.

The court may force Ouma to adhere to his representation by making such order as is appropriate to satisfy the equity. On the basis of this principle, court may order that a licence that is revocable at its inception has become irrevocable because of the party's conduct.

In the case of **INWARDS V BAKER (1965)1 ALL ER 446** the plaintiff wanted to buy land on which to build his house, but he could not afford to buy land. Encouraged by his father, the plaintiff constructed a house on father's land and for several years, while his father was alive, he lived in that house. The father in his will bequeathed the subject land to his widow.

The plaintiff instituted these proceedings for possession. **It was held** that the plaintiff's father allowed an expectation to be created in the plaintiff's mind that the house he built was to be his home, at least for his life. In light of that equity, the father could not have revoked the licence nor could his successor in title.

TERMINATION OF A LEASE

A. EXPIRY

A lease for a fixed period of time can expire upon the lapse of the agreed period e.g., if it is a lease for 45 years, upon the lapse of the 45 years the lease automatically extinguishes.

B. NOTICE

For a fixed term lease,there may be a provision for termination of the lease upon giving notice and such provisions must be complied with. The notice must be given by the lesser himself or his recognized agent and it must be sent to the proper address.

In **Lenon V Ladoem,** the property belonged to the wife and the zealous husband gave notice of termination to the lessee. The lessee contested and the **Court held** that the notice was illegitimate since the husband had no authority to give notice on behalf of his wife.

In **BALHIR V PENESER [1972]EA 94,** a lawyer gave notice on behalf of his client to vacate and deliver possession of the front portion of the estate. The tenant contended that this was not a termination due to uncertainty.

Court held that a liberal interpretation must be given to the notice so that even if it is inaccurate, effect is given to it as if it were clear to the recipient.

C. FORFEITURE

Forfeiture is a situation where the landlord is entitled to re-enter the ranted premises and put an end to the lease, where there has been breach by the tenant of conditions of the lease even if the lease does not contain an express clause for forfeiture.

However, before the landlord re-enters the land, he must make a formal demand unless if the leasehold agreement provides to the contrary. It has to be reasonable notice and it will largely depend on circumstances of the case. E.g., parties may agree on the type and mode of notice.

For example, a clause in a leasehold agreement may provide that a lease may be forfeited if the rent is in arrears for specified period i.e., Default for 6 months the lesser has a right to re-enter the premises.

The landlord may re-enter the premises either peacefully or by getting a court order for possession. It is not advisable to re-enter dwelling premises without proceeding to Court.

Section 25 of the Judicature Act provides for relief from re-entry or forfeiture for nonpayment of rent. It provides that where a Lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture for nonpayment of rent, the Lessee may apply to court for relief.

Refer Sec. 25 of the Judicature Act.

D. SURRENDER

This is where before the expiration of the lease, the lessee surrenders his lease to the landlord who, if accepts the surrender, the lease merges with reversion and it is extinguished. For example, if x is the owner of mailo land at Kibuli, creates a leasehold interest in favour of Y, if Y writes to x showing an intention to give up the leasehold interest and x accepts, the leasehold interest is merged with x 's reversion.

Surrender may be by express agreement, operation of the law or statutory provision. A lease is surrendered by operation of the law if a lesser grants and the lessee accepts a fresh lease commencing before the current

lease expires. A lease is also surrendered by operation of the law where the tenant abandons the premises and the lessee re-enters.

See Sec. 108 of RTA.

E. MERGER

Merger occurs where the tenant, in addition to holding his leasehold interest acquire a reversionary interest as well e.g., where x, the registered proprietor of Mailo land at Kibuli leases his land to Y for a period of 45 years.

Before the Lapse of Y's Lease, X agrees to sell his reversionary interest to Y. in this case, Y's leasehold interest is terminated by the merger.

NB: For a merger to be effective, the lease and the reversion must be vested in the same person in the same right.

Title by registration as a feature of the Torrens system, is where the interests in land are created or transferred by registration under the Regestration of Titles Act. **Section 54 of the Regestration of Titles Act** provides; No instrument until registered in a manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act, or to render such land liable to any mortgage. But upon such registration, the estate or interest comprised shall pass...or be liable to the ... conditions set forth in the instrument or by this Act.

The operation of **Section 54** is illustrated in the case of **LUMU V LINDO MUSOKE** where it was held by **Musoke J**, that the agreement for sale of land did not transfer any interest in the disputed land to the defendant. It merely gave him a contractual right entitling him to bring an action against the plaintiff for damages or for specific performance if the plaintiff refused to execute in his favour the statutory transfer.

The case of **ZIMBE V KAMANZA CA NO.37 OF 1952** Further reiterates the principle as propounded by **Section 54** viz; that title does not pass until a transfer is registered under the Registration of Titles Act. That no man can become the owner of land until a statutory transfer of land to him has been registered.

Therefore, in order for Muzamir to obtain legal interest in the land, he must have the parcels of land brought under the operation of the Registration of Titles Act by having it registered.

Property A.

The facts show that Mazimur would like to own property A together with two wives but one of them is a French national. He wants to establish a beef processing plant whose break-even period is 15 years.

According to **Article 26** of the Constitution provides that **"**Every person has a right to own property either individually or in association with others.**"**

Article 237 (1) of the constitution of the Republic of Uganda, 1995 provides that land in Uganda belongs to the citizens of Uganda and shall rest in accordance with the lad tenure system provided for in this constitution.

Article 237(3) of the Constitution 1995 provides that land in Uganda shall be owned in accordance with following land tenure systems.

a) Customary

b) Freehold

c) Mailo and

d) Leasehold.

Article 237 (2)(c) of the Constitution, provides notwithstanding clause (1) of this article, non-citizens may acquire leases in land in accordance with the laws prescribed by parliament and the laws so prescribed shall define a non-citizen for the purposes of this paragraph. Sect 40(1) of the land Act Supra, provides that subject to **Article 237 (2) (c) of the Constitution**, a non-citizen may acquire a lease in land in accordance with this section. **Section 40 (2) of the Land Act** stipulates that a lease of five years or more acquired by a non-citizen shall be registered in accordance with the registration of titles Act

Section 40 (3) of the land Act provides that a non-citizen shall not be granted a lease exceeding ninety-nine years

Section 40 (3) of the Land Act provides that subjects to the other provisions of this section, a non-citizen shall not a... or hold mailo or freehold land. **Section 40(7) (a) of the Land Act** provides that non-citizen means a person who is not a citizen of Uganda a defined by: constitution and the citizenship Act. Since one of the wives of Mazimur is a French National, she can't be a registered proprietor of Mailo or Freehold. As such, Mazmur can only own property with her by getting a lease on property A.

Creation of a Lease.

Section 3 (5(a) of the Land Act provides that (a) Leasehold tenure is a form of tenure created either by contract or by operation of law.

The parties can therefore enter into a lease agreement

A lease can be created over registered land. **Section 101 of the Regestration of Titles Act** provides that the proprietor of any freehold or mailo land under the operation of this Act may, subject to any law or **agreemen**t for the time being in force, lease that land for any term exceeding three years by signing a lease of it in the form in the Eighth Schedule to this Act.

In every lease there are implied covenants against the lessee as laid out in **Section 102 of the Regestration of Titles Act** which include; payment of rent, keeping leased property in good and tenantable repair. There are also implied powers of the lessor under S. 103 which include; power to enter and view the state of the property and power to reenter and take possession in case of breach of any covenant.

Registration;

Section 40 (2) of the Land Act stipulates that a lease of five years or more acquired by a non-citizen shall be registered in accordance with the Registration of Titles Act.

In order to acquire a legal interest, the lease should be registered. **Section 54 of the Regestration of Titles Act** provides that that no estate or interest in land can be created or transferred by an unregistered instrument and that no land can be made liable to the covenants in an unregistered instrument.

An unregistered lease at common law operates as contract, in equity, it is an equitable lease because equity looks at that has done which ought to be done. This is fortified by the case of **WALSH V LONSDALE (1882)2CH 9.**

In **SOUZA FIGUERIDO & CO LTD v. MOORINGS HOTEL CO. LTD (1960) EA 926** it was **held** that there is nothing in the Act stating that an unregistered instrument cannot operate as a contract inter parties; that an unregistered document operates as a contract inter parties and can confer on the party in the position of intending lessee a right to enforce the contract specifically and to obtain from the intending lessor a registrable lease.

In **CITY COUNCIL OF KAMPALA V MUKIIBI (1967) [368]** it was held that the tenancy agreement, although not in statutory form and bearing no endorsement with a certificate of registration, was enforceable against the defendant as an agreement to grant a lease;

From the facts; Muzamir wants to own together with his two wives in respect of **Property A**.He wants the transactions concluded immediately. One of his wives is a French national.

The best way to obtain legal interest in Property A is therefore to create a lease by entering into a lease agreement with Tomusange the registered proprietor and then have the lease registered.

Lease agreement

Form in the 8th schedule of the Act.

Property B.

Execution of an agreement for sale.

Having carried out due diligence and inquiries, the parties should execute an agreement for sale for each of the parcels of land.

In respect to property B, there is a subsisting lease in the names of Shiv Construction Company. Mudde cannot get a lease from City Council of Kampala the lessor when there is a subsisting lease with 17 years to lapse. He can only buy the interest of Shiv Construction Company and have it transferred to him.

In the case of **LIVINGSTONE SSEWANYANA VS. DR. MARTIN ALIKER SCCA 4/1990**

Held; the appellant's application in response to which the grant was made should not have been considered and still less approved. It was invalid when it was made because the suit property which it applied for was not available for leasing. If the application had been made or approved after the expiration of the respondent's original lease, the consequences would have been different. In the instant case the Commission granted a lease and issued title to the suit property to the appellant when the respondent's title to the same was in existence and when it had no proprietary interest in the suit property until the expiration of the respondent's title. The Title issued to the appellant was therefore null and void.

Therefore, Mudde can only enter into a sale agreement with Shiv Construction Company. Thereafter the lease will be transferred to him under the RTA but with the consent of the lessor.

Registration of sale agreement.

The Regestration of Titles Act does not provide for any mandatory requirement to execute an agreement of sale of land and a sale agreement is not an instrument for purposes of passing an interest in registered land. **Refer to Section 54 of Regestration of Titles Act and ZIMBE V TOKANA KAMANZA CA No.37 of 1952.**

There is no mandatory requirement to have the agreement of sale registered save that for purposes of evidence in any proceedings in court an unregistered agreement may not be admitted in evidenced for want of payment of stamp duty.

It should be noted that an agreement for sale attracts stamp duty. Under **Section 32 of Stamp Duty Act 2014,** any instrument on which a duty is chargeable is inadmissible in evidence unless that instrument is duty stamped as an instrument on which duty chargeable thereon has been paid.

WASUKIRA FRED V M/S HARMONY GROUP LTD (HCT-04-CV-CS 40 OF 2009) [2011] UGHC 28(15 March 2011) where In the instant application, the plaint was supported by an agreement for commission payments/remittances signed by the 1st and 2nd plaintiffs as Managing Director and company Secretary respectively on which no stamp duty was paid.

Held; Where a cause of action is based on a document where stamp duty must be paid and the duty is not paid a cause of action cannot in law be based on such document. Generally, under **Section 42 of the Stamps Act (now 32 of Stamp Duty Act 2014),** any instrument on which a duty is chargeable is inadmissible in evidence unless that instrument is duty stamped as an instrument on which duty chargeable thereon has been paid. If the plaintiff wanted to rely on such unstamped instrument, they ought to have sought leave of court to have the duty paid. The plaintiffs however have not sought leave of court to do so. Therefore, the plaintiffs cannot rely on the unstamped agreement as evidence in this suit.

HOUSING FINANCE BANK V EDWARD MUSIISI (CIVIL APPEAL 22 OF 2010) [2011] UGSC 26 (21 November 2011)

Held; The stamp duty for the agreement of sale had not been paid in accordance with section 42 of the Stamps Act. That notwithstanding the land could not be transferred into the names of the buyer without paying the stamp duty and other taxes connected with land transfers.Therefore, for evidential purposes, the sale agreement should be registered under the Registration of Documents Act Cap 81 and also pay the requisite stamp duty.

Executing A Transfer Instrument

An interest in registered land can only pass upon execution and registration of a proper instrument. **Section 54 Regestration of Titles Act, MUSTAFA NDIGEJJERAWA V KIZITO [1959] 7 ULR 31** where **Ainley.J** gave his judgment that "... No document or instrument can be registered unless it fulfils the requirements, and no instrument (however perfectly it fulfils the statutory requirements) is effectual to transfer any interest in land unless it has been registered..."

The proper instrument for purposes of registration is a transfer form provided for under **Section 92** which must be in the form set out in the **Regestration of Titles Act**, should be properly executed by the parties and must be duly attested by the legally designated persons. **Section 147 of the Regestration of Titles Act provides** that an instrument shall be duly executed if attested to by one witness. Further **Section 148 of the Regestration of Titles Act** requires the signature to be in Latin character.

FREDRICK J.K. ZAABWE V ORIENT BANK LTD AND 5 ORS (CIVIL APPEAL 4 OF 2006) [2007] UGSC 21 (10 July 2007) it was held. Per **KATUREEBE, JSC.**

In my view, the rationale behind section 148 requiring a signature to be in Latin character must be to make clear to everybody receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. When the witness attesting to a signature merely scribbles

a signature, without giving his name or capacity, how would the Registrar or anyone else ascertain that that witness had capacity to witness in terms of **Section 147 of the Registration of Titles Act? Held** that where the signatures to a mortgage are not in Latin character, the mortgage is not valid

The attesting witness must sign the transfer instrument having witnessed the transferor of transferee sign. Where the transferor or transferee is illiterate, the attesting witness must execute a certificate of attestation. This is to certify and confirm that the contents were understood. **Section 3 of the Illiterate Protection Act (Cap) 78 of the Laws of Uganda 2000**, enjoins any person who writes a document for or at the request or on behalf of an illiterate person to write in the jurat of the said document his/her true and full address. This shall imply that he/she was instructed to write the document by the person for whom it purports to have been written and it fully and correctly represents his/her instructions and to state therein that it was read over and explained to him or her who appeared to have understood it.

Section 92 of the Registration of Titles Act Cap 230 provides that the proprietor of land may transfer the same in one of the forms of transfer in the Seventh Schedule to the Act.

The transfer form shall be accompanied by the consent to transfer form in respect of Property B. under **Regulation 92 of the Land Regulations 2004** (1) A lessee shall not assign or sub-let land leased out of former public land without the prior written consent of a board or the commission

(2) Transfers, assignment, leases or sub-leases in respect of registered land shall comply with the requirements in Form 53 specified in the First schedule to these Regulations. Therefore, the parties should execute a transfer instrument, sign it and have it attested.

Valuation and stamp duty

A transfer instrument is incapable of being effectively registered unless the requisite stamp duty is duly paid. Valuation for purposes of payment of stamp duty is done by the chief government valuer who certifies the amount payable by the transfer and its usually 1.5% of the whole consideration as per Stamps (Amendment) Act 2016.

HOUSING FINANCE BANK V EDWARD MUSIISI (CIVIL APPEAL 22 OF 2010) [2011] UGSC 26 (21 November 2011) it was Held that the stamp duty for the agreement of sale had not been paid in accordance with **Section 42 of the Stamps Act (now 32 of Stamp Duty Act 2014.)** That notwithstanding the land could not be transferred into the names of the buyer without paying the stamp duty and other taxes connected with land transfers.

It's a requirement of the law that the intending transferee discloses the consideration paid in the transfer instrument and consent form and any under valuation of the property by the transferee may amount to fraud if it was intended to defraud government of its revenue.

WAKANYIRA GEORGE DAVID V KAVUYA BEN & 2 ORS (HCT-00-CC-CS-560-2006) (HCT-00-CC-CS 560 OF 2006) [2010] UGCommC 21 (23 August 2010)

Counsel for the plaintiff further referred to a decision of Justice Alfred Karokoora (J. as he then was) in the case of **SAMUEL KIZITO MUBIRU & ANOTHER VS G.W. BYANSIBA & ANOTHER [1985] HCB 106,** where he held that by Public Policy any transaction designed to defraud the Government of its revenue is illegal.

Held Per **Hon. Mr. Justice Geoffrey Kiryabwire**

I find that there is a difference between not paying stamp duty on a sale agreement and not paying stamp duty on a transfer form. There is no doubt that by failing to pay due tax is contrary to public policy. In attacking which document should be scrutinized I think it should be the transfer form. This present case should be distinguished from the **mubiru case** (Supra) because in that case the plaintiff sought protection in a land transaction that he was a bona fide purchaser for value without notice. However, the Judge in that case rightly pointed out that you cannot be a bona fide purchaser if you do not pay Government tax.

The transferee must also pay registration fees which is payable to the local authority.

Filing of documents.

Upon payment of the requisite fees the transferee has to submit the duplicate certificate of title, signed transfer forms, photographs and valid identification with evidence of payments which must be paid in the relevant land registry. The land office normally checks the submitted documents, passes them if they are competent, gives them or allocates an instrument number where after will be effected in the names of the transferee.

Also, on lodging the documents, the registration fee should be paid as provided for under the second schedule of Regestration of Titles Act which is 10,000/= for each of the documents, that is Property A and B.

Section 92(2) of the Regestration of Titles Act provides that upon registration of the transfer, the estate and interest of the proprietor shall pass to the transferee and the transferee shall thereupon become the proprietor thereof.

Upon registration a person whose name appears in the title is deemed to be a registered proprietor. **Section 59 Regestration of Titles Act**

DDUNGU LILLIAN V MARC WIDMER & ANOTHER (CIVIL APPEAL 38 OF 2009)[2012]UGHC 253 (23 November 2012) it was held , Where a duly registered proprietor exists, as is the case presently, the certificate of title is conclusive evidence of ownership and therefore no further proof of ownership is required save for where there are allegations of fraud.

Therefore, any purchaser of land under the Torrens system must be diligent to follow the above steps in order to acquire a valid title (legal interest) that cannot be impeached in light of the defence of bonafide purchaser for value without notice.

Therefore, in order to secure a legal interest for Mudde, the above procedure should be followed to ensure an effective transfer of the land from the two proprietors

BREIFLY, THE FOLLOWING STEPS SHOULD BE UNDERTAKEN.

Step 1

Applicant must have in possession the following;

The Land transfer forms as provided in Section 92 of the Registration of the Titles Act Cap 230, the lease agreement and Form for lease.

A photocopy of duplicate certificate of title

Two (2) authentic passport photos of both buyer and seller

Land sale agreement and Lease agreement;

A Registered Board Resolution of the Company Director(s) of **SHIV CONSTRUCTION CO.LTD V ENDESHA ENTERPRISES LIMITED ((CIVIL APPEAL NO.34 OF 1992)) [1993] UGSC 21** Consent to transfer forms. Form 53 Land Regulations 2004 first schedule.

Step 2

The property must be assessed at the market value, by the government valuer for purposes of the applicant paying for Stamp duty which is 1.5%

The applicant checks after 3 working days to collect assessment forms

Step 3

Pay Stamp duty and Registration fees in the bank and get a receipt and transfer forms embossed by Uganda Revenue Authority after the valuation of the land by the government valuer

Transfer form should be embossed with a sticker by Uganda Revenue Authority

Pay Registration fees at Land Registry 10,000/= for an individual

Step 4

Submit all documents together with duplicate Certificates of title, Receipts and Photocopies of all documents

Photocopy of the transfer forms, stamped and Received to the office of Titles.

The registrar will Cancel the name of the registered proprietor and enter the new name in the Registration book.

The Applicant is asked to check after 10 working days to collect the title

THE REPUBLIC OF UGANDA

IN THE MATTER OF REGISTRATION OF TITLES ACT (CAP. 230)

Title

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this..... day of.....2018

BETWEEN

TOMUSANGE DOUGLAS of P.O. Box 1142.Kampala. (Hereinafter referred to as "the LESSOR" which expression shall where the context so admits include their successors and assignees in title) on the one part;

AND

MUZAMIR MUDDE, MICHELENE BONTUE and NAKAZIBWE AISHA all of SUI GENERIS P.O. Box ...Kampala (Hereinafter referred to as "the LESSEE" which expression shall where the context so admits include their successors and assignees in title) of the other part**;**

WHEREAS:

The lessor is the holder of a certificate of title of ownership of land located at Block 250 plot 123 Kyadondo measuring 0.28 hectares

The lessor hereby demises unto the lessee all that piece of land described here in above.

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED as here under.

IN CONSIDERATION for the sum of UGX. UGX ...../= (Amount in words) paid to the LESSOR by the LESSEE on or before the execution of these presents (the receipt whereof the LESSOR doth hereby acknowledge) and conditions hereinafter contained on the part of the LESSEE to be observed and performed, the **LESSOR HEREBY LEASES UNTO THE LESSEE** all that parcel of land comprised an area measuring approximately 25 decimals with four blocks of old dilapidated structures. See plan annexed hereto and edged in red together with all the fixtures erected or to be erected thereon

TO HOLD the same unto the LESSEE for a term of **15years** (hereinafter referred to as the initial term) commencing the26th day of NOVEMBER 2018 YIELDING AND PAYING therefore during the said term a nominal yearly rent of UGX..... /= (Amount in words) payable in advance on the first day of January in every year. Upon expiration of the term the lease shall determine.

THE LESSEE HEREBY COVENANTS WITH THE LESSOR as follows:

To observe and perform all the conditions and covenants implied by law in this lease or otherwise herein contained or referred to,

To pay the LESSOR the rent herein reserved in the manner herein specified.

To use the demised premises for the purpose of establishing a beef processing plant

The lessee will at its own expense, in all things and under the inspection and control of its qualified technical personnel develop the demised plot to suit its desired use(s) in compliance with all the relevant municipal, town planning and other relevant laws.

The LESSEE shall install any equipment, machinery or other facilities and make any changes to the premises as it shall deem fit without first having to obtain the LESSOR's consent.

To keep insured the demised premises to the full value thereof in a reasonable insurance office against loss or damage or fire.

Not at any time during the said term to use, exercise or carry on or permit or suffer to be used, exercised or carried on in or upon the said land or buildings or any part thereof any noxious, noisome, or offensive art, trade, business, occupation or calling or to allow any matter or thing whatsoever to be done at any time during the said term in or upon the said land or building which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands and properties.

To pay all future taxes such as ground rent, property rates and any other outgoings in respect of the land herein leased.

To bear all costs, charges, taxes and expenses for the registration of this lease and all legal costs for preparing the same.

THE LESSOR HEREBY COVENANTS WITH THE LESSEE as follows:

At all times during the continuance of the term hereby created to permit the LESSEE to make such alterations and additions to any of the buildings or other structures erected on the demised premises as per this Lease Agreement.

That the demised land is and shall be free of any encumbrances of whatever nature legal or equitable that may adversely affect the LESSEE'S interest.

Agrees that the Lessee may transfer, sell or sublet or part with possession of or suffer anyone to use or confer on anyone an equitable interest in or in any way mortgage the said land or buildings or any part thereof without having first obtained the consent of the LESSOR.

That the LESSEE paying the rent hereby reserved and performing the covenants and conditions herein-before contained and on the part of the LESSEE to be observed and performed shall quietly possess and enjoy the demised premises during the term hereby granted (including an extension of the term in the said event as stipulated) without any interruption by the LESSOR or any person claiming under or in trust for him.

To register this Lease as an encumbrance on the certificate of title pertaining to the premises and to do everything necessary to enable the LESSEE obtain a valid leasehold title.

That the LESSOR shall not revise or demand for any more premium or consideration apart from what is provided herein.

To hand over vacant possession of the premises on execution hereof.

In the event that it shall become lawful and permissible under the laws of the Republic of Uganda for the LESSEE to hold the mailo estate in the demised land, the LESSOR or his legal representatives, assignees or successors in title shall execute a transfer of the mailo estate to the

LESSEE for a nominal consideration of UGX ...../= (Amount in words) and for the

avoidance of doubt it is agreed that the LESSEE or its successors in title, representatives, assigns or nominees shall have the exclusive right to purchase and transfer the mailo estate in the demised land from the LESSOR into their own name(s).

To pay all outstanding rates/ Ground rents due and owing to any authority in respect of the premises prior to execution hereof whereupon responsibility thereafter shall become the LESSEE'S while the lease subsists.

In the event that the LESSOR fails to hand over vacant possession of the demised land or in case the lease agreement is set aside for want of authority to lease on the part of the LESSOR, then the LESSOR shall refund the sums so far paid by the LESSEE with interest at the prevailing commercial bank rate as well as all other incidental expenses incurred by the LESSEE.

That the LESSOR shall not seek to terminate this lease for any reason whatsoever and undertakes that the LESSEE shall have the first option of renewal upon expiry of the term created herein.

IT IS FURTHER AGREED AND DECLARED as follows:

That during the subsistence of this Agreement, the LESSOR shall not engage in any activities prejudicial to the business or occupation of the LESSEE particularly not to part, transfer or lease the above parcel to any person or entity without the consent of the LESSEE.

At the completion of the lease term, the LESSEE shall have the first option to renew upon such further terms as the parties shall agree upon at the time.

If and whenever any difference shall arise between the LESSOR and the LESSEE relating to the construction of any of the articles herein contained or any act or anything made or done or omitted in regard to the rights and liabilities arising hereunder or arising out of the relationship existing between the LESSOR and the LESSEE by reason of these presents, such difference shall forthwith be referred to arbitration in accordance with the Arbitration and Conciliation Act Cap 4 or such other law in force regarding arbitration in Uganda at the time before recourse can be made to court.

The terms of this agreement are intended by both PARTIES as a final expression of their agreement. This agreement supersedes any prior written or oral agreement between the PARTIES and shall not be contradicted by any evidence precedent to its execution PROVIDED that any PARTY wishing to amend this agreement shall do so with the consent of the other PARTY and any amendment agreed upon shall be in writing and deemed an integral part of this agreement.

The ineffectiveness, invalidity or unenforceability of any provision of this agreement shall not affect other valid provisions thereof which shall remain in full force and effect.

This agreement shall be governed by the Laws of the Republic of Uganda.

IN WITNESS WHEREOF the parties hereto set hereunder their respective hand(s) / seal(s) on the date and year first above written.

Dated this 24 Day of NOVEMBER in the year 2018

.....signed..... (1) ..... signed.....

.....

DOUGLAS TOMUSANGYE (LESSOR) MUZAMIR MUDDEE (LESSEE)

..... signed.....

..... MICHELENE BONTUE' (LESSEE)

.....signed.....

....

AISHA NAKAZIBWE (TRANSFEREE)

(LESSEE)

WITNESS

WITNESS FOR THE LESSOR WITNESS FOR THE LESSEE

1, NAME: ..... 2,NAME: .....

SIGN.....SIGN; .....

ADDRESS..... ADDRESS: .....

CONTACT.....CONTACT: .....

DATE .....DATE: .....

IN THE PRESENCE OF:

Name .....

Signature ..... signed..... Certificate of Attesting Witness

This Lease agreement is signed by.....in my presence at.....in the District of Kampala this.....day of.....20.....and I certify that the above instrument was signed by him/her/them after having read the same.

BEFORE ME:

.....signed.....

COMMISSIONER FOR OATH

<u>DRAWNED AND FILED BY:</u>
SUI GENERIS & CO ADVOCATES
P.O.BOX 0000 KAGUGUBE RD
KAMPALA UGANDA

Eighth Schedule.

Section 101.

LEASE BY OWNER IN FEE SIMPLE.

Freehold Register

Mailo Vol. ____ Fol. ____

Lease by Owner in Fee Simple of All or Part of His or Her Land.

I, _____ (insert name and addition), (hereafter called the lessor) being registered as the proprietor of an estate in fee simple in the land (or mailo land) comprised in Freehold/Mailo Register Vol. _____ Fol. _____ hereby lease to _____ (insert name and addition) _____ (hereafter called the lessee) all that piece of land being the land/part of the land comprised in that folio (if the land leased is part only of the land comprisedin the certificate of title, set out the description and refer to a plan) to hold to the lessee for the term of _____ years from the _____ day of

_____, 20 ____, at the clear yearly rent of shs. _____ payable _____ (here insert terms of payment) subject to the covenants and powers implied under the Registration of Titles Act, (unless hereby negatived or modified) and also to the covenants and conditions hereafter contained (here set out any special covenants and conditions).

The following covenants by the lessee are to be construed according to section 104 of the Registration of Titles Act—

The lessee will not transfer or sublet.

The lessee will cultivate.

The lessee will not cut timber.

The lessee will paint outside every _____ year.

The lessee will paint inside every _____ year.

The lessee will not use the premises as a shop.

The lessee will not carry on any offensive trade.

Dated this .....day of ..... 20 .....

Signed by the lessor, ...

In the presence of .....

Signed by the lessee, ...

In the presence of .....

PROPERTY B

THE REPUBLIC OF UGANDA

TRANSFER OF LAND, MORTGAGE OR CHARGE

Freehold Register

Leasehold

Mailo

Vol. ____ Fol.____

Form 1.

TRANSFER OF LAND.

I, _____ (insert name and addition of transferor), being the registered proprietor of the lands comprised in theabove-mentioned folio in consideration of the sum of shs. _____ paid tome by _____ (insert name and addition of transferee) on or before the execution of these presents the receipt of which

I acknoweldge hereby transfer that land (if the land leased is part only of the land comprised in the certificate of title, set forth the description and refer to a plan) to _____ (name of transferee) to hold to the_____ (name of transferee) for all my estate and interest in theland.

Dated this _____ day of _____, 2018

Signed by (Transferor) .....

In the presence of .....

Signed by (Transferee).....

In the presence of .....

Form 53 under Regulation 92.

THE REPUBLIC OF UGANDA

THE LAND ACT, CAP 227

THE LAND REGULATIONS, 2004

APPLICATION FOR APPROVAL TO DEAL IN LAND

PART ONE: PARTICULARS OF LAND DEALING

1) (To be filled by all)

Block..... Plot.....

FRV/MRV/LRV..... Folio.....

Location.....

Area.....

Use of land.....

Details of development on the land.....
.....

Nature of land transaction (Transfer/ Lease/ Sub-lease).....

FROM

Name:.....

Address:.....

Citizenship: .....

TO

Name :.....

Address :.....

Citizenship: .....

TRANSFER:

Consideration:.....

LEASE/SUB-LEASE:

Term: .....years.....months.....from.....to .....

Premium (if any).....Rent.....per annum

2) (To be filled only by applicants seeking consent)

I/We ..... the registered proprietor(s) of the land described above hereby apply for consent to transfer/sublease/assign the above land.

3) (To be filled by all)

I/WE the undersigned hereby declare that the information given in this application is correct to the best of my/our information and belief.

Name and Signature of applicant(s) or agent(s)*

.....

Date: .....

FOR OFFICIAL USE

PART TWO

For stamp duty purposes, I hereby assess the value of the land at Shillings:

OBJECTION MY LORD

Figure.....

Words.....

Date.....

.....

Chief Government Valuer's signature

PART THREE

The commission/board * hereby consent/do not consent * to the application to assign/sub-lease.

....

Name and signature, Secretary,

Uganda land commission

.....

Name and Signature, Secretary.

District Land Board

Date.....

What steps Muzamir would have to take to immediately lawfully obtain physical possession of the whole of Property B from the various persons currently in possession?

Property B is fully developed with a storied commercial building and is fully occupied. The building currently has the following occupants.

- The ground floor is occupied by a pharmacy, a restaurant, a salon and a dentist's clinic, respectively,each paying rent of Shs.1.5 million per month, payable three months in advance.
- The 1st Floor is fully occupied by a branch of BETAFRICA Ltd., a sports betting company payingUSD4000 annually payable in two equal installments in advance;
- The 2nd Floor is fully occupied by Crane School of Tourism paying Shs.6 million annually payable in advance of every two years.
- The 3rd Floor is occupied by the relatives of the Executive Director of Styles Real Property Limitedand they do not pay any rent.

However, certificate of title shows that there is a sublease for 15 years granted to Styles Real Property Limited. The facts do not exactly tell whose tenants the above persons are, whether for the lessee or sub-lessee.

In this respect therefore, Mudde should first terminate the sublease and then terminate the tenancies.

A sublease is provided for under **Section 109 Regestration of Titles Act** which states that a lessee can sublet for a term not less than three years.

Termination of Leases.

Leases may be terminated by forfeiture, effluxion of time, notice, surrender and merger.

Effluxion of time

At common law, a lease for a fixed term automatically terminates when the period expires. There is no requirement for either party to serve notice of termination unless their lease agreement expressly says so.

Notice to quit.

A lease for a fixed period cannot be terminated by notice by either party unless the right to terminate is expressly reserved in the lease or in the event of breach of a term, which entitles either party to terminate the lease.

However periodic tenancies are by nature terminable by either party giving an appropriate notice. According to Mugambwa; Principles of Land Law in Uganda at page 111, in absence of any express agreement between the parties a weekly tenancy is terminable by one week's notice, a monthly tenancy by one month's notice and a quarterly tenancy by three month's notice. The exception to this rule is a yearly tenancy which is terminable by six months notice.

In **RUKANDEMA V KABALE TOWN COUNCIL CA NO. MKA 10 OF 1985,** Karokora JSC held that a yearly tenancy is terminable by notice of atleast six months expiring at the end of a full period.

He stated; the law governing dtermination of yearly tenancy is spelt out by R. E. MEGARRY QC & WADE in The Law of Real Property 3rd ed at page 641 " a yearly tenancy may be determined by such notice and a t such time as the parties agree. See **ALLISON V SCORGALL (1920) 3 KB 443**. In default of such agreement, it can be determined by at least half a year's notice expiring at the end of a completed year of tenancy."

Surrender

Surrender occurs before the expiration of the lease; the lessee gives up possession of the land to the lessor. Once the lessor accepts possession the lease merges with the reversion and is thereby terminated. Surrender may be by express agreement of the parties, operation of law or statutory provision.

Section 108 Regestration of Titles Act provides that **Lease may be surrendered by endorsement.**

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

(2) The registrar shall enter in the Register Book a memorandum recording the date of such surrender, and shall likewise endorse upon the duplicate, if any, a memorandum recording the fact of the entry having been made.

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

Merger;

According to Megarry supra, merger is the counterpart of surrender. Under a surrender, the land lord acquires the lease, whereas merger is the consequence of the tenant retaining the lease and acquiring the reversion or of a third party acquiring both lease and reversion.

Forfeiture;

This is the re-entry by the landlord for breach of covenant that entitles the landlord to terminate the lease. This is provided for under S. 103(b) RTA.

In Kasaja v Registrar of Titles MA 51 of 1993, it was held that forfeiture is only manifested by actual physical re-entry or by the commencement of an action for repossession.

Termination of a sublease;

Section 112 of the Regestration of Titles Act provides that **Provisions as to leases to apply to subleases.**

(1) The provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sub lessors and sub lessees with such modifications and exceptions as the difference between a lease and sublease, and in the

mode of registration of each require; and the entries of recovery of possession and of surrender provided for by sections 106 and 108 shall, in the case of a sublease, be made on the sublease and on the lease, and not in the Register Book; and the memorandum directed by section 108 to be endorsed on the duplicate shall be written across the entry of such sublease in the Sublease Register; and in case of a surrender evidenced by a separate document, that document shall be annexed to the original sublease.

(2) If the lease is determined by forfeiture or operation of law or by surrender under any Act relating to bankrupts and their estates, that determination or surrender shall determine the sublease.

From the facts there is a sublease of 15 years registered as an encumberance to the lease. On purchase of the Lease Mudde holds the lease subject to the sublease. Since the sublease is fo a fixed term, it cannot be terminated by notice. The available option is surrender. Mudde should enter into an agreement with Styles Real ltd for surrender of their sublease.

The rest of the persons in occupation are periodical tenants whose tenancies can be determined by a notice to quit.In this respect Mudde should give a monthly notice to the occupants of the ground floor, a six months' notice to quit to the occupants BETAFRICA, and six months' notice to quit to Crane School of Tourism.

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT (CAP 230)

RE; LEASEHOLD COMPRISED IN VOLUME 1866, FOLIO 17, PLOT NO.77 NAKAWA

DEED OF SURREDER OF LEASE

TO: THE REGISTRAR OF TITLES

KAMPALA

TAKE NOTICE, that I STYLES REAL PROPERTY LTD of P.O.BOX 4877 Kampala having been registered as a sub lessee for 15 years over the above-mentioned leasehold on the 05/04/2017 and the sublease thereby registered as an encumbrance on the lease;

Do surrender all interest in the above-mentioned lease and any and all interest in the above-mentioned property back to MAZIMUR MUDDE the lessor and registered proprietor of the lease hold land interest relating to the property herein stated.

Dated and signed as a deed at Kampala this .....day of November 2018.

SIGNED by the said

STYLES REAL PROPERTY LTD

.....

In the presence of .....

I MAZIMUR MUDDE do hereby consent to and approve the said surrender in the terms as proposed.

Signed by the said .....

In the presence of .....

ADVOCATE

Drawn and filed by

SUI GENERIS and CO ADVOCATES

P.O.BOX 0000 KAMPALA

What further steps Muzamir would have to take in order to lawfully establish and implement his personal venture in Property B if such venture is a Hospital whose business break-even period is projected to be 20 years.

Whenever there is a transfer of a lease, the transferee holds it subject to the existing covenants and conditions. This is provided for under **Section 105 of the Regestration of Titles Act** and it further provides that. In every transfer of a lease made under this Act, and in every transfer of a grant for years, there shall be implied a covenant with the transferor by the transferee binding him or her and his or her executors, administrators and transferees that he or she or they will thenceforth **pay the rent by the lease or grant reserved, and perform and observe all the covenants contained in the lease or grant or by law declared to be implied in the lease** or grant and on the part of the lessee or his or her transferees to be performed and observed, and will indemnify and keep harmless the transferor and his or her representatives against all actions, suits, claims and expenses in respect of the nonpayment of the rent or the breach or nonobservance of the covenants or any of them.

This simply means that the transferee has to comply with the terms of the lease agreement.The lease obtained from Shiv Construction Ltd has only 17 years remaining and is sublet to the condition that the plan and specification of buildings on the land should be approved by the lessor.Since the lease has 17 years remaining, and yet the business break even period of the hospital is 20 years, **Muzamir** requires enlargement of the lease term beyond the remaining 17 years to cover the time of the business break even period.

Further, the original covenant in the lease was to have a building constructed on the land whose value was not less than 50million shillings but its plans and specifications had to be approved by KCCA.

In this respect, for **Muzamir** to construct a hospital, he needs approval from KCCA and further to have security of his business, he needs enlargement of the term of the lease. This requires variation of the lease deed.

The steps that Muzamir has to take to enable him establish and implement his personal venture are;

Muzamir has to enter into a new agreement with the lessor to vary he terms of the lease agreement to enable him use the land by constructing a hospital and have the lease term enlarged beyond the remaining 17 years.

Seek permission from the physical panning authority in accordance with **Section 33(1) of the Physical Planning Act**. A person is not supposed to carry out a development with in the planning areas without obtaining development permission from the Physical planning authority.

Application for development permission should be in form **Physical Planing Act .1 in the 6th Schedule as per Section 34**.

After the requisite permission is obtained, the variation deed will be drafted and registered. It is important to note that variation is between a lessor and lessee and one is not a lessee until registered**. (Section 54 of the Regestration of Titles Act**, According to item 22 of the 22nd schedule of **the Regestration of Titles Act** , the fees for registration of a variation deed is 10,000.

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP 230

LEASEHOLD REGISTER

VOLUME 1866 FOLIO 17

Known as

PLOT 77, NAKAWA

KAMPALA

VARIATION OF LEASE

THIS VARIATION OF LEASE made this .... day of.....2018

BETWEEN

KAMPALA DISTRICT LAND BOARD herein after referred to as "lessor" and having their address as Kampala District Land Board PO.BOX .... Kampala.

AND

MUZAMIR MUDDE here in after referred to as lessee C/o SUI GENERIS and Co. Advocates P.O.BOX 0000 Kampala.

WHEREAS

Kampala City Council Authority former Urban Authority did on the 1st day of August 1990 lease land situate at Plot 77 Nakawa (Commercial Area) of lease hold register to Shiy Construction Company Limited for 47 years commencing on 1st November 1988 which lease was registered Instrument Number 404781.

The lease was transferred to Muzamir Mudde of P.O. Box ....Kampala and registered under Instrument Number .... on .....2018.

The parties have agreed to change the lease from the date of execution hereof in consideration of the conditions and covenants hereafter set.

NOW THIS VARIATION OF DEED WITNESSETH AS FOLLOWS:

That the lease registered on 17.8.90 for purposes of erecting a building is hereby varied to the purpose of constructing a hospital commencing on the date of execution of this variation deed.

That the lease shall be extended from a period of 17 years to a period of 50 years

IN WITNESS WHEREOF THE PARTIES HERETO have affixed their respective signatures, the date, month and year first above written.

Signed by the said (secretary and chairperson)

Kampala District Land Board

In the presence of .....

Muzamir Mudde

In the Presence of .....

Drawn and filed by

SUI GENERIS &Co. Advocates

P.O.BOX 0000

Kampala

What steps Muzamir would take to address default in rental payments by each of the tenants in Property B assuming that he took over as landlord and retained them in the premises.?

There are several remedies available to a landlord against a defaulting tenant.

- Suing the tenant to recover the rent under Order 36 of the Civil Procedure Rules.
- Self-help remedy of eviction
- Distress for rent for purposes of only recovering the rent (not eviction)

Muzamir can choose to distress for rent.

According to Principles of Land Law in Uganda by T Mugambwa page 105 distress for rent is a common law self-help remedy by which land lord may enter the leased premises if rent is in arrears and confiscate any goods found on the premises of the value of outstanding rent as highlighted in Megarry and Wade the Law of Real Property pg 709-12

However, the remedy depends on the existence of the landlord tenant relationship.

In **MALE MABIRIZI AND ANOR V OWERE FRANCO AND ORS MISC. APPLICATION NO. 2763 OF 2014** held; the common law principle is that distress for rent is only applicable where there subsists a relationship of landlord and tenant between the parties; notwithstanding that the former tenant is still in possession.

Quoting Halsbury's Laws of England, Third Edition, volume 38, states at page 741, paragraph 1207 as follows:

"If a tenancy determines by effluxion of time or otherwise, and former tenant remains in possession against the will of the rightful owner the former tenant is, apart from statutory protection, a trespasser from the date of the determination of the tenancy

This principle was applied in **SOUZA FIGUEIREDO & CO. LTD. VS GEORGE & OTHERS (1959] E.A. 756,** which states that for a landlord to exercise to levy for distress for rent, a landlord/tenant relationship must subsist between the two.

This authority was cited **by** the Supreme Court of Uganda, with approval and restatement of the **proposition of** law therein, in **JOY TUMUSHABE & ANOR VS M/S ANGLO AFRICA LTD & ANOR SCCA NO. 7 OF 1999 WHERE IN KANYEIHAMBA JSC STATED AS FOLLOWS:** "In any event, distress for rent is only permissible if the relationship of tenant and landlord exists between the parties: but as I have shown, that relationship had had ceased to exist as a result of the appellants acts and conduct. In the result, distress for rent in this case was affected against trespassers and it could not have been possible for the persons who effected the alleged distress for rent to do so under the Act."

Distress for rent would only be applied where the landlord does not intend to terminate the tenancy.

According to the case of **JOY TUMUSHABE AND ANOTHER V ANGLO AFRICAN LIMITED AND ANOR S.C.C.A 7/99** it was held that when the appellants refused to pay rent or acknowledge the title of the owner as landlord, they became trespassers.... At this juncture, the landlord could have chosen to legally evict them as trespassers."

In MUSUMBA VS KASAKA (1971) IULR 222 held Distress for rent only arises where the rent is in arrears. At common law landlord has no right to sell distressed property without a court order, he or she could only retain the property as a coercive measure to enforce payment or could only sell after authorization from court shown. In Uganda, landlord has no power to sell without a judicial order unlike in England where the right of sell was introduced under the *Distress Act.*

In **ASSIST (U) LIMITED VERSUS ITALIAN ASPHALT & HAULAGE LIMITED & ANOR H.C.C.S NO. 1291 OF 1999 (COMMERCIAL COURT)** it was held that the law in Uganda like the common law does not provide a right to sell the distrained items. Simply put the remedy of distress for rent allows the landlord or person authorized by him and certified by court to take into his possession the chattels of his tenant who has not paid rent to be held as a pledge/lien but not for sale to compel the payment of-rent.

In Uganda distress for rent is provided for under **Distress for Rent (Bailiffs) Act Cap 76**; **Section 2 of the Act** provides that "No person, other than a landlord in person, his or her attorney or the legal owner of a reversion, shall act as bailiff to levy any distress for rent unless he or she shall be authorized to act as bailiff by a certificate in writing under the hand of a certifying officer, and such certificates may be general or apply to a particular distress or distresses"

This means that distress must be carried out by the landlord in person, by a lawyer, or by a duly licensed bailiff.

In it was held **YOKA RUBBER INDUSTRIES LTD V THE DIAMOND TRUST PROPERTIES LTD HCT-00-CC-CS-0685-2006** that though the right to distress for rent is a common law right, how that distress is to be effected is regulated by the written law above. Other than a registered or certified bailiff the only persons authorized to distress for rent are firstly a landlord in person; secondly an attorney of the landlord and thirdly an owner of a reversion.

Therefore, this means that it is only when the landlord seeks to distress for rent through someone else who is not either his attorney or legal representative that a certificate will be necessary.

According to **Section 1(b) of the Distress for Rent Bailiffs Act Cap 76** a certifying officer means a chief Magistrate and a magistrate grade 1 whereas bailiff under **Section1 (a)** means a bailiff for the purpose of distress for rent.

Therefore, application is addressed to either the Chief Magistrate or Grade 1.

In **MALE MABIRIZI AND ANOR V OWERE FRANCO AND ORS MISC. APPLICATION NO. 2763 OF 2014,** it was held thatIt is unmistakably clear, from the provision of the law cited above, that the jurisdiction to issue a certificate for the levying of distress, and the appointment of the bailiff in that regard, vests solely in a Magistrate's Court; and this mandate is exclusively exercisable either by a Chief Magistrate or by a Magistrate Grade 1. Accordingly, in issuing the certificate to levy distress for rent, the Registrar Execution acted without jurisdiction; for which his act was illegal, and cannot be allowed to stand.

In **JOY TUMUSHABE AND ANOR V ANGLO AFRICAN LIMITED AND ANOR (CIVIL APPEAL 7 of 1999) [1999]UGSC 5 (14 Februry 1999)** supra held that "that he who chooses to distress for rent under the Act must do so strictly in accordance with the provisions and rules of that Act. The bailiffs who are authorized to distress for rent must be qualified and do so in accordance with the terms and conditions prescribed in the Act or rules made there under. that Under that section the persons who could levy distress for rent are the landlord himself, the attorney of the landlord, the legal owner of the reversion and a person authorized to act as bailiff by a certificate in writing under the hand of a magistrate.

Rule 3 (2) of the Distress for Rent (Bailiffs) Rules, a special certificate has to specify the particular distress to which it applies. **Rule 20** prevents the one levying distress from charging fees, charges or expenses, other than those specified in and authorized by **Rule 21** and the scales set out in the second schedule of the Rules. In case of any dispute as to the amount of fees payable then the fees are to be taxed by a certifying officer in the area, where the distress is levied. **Rule 24** requires that every bailiff, levying a distress, once requested by the tenant to produce to that tenant the certificate authorizing distress and a copy of the table of fees, charges and expenses, authorized by the Rules.

It should be noted that under **Section 17 of the Limitations Act** that no action shall be brought or distress made to recover arrears of rent or damages in respect of these arrears after the expiration of 6 years from the date on which the arrears became due.

In **conclusion** Muzamir can first demand the arrears from the tenants through demand letters and if they do not pay shall then make an application for an order for distress for rent and attach the tenancy agreements as well as the demand notes to pay rent.

The application is to either the Chief Magistrate or Grade 1 Magistrate. It's made by Notice of Motion supported by an affidavit under **Order 52 rules 1 and 3 of the Civil Procedure Rules.**

The Application is made exparte usually to prevent the Tenant from spiriting away his property on notice being given to him.

What steps Muzamir's Lessor would have to take to effectively terminate the Lease in the event that Muzamir defaulted on the terms of the lease for a substantial period of time.?

FORFEITURE/RE-ENTRY

Muzamir's Lessor has to re-enter the land by taking possession and register the re-entry with the Registrar of Titles once the lease defaults on the terms of the lease.

Section 3 (5) (e) of the Land Act, Cap. 227 as amended by Acts 1 of 2004 and 2010, provides that a lease may be subject to terms and conditions of the lease.

Section 103(b) the Regestration of Titles Act provides for the right of forfeiture. It states that (b) that in case the rent or any part of it is in arrear for the space of thirty days, although no legal or formal demand has been made for payment of that rent, or in case of any breach or nonobservance of any of the covenants expressed in the lease or by law declared to be implied in the lease on the part of the lessee or his or her transferees, and the breach or nonobservance continuing for the space of thirty days, the lessor or his or her transferees may reenter upon and take possession of the leased property.

Re-entry is effected by taking physical possession of the land or by commencing an action in court for termination of the lease and an order of vacant possession. This principle which is well established was stated in **KASAJA V REGISTRAR OF TITLES 1992 4 KALR**- and cited with approval in **ERUKANA KUWE VS VASRAMBHAI DAMJI VADER SCCA NO. 2 OF 2002.**

However constructive possession is sufficient provided the lessor ejects the lessee and puts on the premises a third party who is directly answerable to the lessor as was the case in **ERUKANA KUWE V. VASRAMBHAI DAMJI VADER SCCA NO. 2 OF 2002.** In this case, the lessor terminated the lease and entered into a fresh tenant agreement with the lessee's tenant. It was held; , the consequences of what the appellant did in that regard were the same as if he had terminated the respondent's lease by sub-letting it to a complete stranger who had not been the respondent's tenant. Further, the appellant's action amounted to a lawful re-entry of the suit property. He did not take physical possession of the property, but I think that by putting his tenant in possession thereof, he thereby took constructive possession of the suit property. The respondent was thereby put out of possession of the suit property.

Re-entry must be registered.

Section 114 the Regestration of Titles Act. Determination of lease or sublease by reentry to be entered in

Register Book or Sublease Register.

In the case of a lease or sublease of land under this Act, if it is proved to the satisfaction of the registrar that the lessor has reentered upon the premises in strict conformity with the provisions for reentry contained in the lease or sublease, or under the power of section 103(b), where the lease or sublease is under this Act, the registrar may make an entry of that reentry in the Register Book and the term for which the land was leased or subleased shall, upon that entry being made, determine and may be removed as an incumbrance from a certificate.

Whether or not the re-entry is registered, as between the lessee and the lessor the lease is terminated the moment the lessor takes physical possession or obtains an order of vacant possession.

"In LUGOGO COFFEE CO. LTD. -VS- SINGO COMBINED GROWERS LTD. (1976) H.C.B. 92,quoted in **ERUKANA KUWE V VASRAMBHAI DAMJI VADER** for the proposition **that where the Registrar of Titles declines to note a re-entry and advises that the dispute be resolved by court action, the lease does not remain subsisting as between the lessee and the lessor. It is terminated notwithstanding a refusal by the Registrar of Titles to note the re-entry.** In this case The Registrar declined to mark the re-entry and advised that the dispute be resolved by court action. The vendor did not refer the matter to court but instead sold the land to the plaintiff company. Nyamuchoncho J., as he then was, held inter alia, a lease is a contract and breach of a term of a contract rescinds the contract. First that as between the lessor and the lessee the lease is determined by the lessor's lawful re-entry. Secondly, the learned trial judge held that refusal by the Registrar of Titles to make an entry did not have the effect of keeping the lease subsisting. The lease was terminated by the lessor's re-entry for all intents and purposes as between the lessor and the lessee although the law had not recognized the re-entry.

In **Eurukana Kuwe** Supra, it was held that **the lease agreement between the appellant and the respondent was terminated by the appellant's re-entry for clear breaches of covenants by the respondent. It only remained for the High Court to order the registrar of titles to perfect the re-entry by noting in the register, a remedy which the appellant sought by his suit.**

Muzamir's Lessor can also petition court for an order determining the lease and vacant possession. Thus, in **NAMAYANJA V DAPCB (supra)** where the suit was brought, interalia, for determination of the lease for breach of contract, Ekirapa J granted all the prayer for vacant possession holding that the Defendant disobeyed and was guilty of fundamental breach of the contract.

NOTICE OF RE- ENTRY

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT, CAP 230

LEASEHOLD REGISTER

LRV 1866 FOLIO 97

PLOT NO.77

AT NAKAWA

(COMMERCIAL AREA).

TO: THE REGISTRAR OF TITLES

DEPARTMENT OF LAND REGISTRATION

KAMPALA.

Dear Sir/Madam,

RE: APPLICATION FOR NOTING RE- ENTRY.

(Under Section 103 (b) and 114 Of the Registration of Titles Act Cap 230,)

I, **Tumwesigye Patrick** the town clerk of Kampala City Council Authority on behalf of the Authority, being the lessor in the above-mentioned leasehold land hereby apply for noting re-entry in the register book and removal of the above given lease from the leasehold certificate of the title on the ground that the Authority has re-entered upon the leased premises in strict conformity with the provisions for re- entry contained in the lease agreement.

This application is supported by my statutory declaration filed herewith and any other statutory declaration (s) that may be filed hereafter.

Dated at Kampala this 26th day of November 2018.

Signed by the said;

.....

Tumwesigye Patrick

Town Clerk KCCA

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP 230

AND

IN THE MATTER OF THE STATUTORY DECLARATIONS ACT, CAP 22

AND

IN THE MATTER OF AN APPLICATION BY TUMWESIGYE PATRICK (on behalf of KCCA) **TO NOTE RE- ENTRY AGAINST LAND COMPRISED IN LRV 1866 FOLIO 97 PLOT NO.77AT NAKAWA (COMMERCIAL AREA).**

STATUTORY DECLARATION

I, Tumwesigye Patrick on behalf of Kampala City Council Authority P.O BOX 678, Kampala do solemnly swear and declare as follows;

That I am a male Ugandan adult of sound mind and the town clerk of Kampala City Council Authority.

That Kampala City Council Authority is the registered proprietor of the land comprised in LRV 1866 Folio 97 Plot No.77at Nakawa (Commercial Area).

That in 2017 the Authority leased the above-mentioned land to Mudde Muzamir.

That pursuant to clause 3 (a) of the lease, the Authority instructed its legal department to give the lessee the prescribed 30 days' notice of the several breaches of the lease namely;

Non- payment of ground rent

Failure to erect one dwelling house on the demised land.

Subletting or otherwise parting with possession of the demised land without the written consent of the lessor

That the Authority's advocates issued a foresaid notice by letter a copy of which is hereto annexed as A

That the prescribed notice expired but the lessee failed to take corrective steps and the aforesaid breaches continued unallocated.

That as a result, Kampala City Council Authority exercised its right of re- entry and as of now has unchallenged possession of the said land.

OBJECTION MY LORD

That I make this statutory declaration in support of my application on behalf of Kampala City Council Authority for noticing re- entry in the register and cancelation of the lease.

That I hereby declare that whatever is stated herein above is true and correct to the best of my knowledge and by virtue of the **Statutory Declaration Act, Cap 22 of the Laws of Uganda.**

Declared at Kampala This 26th day of November, 2018 by the said;

.....

Tumwesigye Patrick

BEFORE ME;

.....

COMMISSIONER FOR OATHS

Drawn and filed by

M/S SUI GENERIS ADVOCATES
P.O Box 0000,
Kampala

What steps Muzamir would have to take to retain the property in the event that his Lessor has written to him terminating the lease in property B and is preparing to evict Muzamir for non-payment of rent?

Muzamir should apply to the high court for relief against forfeiture.

Section 25 of the Judicature Act Cap 13 provides for relief from re-entry or forfeiture for non-payment of rent. Under Subsection 1, where a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture for non-payment of rent, the lessee, his or her executors, administrators or assigns may, in the lessor's action or in an action brought by himself or herself, apply to the High Court for relief.

The relief is explicitly granted where the landlord can be compensated for any loss occasioned by the breach as Per Judge **NYAMCHONCHO IN KIWANUKA MUSISI VS. SEGAWA (1973) E.A 561**

Before court grants the relief, attention will be given to the conduct of the applicant. The court will have to consider whether the breach was wilful, negligent and its general gravity the court shall further have to compare the value of the property and the alleged damages occasioned by the breach as Per Lord Wilberforce in **SHILOH SPINNERS L.T.D VS. HARDING (1973) A.C 275**

Oder JSC in **ERUKANA KUWE VS. VADER SCCA 2/2002** stated thus ''Under the provisions of **sub-section 27(2) now Section 25**, High Court has discretion under sub-section (1) thereof to grant relief sought against forfeiture for non-payment of rent. It may grant any relief it considers fit. It may also refuse the relief sought as thinks fit. In the instant case, the High Court purported to exercise discretion of granting relief against forfeiture for breaches of covenants where it did not have jurisdiction to do so. Consequently, with respect, the question of the Court of Appeal declining to disturb the exercise of discretion by the trial court did not arise.''

In the same case Mulenga JSC observed further that

"The applicable law is **Section 27** of the Statute, which creates the remedy of "relief from forfeiture" and renders it available only lessees threatened with re-entry or forfeiture "for non-payment of rent". In my view, to make it available to lessees in breach of other covenants also, would be tantamount to amending the statute which cannot be what is envisaged under **Section 16(2) of the Statute**

In **GOMBIA MARINES AND CONTRACTORS VS. KIWANA MISC APPLICATION NO. 13/1B/9 (UNREPORTED**), Byamugisha Judge noted that relief will not be granted were the lessor actually re-enters with the parties altering their positions and new interests are at time of application already created e.g., there are new tenants.

In the case of the **EXECUTRIX OF THE ESTATE OF THE LATE CHRISTINE MARY NAMATOVU TEBEJJUKIRA AND ANOTHER VS NOEL GRACE SHALITA STANANZI CIVIL APPEAL NO. 2 OF 1988 (S.C.)** (unreported) ("**Tebejjukira's Case"),** this Court

held that a lessee seeking relief against forfeiture is also so precluded "where the registered proprietor has re-entered "lawfully. The rationale behind that is that a lawful re-entry terminates the lease. In the circumstances therefore, the issue framed at the trial, whether there was "a re-entry of the premises in law by the plaintiff (appellant)" was critical, and it had to be answered unequivocally.

In **DR. ADEODANTA KEKITINWA & 3 OTHERS VS. EDWARD MBUDO WAKIDA CACA 3/97.** It was held that equity leans against forfeiture, where the lease is running and there is an earnest intention of compliance with the covenants

Procedure; The application is brought under Section 98 of the Civil Procedure Act that provides for the inherent powers of court and **Order 52 Rule 1 of the Civil Procedure Rules S.I 71-1**

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO 094 OF 2018

MUDDE MUZAMIR.....APPLICANT

VERSUS

KAMPALA DISTRICT LAND BOARD.....RESPONDENT

NOTICE OF MOTION

Under **Section 25 (1) of The Judicature Act, Cap 13, Section 98 of The Civil Procedure Act, Cap 71** And **Order 52 Of The Civil Procedure Rules S.1 71-1)**

TAKENOTICE that this honourable court shall be moved on the 26th day of November, 2013 at 10:00 O'clock in the forenoon/afternoon or soon thereafter as counsel for the applicant can be heard on the application for orders that

The applicant be granted relief from feature for non-payment of rent.

The costs of this application shall be provided for.

TAKE FURTHER NOTICE that the grounds this application are set out in the affidavit of the applicant attached herewith, but briefly they are;

That the applicant undertakes to pay the respondent the outstanding rent arrears.

That the applicant undertakes to pay the respondent any costs and damages incurred.

That it is in the best interest of justice that this honorable court grants this application.

Dated at Kampala this 26th day of November 2018.

.....

COUNSEL FOR THE APPLICANT

Given under my hand and the seal of this honourable court this 26th day of November 2018.

.....

REGISTRAR

Drawn and filed by

M/S SUI GENERIS ADVOCATES

P.O Box 0000,

Kampala

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO 094 OF 2018

MUDDE MUZAMIR..... APPLICANT

VERSUS

KAMPALA DISTRICT LAND BOARD..... RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION

I, Mudde Muzamir of C/ SUI GENERIS and Co. Advocates P.O Box 0000, Kampala, do solemnly swear and state as follows.

That I am a male Ugandan adult of sound mind and the applicant in this matter and swear this affidavit in that capacity.

That I am the registered proprietor of land comprised in LRV 1866 Folio 97 Plot No.77 Nakawa (Commercial Area).

That on the 23rd day of November 2018, the respondent board wrote to me terminating the lease.

That the respondent board is preparing to evict me from the said land for non-payment of rent.

That I undertake to pay the lessor, the respondent in this matter all the outstanding rent arrears, any damages or costs incurred.

That I certify that whatever I have stated herein above is true and correct to the best of my knowledge.

Sworn at Kampala this 26th day of November 2018 by the said;

.....

DEPONENT

OBJECTION MY LORD

BEFORE ME;

.....

COMMISSIONER FOR OATHS

Drawn and filed by

M/S SUI GENERIS ADVOCATES

P.O Box 0000,

Kampala

EXAMPLE

Whether Muzamir can eventually convert the acquired interests into tenure and, what steps would he have to take?

Article 237(2) of the 1995 Uganda Constitution as amended and **Section 2 of the Land Act Cap 227** provides for the four types of land tenure which are **Customary, Freehold, Mailo** and **Leasehold** land tenure systems.

In the instant facts the tenure in contention is Leasehold tenure system provided for **under Article 237(3)(d) of the Constitution** and **Section 2 (d) of the Land Act**.

Leasehold tenure is a system of holding land where land is held for a specific period of time. Lease tenure can be converted into Freehold tenure.

Article 237 (5) of the Constitution is to the effect that a lease granted to a Ugandan citizen out of public land may be converted into freehold.

Section 28(1) of the Land Act is to the effect that any lease which was granted to a citizen out of public land may be converted into freehold.

This means that Muzamir can convert the leasehold title into freehold under the above provisions of the law.

Freehold land tenure is a system of holding land in which the land is held in perpetuity**. Article 237(3) (b) of the Constitution and Section 2(b) of the Land Act** provide for freehold tenure as one of the recognized ones in Uganda.

The Land Act provides for conversion of leases to freehold**. Section 28(1)** provides for conditions that must be satisfied before a lease is converted into freehold. Firstly, the lease must have been granted to a Uganda. The Board must be satisfied that the following conditions have been complied with. The leasehold is authentic and genuine.

There were no customary tenants on the land at the time of acquisition of the lease.

If there were any customary tenants on the land at the time of acquisition whose tenancy was disclosed, those tenants were duly compensated.

That all development conditions and covenants have been complied with.

Any other conditions imposed by law have been complied with.

The conversion shall be limited to one hundred hectares and that any area in excess shall be converted only if the board has verified it and is satisfied that it is desirable in the public interest that it should be converted into freehold.

The sublease that exists on the land would turn into a lease if the conversion is successful. **Section 28(3)** of the **Land Act** is to the effect that any sublease held under a lease converted in accordance with **subsection (1)** is taken to be upgraded to a lease under the same terms, conditions and covenants.

(4) Upon conversion the registrar shall endorse on the leasehold certificate of title the words "Converted to Freehold", cite the applicable law and append his or her signature

Regulation 14 of the land regulations 2004 provides that leasehold conversion of a former public land into free hold shall be in form 5 of the first schedule to the regulations.

The practical steps of the conversion would be as follows;

The Applicant Muzamir must fill out three application forms in **Form 5 of** the **first schedule** of the **Land Regulations, 2004.**Each application form should be accompanied by an authentic deed plan, duplicate certificate of title, a passport size photograph, national id, payment of the land board fees and a letter requesting conversion of the same to the District land officer.

The applicant Muzamir then present the above documents to the department of land administration for checking the photocopy is stamped received and returned to the applicant. The applicant checks after 10 days if there is surrender deed to be processed.

The applicant presents the photocopy given to him by the land administration stamped received and identification documents on collecting the Freehold title after 20 working days.

Regulation 22(2) of the Land Regulations, a Board shall hold a hearing into an application for the conversion of a lease granted out of former leasehold land to freehold where it appears that all or any of the conditions referred to in paragraphs *(a)* to *(e)* of subsection (1) of **Section 28** of the Act have not been complied with and that it is in the interest of justice and fairness that a hearing be held to enable the applicant to satisfy the board on that matter;

(b) In any case where the application relates to land in excess of one hundred hectares, in order to determine whether it is in the public interest to permit the conversion, and to determine "public interest".

Section 23 (7) The lease offer or grant of freehold shall be in Form 18 and 19 in case of land held by boards, specified in the First Schedule to these Regulations

Regulation 14

THE REPUBLIC OF UGANDA
THE LAND ACT, CAP 227
THE LAND REGULATIONS, 2004

FORM 5

APPLICATION FOR CONVERSION OF LEASEHOLD OUT OF FORMER PUBLIC LAND TO FREEHOLD

PART I: (To be filled by the applicant in triplicate)
1. Name Address Citizenship
.....

....	....	....

2. Location of land the subject of application:
a) Village/Zone .....
b) Parish/Ward .....
c) Sub-county/Town .....
d) County/Division .....
e) District .....
3. LRV.....
Fol.....
Block.....
Plot.....
4. Approximate area (ha).....
(number 5 and 6 to be filled only if the conversion concerns land exceeding one hundred hectares.)
5. I/We wish to convert land in excess of one hundred hectares by
.....
(State amount in excess of one hundred hectares) and I/we wish the board to verify it.

6. Justification for grant of land in excess of 100 hectares

.....

.....

Name and signature of applicant(s)

.....

....

....

Date of application.....

DECLARATION

*I/We ..... declare that the above particulars are true to the best of my/our knowledge and belief and that the following conditions have been complied with-

(i) (ii)	that the leasehold is authentic and genuine; that there were no customary tenants on the land at the time of acquisition (whose tenancy was not disclosed) *;

(iii) that the customary tenants, who were on the land at the time of acquisition and whose tenancy was disclosed, were duly compensated*;

(iv) that all development conditions and covenants have been complied with;

(v)	that any other conditions imposed by law from time to time have been complied with; and

(vi) that the conversion is limited to one hundred hectares/that the conversion exceeds one hundred hectares (*delete whichever is not applicable)

Name and Signature/Thumbprint of applicant(s)

....

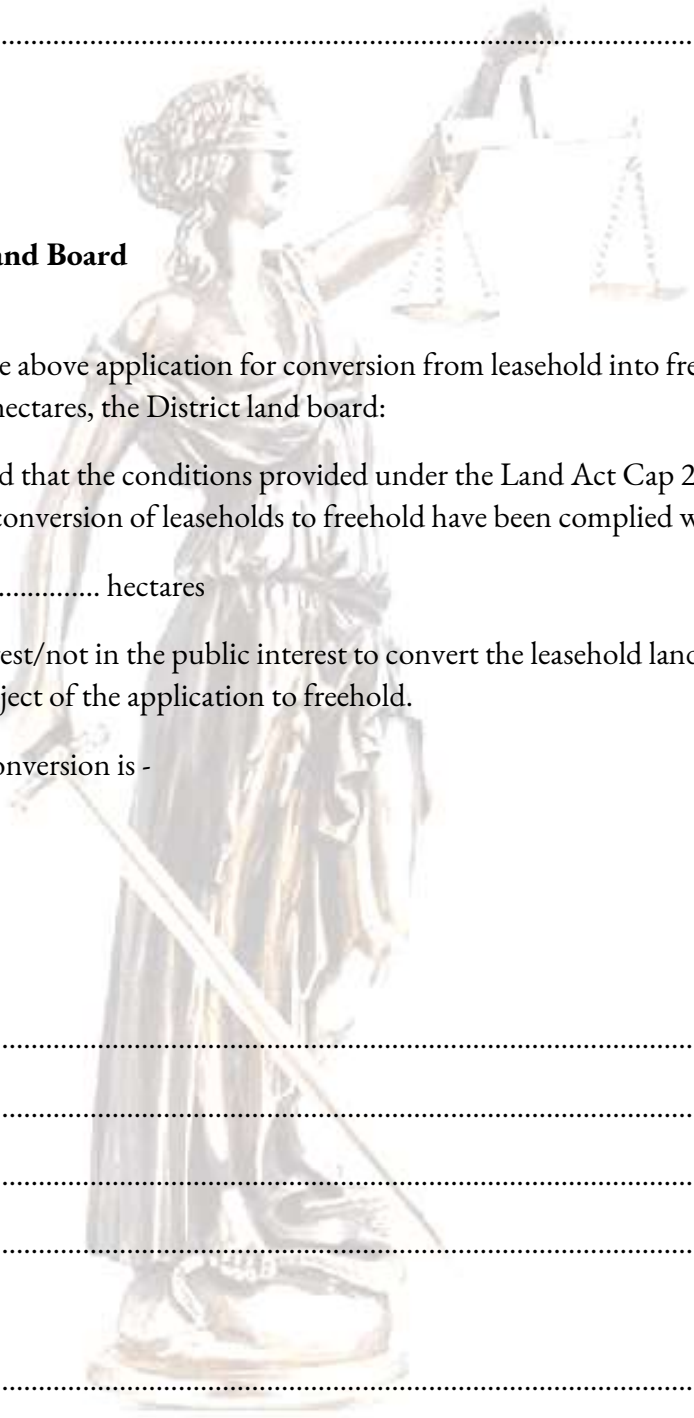
....

....

Date.....

Declared before me, ...

Name and Signature
Commissioner for oaths
(Official Stamp)
Date .....



PART II
Decision of District Land Board

A: Having considered the above application for conversion from leasehold into freehold of land not exceeding one hundred hectares, the District land board:

a) Is satisfied/not satisfied that the conditions provided under the Land Act Cap 227 and regulations made under it affecting conversion of leaseholds to freehold have been complied with;

b) The verified area is..... hectares

c) It is in the public interest/not in the public interest to convert the leasehold land in excess of 100 hectares which is the subject of the application to freehold.

B: The application for conversion is -

a) Approved

b) Not approved

C: Reasons for decision

.....

.....

.....

.....

D: Minute number

.....

.....

.....

OFFICIAL SEAL

.....	.....
Name and signature of the Secretary, district land board	Name and signature of the Chairperson, District Land Board

Date.....

* The board shall send a copy of this form to the Registrar to effect the conversion.

Regulation 23

THE REPUBLIC OF UGANDA
THE LAND ACT, CAP 227
THE LAND REGULATIONS, 2004

FORM 19

Land at.....

Village: .....

Parish: .....

Sub-county.....

County: .....

Municipality: .....

District: .....

Approximate area: .....

To.....

.....

.....

FREEHOLD OFFER
(in case of land held by a district land board)
1. The district land board is in receipt of your application dated for a freehold.
2. Subject to your obtaining any necessary approval or consent required by law, the board has approved a grant of freehold in respect of the above land on the following terms and conditions:-
a) user to be restricted to .....
b) a premium of Shs .....will be payable
c) compensation to any tenant on the land will be done by the applicant.

d) Any other condition (if any).....
4. The offer is conditional on the terms and conditions of the grant of freehold being accepted within forty-five days of the date of this offer.
5. Acceptance shall be in writing to the board and shall be accompanied by the following payments
i) premium.....
ii) Survey and mark stones.....
iii) Assurance of title.....345w.....
iv) Registration of grant.....
v) Issue of certificate of title.....

TOTAL	Shs	.....
Less deposit paid (if any) Balance payable (if any)	Shs..... Shs.....	.....
6.	Stamp duty will be paid before registration.	

7. Minute number .....
8. Upon acceptance of the above requirements, a grant of freehold under Form 4 will be prepared in your favour for registration.
This offer is made this day ..... of .....year .....
.....
Name and signature
Secretary, district land board
*(Delete whichever is inapplicable)

EXAMPLE

Muzamir having fully paid up the consideration for property A is now before you with his two wives and seeks that you advise them on the most appropriate mode or type of co owning the land.

Furnish the advice with credible justifications for the mode or type you would have advised them to adopt **Section 56 of the Registration of Titles act Cap 230** provides that two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares.

This section creates two types of tenancies in land that is joint tenancy and tenancy in common.

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

One of the ways in which you can own land in association with others is by co ownership. According to **Mugambwa; Principles of Land Law in Uganda at page 145**, co-ownership is where two or more persons concurrently own an interest in land. The interest may be leasehold, freehold, or mailo. Each co-owner is entitled to the simultaneous enjoyment or use of the land, claiming not a separate portion but mutual right in the whole.

As stated in **MEGARRY AND WADE; THE LAW OF REAL PROPERTY, AT PAGE 417**, English law recognises two forms of co ownership that is joint tenancy and tenancy in common.

JOINT TENANCY

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

Expressed negatively, there is no part of the land that they do not each own. The expression joint tenancy was expressed by Lord Browne Wilkinson in the case of **HAMMERSMITH LBC V MONK[1992]1 AC 47,** "in property law, a transfer of land to two or more persons jointly operates as to make them viz-a-viz the outside world one single owner"

OSBORN'S CONCISE LAW DICTIONARY 11TH EDITION SWEET AND MAXWELL AT PAGE 235 defines joint tenancy as a form of ownership in which two or more persons are regarded as being wholly entitled to the whole property. On the death of one of the joint owners the property remains vested in the survivors by a right of survivorship (jus accrescendi).

FEATURES OF A JOINT TENANCY

According to **MUGAMBWA; PRINCIPLES OF LAND LAW IN UGANDA AT PAGE 145,** A joint tenancy has two essential features which distinguish it from a tenancy in common; presence of the four unities and the right of survivorship. Unless these two features exist , there cannot be joint tenancy.

In the case of **AG SECURITIES VERSUS VAUGHAN (1988) 2 ALLER 173** Sir George Waller considered the essential ingredients of a joint tenancy and held that first of all there must be unity of interest, there must be unity of title, unity of time, and finally unity of possession of the whole property.

Co-owners in joint ownership hold the whole jointly and nothing separately they do not have distinct shares

THE FOUR UNITIES

MEGARRY AND WADE THE LAW OF REAL PROPERTY (5TH EDN, 1984) PP 419–422 sets out the four unities of possession, title, time and interest as the requirements for a joint tenancy.

In **AG SECURITIES V VAUGHAN AND OTHERS** held a joint tenancy is one where the tenancy commences on the same day [1988] 2 All ER 173 at Sir George Waller 184, for all, where the term is the same for all, where the rent should not be altered without due notice to all and possibly where all are jointly liable for the rent.

UNITY OF POSSESSION

This means that each co-owner is entitled to undivided possession of the whole of co owned land and none holds any part separately to the exclusion of the other co-owners. In *Wiseman v Simpson* [1988] 1 All ER 245 it was held that As joint tenants each has the right to occupy the property and neither can lawfully exclude the other.

UNITY OF INTEREST

This essentially means that the kind of interest the co-owners have in the property must be uniform or rather identical in nature. For example, one co-owner cannot claim to have a leasehold interest while the other claims to have freehold. It must be of the same nature

UNITY OF TITLE.

Joint tenants must derive their identical interests in the land by an identical means through the same act or document e.g if they have derived title by the same act of adverse possession from a single conveyance.

AG SECURITIES V VAUGHAN AND OTHERS [1988] 2 ALL ER 173 at 184 Sir George Waller held; Unity of title. The unity of title for a joint tenancy has to be the same act or document. Megarry and Wade were repeating that which was contained in Blackstone's Commentaries (2 Bl Com 180):'Joint-tenancy cannot arise by descent or act of law; but merely by purchase, or acquisition by the act of the party: and, unless that act can be one and the same, the two tenants would have different titles

UNITY OF TIME;

The interest of each joint owner must vest at the same time.

The above four unities were illustrated in the case of **AG SECURITIES VERSUS VAUGHAN (1988)3 ALLER 1058** the appellants owned a four-bedroom house under separate contracts entered into at different times. They granted the right to occupy the flat to four individuals referred to as flat sharers. The contract entitled each occupant to use the premises in common with other people who might from time to time have a similar right. The rent payable by each occupant varied. The court of appeal held that the occupants held the flat in joint tenancy. The House of Lords reversed this decision on holding that the agreements entered into by the appellant with the four occupants whereby each occupant had exclusive possession of one bedroom and shared the remainder of the accommodation did not have the effect of creating a collective joint tenancy among the occupants of the flat for the time being by virtue of their having between them exclusive possession of the flat, since the agreements were independent of one another, commenced on different dates, covered different periods and provided for different payments for that occupation.

Lord Jauncey; I should be surprised indeed if a joint lease could be created by four separate documents of different dates in favour of four independent persons each paying a different rent and also for different

periods of six months. Such an arrangement would, as Sir George Waller pointed out be notably deficient in the four unities of interest, title, time and possession

The House of Lords holding was on **t**he ground that the arrangement was notably deficient in the four unities of interest of title, interest, time and possession. There was no unity of time because each occupant commenced his or her occupation at a different date, no unity of title because each tenant had his own contract, no unity of interest because the arrangements covered a different period and provided for different payment for that occupation.

The right to survivorship under joint tenancy

This is the second feature of joint tenancy which is also known as **Jus accrescendi, in Roman law, is the right of survivorship, the right of the survivor or survivors of two or more joint tenants to the tenancy or estate, upon the death of one or more of the joint tenants.**Joint tenants do not have distinct shares in the co-owned land they own the whole as co-owners. Therefore, upon death of one joint tenant his or her interest in land is extinguished and does not form part of his or her estate.

The essence of survivorship **–jus accrescendi**-is that when one of the joint tenants dies, his interest in the land automatically passes to the remaining joint tenants. This is a logical consequence of the fact that all the joint tenants are regarded as being wholly entitled to the whole of the land. In a sense, when one of the joint tenants dies, the extent of the interest of the others in relation to the land remains unchanged. They are entitled to no more than they were entitled to before the death of the joint tenant namely the whole of the land.

Because of this doctrine property owned in joint tenancy cannot devolve by will or intestate succession unless the joint tenancy has been previously severed in the life time of the deceased joint tenant.

Where joint tenants die in a common calamity in cirumstances which render it impossible to determine who survived the other, the doctrine of survivorship does not apply.

In the case **of WILCOX VERSUS MCLEROTH (1933) KLR 82** a husband and wife executed identical wills each appointing the other sole heir and executor of my estate and effects. They both drowned in the lake in circumstances in which it was not known who survived the other. It was held that according to common law the estate of each of the deceased must be administered in intestacy it being presumed that they died at the same time.

TENANCY IN COMMON

This differs from joint tenancy in that tenant in common hold land in individual shares. In other words, each tenant owns a distinct share in the property. What makes parties co-owners is that they all have shares in the same piece of land though the land is not physically divided amongst them. Because each person has a distinct share in the property the doctrine of survivorship does not apply. Hence if one of the tenants in common dies, his or her share of the land passes under his will or intestacy. The most important feature of tenancy in common is unity of possession.

CREATION OF A TENANCY IN COMMON

At common law where a grant is made to two or more persons it is presumed that the grantor intended to create a joint tenancy.

In **RE MURRAM MURTER 18 KLR 65.** A testator granted his estate to a trustee to apply for the benefit of G and J; the issue was whether G and J were to hold the estate as joint tenants or tenants in common. It was held that where property is given to several persons concurrently, prima facie, they take as joint tenants. In this case since there was nothing to suggest a tenancy in common, it was held that the testator intended G and J to hold in joint tenancy.

The presumption of joint tenancy is discharged either where the grant contains words of severance. The words of severance are expressions that indicate the grantor's intentions that each grantee should take a separate and distinct share in the property.

In **ROBERTSON V FRASER (1871) 6 CH APP 696** Lord Hartherly said, "Anything which in the slightest degree indicates the intention to divide the property must be held to abrogate the idea of joint tenancy and create a tenancy in common. Examples of words which have been held to constitute severance include "share and share alike", "amongst", "in equal share", "equally", and "participate",

In equity, a grant of property to two or more persons without words of severance creates a joint tenancy whereas a grant with words of severance creates a tenancy in common just like at common law.

Traditionally, there were three such situations in which persons who were joint tenants at law were compelled by the court of equity to hold the legal estate upon trust for themselves as equitable tenants in common. This is called a resulting trust. These were;

- Where the property was purchased with funds contributed in unequal shares.
- Where the property constituted partnership assets.
- Where the property was held as security for a loan advanced by the joint tenants

TERMINATION OF JOINT TENANCY

Joint tenancy may be terminated by conversion into sole proprietorship, severance and partition.

Upon death of one of the joint owner's land vests in the surviving co-owner as the sole owner by virtue of the rule of jus accrescendi. Such a person may apply to the registrar to be registered as the sole proprietor thereof.

Severance basically means converting joint tenancy into tenancy in common by dividing the land into different shares.

Both joint tenancy and tenancy in common can be determined by sale or partition of the land. Termination by sale is where the land is sold and the proceeds and sharing the proceeds amongst the different tenants in accordance with their share taking into consideration the necessary adjustments like fees, reimbursements among others .

Partition on the other hand is where the land is physical division of land amongst the co-owners. As already discussed under workshop one, Muzamir can only create a leasehold interest over private mailo since one of his wives Michelene is a non-citizen. Co-ownership can be under leasehold, mailo or freehold.

CREATION OF CO-OWNERSHIP UNDER THE REGESTRATION OF TITLES ACT

Joint tenancy and tenancy in common is created by registration under the RTA as joint tenancy or tenancy in common respectively. **Section 56 and Section 94 of the Regestration of Titles Act**,

Section 56 of the Registration of Titles Act cap 230 provides that two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares.

Section 94 of the Regestration of Titles Act provides that **Proprietor may vest estate jointly in himself or herself and otherswithout limiting any use. That** the proprietor of land or of any estate or interest in land under the operation of this Act, may transfer that land, to his or her spouse or jointly with any other person to himself or herself alone and upon the registration of the transfer the land, estate or interest shall vest in the transferee solely or jointly, and she, he or they shall become and be deemed the proprietor or proprietors thereof.

Instruments presented that would transfer an estate or interest to two or more persons should set out the manner in which the co-owners hold the estate/interest. Where persons desire to hold as joint tenants, the instrument of transfer should state that the transfer was made to the transferees "as joint tenants". If they

desire to hold as tenants in common, the instrument should state likewise and the proportions in which the land is held. Registration of the co-owners of joint tenants and tenants in common is conclusive evidence as concerns third parties who act in reliance upon the registrar.

Muzamir and his wives should own the land as joint tenants. This is because of the practical application of joint tenancy.

PRACTICAL APPLICATION OF CO OWNERSHIP

Many people who own land in tenancy in common or joint tenancy are not clear in their minds of the advantages of joint tenants over the other. Where it is the wish of the co-owners that whoever is the survivor should enjoy the property in solo, they would put on hold the property in joint tenancy.

Normally, joint tenancy is best suited for married people because upon the death of either spouse, survivor automatically becomes the sole owner without need of probate.

It is also a convenient manner of holding legal title by administrators of estates and trustees. This is because where there are two or more administrators or trustees and one of them dies by operation of the doctrine of **jus accrescendi**, a survivor would have legal power to administer the estate- **Section186 Succession Act Cap 139 Laws of Uganda** provides that "when probate has been granted to several executors and one of them dies, the entire representation of the estate accrues to the surviving executor or executors" see also **Section 275 Succession Act and Section 19 the Regestration of Titles Act**.

For the same reason, it is advantageous for partners to be registered as joint tenants. Upon death of one of the partners, the firm normally dissolves and the survivor has legal obligation to wind up the business which usually involves sale of partnership property. By operation of right of survivorship, the remaining partner will have power to sell off the partner's property without the consent of the representatives of the deceased partners unlike if it were a tenancy in common.

The beneficial interest of the estate of the deceased in the partnership is protected by the presumption that the beneficial interest is held in tenancy in common.

However, joint tenancy as a manner of holding property can be a trap for the unwary in particular because of the draconian operation of the right of survivorship. Thus Muzamir, Michelene and Aisha Nakazibwe would become joint owners subject to the doctrine of survivorship that upon death of either co-owners, land remains property of the surviving co-owners until the last survivor upon death of which property will form part of his or her estate either in intestacy or under a will. This implies that the land would continue to be owned by the wives incase Muzamir dies and would automatically pass on to them upon his death without need of a will.

Illustrate to them how the type of co-ownership adopted will be reflected on their Duplicate Certificate of Title.

The type of co-ownership is illustrated on the certificate of title by inserting the words: "survivorship" or "no survivorship"

Section 57 of the Regestration of Titles Act, provides for effect of insertion of the words "no survivorship"

(1) Upon the transfer of any land and upon the lease of any freehold land to two or more persons as joint proprietors with the words "no survivorship" endorsed on the transfer or lease, the registrar shall enter those words in the memorial of that transfer or lease and also upon any certificate of title issued to the joint proprietors pursuant to the transfer and sign his or her name thereto.

(2) Two or more joint proprietors of any land or of any lease of freehold land may by writing under their hands direct the registrar to enter the words "no survivorship" upon the certificate of title or instrument relating to the property.

(3) In every case after the words "no survivorship" have been signed by the registrar, whether under this or any preceding section, it shall not be lawful for any persons other than the proprietors registered to transfer or otherwise deal with the property without the order of the High Court.

B) Muzamir has informed you that one of his neighbours on the east side of Property A has blocked off the only road by which the property could be accessed. That neighbour is in possession of a Decree of the Chief Magistrates Court of Makindye in Civil Suit No.0681 of 2003 granting a permanent injunction to the decree holder against Douglas Tomusange restraining him from trespassing on the decree holder/neighbour's said land by illegally using the same as a road. The only other neighbour whose land is not fully built up and comprises in Kyadondo Block 250 Plot 89 has refused to talk to Muzamir over granting him an access on any terms.

Advise Muzamir on the possible options he has in the circumstances and draft the documents you would use in the most appropriate circumstances.

ACCESS TO ROAD

REFRENCE IS MADE TO THE ROADS ACT, 2019, ACT 16 OF 2019

The Roads Act 2019 came into force following its publication on 25th September 2019 in the gazette and the Act repealed the Roads Act Cap. 358 and the Access to Roads Act, Cap. 350

The Act was put in place to ensure the following;

- Reformation of the law relating to the development, management and maintenance of public roads.
- To provide for the appointment of road authorities for the development, maintenance, control and management of different classes of public roads.
- To provide for toll roads and the imposition of road tolls on certain public roads.
- To provide for the classification of public roads.
- To provide for the declaration, control and protection of road reserves on public roads.
- To provide access to public roads.
- To provide for axle load control on public roads.
- To provide for the creation of an environment section for the road sector.
- To provide for road safety.
- To provide for offences and penalties.
- To make provision for related matters**.**

Significant Highlights of The Act

1. The Act empowers the Minister of Works and Transport in consultation with the Minister of Finance, Planning and Economic Development to declare toll roads and prescribe tolls payable in respect of these roads by a statutory instrument. Vehicles exempt from the toll include the Presidential convoy and emergency vehicles of the fire brigade and ambulances.
2. The Act empowers the Minister of Works and Transport to provide for different widths for road reserves for the other classes of public roads. Under the old Roads Act, the width of a road reserve

was set at fifty feet from the centre line of any road. The new provision allows for flexibility in determining the width of road reserves and can be wider depending on the classification of the road.

3. The Act repeals the Access to Roads Act to consolidate the legal framework relating to roads in Uganda. The Act provides for the construction of an access road to a public road or highway through private property after compensation of the affected landowner. It also provides for control, location and design of access roads and introduces service roads, which run parallel to a highway and provide access to property bordering these roads, for purposes of limiting the number of access roads.

4. The Act provides that acquisition of land, excavation and taking of materials required for road construction is to be done per the Constitution. Prompt acquisition of land has been a thorny area for the Government, and the muted response is disappointing.

5. The Act designates road authorities responsible for construction, alteration, rehabilitation, maintenance, protection and supervision of roads falling within their jurisdiction. The Act has provided for the classification of roads for this purpose, with the Uganda National Roads Authority (UNRA) being responsible for national roads, local government councils for the district and community access roads, urban councils for urban roads and city authorities for city roads. Therefore, Kampala City Council Authority (KCCA) will be responsible for roads within Kampala.

6. The Act creates offences including destroying roads, obstruction and interference on roads such as the improper erection of billboards, clogging drains by depositing sewage, refuse or garbage, a nuisance on roads and offences relating to toll roads among others. Also, various offences have been removed from the Traffic and Road Safety Act and provided for under this Act. These include failure to comply with speed limits.

The Roads Act 2019 ("the Act") repeals the Roads Act, (Cap. 358) and the Access to Roads Act, (Cap. 350). Key provisions of the Act are highlighted below;

1. **Road tolls**

The Act empowers the Minister of Works and Transport in consultation with the Minister of Finance, Planning and Economic Development to declare toll roads and prescribe tolls payable in respect of these roads by a statutory instrument. Vehicles exempt from the toll include the Presidential convoy and emergency vehicles of the fire brigade and ambulances.

The Act stipulates that the toll revenue shall be deposited into either the Consolidated Fund or the Uganda Road Fund. The duality in this provision creates an accountability risk and the implementing statutory instrument should be used to clarify this.

The free rides on the Kampala-Entebbe Expressway will soon be over.

2. **Public Private Partnerships**

The Act allows for road authorities to enter into public private partnership agreements with private entities to operate tolls or collect toll revenue. The private entity as well as the agreement is required to be approved under the Public Private Partnership Act, 2015.

This provision allows for private sector financing of roads. The planned Kampala-Jinja Expressway should be the first road under the new legal regime if it can overcome its current procurement issues.

3. Appointment of road authorities

The Act designates road authorities responsible for construction, alteration, rehabilitation, maintenance, protection and supervision of roads falling within their jurisdiction. The Act has provided for the classification of roads for this purpose, with the Uganda National Roads Authority (UNRA) being responsible for national roads, local government councils for district and community access roads, urban councils for urban roads and city authorities for city roads, therefore, Kampala City Council Authority (KCCA) will be responsible for roads within Kampala.

Previously, the country's road network was managed entirely by the central Government.

4. Road reserves

The Act empowers the Minister of Works and Transport to provide for different widths for road reserves for the different classes of public roads. Under the old Roads Act, the width of a road reserve was set at fifty feet from the centre line of any road. The new provision allows for flexibility in determining the width of road reserves and can be wider depending on the classification of the road.

The consideration behind this provision was to provide for a long-term solution to address traffic jams within the cities, urban areas and along highways.

5. Land acquisition and compensation

The Act provides that acquisition of land, excavation and taking of materials required for road construction is to be done in accordance with the Constitution. Prompt acquisition of land has been a thorny area for the Government and the muted response is disappointing.

6. Access to roads

The Act repeals the Access to Roads Act to consolidate the legal framework relating to roads in Uganda. The Act provides for construction of an access road to a public road or highway through private property after compensation of the affected land owner. It also provides for control, location and design of access roads and introduces service roads, which run parallel to a highway and provide access to property bordering these roads, for purposes of limiting the number of access roads.

7. New offences and high penalties

The Act creates offences including destroying roads, obstruction and interference on roads such as improper erection of bill boards, clogging drains by depositing sewage, refuse or garbage, nuisance on roads and offences relating to toll roads among others. In addition, various offences have been removed from the Traffic and Road Safety Act and provided for under this Act. These include failure to comply with speed limits. The rationale for this interplay between the two Acts is not clear and is likely to cause an administrative headache.

Unfortunately, many of the prescribed penalties are outrageously high which will cause difficulties in implementation. A road contractor who fails to meet the standards prescribed by the Minister for Works and Transport may be liable on conviction to a fine up to UGX40 000 000 000 (forty billion Uganda shillings) and in addition, the court may require the contractor to remedy the defects. The value of the underlying road contract or the extents of the failure to meet the standards, appear to be entirely irrelevant. Failure to observe a building line, attracts a daily penalty of UGX40 000 000 (forty million Uganda shillings), obstruction of an officer acting under this Act, attracts a penalty of UGX100 000 000 (one hundred million Uganda shillings) while littering attracts a fine of UGX2 400 000 (two million four hundred thousand Uganda shillings).

MUGISHA STEPHEN V KARUGABA YOSTASI HCCS LD 0050 OF 2013; An easement means an interest in land owned by another person with the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road.

SECTION 2 ROADS ACT 2019 (ACT 16 OF 2019) ENVISAGES THE FOLLOWING

The purpose of this Act is—

(a)to reform the law relating to the development, management, classification, demarcation and safety of public roads and for the placing and maintenance of road furniture;

(b)to provide for the declaration, management and protection of road reserves on public roads;

(c)to provide for the control of axle loads on public roads;

(d) To provide for the development and maintenance of toll roads and the imposition of road tolls on certain public roads;

(e) To provide for access to public roads;

(f) To create an environment that is conducive for the efficient and effective rehabilitation and maintenance of public roads; and

(g) To provide for the development and management of ferries and ferry landings.

Part III – Classification of public roads and declaration of road reserves, **Part VI – Road safety**, **Part VIIAccess to roads**, **Part VIII – Offences and penalties**

The law provides that, the person in need of the road of access is supposed to ask neighbors for access upon provision of compensation, if the neighbors refuses, he or she may apply to the land tribunal by way of use of form specified in the schedule to the Act.

Part II – Road management

Road authority

Section 4. Appointment of roads authorities

(1)The Minister may, by statutory instrument, appoint road authorities for the purposes of this Act.

(2)The Minister shall specify the type and area of roads over which a road authority appointed under subsection (1) shall be responsible in relation to the construction, alteration, rehabilitation, maintenance, protection and supervision.

(3)Notwithstanding subsection (1), the following are appointed road authorities for purposes of this Act—(a)the Uganda National Roads Authority established by **Section 5 of the Uganda National Roads Authority Act, 2006**; for national roads;(b)local government councils; for district and community access roads;(c)urban councils; for urban roads; and(d)city authorities; for city roads.

Section 5. Functions of roads authorities

(1)A road authority is responsible for the development, maintenance, control and management of public roads, road reserves and facilities under its jurisdiction in accordance with this Act and any other applicable law.

(2)Without limiting the generality of subsection (1), a road authority shall—(a)develop public roads in accordance with its respective investment and physical development plans;(b)prepare and implement road maintenance programs;(c)adopt a harmonised approach on technical standards issued by the Minister for the promotion of a sustainable road network, taking into consideration

the fact that different road users may require different standards;(d)ensure road safety during development and maintenance of public roads;(e)control and regulate the use of road reserves;(f)manage the use of public roads with the aim of providing safe and adequate infrastructure for road transportation;(g)conduct and maintain inventories on all public roads under its jurisdiction;(h)develop, maintain and use road management systems for planning, budgeting, rational use of resources and decision making;(i)provide pedestrian crossings, footways, cycle tracks, parking lanes and similar passageways on public roads;(j)construct, maintain and control storm-water drains; and(k)carry out any other function as may be determined by the Minister.

(3)In carrying out its functions under this Act, a road authority may— (a)undertake research or collaborate with any public research organisation with a view to facilitating the planning, development and maintenance activities of the road authorities;(b)approve within standards issued by the Minister, remove, adjust or modify road advertisements and utility lines and charge fees for such advertisements and utilities lines;(c)impose road tolls in accordance with this Act;(d)enter upon any land to carry out investigations connected with siting, diverting, maintenance and construction of public roads;(e)control traffic during maintenance, operation and construction of public roads;(f)recommend the reservation of land for proposed public roads to the relevant government ministry, department or agency;(g)place temporary or permanent traffic signs, including road signs and signals;(h)undertake work across, on and within road reserves;(i)acquire land for road development in accordance with the applicable laws;(j)keep public roads clear of any obstructions;(k)control utility service lines; and(l)carry out any other act relevant to the performance of its functions under this Act.

Section 6. Powers of the Minister

(1)The Minister may, in consultation with the relevant road authority, by statutory instrument, delegate any of the functions of the road authority prescribed under section 5 to any public institution or agency or to a private entity in respect of an area or specified public road.

(2)The Minister may, in consultation with the roads authorities, issue standards and design codes for public roads, bridges and ferry landings.

(3)The Minister may give directions to a road authority with respect to policy and a road authority shall comply with those directives.

(4)The Engineer-in-Chief appointed by the Public Service Commission within the Ministry responsible for transport shall provide technical advice to the Minister on matters relating to— (a)issuance of standards and design codes for public roads, bridges and ferry landings;(b)declaration of toll roads;(c)classification and reclassification of public roads;(d)road reserve widths for different classes of public roads;(e)determination and prescription of building lines; and(f)restriction of certain classes of vehicles from using certain roads.

Under Article 43 of the Constitution of the Republic of Uganda, in the enjoyment of the rights and freedoms described in the constitution no person shall prejudice the fundamental or other human rights and freedoms of others or public interest while enjoying their rights.

Part III – Classification of public roads and declaration of road reserves

Section13. Classification and reclassification of roads

(1)The Minister may, by statutory instrument, classify or reclassify public roads for purposes of this Act.

(2)In classifying or reclassifying a road under subsection

(1), the Minister shall—

(a) Be guided by the use, function or administrative criteria of the road; and

(b) Consult the Minister responsible for finance and the relevant road authority.

Section 14. Classes of public roads

(1)Notwithstanding **Section 13,** all public roads in Uganda are classified as national roads, urban roads, district roads or community access roads under this Act.

(2)Every road set out in Schedule 2 to this Act is declared a public road for purposes of this Act.

(3)The Minister may, taking into account any developments, declaration, public interest, road closure, diversion, turning or enlargement relating to a public road under this Act, reclassify public roads.

Section 15. Declaration of road reserves

(1)The Minister may, by statutory instrument, declare a road reserve on any land acquired by a road authority for purposes of road construction.(2)The Minister may declare and gazette different widths of road reserves for different classes of roads.(3)A road authority shall clearly demarcate and mark the boundaries of a road reserve on every public road under its jurisdiction using trees, pegs or any other marking approved by the Minister.

Section 16. Road reserves to be kept clear

(1) A road reserve declared under section 15, shall be used exclusively for the development and expansion of public roads or for other road related activities

(2) Notwithstanding subsection (1), a road authority may—

(a) Plant trees and other vegetation in a road reserve;

(b)in writing, authorise any person or authority to use a road reserve for any approved activity including the placing of public lighting, advertisements, pipelines, telephone lines, electric supplies, optic fibre cables and posts, drains, sewers, mains and other utilities.

(3)The authorisation to use a road reserve under subsection (2) shall only be granted where the use does not hinder further use and development of the road reserve by a road authority.

(4)Subject to subsection (5), where a road authority requires a road reserve occupied by a person authorised under subsection (2) for road expansion, development, maintenance or other road related activity, the person authorised to use the road reserve shall remove the utilities or developments and restore the area to as near as possible to its original state or repair any damage as determined by the road authority in accordance with subsection (7).

(5)The cost of removing developments from a public road and restoration of the area under subsection (4) shall be at the cost of the person authorised under subsection (2) without any compensation from the relevant road authority.

(6)Where a road authority requires to use a road reserve, the road authority shall notify the person authorised to use the road reserve not later than ninety days or such other shorter period as a road authority may specify in the notice before the commencement of road works in the respective road reserve.

(7) A person authorised to use a road reserve under this section whose activity causes or is likely to cause damage to the road, road furniture or the surrounding environment shall—

(a)where damage is done to the road furniture or road, restore the damaged road furniture or fund the restoration of the road section to its original state and condition in accordance with the road technical specifications and standards issued by the Minister; and

(**b**)where the damage is done to the surrounding environment of the road reserve, restore the environment to its previous state and condition in accordance with the National Environment Act, 2019.(8)A person who constructs any structure in or on a road reserve or uses a road reserve without authorisation under this section is not entitled to any compensation for the structure or use and shall remove the structure or cease the use of the road reserve at his or her cost.

Section 17. Power to prescribe building lines on public roads

(1)The Minister may, in consultation with the relevant road authority, by statutory instrument, prescribe—
(a)the building line in which buildings shall be erected along a road, taking into account the Physical Planning Act, 2010; and

(b)the distance from the centre of the road within which no building shall be erected in a local government or area.

(2)Where a building line is prescribed under this section in relation to an existing road, no new building, other than a boundary wall or fence, shall be erected and no permanent excavation below the level of the road shall be close to the centre line of the road than the building line, except with the consent of the relevant road authority subject to such conditions as the road authority deems fit.

(3)The prohibition imposed under subsection (2) shall not affect the right of any railway, bus rapid transit, electricity, water or sewerage undertakers to make an excavation for the purpose of laying, altering, maintaining or renewing any main, sewer, pipe, electric line, duct or other apparatus.

(4)A condition imposed by a road authority in giving consent under subsection (2) shall be binding on the successor in title to every owner, and on every lessee and occupier of any land to which it relates.

(5)Where, in the opinion of a road authority, a building line prescribed under this section, or any part of a building line, is no longer necessary or desirable, the road authority shall advise the Minister to remove the building line.

The law provides that once the order of access to the road is granted it shall be for accessing the road not exceeding 20feet the order is granted under the law such order shall be registered in the register book under the **the Regestration of Titles Act** within three months from the date of issue of the order.

MUGISHA STEPHEN V KARUGABA YOSTASI HCCS LD 0050 OF 2013. Held; The objective of the Access to Roads Act, as is stated in the long title, is to provide for procedure by which a private land owner who has no reasonable means of access to a public highway may apply for leave to construct a road of access to a public highway and for other purposes connected with that.

Access is defined in **Black's Law Dictionary, 6th Edition Page 12**, in real property law, as denoting the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to highway without obstruction that "access" to property does not necessarily carry with it possession. An easement of access is that right which a landowner has of ingress and egress from his premises, in addition to the public easement in the street. The order to construct an access road on another person's land is normally granted where there is no other way by which the Applicant/grantee can access the public highway except through the land of the Respondent/grantor who is another landowner.

In the case of **BARCLAYS BANK VERSUS PATEL, [1970] EA 88, COURT OF APPEAL OF KENYA**, held that;

"A way of necessity arose by operation of law and continues to exist for as long as the necessity exists notwithstanding that it was not referred to in the certificate of title to the servient tenement, and cannot be defeated unreasonably.

Section 61. Requirements and specification of access roads

(1)The Minister shall, by regulations, specify the requirements and specifications of access roads.

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

(3)A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred twenty currency points or imprisonment not exceeding five years, or both.

Section 62. Application for leave to construct access road through private property

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

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

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

(4)An application under subsection (1) shall be in a manner prescribed by regulations.

Section 77. Regulations

(1)The Minister may, by statutory instrument, make regulations for the better carrying into effect the purposes and intentions of this Act.

(2)Without prejudice to the general effect of subsection (1), regulations made under this section may provide for—

(a)the general control, use, management, survey, construction and maintenance of public roads and bridges;(b)prevention of obstruction on public roads;(c)the placement, removal, control, erection or modification of any structure or the control of carrying out of any works, on, under or over land within a public road, road reserve or ferry landing facility;(d)placement and maintenance of road furniture;(e)management and control of road reserves;(f)classification and reclassification of public roads;(g)laying of railways, trolleys, tramways and other crossings on public roads;(h)placement of utilities on public roads;(i)fees;(j)the imposition, collection, operation, management and maintenance of toll roads;(k)securing safety on public roads;(l)placement of advertisements and billboards on public roads;(m)prohibiting activities that may cause damage to public roads;(n)forms, permits and certificates or authorization required under this Act;(o)the requirements and specification of access roads and the procedure for applications to construct, operate and maintain access roads;(p)protection of the environment during road construction and maintenance;(q)use of public roads by non-motorists;(r)mainstreaming cross cutting and environmental issues in the road sector;(s)administrative or procedural matters which are necessary to give effect to this Act;(t)forfeiture of anything used in the

commission of an offence under this Act; and(u)any other matter which is necessary and expedient to give effect to this Act.

(3)Regulations made under this section may, in respect of any contravention of any of the regulations—(a)prescribe a penalty of a fine not exceeding two hundred eighty eight currency points or imprisonment not exceeding twelve years, or both;(b)in the case of a continuing contravention, prescribe an additional penalty not exceeding two thousand currency points in respect of each day on which the offence continues; and(c)prescribe a higher penalty not exceeding three hundred sixty currency points or imprisonment not exceeding fifteen years or both in respect of a second or subsequent contravention.

Section 78. Amendment of Schedules

(1)The Minister may, with the approval of Parliament, by statutory instrument, amend Schedule 2.

(2)The Minister may, by statutory instrument, amend Schedules 1, 3, 4, 5 and 6.

Section 79. Repeal and savings

(1)The Roads Act, Cap. 358 is repealed.

(2)The Access to Roads Act, Cap. 350 is repealed.

(3)Sections 120, 132, 133, 139, 140, 153, 154, 173 and 178 (j) and (k) of the Traffic and Road Safety Act Cap. 361 are repealed.

(4)Any statutory instrument made under the Roads Act, the Access to Roads Act, or the provisions of the Traffic and Road Safety Act repealed under subsections (1), (2) and (3) and in force immediately before the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until it is revoked by a statutory instrument made under this Act.

Schedule 1 (Section 3 and 78(1))

Currency point

A currency point is equivalent to twenty thousand shillings.

Schedule 2 (Sections 3, 14 (2) and 78 (2))

CLASSIFICATION OF PUBLIC ROADS

Class of Road	Type of road	Road Authority	Designated by	Recommending authority	Description
National Road	Expressway	Uganda National Roads Authority	Minister	Executive Director, UNRA	Heavy traffic roads, high speed access with dual carriage way separated junctions, and consider grade of road. It may qualify for using private sector financing.
National Road	A	Uganda National Roads Authority	Minister	Executive Director, UNRA	Strategic roads of national impo ports, airports and border posts and to the Capital City. They serv transport, with a relatively high heavy trucks
National Road	B	Uganda National Roads Authority	Minister	Executive Director, UNRA	Roads linking District Headqu other or to a class A road. They major regional commercial, po administrative centres to Class A serving as collectors for Class C r roads. Trips are a mixture of lon local traffic.
National Road	C	Uganda National Roads Authority	Minister	Executive Director, UNRA	Roads linking small towns Headquarters, to Class A and B each other. They are local in natu local roads to Class B road net using these roads is predom covering short distances
National Road	Other	Uganda National Roads Authority	Minister	Executive Director, UNRA	Other national roads, maintained
District Road	I	DistrictCouncil	Minister	CAO, District Council	Link District centres to each national road network.

District Road	II	DistrictCouncil	Minister	CAO, District Council	Provide a connection to the network or Class I Distri Interconnect district headquarter administrative centres
District Road	III	DistrictCouncil	Minister	CAO, District Council	Connectors to and between Cl Road Network.
Urban Road	U	Municipal Council	Minister	Town Clerk, Municipal Council	Road within a municipality, national road.
Urban Road	U	TownCouncil	Minister	Town Clerk, Town Council	Road within a Town Council, national road.
Park Road	P	As Determined by the Minister	Minister	Executive Director Uganda WildlifeAuthority	Road within a national park, national road or district road.
CommunityAccess Road	CAR	DistrictCouncil	Minister	CAO, District Council	Road, path or track linking com villages to other classified road provides access to administrativ economic services.

Schedule 3 (Sections 3, 34 (1), 35 (1) (a), 35 (2) (b), 36 (4) and 78 (2))

Permissble axle load limits

Axle Type	Number of Tyres on Axle	Type of Tyre	Permissible Limit (Metric tonnes)
Single	2	Conventional	8

Single	4	Conventional	10
Tandem	8	Conventional	18
	4	Super Single	16
Tridem	12	Conventional	24
	6	Super Single	22.4
Liftable Single	4	Conventional	10
Liftable Single	2	Super Single	8.5

1. A tolerance of 5% of the permissible maximum axle load limit shall be allowed on the axle load limits.2. A vehicle with liftable axles shall be fitted with the manufacturer's certified dead man's switch and must have an automatic drop-down mechanism when loaded.3. No axle in the tandem or tridem axle group shall exceed the permissible maximum single axle load limit.4. The maximum number of axles in any axle group shall be limited to three (3) axles.

Schedule 4 (Sections 3, 34 (2), 35 (1) (b), 36(4) and 77 (2))

Gross Vehicle Weight limits

The permissible maximum Gross Vehicle Weight shall be 56 metric tonnes, subject to the following conditions—

(a)the vehicle shall have a maximum of seven (7) axles; and(b)the Gross Vehicle Weight shall be limited in relation to the vehicle spatial axle load distribution of using the bridge formula.

Schedule 5 (Sections 35 (1) (c) and 77 (2))

Vehicle dimensions, axle load configurations and vehicle combination

Standard/Provision Type of vehicle	Type of Vehicle	Dimensions in Metre

Maximum overall length of vehicle	Rigid Vehicle	12.50
	Articulate Vehicle	17.40
	Combination Vehicle	22.0
Maximum overall width of vehicle	All Vehicle Categories	2.60
Maximum overall height of vehicle	All Vehicle Categories	4.30
Projecting load limits (front and rear)	All Vehicle Categories	1.25
Projecting load limits (sides)	All Vehicle Categories	0.15

Schedule 6 (Sections 8(3) and 77(2))

Classification of vehicles

Class	Type of vehicle	Description
1	Motorcycles	Vehicle with two wheels; excluding tricycles. (Commercial motor cycles n toll roads).
2	Light vehicles	Light vehicles with 3 or more wheels; with or without trailers and with no the vehicle or trailer.
3	Medium goodsvehicles and medium buses	Goods vehicles or buses with three or fewer than three axles of which on heavy axle.
4	Large goodsvehicles and large buses	Goods vehicles or buses with four or more axles of which one or more is a h

NATIONAL PHYSICAL PLANNING STANDARDS AND GUIDELINES 2011

PLOT ACCESS

Every plot must have direct vehicular access to a road**. Section 28 of the Public Health (Buildings) Rules SI No. 281** states that "A building shall not be erected on any plot which has no proper and sufficient access to a road or road reserve, such road or road reserve not being a sanitary lane or passage". Permission for house development will not normally be granted until the access road has been provided. In low and medium density residential developments, a private driveway leading to the house should be 3 m wide. There should be sufficient turning space at the end of the drive to enable cars turn and leave the plot in forward gear. The corner radii at the junction of the driveway and the access road should be 3 m. Where the driveway crosses a storm water drain it is necessary to construct a culvert to the satisfaction of the road authority. Plot accesses for corner plots should be at the extreme end of the plot away from the corner. Where there are sharp corners, plots should be accessed through a smaller connector road

PLOT ACCESS All commercial plots must have direct access by road for vehicles and public walkways for pedestrians. These can be to the front or rear, depending on the location and layout of the commercial area.

ROAD STANDARDS

Road Classification According to UNRA, roads in Uganda are classified into 5 classes according to their major function in the road networks. These are:-

a) **International Trunk Roads**: These roads link international important centers and provide connection between the national road system and those of neighbouring countries. These are carriageway roads (each with 2 or more lanes, with a hard shoulder, separated by a central reservation) with no obstructions, designed for high-speed traffic. Major function is to provide mobility. Directional signs should be positioned at least 1 km before an exit for connecting roads and 2 km before intersections. Building restrictions (i.e., requirements for special planning permission) apply to the construction or major alterations of structures 40-100m from the edge of the motorway and banning the construction of high buildings within 40m of motorways. They range between 40 metres in urban areas and 60 metres in rural areas.

b) **National Trunk Roads**: These link provincial capitals, main centers of population and nationally important centers. Their major function is to provide mobility.

c) **Primary Distributor Roads**: These roads link provincially important centers to each other or to higher class roads (urban/rural centers) and provide linkage between districts, local centers and development areas with higher class roads. Major function is to provide both mobility and access.

d) **Secondary Distributor Roads**: These roads link locally important centers to each other, to more important centers, or to higher class roads (rural/market centers) and linkage between locally important traffic generators and their rural hinterland. Major function is to provide both mobility and access.

e) **Access Roads:** These roads link to minor centers (market/local center) and all other motorable roads i.e. distribute the traffic within districts. Major function is to provide access to land adjacent to the secondary road system. They are further classified into major and minor local distributors depending on the volume of traffic generated within the area they serve. A large traditional housing area within excess of 900 houses (or 600 houses in 25 the case of low density, high car-owning areas) may need a major distributor, together with one or more minor distributors. Minor Access Roads – link individual plots (houses, offices, shops, industrial premises etc.) with the distributor roads. Access roads in housing areas and shopping centres are termed as streets and are further classified into primary and secondary streets. All streets in housing areas must be designed for consistent slow speeds in the interest of road safety. As high a proportion of the houses as possible should be on secondary streets. A secondary street in a traditional housing area may serve up to 60 houses (30 in low density areas) and will normally take the form of a cul-de-sac (max. length 150m) or loop road (max. length 500m) carrying only access traffic. Primary streets in traditional housing areas may serve up to 120 houses (60 in low density areas). Minor access roads in shopping centres are sometimes known as service roads. Roads of the highest classes, (a) and (b), have as their major function to provide mobility and have longer trip lengths. They are required to provide a high level of service with a high design speed. The roads of Classes (c) and (d) serve a dual function in accommodating shorter trips and feeding the higher classes or road. For these roads an intermediate design speed and level of service is required. Roads in Class (e) have short trip length and their primary function is to provide access to different user activities and individual plots. Design speeds and level of service for these roads may be low. The different geometry design specifications recommended by UNRA are indicated in table 5.4. Guidelines for Naming Roads in Urban Areas a) Terrace refers to a street set on hill: a street constructed along a piece of raised or sloping ground. b) Avenue refers to a wide street or road in a town or urban centre. c) Street refers to a public road in town: a public road, especially in a town or city, usually lined with buildings. d) Rise refers to the road that goes in an upward slope or gradient. e) Close refers to street closed at one end: a road with no exit at one end, often in a residential area (similar to a cul-de-sac).

ROAD DIMENSIONS

The road space necessary for the free movement of vehicles comprises of vehicle size, side and head clearance, an extra allowance for the oncoming traffic, space for verges, drainage gutters and hard shoulders. The safe side clearance is dependent on the speed of that road for instance ≥1.25 m for roads with ≥70 km/hr; ≥0.75 m for roads with a speed limit of ≥50 km/hr.

ROAD RESERVES

Road reserve widths by class of road are given in table 5. These are general guidelines only and, in some circumstances, it may be necessary to deviate from them. It is often the case that a road has not been designed in detail at the time that layout planning is to commence. If there is some doubt about the precise centre line of the road, perhaps because of possible topographic or other constraints, it will be prudent to opt for a wider reserve. On the other hand, where a new road is to pass through an existing built-up area, a much-reduced reserve may be necessary in order to minimize land and property acquisition costs.

JUNCTION SPACING AND PLOT ACCESS

It is desirable to limit the number of junctions and access points on the more important distributor roads in the interest of safety and maintaining a smooth flow of traffic. Table 5 indicates what is permissible.

VISIBILITY SPLAY AT JUNCTIONS

The purpose of visibility splays is to allow a driver entering a junction from a minor road to have unobstructed visibility to the left and right along the major road, for a distance appropriate to the major road traffic speed. This enables the driver to judge safely when s/he may turn into or cross the major road. 4.3.6 Tree Belts The provision of tree belts improves the appearance of the road and can make a useful contribution to meeting the urban area's fuel wood requirements (tree belts should be a minimum of 10 m wide).

See table 5 for guidance on which roads should have tree belts.

In all cases the provision of a single line of trees adjacent to the footway is strongly recommended to provide shade for pedestrians.

ACCESS TO PREMISES

Road Widths and Corner Radii Access roads into premises, houses, car parks, etc; must be designed so that vehicles can enter or leave the site without causing undue delay or hazard to traffic on the major road. The dimensions depend very much on the volume of lorry traffic that is likely to use the access, because these

vehicles require much wider road widths and corner radii than cars and pick-ups. Apart from very minor roads, the junction layout should enable turning vehicles - especially long vehicles to negotiate the junction without running into other traffic lanes. The narrower the major road, the more necessary it is to have widercornerradii. Table 5: Urban Road Standards Class of Road Minimum Reserve Width (metres) Minimum Junction Spacing Individual Plot Access Tree belt Trunk Roads (Arterial/Freeways including Town By – passes) 60 500 m Not permitted Desirable Primary Distributor 40 200 m Not permitted Desirable Secondary Distributor 30 100 m Not permitted Desirable Tertiary (Local Distributor) 18 - Permitted Desirable Access Roads

(a) Industrial street/road 25 - Permitted Desirable 27 Class of Road Minimum Reserve Width (metres) Minimum Junction Spacing Individual Plot Access Tree belt

(b). Primary Residential Street 15 - Permitted Desirable

(c). Secondary Residential Street 08 - Permitted Desirable

(d). Primary shopping street (Heavy commercial) 20 - Permitted –

(e). Secondary Shopping Street (Average commercial) 15 - Permitted –

(f). Service Lanes 5 - Permitted - 28 4.3.7 Walkways and Footpaths Walkways are adjacent to roads and are included in the road reserve; footpaths follow routes that are separate from roads. Walking is by far the most common means of travel in Uganda's towns. Consideration must be given to the needs of pedestrians in the planning of all developments. In busier areas such as shopping centres the needs of pedestrians will usually take priority over those of other road users.

There is also an important safety aspect: where adequate footways exist, the pedestrian is less likely to walk on the carriageway and the risk of accidents is consequently much reduced. In planning for pedestrian access, it is necessary to judge which route(s) pedestrians will take to reach the development. Pedestrians will in general take the shortest route possible. The location of bus stops and convenient road crossing points will also have strong influence on the routes taken. Pedestrian links can be designed to follow the access road into a development but it is often preferable from a point of view of safety and convenience if a separate footpath is provided. Where the proposed development affects a well-established pedestrian route, it will be necessary to provide a convenient alternative route. Recommended walkway and footpath widths are given in table

WALKWAY AND FOOTPATH WIDTHS

Function Width (m) Shopping streets 2 – 4 Primary footways/footpaths (3 persons wide) 2 Secondary footways/footpaths (2 persons wide) 1.2 Access paths (e.g., to a house) (one person wide) 1 4.3.8 Cycling Facilities The provision of cycle ways can only be justified in certain situations. The standard widths for

cycle ways are 2.5 m (two-way) and 1.8 m (one way). Where space is restricted, it may be permissible to provide a combined cycle way/footway with an overall width of 3 m. The cycle way section (1.6 m wide) must be divided from the footway by an unbroken white line and be marked at intervals with the cycle symbol. Simple cycle stands should be provided at convenient points in shopping areas, and at schools, hospitals, and other locations expected to attract many cyclists.

ZZIWA SSALONGO & ANOTHER VERSUS KAFUMBE ANTHONY LUYIRIKA, CIVIL APPEAL NO. 33 OF 2012 HELD; the Land tribunals created under the Constitution and the Land Act ceased to exist following the expiry of contracts of chairpersons and members of district land tribunals. Consequently, Practice Direction No. 1 of 2006 was put in place conferring jurisdictions formerly exercised by the land tribunals on magistrate's courts presided over by Magistrate Grade 1 and above.

3. **The law** provides that the application must be in form set out in the schedule to the **Roads Act 2019 (Act 16 of 2019)**. In **ZZIWA V KAFUMBE** supra it was held that the application is in a format set out in the Access to Roads Act.

The application must be accompanied by a sketch or plan showing approximately the course and direction of the proposed road and present means of access, if any to the public high way.see Section 18 **Roads Act 2019 (Act 16 of 2019)**

In case the applicant is unable to make a sketch plan, an application can be made to the Magistrate court for leave to enter the land and make a sketch plan.

4. The tribunal shall then ensure that the owner of the affected land is served with notice so as to show cause against the grant of the application, The service is preferably personal or by leaving it with an adult member of the family or servant residing with him or at a conspicuous place on his property or in a local newspaper as per S**ubsection 4** of section 3. And **Order 5** of the civil procedure Rules SI 1-71.

6. A hearing date is then set of the application. After the expiration of 1month from the date of service of notice on the owner of the land is when the hearing is set.

7. Accordingly the land tribunal may make an order after the hearing of such evidence as may be adduced in respect the application subject to any other terms it may so deem fit to impose and payment of compensation.

8. The land tribunal (Magistrates Court) may at any time, on application made by the owner of adjoining land for the revocation of an order made under the law and after giving the other party an opportunity to show cause why the order should not be revoked, make an order revoking the order.

The width of the road shall never exceed 20 ft.

The law provides that, an order made is registrable in the register book under the RTA on application made by the person affected by the order within 3months of the date of the order, or where an appeal is pending within one month after determination of the appeal.

An application for registration of the order made to the registrar must be accompanied by, a certified copy of the order, a sketch of the course and direction of the proposed road of access as approved by the land tribunal and such certificate of title as the registrar of titles may require for endorsement of the order on the certificate.

If the registrar of titles is satisfied that the application is in order, he or she shall, on payment of the fee prescribed under the Registration of Titles Act, register the order in the Register Book. Item 22 schedule 27 to the **the Regestration of Titles Act**, **Cap 230** –application fees is UGX 10,000

Section 54 of the Regestration of Titles Act R, **Cap 230** –provides to the effect that an instrument not effectual unless registered.

Section 65 the Regestration of Titles Act, Cap 230 is to the effect that easements existing under deed or writing to be noticed as encumbrances by the registrar of titles.

Section 60 the Regestration of Titles Act, Cap 230- provides to the effect that a certificate conclusive evidence as to title to easements.

Under the Roads Act 2019 (Act 16 of 2019) When a road of access has been constructed, the applicant or his servants any other person lawfully going to or from the applicant's land or this successors in title shall have leave at all times to use the road of access.

Documents

Application for leave to construct a road of access, form set out in the schedule to the access to **Roads Act 2019 (Act 16 of 2019)** and practice direction no.1 of 2006.

However, since the matter is now before Court and not tribunals, court cannot be moved by a form. It has to be a notice of motion supported by an affidavit.

STEP X Appeal

An appeal shall lie, with thirty (30) days, from any order of the land tribunal (magistrates court) under this Act, to the High court whose decision shall be final.

Compensation

In the case of A**HMED DAUDA ZIWA AND ANOTHER V. KAFUMBE ANTHONY HCCA NO. 33 OF 2012**. It was stated that compensation should conform to Article 26 of the constitution and should also consider the loss of the land itself.

According to our facts muzamir has no alternative access to his land and thus can apply to court for this remedy to grant him access.

THE UGANDA NATIONAL ROADS AUTHORITY ACT, 2006

Further refrence can also be made to the **THE UGANDA NATIONAL ROADS AUTHORITY ACT, 2006** An Act to provide for the establishment and operation of the Uganda National Roads Authority for the purpose of managing the provision and maintenance of the national roads network in a more efficient and effective manner; to render advisory services to Government; and for related matters.

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF

IN THE MATTER OF LAND COMPRISED IN KYADONDO PLOT 123 BLOCK 250 BUNGA.

APPLICATION FOR LEAVE TO CONSTRUCT A ROAD OF ACCESS

(**Roads Act 2019 (Act 16 of 2019)** and the schedule thereof practice direction No. 1 of 2006)

1. Name of applicant.....	
Place of abode.....	
Nationality.....	
2. Name, situation and registered title reference of land or lease of land in respect of which the road of access is required, stating the title reference of land, county and all particulars which may assist in locating it	
3. Name of public highway to which the road of access is required	
4. Name or names of land over which it is proposed to construct the road of access, together with the name or	

names of the respective owner or owners of the land	
5. The means of access (if any) to any highway at present available for the use of the applicant and whether use of that highway is subject to any payment or other terms or conditions	
6. Whether any crops or building will be damaged or destroyed by the construction of the road of access; if so, to what extent	
7. Maximum width between drains of proposed road of access	
8. Any other facts of which the applicant is aware which may affect the grant	

.....

Applicant

Draft a notice of motion and an affidavit but attach the above form.

Having started the operations of a Hospital on **Property B**, the Ministry of Health has identified Muzamir's Hospital as a health facility that government could take over in pursuit of its policy to put a functional hospital in every sub county. The Ministry intends to cause the Ministry of Finance to avail funds to compensate Muzamir and take over his property instead of building a completely new facility in the same area. Muzamir is completely opposed to this development but the Ministry of Health is also insistent. Muzamir has petitioned the Inspector General of Government to intervene.

COMPULSORY LAND ACQUISITION

In Uganda land ownership belongs to the citizens. **Article 237 of the 1995 Constitution** provides that land in Uganda belongs to the citizens and shall vest in them in accordance with the land tenure systems provided for in the constitution which includes customary, freehold, leasehold and mailo.

The right to own land is further fortressed by **Article 26 of the Constitution** which provides that every person has a right to own property either individually or in association with others. The question that can be asked is whether this right to own property is absolute? Under the constitution the right to own property is not non-derrogable and can be limited within the meaning of article 43 of the Constitution.

Section 42 of the Land Act provides that the Government or a local government may acquire land in accordance with **Articles 26 and 237(2) of the Constitution**

Article 237(2)(a) of the Constitution provides that notwithstanding clause 1, the government or a local government may subject to Article 26, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by parliament. This means that though land in Uganda belongs to the citizens it can be acquired by government in public interest hence the right to own land is not sacrosanct.

This was emphasized in the case of **AMOOTI GODFREY NYAKAANA V NEEMA & ORS** Constitutional Appeal No. 05/2011 where it was held that "an analysis of the provisions of the Constitution (articles 26, 237, 242, 245) points to the principle that although one has a right to own land through one of the systems of land tenure listed in the constitution, there may be situations which

necessitate the government either to take over that land or to regulate its use for the common good of all the people of Uganda." This is what is referred to as compulsory acquisition of land.

The law alluded to in **Article 237(2) (a) is the Land Acquisition Act Cap 226.** Compulsory acquisition of land by government or any other public body is provided for in S.s 3 and 7 of the Act

The Land Acquisition Act Cap 226 provides for the procedure to follow before compulsory acquisition of land.

1. Any person authorised by the minister may enter the land in order to examine and ascertain the suitability of the land for a public purpose. **Section 2 Land acquisition Act**. He can survey the land, dig into the subsoil and remove samples and do any other thing necessary for ascertaining its suitability. The government has a duty to pay compensation to any person who suffers damages as a result of entering and examining the land.

2. When the minister is satisfied that the land is needed for public purpose, he or she may by statutory instrument declare that the land is required by the government for a public purpose as per **Section 3.** The instrument shall specify the location of the land to which it relates and the approximate area of the land. The minister shall cause a copy of every declaration to be served on the registered proprietor of the land specified in the declaration. **Section 3(3).**

3. On publication of a declaration under **Section 3**, the assessment officer shall cause the land to be marked out and measure a plan of the land to be mad if a plan of the land has not already been made as per Section 4.

4. As soon as may be after the publication of the declaration in respect of any land, the assessment officer causes a notice to be published in the gazette and exhibited at the convenient place or near the land. It should state that government intends to take possession of the land. The notice of not less than 15 days is given inviting all people having interest in the land by the assessment officer on a day, time and place specified in order to determine the nature of their claims, the amount of compensation to be paid and any objections they may have to the plan for the land use as per **Section 5 (1) (2) and (3) of the Land Acquisition Act**. The assessment officer may require a statement in pursuance of Section 5(3) to be made in writing and signed by the party making it or his or her agent.

5. The Assessment officer on the day specified hears the claims and makes an inquiry into the claims and objections made in respect of the land. While carrying out this inquiry, the assessment officer has the same power as a magistrate's court in its civil jurisdiction to summon and enforce attendance of witnesses and to compel production of documents.

6. An award is made by him or her specifying the true area of the land and the compensation among all persons which should be paid to each person having an interest in the land **(Section 6(1) of the Land Acquisition Act).**The award also specifies the apportionment of compensation among all the persons

know or believed by him to have an interest in the land whether or not they have appeared before him or her.

Important to note is that Compensation is paid basing on the current market price of the land in the area prepared annually by the District Land Board. (**Section 59(1) (e)&(f) of the Uganda Land Act).**

7. Where an assessment officer makes an award under section 6, he can cause a copy of the award to be served on the minister and persons who have an interest in the land but where not personally there when the award was made.

8. Any person aggrieved by the award of the Assessment officer may appeal to the District Land Tribunal or the High court if the Value of the land exceeds 50,000,000/= (**Section 76 1(b) &(c) of the Land Act**)

9. The Uganda Land Commission then pays compensation for the value of the land if no appeal is made to the Courts of law (**Section 6(4) (b) of the Land Acquisition Act).**

10. It is only after all people having interest in the land have been fully and adequately compensated that Government then takes possession of the land as provided for in **Article 26(2)(b)(i) of the Constitution.** The land is then managed by the Uganda Land Commission as per **Section 7(1) of the Land Acquisition Act.**

The minister may however take possession at any time after the publication of the declaration if the minister certifies that is in the interest of the public for him to do so. **Section 7(1).**

The estate and interest of every person having an interest in the land immediately before the land so vested is deemed converted into a claim for compensation under the Act.This means that it is only that the owner has been compensated that his rights are extinguished.

11. Soon after taking possession, the assessment officer forwards to the registrar of titles a copy of the declaration relating to the land, endorsed with a certificate signed by the assessment officer who states that the assessment officer has taken over possession of the land and specifies the date on which he did so.

12. On receipt of the endorsed declaration, the registrar of titles may take such steps to give effect in the register book to the operation of the possession specified in the declaration.

Keynotes;

Article. 237(1) of the Constitution provides that all land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems.

Article 26(1) of the Constitution guarantees every person's right to own property either individually or in association with others.

However, **Article 26(1) of the Constitution** is not an absolute right as was held in the case of **UGANDA NATIONAL ROADS AUTHORITY V. ASUMAN IRUMBA & ANOR,** const. App No. 4 of 2014 which the supreme court emphasized that if can be derogated however the derogation must be tandem with the constitution and other laws in place.

UGANDA NATIONAL ROADS AUTHORITY VS. IRUMBA ASUMANI & PETER MAGELAH, SUPREME COURT CONSTITUTIONAL APPEAL NO.2 OF 2014

The Supreme Court has confirmed the sanctity of property rights under the Constitution.

Article 26 of the Constitution on freedom from deprivation of property provides for prompt payment of fair and adequate compensation prior to the State's compulsory acquisition of any property. The Court ruled that the Land Acquisition Act (Cap 226) is unconstitutional in so far as it provided for the compulsory acquisition of property before the payment of compensation to the owner.

The Government of Uganda commissioned a project to upgrade the Hoima-Kaiso-Tonya Road, leading to Uganda's oil fields in the Albertine Graben. Acting under the Land Acquisition Act, the Government compulsorily acquired the project land and the Uganda National Roads Authority ("UNRA") took possession before payment of compensation to the owners.

The respondents challenged the constitutionality of the Land Acquisition Act that permitted the Government to compulsorily acquire land before payment of compensation. Under Article 26(2) of the Constitution, no person can be compulsorily deprived of property without prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property.

The Constitutional Court found the Land Acquisition Act unconstitutional to the extent of its inconsistency with Article 26(2) of the Constitution in so far as it did not provide for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of any property by the State.

UNRA appealed to the Supreme Court and sought to argue, among others, that Article 26 was not a non-derogable right and that in certain circumstances, the State would be entitled to compulsorily acquire property before payment of compensation for instance in situations of natural disasters, emergencies or in the interest of public good.

The Supreme Court Decision

The Supreme Court upheld the Constitutional Court decision that the Land Acquisition Act was inconsistent with Article 26 of the Constitution and therefore unconstitutional. The Supreme Court held further that whereas Article 26 was not among the non-derogable rights, this does not give powers to Government to compulsorily acquire people's land without prior payment, and that such planned Government projects do not fall under the exceptions of disasters and emergences.

Relevance

This decision could not have come at a better time, following the passing of the Public Private Partnerships Act 2015 and what may well be a boom in Uganda's infrastructure development. For property owners, developers and lenders taking security on property, the Supreme Court confirmation on property rights was good news.

One instance where the right to own property may be derogated is where government or a local government compulsorily acquires the land under **Article 237(2) (a) of the Constitution**. **Article 237(2) (a) of the Constitution** grants the government or local government subject to S.26 of the constitution to acquire land in the public interest and the conditions governing such acquisition as prescribed by an Act of parliament.

Under **Article 26(2) of the Constitution**, the property compulsorily acquired must be acquired for public use or in the interest of defence, public safety, public order, public morality or public health.

Further under **Article 26(2)(b) of the Constitution**, the compulsory acquisition must be made under a law which makes provision for prompt payment of fair adequate compensation prior to the taking of possession or acquisition of the property.

In the case of **UGANDA NATIONAL ROADS, AUTHORITY ASUMAN IRUMBA & ANOR,** the Supreme Court held that **Section 7 of the land Acquisition Act** which allowed for the government to compulsorily acquire land and pay lease was unconstitutional as it violated **Article 26(2) (b) of the constitution.** The compensation must come prior to the acquisition and must be adequate. For it to be adequate it must place the person on the same form as before or even better but not worse off than they were.

PROCEDURE FOR COMPULSORY LAND ACQUISITION.

The procedure is provided for under the land Acquisition Act however the same must be read in hive with the constitution under **Article 274 of the Constitution**

(1) The minister authorizes any person to enter upon the land identified for purposes of surveying and any other thing necessary to ascertain the suitability of the land for the intended public use. **Section 2(1).** The phrase public use was defined in the case of **B.P. BHATT ABUDU ANOR V HABIB VERSI (1958) EA 536.**

The government is liable to pay compensation to any person who suffers damages as a result of the exercise of ascertaining suitability **Section 2(2).**

(2) Making a declaration that land is needed for public purpose.

The minister having satisfied themselves as to the suitability issues a statutory instrument stipulating the location of the land, its approximate area and plan if made. **Section 3(1) & (2).**

The declaration must be served on the named persons in the declaration Section 3(3).

(3) The assessment office shall mark out the land and issue a plan

(4) Issuance of a notice.

After the publication of the declaration, the minister must appoint as assessment officer and the assessment officer shall cause a notice to be published in the Gazetted and exhibited at convenient places on or near the land stating that the government intends to take possession of the land and that claims to compensation for all interests be made to him or her. **Section 5(1)**

The notice shall not be earlier than 15 days unless the minister directs otherwise and not later than 3 days after the publication of the notice **Section 5(4)**

The notice must give the particulars of the land to which the notice relates and require all persons having an interest in the land to appear personally or by agent before the assessment officer on the day and time and place specified must state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for those interests and their objections if any to any of the place of land under **Section 4 & Section 5(3)**

Each copy of the notice issued must be served upon the registered proprietor of the land to which the notice relates **Section 5(6).**

(5) Inquiry and award.

The assessment officer on the day specified in the notice will proceed to hold an inquiry in to claims and objections made in respect of the land and go ahead to make an award under his or her hand specifying the true area of the land, the compensation which in his opinion should be allowed and the apportionment of that compensation among all the persons known or believed.

The assessment made must be in line with the Guidelines for compensation Assessment under land Acquisition of June 2017.

The compensation of the land as was held in the case of Puran **CHAND MANY V THE COLLECTOR UNDER THE INDIAN LAND ACQUISITION ACT (1957) IEA 125**, must be assessed on "the price which a vender might be expected to obtain from a willing purchase.

A willing purchaser is one who although he may be a speculator, is not a wild or unreasonable speculator.

(6) Taking possession.

The government may take possession of the land having paid the compensation to the affected persons and this is under **Section 7 of the Land Acquisition Act** which must be real subject to the constitution under Art. 274 as was held by the supreme court in the case of

Upon taking possession, the assessment officer must take possession of the land as soon as possible receive the duplicate certificates **UNRA V ASUMAN IRUMBA AND ANOR.**of title and the declaration relating to the land and send the same with an endorsement on the certificate that they have taken possession of the land to the land registry **Section 7(3).**

The registrar must upon receipt of the endorsement effect the change of proprietorship in the register **Section 7(4).**

Remedies Available to persons whose land has been compulsorily acquired.

(1) Prior, adequate and fair compensation which may be momentary or in form of resettlement.

(2) Court action for damages where the land is compulsorily acquired without prior adequate and fair compensation.

It should be noted that **Article 237** allows for compulsory acquisition subject to **Article 26 of the Constitution**. One of the requirements for land acquisition in **Article 26** is prior compensation before acquisition. However, the Land Acquisition Act does not provide for mandatory prior compensation before acquisition.

Important to note is that the Land Acquisition Act is one of the enactments that came in force before the passing of the 1995 Constitution. **Article 274 of the Constitution** provides that existing law before coming into force of the constitution shall be read with necessary modifications and qualifications to bring it in line with the provisions of the constitution. This was emphasised in **OSOTRACO V ATTORNEY GENERAL AND ALSO KABANDIZE V KAMPALA CITY COUNCIL AUTHORITY.**

Article 2(2) of the Constitution provides that the constitution is the supreme law of the land and no statutory provision in any enactment inconsistent therewith can supersede the provisions of the Constitution. It follows therefore that for any compulsory acquisition of land to be valid, such acquisition must be within the confines of **Article 26(2) of the Constitution.** It is provided that every person has a right to own property either individually or in association with others. Property for that purpose is not defined but ordinarily included land or landed property. In **PHILLIP KARUGABA V ATTORNEY GENERAL CONSTITUTIONAL APPEAL NO. 1/2004**

Justice Bart Katureebe stated that "The word property does not have a limited connotation but applies to “personal” as well as “tangible” property.”

It follows therefore that for the right of ownership of property to be interfered with such interference of any form must be in accordance with **Article 26(2) of the constitution**.

Compulsory acquisition of land is therefore an exception and permitted interference with the right of ownership of property enshrined in **Article 26** not forgetting that **Article 43 of the constitution** provides for the limitation of enjoyment of rights. In that context any limitation imposed on the right of ownership can only be legally effective if it is in tandem with the pre-condition set out in **Article 26(2)**

Article 26(2) of the Constitution allows compulsory Acquisition of land for purposes stipulated therein and subject to satisfaction of the condition precedent set out in the article. The condition precedent upon which compulsory acquisition may be deemed to be legal is provision for prior compensation before such acquisition. The compensation must be fair and adequate in the circumstances.

In **ONEG OBEL & ANOR VS. AG & ANOTHER HCCS NO. 0066/2002** the government moved onto the suit land and constructed a road without the consent of the plaintiff who was the registered proprietor thereof. The plaintiff was deprived of his interest and right over the land without promptly being paid fair and adequate compensation contrary to Article 26. Court held that the acts of the defendant were illegal. That one of the conditions of acquiring private property by government is to pay prompt fair and adequate compensation. Court granted exemplary and general damages by declaring that the conduct of the agents of the government was arbitrary, oppressive and unconstitutional.

In that context any compulsory acquisition of land will be rendered unconstitutional and illegal if provision is not made for prior and adequate compensation. In **VENANSIO BAMWEYAKA V KAMPALA DISTRICT LAND BOARD, CIVIL APPEAL NO. 2 OF 2007** Okello JA held that where the application for and the alienation of the land by the controlling authority has been done without consultation of those in occupation thereof such grant would not be allowed to stand

As noted earlier, the Land Acquisition Act is contrary to **Article 26 of the Constitution** in not providing for prior compensation before acquisition. The legality of **Section 7 of the Land Acquisition Act** was challenged in the case of **ADVOCATES FOR NATURAL RESOURCES, IRUMBA ASUMANI AND OTHERS V ATTORNEY GENERAL. CONSTITUTIONAL PETITION NO. 40/2013** ;In this case the government in upgrading the Hoima-Kaiso-Tonya road in order to ease and facilitate the oil exploration and exploitation activities, expropriated the land of Irumba Asumani without prompt payment of compensation. The petitioner contended that this act of the respondents contravened his rights as enshrined under **Article 26 of the Constitution.** The Constitutional Court held that **Section 7 of the Land Acquisition Act** is inconsistent with and contravenes **Article 26 of the Constitution**. The provision was nullified to the extent of its inconsistency that is as it does not provide for prior payment of compensation before government compulsorily acquires or takes possession of any person's property. It was further emphasised that judicial bodies should construe old laws that predate the 1995 Constitution in conformity with **Article 274 of the Constitution**.

However, of great importance in regard to this matter is the Supreme Court's judgement on appeal in **UNRA v IRUMBA ASUMANISCCA NO. 2 OF 2014** where the highest court confirmed the decision of the Constitutional Court. It was held that **Section 7(1) of the Land Acquisition Act** was inconsistent

with **Article 26 of the Constitution** as it allowed government to compulsorily acquire land without prior compensation. The Court went on to hold that whereas **Article 26 of the Constitution** is not among the non derogable rights stated under **Article 44 of the Constitution,** this doesnot give powers to government to compulsorily acquire people's land without prior payment and that such planned government projects do not fall under the exceptions of disasters and emergences.

The ruling of the Supreme Court is thus applauded for confirming and preserving the sanctity of property rights. As noted above the court made it clear the right to own property is absolute save in instances of disasters, calamities and emergences. Those are the only limits court qualified to be the exceptions where someone can be deprived of their property without prior compensation.

UGANDA NATIONAL ROADS AUTHORITY VS. IRUMBA ASUMANI & PETER MAGELAH, Supreme Court Constitutional Appeal No.2 of 2014 The Supreme Court has confirmed the sanctity of property rights under the Constitution. **Article 26 of the Constitution** on freedom from deprivation of property provides for prompt payment of fair and adequate compensation prior to the State's compulsory acquisition of any property. The Court ruled that the Land Acquisition Act (Cap 226) is unconstitutional in so far as it provided for the compulsory acquisition of property before the payment of compensation to the owner. Background The Government of Uganda commissioned a project to upgrade the Hoima-Kaiso-Tonya road, leading to Uganda's oil fields in the Albertine Graben. Acting under the Land Acquisition Act, the Government compulsorily acquired the project land and the Uganda National Roads Authority ("UNRA") took possession before payment of compensation to the owners. The respondents challenged the constitutionality of the Land Acquisition Act that permitted the Government to compulsorily acquire land before payment of compensation. Under **Article 26(2) of the Constitution,** no person can be compulsorily deprived of property without prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property. The Constitutional Court found the Land Acquisition Act unconstitutional to the extent of its inconsistency with **Article 26(2) of the Constitution** in so far as it did not provide for the prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of any property by the State. UNRA appealed to the Supreme Court and sought to argue, among others, that **Article 26** was not a non-derogable right and that in certain circumstances, the State would be entitled to compulsorily acquire property before payment of compensation for instance in situations of natural disasters, emergencies or in the interest of public good. The Supreme Court Decision The Supreme Court upheld the Constitutional Court decision that the Land Acquisition Act was inconsistent with **Article 26 of the Constitution** and therefore unconstitutional. The Supreme Court held further that whereas Article 26 was not among the non-derogable rights, this does not give powers to Government to compulsorily acquire people's land without prior payment, and that such planned Government projects do not fall under the exceptions of disasters and emergences.

Thus by virtue and operation of **Article 26 of the 1995 Constitution of the Republic of Uganda**, a person's land/property cannot be compulsorily taken without any prior compensation. The Constitutional provisions that provide the right to own property equally put an exception to it, which is through compulsory acquisition by government if it is in the public interest. **Article 26(1) & (2) of the 1995 Constitution of the Republic of Uganda**. Similarly under **the Land Acquisition Act cap 226**, particularly **Section 7** provides for the modes and steps through which Government can compulsorily acquire someone's land.3 The point of concern and importance is at the time of payment verses taking possession, must Government first acquire your land then fulfil the Constitutional requirement of payment or it can choose to pay you before or even after, anytime it feels so convenient, do emergencies and disaster make it automatic for the Government to compulsorily acquire your land then pay later? Does a right to own property and compensation under **Article 26 of the 1995 Constitution of the Republic of Uganda,** a derogable right? **Section 7(1) of the Land Acquisition Act** states: The determination of the above questions lays down the yardstick of what amounts to prompt payment prior to acquisition and the preservation of the sanctity of the Constitutional requirement of payment prior to taking of land.4 The law in spotlight being **Section 7 (1) of the Land Acquisition Act cap 226.** The government of Uganda commissioned a project to upgrade Hoima, Kaiso-Tonya road, Hoima District, in order to ease and facilitate the oil exploration activities in that area. The project was implemented by Uganda National Roads Authority (UNRA) a government agency. The government then proceeded under **Section 7 (1) of the Land Acquisition Act cap 226** to compulsorily acquire land from the people affected by the project. The complainant Uganda National Roads Authority appealed against the Comt of Appeal decision where the respondents had sued the Attorney General and UNRA under Article 137(1) (2)(3) of the Constitution challenging the constitutionality **of S.7 (I) of the Land** Acquisition Act cap 226. They alleged that this was contravening **Aticle 26 of the 1995 Constitution of the Republic of Uganda**. The complaint by the respondents was the government proceeded to acquire their land without them being compensated first which contravened their right to own propetty as enshrined under **Atticle 26 of the Constitution**. In support of that submission counsel relied on **ATTORNEY GENERAL VERSUS MAJOR GENERAL TINYEJUZA CONSTITUTIONAL APPEAL NO 1 OF 1997** where this court stated that the Constitutional Court has jurisdiction under **Aticle 137 of the Constitution** is to interpret the Constitution and to deal with matters arising therefrom.

Counsel submitted further that following the above interpretation by this court, the Constitutional Court dismissed the cases which did not require constitutional interpretation, namely: Re **SHEIK ABDUL SENTAMU & ANOTHER CONSTITUTIONAL PETITION NO 7 OF 1998 AND RICHARD MWAMI VS ATTORNEY GENERAL CONSTITUTIONAL APPEAL NO. 821 OF 2013**. The Constitutional Court Held; that **Section 7(1) of The Land Acquisition Act cap 226** is nullified and is unconstitutional to the extent of its inconsistency with Article 26(2) of the 1995 Constitution of the Republic of Uganda. That is to the extent that it does not provide for prior 1 Uganda **NATIONAL ROADS AUTHORITY V IRUMBA & ANOR (CONSTITUTIONAL APPEAL N0.02 OF 2014) [2015] UGSC 22 (29 October 2015); 'Magistrates Courts Act, Cap. 16.** Payment of compensation

before government compulsorily acquires or takes possession of any person's property. The Supreme Court upheld the Constitutional court decision and stated that **Section 7(1) of the Land Acquisition Act cap 226** was inconsistent with **Article 26 of the Constitution** as it allowed government to compulsorily acquire land without prior compensation.

Application of Article 274 & Ousting the Jurisdiction of the Constitutional Court

This was another point of contention as to whether the Constitutional court was vested with powers visavis **Article 274 of the Constitution**. That since this was an existing law, a pre-1995 law, and then Constitutional Court should have referred it back to the appropriate court to deal with it. The Constitutional court had found that **Section 7 (1) of the Land Acquisition Act cap 226** could have been interpreted according to **Article 274 of the Constitution** and this would have involved reading into the section the phrase "prior payment" Having found that way, why then didn't the Constitutional Court forward the matter to High Court for enforcement, since by applying **Article 274 of the Constitution** would not amount to the interpretation of the Constitution? (Emphasis mine) On this point the Supreme Court held that," ... that cannot be the mandatory procedure for the Constitutional Court to follow. That whereas it is true that **Article 274 of the Constitution** could have been used by any other court to interpret **Section 7(1) of the Land Acquisition Act cap 226** to be in conformity with Article 26 of the Constitution, this did not oust the jurisdiction of the Constitutional Court to interpret the Constitution. It went ahead to state that though Article 27 4 allows existing laws to be interpreted by other courts and tribunals so as to bring them in conformity with the Constitution, the Constitutional Court has the original jurisdiction for constitutional interpretation which should not be denied to it by anybody if it so chooses to exercise it• Is **Article 26 of the Constitution** absolute or it is derogable? It was a point of contention as to whether Article 26 can be limited by **Section 7 of the Land Acquisition Act cap226** since Article 26 is not among the Non derogable rights enshrined under **Article 43 & 44**. That acquisition before payment is the exception where such right to own property can be taken away. Land Act, **Section 34 (3**). See, **Section 32 A, Land (Amendment) Act 2010.**

Supreme Court held that whereas **Article 26** is not among the non derogable rights stated under **Aticle 44 of the Constitution**, this does not give powers to Government to compulsorily acquire people's land without prior payment, and that such planned government projects do not fall under the exceptions of disasters and emergences. The Supreme Court dismissed the appeal and upheld the judgment of the Constitutional Court. The Supreme Court confi1med and preserved the sanctity of property rights, which are; the Constitutional right to own property under **Article 26 of the Constitution**. In fact the court made it clear that this right whereas it is not expressly a non derogable right, but it is absolute save in instances of disasters, calamities and emergences. Those are the only limits court qualified to be the exceptions where someone can be deprived of their property without prior compensation. The judgment is a precursor on the applicability of and the difference between 274 of the Constitution and **Article 137 of the Constitution Article**

COMPENSATION MUST BE FAIR AND ADEQUATE

Article 26(2) of the 1995 Constitution makes a requirement that the enabling law must provide for prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property by the Government.

The Land Acquisition Act does not provide for payment of **'fair and adequate**' compensation as laid down in the Constitution. The Act only refers to compensation and does not clearly state how that compensation should be assessed"

Although the Land Act of 1998 attempted to remove the lacuna by providing under Section 41(6) that "Compensation must be paid to the land owner at a fair market valuation assessed on a willing seller willing buyer basis.

SHEEMA COOPERATIVE RANCHING SOCIETY & 31 ORS V ATTORNEY GENERAL (HIGH COURT CIVIL SUIT NO.103 OF 2010) [2013] court held that the compensation award offered by Government pursuant to the Valuation Report of August 2005 was outdated and insufficient and inadequate since it was not based on the open market value and disturbance allowances were never considered.

THE CASE OF SOUTHERN RANGE NYANZA LIMITED V UGANDA (CIVIL SUIT 423 OF 2014) [2021] UGHC 22 provides for **Article 26 (2**) which advocates for the prompt payment of fair and adequate compensation, prior to taking possession or acquisition of the property and **GOOD MAN INTERNATIONAL LTD V ATTORNEY GENERAL & ANOR (CIVIL SUIT 73 OF 2014)** is another case that provide for compulsory acquisition.

The reasons for acquisition of land compulsorily are provided for in the Constitution.

Article 237(2)(a) provides that the Government or a local government may, subject to article 26 of this Constitution, acquire land in the **public interest**; and the conditions governing such acquisition shall be as prescribed by Parliament;

In **B.P BHATT & ANOTHER VS. HABIB RAJANI VERSI (1958) EA. 536 at 540** Court held that the phrase public interest‖ means much the same as the purpose in the public interest. It must include the purpose, an aim or objective in which the general interest of the community as opposed to the particular interests of individuals directly and virtually concerned.

Article 26 (2) of the Constitution provides that no person shall be compulsorily deprived of property or any interest in or right over property of any description expect where the following conditions are satisfied

The taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health.

In ONEG OBEL & ANOTHER VS. AG & ANOR HCCS NO. 0066/2002 it was held that by both provisions of **Section 73 of the Land Act and Article 26 of the Constitution** the government is bound by statute to show that the property it intends to acquire compulsorily is necessary for defence, public security, public health or public morality and to pay adequate compensation prior to such acquisition. In the instant case the defendant failed to prove the plaintiffs land was necessary for defence, public security, public health or public morality and to pay adequate and prompt compensation as required by the Land Act and the Constitution.

From the facts, government under the Ministry of Health would like to take over the Hospital constructed by Muzamir. Public health is a matter of public interest and is one of the conditions stipulated under **Article 26(2)(a) of the Constitution**. therefore, government can acquire Muzamir's hospital compulsorily subject to prior fair and adequate compensation assessed on fair market value. As stipulated in **UGANDA NATIONAL ROADS AUTHORITY v IRUMBA AND ANOR (Constitutional Appeal 2 of 2014)[2015] UGSC 22 (29 October 205)**, this is not a situation of emergency that government should take land without prior compensation.

D/Muzamir has informed you that the land which he uses as a ranch and from which he gets the animals for his project on **Property A** measures approximately 108 acres in size. It is located on land comprised in **Mawokota Block 83 Plot No.674** which is registered in the name of Zubair Nkumba who owns and uses numerous other parcels of land in the area. Muzamir has used the land for the last 32 years without permission and without paying anything to Zubair Nkumba, but also without any complaint from the latter. Rumour reliably has it, however, that Zubair never sells his land, and there is no chance whatsoever of Muzamir ever purchasing the land from Zubair, in spite of the fact that Muzamir has the capacity to make a very lucrative offer. Muzamir nevertheless wants to lawfully acquire a certificate of title over the land he occupies so that he can obtain credit from a financial institution to enable him expand his meat processing business in order to start exporting beef to the Arabian region. Muzamir has sought your legal services.

Advise Muzamir on the following -

1. The circumstances under which he may obtain a certificate of title without Zubair's indulgence.
2. Assuming it was possible, what steps would Muzamir have to take?
3. Draft the documents he would use in the circumstances.

4. What steps could Zubair take to resist Muzamir's actions and what would be the grounds of the objection?

Adverse Possession

Under **Section 59 Regestration of Titles Act,** registered proprietor of land is protected and his or her title is in absence of fraud and other infirmities indefeasible. However, the doctrine of adverse possession acts as an exception.

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

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

It is based on the limitation of the time when a person is entitled to bring an action for the recovery of land under the **Limitation Act Cap 80**

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

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

Further, **Section 11 (1) Limitation Act Cap 80** provides that;

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

Section 16 Limitation Act Cap 80 further provides that;

"**Subject to sections 8 and 29 of Limitation Act Cap 80** and subject to the other provisions thereof, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action), the title of that person to the land shall be extinguished."

Section 29 Limitation Act Cap 80 also stipulates that;

"Without prejudice to the operation of **Section 187 of the Registration of Titles Act**, (which contains certain provisions relating to the limitation of actions), this Act shall apply to land registered under the Registration of Titles Act in the same manner and to the same extent as it applies to land not so registered, except that where, if the land were not registered, the estate of the person registered as proprietor would be extinguished, that estate shall not be extinguished but shall be deemed to be held by the person registered as proprietor for the time being in trust for the person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estates and interests of any other person interested in the land whose estate or interest is not extinguished by this Act.

HOPE RWAGUMA V **JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.**

Held; It is important to note that all the above provisions are specific on the issue of limitation of the time when a person is entitled to bring an action for the recovery of land. The effect of the law of limitation on the defendant's claim for the recovery of the suit land must therefore be viewed in the light of the plaintiff's concurrent claim of title over the same land by adverse possession. This raises the issue of whether it is possible for a person to claim and obtain title to land as against the registered owner by adverse possession. A wealth of authorities seems to suggest that it is possible. Whereas a registered proprietor of land is protected and his or her title is in absence of fraud and other infirmities indefeasible under **Section 59 and 176(2) of the Registration of Titles Act**, adverse possession appears to provide the exception to the general principle of indefeasibility of the title.

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

HOPE RWAGUMA V **JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.**

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

The **Registration of Titles Act** under **Section 78** thereof recognises adverse possession as a basis on which a person in use and occupation of land can claim title to the land of the registered owner.

It states that **"A person who claims that he or she has acquired a title by possession to land registered under this Act may apply to the registrar for an order vesting the land in him or her for an estate in fee simple or the other estate claimed. "**

HOPE RWAGUMA V **JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.**

HELD; According to decided cases of persuasive authority by the Supreme Court of India on the same issue, the rationale of the exception of adverse possession to general principle of the indefeasibility of title is premised on the theory or presumption that the owner has abandoned the property to the adverse possessor or on acquiescence of the owner to the hostile acts and claims of the person in possession. In other words, the law regards the owner of land to be under duty to protect his or her interests in the land and is not expected to just look on when his or her rights are either infringed or threatened by third parties such as squatters and trespassers occupying his or her land. See also: **P.T. MUNICHIKKANNA REDDY & O'RS VS. REVAMMA & O'RS, (2007) AIR (SC) 1753 P.T.**

In **ANNAKILI VS. A. VEDANAYAGAM & ORS,AIR 2008 SC 346** the Supreme Court of India gave the essential elements of adverse possession which were considered in light of the Limitation Act of India with provisions similar to the Uganda **Limitation Act (Cap 80.** It was held that;

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

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

HOPE RWAGUMA V **JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012.**

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

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

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

a) what date they came into possession of the property;

b) what was the nature of her possession;

c) whether the factum of their possession was known to the other party;

d) how long her possession has continued; and

e) Whether her possession was open and undisturbed.

HOPE RWAGUMA V **JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012**

HELD; It need emphasis that adverse possession is a right which comes into play not just because someone loses high right to reclaim the land out of continuous and willful neglect but also on account of possessor's positive intent to dispossess. It is thus important for this court, before stripping the defendant of his lawful title, to take into account whether the plaintiff is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the defendant the registered owner of the suit land. Once again, the efficacy of adverse possession by the plaintiff would much depend on the provisions of the **Limitation Act (Cap. 80);** by operation of which right of the defendant to access the court expired through effluxion of time. There is yet another huddle for the plaintiff to succeed in her claim of title to the suit land through adverse possession. She has to show on what date she came into possession; what the nature of her possession was; **whether the factum of her possession was known to the other party;**

how long her possession has continued; and whether her possession was open and undisturbed. See also: **KARNATAKA BOARD OF WAKF VS. GOVERNMENT OF INDIA & ORS [(2004) 10 SCC 779].**

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

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

The case of MIZA V BRUNA OSOSI (CIVIL APPEAL NO. 0026 OF 2016) [2017] UGHCLD 101 (21 DECEMBER 2017) Explains the input of the law of limitation in adverse possession stating that the law of limitation guarantees that people should be free to get on with their lives or businesses without the threat of stale claims being made. The Limitation Act also encourages claimants to bring their claims promptly and not, in the old phrase, "to sleep on their rights". **Section 5 of The Limitation Act,** which provides for limitation of actions for the recovery of land, states as follows;

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

This limitation is applicable to all suits for possession of land based on title or ownership i.e., proprietary title as distinct from possessory rights. Furthermore, **Section 11 (1)** of the same Act provides that;

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

These provisions have been applied in cases such as **SEMUSAMBWA JAMES V. MULIRA REBECCA [1992-93] HCB 177 AND KINTU NAMBALU V. EFULAIMU KAMIRA [1975] HCB 222,** where it was held that a suit for a claim of right to land cannot be instituted after the expiration of twelve years from the date the right of action accrued.

According to **Section 6** of the Limitation Act, the right of action is deemed to have accrued on the date of the dispossession. A cause of action therefore accrues when the act of adverse possession occurs. In **F. X MIRAMAGO V. ATTORNEY GENERAL [1979] HCB 24,** it was held that the period of limitation begins to run as against a plaintiff from the time the cause of action accrued until when the suit is actually filed. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run as against the plaintiff.

The case of IGA V. MAKERERE UNIVERSITY [1972] EA 65 If by reason of disability, fraud or mistake the operative facts were not discovered immediately, then **section 21 (1) (c) of The Limitation Act** confers an extension of six years from the date the facts are discovered. This disability though must be pleaded as required by **Order 18 rule 13 of The Civil Procedure Rules,** which was not done in the instant case. A litigant puts himself or herself within the limitation period by showing the grounds upon which he or she could claim exemption, failure of which the suit is time-barred, the court cannot grant the remedy or relief sought and must reject the claim

In this case, Muzamir has used the land for the last 32 years without permission and without paying anything to Zubair Nkumba, but also without any complaint from the latter. He therefore qualifies to get a certificate of title on grounds of adverse possession.

MINING AND MINERALS ACT, 2021

Action points

- Mining and Minerals Act, 2021, repeals the Mining Act, 2003.
- Introduces a competitive licensing regime for brownfields (existing mining projects) and retains first come, first served model for greenfields (new mining projects).
- A model mining agreement for large-scale mining businesses is introduced.
- Prospecting, exploration, and retention licences are retained, and the location licence is replaced with the small-scale and artisanal mining licences.
- A National Mining Company, more like the Uganda National Oil Company, is created.
- A traceability and certification scheme to eliminate smuggling of tin, tungsten, tantalum, and gold is established (3TGs), and will enable direct access to lucrative international markets.

- Royalty sharing revised with owners of land with minerals getting 5% instead of the old 3%.
- The Mineral Protection Unit is abolished.
- The ministry of energy and mineral development will publish on its website information about actual owners (beneficial owners) of mining businesses.
- Offenders of the law will pay fines ranging from Shs60–500 million or serve imprisonment terms of between 2 and 7 years or both. Some consider this harsh.
- Building substances (development minerals) such as sand, murram, clay to be regulated under a separate law.

New developments in the law included the introduction of a competitive bidding licensing regime for brownfields (existing mining projects). The first-come, first-served model of licensing in the Mining Act, 2003, has been retained for greenfields (new mining projects) to encourage private sector investment. A mineral cadastre department has been created under the Directorate of Geological Survey and Mines (DGSM) to carry out (online) licensing. This is separate from the regulation function retained under the mines department. The law gives the minister responsible for energy and mineral development powers to grant and revoke mineral rights ("ownership rights to underground resources such as oil, silver, or natural gas"), licences, and permits. These powers previously belonged to the head of DGSM. The minister can also enter mineral agreements with investors for and on behalf of the government. And the finance minister, in collaboration with the ministry of energy and mineral development, has powers to give incentives such as tax waivers to investors in the sector.

The law introduced a model agreement for large-scale mining businesses. It requires community development agreements between mining companies and owners of land where minerals are found. It retains the following licence types: prospecting, exploration, and retention. The mining lease under the 2003 law was broken down into four to take care of the different categories of mineral enterprises based on financial, technical, and other competencies. The new mineral rights are large-scale mining licence, medium-scale mining licence, small-scale mining licence, and artisanal mining licence. The location licence in the 2003 law has been replaced with the small-scale and artisanal mining licences to provide for local participation in artisanal mining that has been ring-fenced for Ugandan citizens. Ugandans can operate small-scale mining enterprises with majority shares alongside foreign investors for purposes of raising capital. This is designed to further incentivise local participation. Minimum mineral rights range from five years for a small-scale licence to 21 years for a large-scale mining licence.

Creation of a National Mining Company

The National Mining Company (NMC) has been created to handle the commercial interests of the government. Its funding shall come primarily from the Consolidated Fund. Yet NMCs structurally tend to be cash hungry, drawing away resources from other government priorities. Most of Uganda's mineral commodities have not been quantified to establish their commercial value and mining as a business requires fiscal and financial management discipline which public entities tend to lack.

Regulation of building substances (development minerals)

Provisions on the licensing, exploration, and extraction of building substances (development minerals) and seem to sugest that a different law be enacted for that purpose. Proceeding under the mining law would have run counter to Article 244(5) & (6) of the Constitution. In a judgement in February 2022 on the same issue, although not emanating from parliament, the Supreme Court shared the same view that Building substances include sand, murram, clay. See also **Welt Machinen Engineering Ltd v China Road & Bridge Corporation & Anor (Civil Suit 16 of 2014) [2016] UGHCCD 17**

Illegal exploitation of natural resources

The law domesticates the 2010 International Conference on the Great Lakes Region (ICGLR) Regional Initiative Against the Illegal Exploitation of Natural Resources (RINR) and the ICGLR (Implementation of the Pact on Security, Stability and Development in the Great Lakes Region) Act, 2017, and related regulations. It provides for the implementation of a mineral traceability and certification scheme to eliminate mineral smuggling and illegal exploitation of designated conflict minerals such as tin, tungsten, tantalum, and gold (3TGs). This will enable miners and exporters of 3TGs to have direct access to lucrative international markets, which are otherwise averse to minerals sourced from regions where proceeds fund armed conflict. DGSM is charged with regulating the certification process. This is a welcome development for the miners and exporters of 3TGs. They have always cited the lack of a certification mechanism as the reason for smuggling of the 3TGs to neighbouring countries such as Rwanda to access international markets.

Fines and penalties

The new mining law introduces a prohibitive penalty-and-fines regime. A person who commits an offence under this law is liable to fines ranging from Shs60–500 million or imprisonment terms of between 2 and 7 years or both. Offences attracting these punishments range from prospecting, mining or exploration operations without a valid mineral right, licence or permit; carrying out refining, smelting, processing, trading, storage or any other activity without a valid mineral right, licence or permit; aiding or assisting illegal operations, trespassing on mineral rights of other mineral rights owners; and undertaking quarrying activities for commercial purposes without a quarry licence. Critics say that these penalties are extreme and amount to criminalisation of mining activities instead of deepening and promoting legal and responsible

mining practices. And that such penalties and fines will serve to entrench and promote corruption in the sector.

Mineral Protection Unit abolished

There will be no special police unit to enforce compliance within the mining sector on account of the poor track record of the current Mineral Protection Unit. Sector regulator, DGSM, will rely on the general police force for enforcement of compliance with any policies, laws, and regulations.

Changes in the fiscal regime

The law revises the royalty sharing proportions by giving the central government 65%; district local government 20%; sub-county/town council 10%; and registered or customary owners, lawful or bonafide occupants of the land 5%. In the 2003 law, the central government took 80%, local governments 17%, and owners or lawful occupiers of land with minerals 3%.

The new law also allows state participation of up to 35% in some medium to large-scale mineral projects. Controversially, the law permits the government to transfer its shares to a third party without asking the mining company, which has majority stake, whether it would like to take the said shares.

There are limited checks on non-compliance and under-declarations by a mining company. This could be improved by ensuring that all mine gates have a standard compliance audit process involving all parties to the royalties declared. These include the state (Uganda Revenue Authority), the local government, and representatives of landowners/trusts or community land associations/committees.

The law allows the minister and cabinet to waive royalty payment. Local governments and representatives of landowners are not part of that decision. This is improper because it takes away the right to raise revenues for local development. This provision also contravenes Article 26 of the Constitution on the right to property.

Local content

The law seeks to ensure that Uganda benefits more from the mining sector. It, therefore, demands technology transfer; research; recruitment, training and promotion of Ugandans and to prioritize the use of goods and services available in Uganda. This is a welcome new development.

Beneficial ownership disclosure

The government will publish on the ministry website information about actual owners (beneficial owners) of mining businesses, and failure to provide the right information will lead to cancellation of the licence. This is applaudable. However, the definition of a beneficial owner should be expanded beyond a natural person to include a legal entity as well. Qualification to be a beneficial owner should be further expanded beyond the narrow and restrictive 5% interest in the company in issue.

Access to land rights, valuation and compensation

Owners of mining businesses will act in a way that does not antagonise owners of land under which a mineral exists. They will negotiate. But, as a departure from the Mining Act, 2003, which requires a negotiated acquisition of surface rights, the new law provides for compulsory acquisition of private land where the exploration or mining operation is significant to the government. The law makes provision for dispute resolution in relation to land valuation and compensation. For example, anyone dissatisfied with the decisions of the regulator and or the minister may appeal to the Minerals Disputes Tribunal. This is good because it will quicken resolution of disputes and facilitate business by avoiding long and costly court processes.

Overall, the new piece of legislation is progressive. It largely aligns with Uganda's Vision 2040, the national development plans, the Africa Mining Vision, and is sensitive to trends in the international minerals market. It benchmarks several regional and international mineral sector best practices. However, the new regulatory framework on its own will not address all issues. The government will have to dedicate to the mining sector the same resources, both technical and financial, that have been allocated to the petroleum and energy sectors for it to realise its ambitions.

Mining licenses Uganda's mining licences derive from the concessionary system. As the term suggests, a concession allows for the private ownership of natural resources. The ownership of the minerals is vested in the mining companies at extraction subject to the payment of royalties, taxes and other fiscal impositions to the government. The Mining Act provides that no person may explore or prospect for, or retain or mine or dispose of any mineral in Uganda except under, and in accordance with, a licence issued under the Act. The various types of mining licences in Uganda are: Type of license Discussion Prospecting licence A prospecting licence gives the holder a non-exclusive right to carry on prospecting operations for any mineral. It is non-transferable and is for a duration of one year. Exploration licence An exploration licence gives the holder an exclusive right to carry on exploration operations in the specified area and for the mineral to which the licence relates. It is for a duration not exceeding three years but can be renewed for a further period not exceeding two years. Retention licence A retention licence is given to a holder of an exploration licence if a mineral deposit of potentially commercial significance has been identified but such deposit cannot be developed immediately by reason of adverse market conditions, economic factors and other factors beyond their control, which are of a temporary nature. It is for a duration not exceeding three years but can be renewed for a further period not exceeding two years. Mining lease A mining lease gives the holder an exclusive right to carry on exploration and mining operations in the specified mining area. It is for a duration not exceeding twenty years or the estimated life of the ore body. It can be renewed for a period not exceeding 15 years. Location licence A location licence gives the holder the exclusive right to prospect for and mine in a designated area. It is for a duration not exceeding two years and can be renewed for a further period not exceeding two years. A location licence can only be granted to Ugandan citizens

and companies desirous of carrying on small scale prospecting and mining operations. Mineral dealer licence A mineral dealer's licence enables the holder to purchase and sell minerals in Uganda. It is for a duration of one year and renewable annually. Goldsmith licence A goldsmith licence enables the holder to manufacture articles from any precious mineral or any substance containing any precious minerals in Uganda. It is for a duration of one year and is renewable annually.

The acquisition of mining rights Mining rights in Uganda are principally acquired by 3 main ways. These are the direct acquisition of rights and obligations under a mining licence also known as farm outs, farm downs or assignments, the direct or indirect acquisitions of the shares of an entity with a mining licence and first come first serve basis where an investor applies for a licence from government for any available mining area. Some countries like Kenya envision in their regulatory regime the use of competitive licensing rounds to give out mining rights. Licensing rounds are however largely used in the upstream oil and gas sector.

Transfer of mining licenses The mining sector extensively uses farm down techniques which involve the assignment of part or all of the exploration or mineral licence interests to a third party. The third party, called the 'farmee', may reimburse the farmor (" party transferring the mining right ") all or part of their sunk exploration costs and also commit to fund certain costs associated with future exploration work as outlined in a work programme. Farm outs raise finance but also manage exploration and development risks in the sector. Countries that place onerous requirements on the assignment of mining interests can discourage FDI in the sector. Assignments provide the opportunity for big mining companies to collaborate with junior miners that could have already played a key role in de-risking the acreage in place but are constrained by resources and expertise to go it alone.

Junior mining companies play a key role in the development of countries' mining sectors because of their high appetite for risk that the big mining companies may not have. The booming mining sectors in Canada and Australia are largely attributed to the fiscal incentives provided to junior mining companies some of which have made discoveries and in partnership with the larger mining companies have also grown into big companies. Unless provided otherwise, the Mining Act permits the transfer of mining rights but this is void and of no legal effect unless approved by the Commissioner for Geological Survey and Mines Department subject to the terms given.

Mining agreements Mining agreements are also known as Mining Development Agreements ("MDA"). The Mining Act allows the Minister responsible for mineral development to enter into an MDA with any person holding an exploration license or mining lease. The terms included in the MDA include but are not limited to conditions relating to:

• Minimum exploration or mining operations to be carried out and the timelines of such operations;

• The minimum expenditure in respect of exploration or mining operations;

• The manner of carrying out the exploration or mining operations;

• The processing whether wholly or partly in Uganda of minerals found

• The basis on which the market value of any group found may be determined;

• The financial and insurance arrangements;

• The resolution of disputes through an international arbitration or a sole expert;

• Any other matter connected with the contemplated mining operations. The Mining Act is silent on stabilisation clauses in mining agreements and is thus not very clear whether their inclusion can stand legal scrutiny.

Uganda's mineral fiscal regime combines both legal and contractual instruments setting out the framework for the allocation of the economic rent or wealth arising from the sector to the government and the investors. Economic rent is the difference between the revenues accrued from the production of minerals and the costs of production including the investor's 'reasonable' return on investment. Uganda's mineral fiscal regime is represented by some of the following fiscal tools discussed below.

Royalties Royalties are impositions on the production of minerals and are broadly categorised into two types, namely: specific or ad valorem. Specific royalties are computed as a fixed value amount on the quantity of the resource extracted, while ad valorem are charged as a percentage of the monetary value of the resource. Royalties are favoured by governments because they are easy to administer, collect and also provide a first tranche of payment as soon as production commences. Specific royalties are simple to administer, provide early revenues and are not affected by fluctuations in commodity prices. Government revenues, however, remain stagnant if resource prices increase and do not keep up with inflation. Ad valorem royalties address some of these concerns through valuation based on the prevailing commodity prices. Royalties are however unpopular with mining companies and are criticised as being insensitive to costs, frontend loaded and with the potential to end production prematurely. Mining companies tolerate royalties linked to the profitability of the project. Governments are usually reluctant to forego royalties though it is suggested that abandoning these may create an impetus to attract mineral sector investment as investors prefer to be taxed on the ability to pay determined by profitability and not production. The Mining Act allows the Minister responsible for Mineral Development to waive the payment of royalties with the approval of Cabinet if it is considered necessary to encourage mineral production.

THE NATIONAL ACTION PLAN FOR ARTISANAL AND SMALL-SCALE GOLD MINING IN UGANDA, IN ACCORDANCE WITH THE MINAMATA CONVENTION ON MERCURY

Uganda became a signatory to the Minamata Convention on Mercury in 2013 and re-affirmed its commitment to protecting human health and the environment from anthropogenic emissions and releases of mercury and its compounds by becoming a Party to the Convention on 1st March, 2019. As we are all

aware, the Minamata Convention on Mercury is a multilateral environmental agreement that addresses specific human activities which are contributing to widespread mercury pollution. Results from the national Minamata Initial Assessment Studies carried out in 2018 were an eye opener that mercury emissions from the Artisanal and Small-Scale Gold Mining (ASGM) sector in Uganda were more than significant. Similarly, assessments on the national overview of the ASGM sector, including baseline estimates of mercury use and practices enhanced our understanding on mercury sources and releases in the ASGM sector and existing unsustainable gold mining and processing practices. These studies among others facilitated the development of this National Action Plan on ASGM.

The Artisanal and Small-Scale Gold Mining (ASGM) sector is responsible for most mercury emissions worldwide, releasing 838 tonnes annually of mercury into the environment (UN Environment, 2019). Sub-Saharan Africa is the second highest emitter with 252 tonnes annually of mercury into the environment. Mercury is highly toxic (IBID). It affects flora and fauna as well as human health. For humans, it poses a threat to the development of the child in utero and early stages of life leading to birth defects and body deformities. Communities and ASGMs working or living around the mines can be exposed to two forms of mercury in an ASGM context: Elemental mercury and organic mercury. The Government of Uganda implemented a project titled "Regional project on the development of National Action Plans (NAP) for the Artisanal and Small-Scale Gold Mining in Africa". The project was in line with the Minamata Convention whose objective is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds and it sets out a range of measures to meet that objective. The goal of the NAP project was to contribute to the implementation of the Minamata Convention through the reduction of the risks posed by the unsound use, management and release of mercury in the Artisanal and Small-Scale Gold Mining sector. Uganda including other participating countries (Burundi, Republic of Congo, Central African Republic, Kenya, Swaziland, Zambia, and Zimbabwe) notified the Interim Minamata Secretariat that mercury emissions from the Artisanal and Small-Scale Gold Mining (ASGM) sector was more than significant in their respective territories. The NAP project was aimed at assisting participating countries including Uganda to develop National Action Plans (NAPs) to reduce the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, artisanal and small-scale gold mining and processing in accordance to Annex C of the Minamata Convention. By developing their National Action Plans participating countries are complying with the text of the Minamata Convention and are enabled to implement it. In addition, participating countries including Uganda, would benefit from new and updated information about the use of mercury in the ASGM sector in the country and from increased capacity in managing the risks of mercury emitted and released from such activity and to foster cooperation with similar countries for future implementation of the NAPs.

In 2017, the President of Uganda announced a waiver of royalties on gold mined or exported from Uganda though it is not clear whether there was a follow up legal instrument to effect this directive. Uganda's

current royalty rates are: Mineral Type of royalty Royalty rate Precious metal Ad-valorem 5% of the gross value Precious stones Ad-valorem 10% of the gross value Base metals and ores Ad-valorem 5% of the gross value Coal including peat Specific UGX 5000 per tonne Vermiculite Specific UGX 10,000 per tonne Kaolin, limestone, chalk or gypsum Specific UGX 10,000 Per tonne Marble, Granite, sandstone and other dimension stones Specific UGX5000 per tonne Pozzolanic materials Specific UGX 1,000 per tonne. Uganda's Mineral Regulatory Regime A fresh perspective Mineral Type of royalty Royalty rate Phosphate Specific UGX 10,000 per tone Salt Specific UGX 5,000 per tonne Royalties collected from the mining sector in Uganda are shared as follows: eighty percent to the Central Government, seventeen percent to the Local Government and 3% to the land owner.

Fiscal terms imposed under the ITA Uganda's mineral income tax regime is based on the taxable profits of the mining company determined by adjusting accounting profits or losses with allowable or disallowable expenses. A company only has income tax to pay when it has a taxable profit. Some features of Uganda's mineral income tax system are: Feature Discussion Rate of corporation tax Until 2015, the ITA provided for a variable rate of income tax system for the mining companies. The rationale for this was to capture a competitive share of revenues for the government at different mine profitability levels while at the same time providing suitable tax relief for projects. A variable rate of income tax formulae was used to tax highly profitable mines which could rise up to 45% but also reducing to 25% if the mine was not so profitable in that year of income. The rate of income tax is for mining companies is now 30%. Ring fencing Ring-fencing requirements were introduced in 2015.Ring-fencing is an arrangement where the different mining areas held by an investor are considered separate with costs and revenues disaggregated when determining the taxable profits for each mining area. Carry forward of tax losses The ITA allows taxpayers to carry forward tax losses and deduct the same in determining the taxpayer's taxable profits in the following year of income. Effective 1st July 2018 taxpayers with carried forward tax losses for 7 consecutive years will pay income tax at the rate of 0.5 percent of the gross turnover for every year of income in which the loss continues after the seventh year. Mineral exploration and extraction expenditure The ITA permits mining companies to deduct any expenditure of a revenue or capital nature for their mining operations in accordance with the provisions of the Act.

Surface rentals The following annual rents below are paid depending on the category of the mining right held other than a prospecting license. Mineral Rates Holder of an exploration license for every square kilometer UGX 50,000 Annual rent for the first renewal of an exploration license for every square kilometer UGX 75,000 Annual rent for the second renewal of an exploration license for every square kilometer UGX 100,000 Holder of a retention license for every square kilometer UGX 100,000 Holder of a location license UGX 1,000,000 per annum Holder of a location license (Class VII Brine and salt) UGX 20,000 per annum Holder of a mining lease UGX 100,000 per annum per hectare or part of hectare

Value Added Tax Act Mining companies in Uganda may register for VAT at exploration and development stages even before they embark on production. Entitlement to VAT registration though laudable may not solve the issue of timely refund of VAT repayments which is a challenge in many developing countries.

Uganda additionally operates a deemed VAT paid regime providing that while inputs for mining operations are 8 Uganda's Mineral Regulatory Regime A fresh perspective charged VAT at the standard rate of 18%, the mining companies need not expend cash as the VAT charged is deemed to be paid under the law. The vendors to the mining companies similarly need not remit the VAT charged to the government but their ability to recover the input VAT they suffer in providing supplies to the mining companies is not affected.

Fiscal terms under the East African Community Customs Management Act, 2004 Uganda is part of the East African Community Customs Union and thus uses the same legislation applicable to all the East African countries, namely, Uganda, Kenya, Tanzania, Rwanda and Burundi with respect to customs matters. The East African Community Customs Management Act, 2004,exempts all machinery and inputs imported by licensed mining companies and their subcontractors for direct and exclusive use in mining exploration and development from import duty. This tax policy stance taken by Uganda is laudable and consistent with the position adopted by many other countries that exempt extractive projects from import duties. The general import duty rates are otherwise 0% for raw materials and capital goods under Chapter 87 of the Common External Tariff, 10% for semi-processed goods, 25% for finished products and 35% to 100% for sensitive items.

Infrastructure Development Levy The Finance Act 2015 introduced a levy known as the Infrastructure Development Levy paid on selected goods imported into Uganda. The levy is at the rate of 1.5% of the customs value of goods and is payable at the time goods are imported. Mining companies are not exempted from this levy which has the potential to adversely affect the economics of mining projects.

Local government levies Depending on the area of operation, local government authorities may levy, charge and collect fees, taxes, rents and rates that are set out in the Local Government's Act. These levies are presently immaterial.

CASE LAW IN MINING ISSUES

In the case of **Nilefos Minerals Ltd v Attorney General & Anor (Miscellaneous Cause 184 of 2014) [2016] UGHCCD 10** was BEFORE: HON.JUSTICE STEPHEN MUSOTA it was an application by Notice of Motion for Judicial Review of the decision of the Minister of Energy & Mineral Development made on the 28th day October 2014 confirming the decision of the Commissioner Department of Geological Surveys and Mines made on 10th June 2013 where the Commissioner refused and denied the applicant the Mining Lease. The applicants are seeking for prerogative orders of mandamus, prohibition, certiorari, permanent injunction, damages and costs of the application. The application is brought under Articles 28, 42, 44(C), 26(1&2), Article 50(1&2) of the Constitution and Section 119(1&2) of the Mining Act (2003). Section 33, 36, 37 of the Judicature Act and Rules 3, 4, 6 and 8 of the Judicature (Judicial Review) Rules SI 11 of 2009.

It was argued that Section 43(4) of the Mining Act 2003 wherein it is enacted as follows:

"..... (4) The commissioner shall not refuse an application for the grant of a Mining Lease on any ground referred to in subsection (3) of this section unless the commissioner-

1. ***has given notice to the applicant of his or her intention to refuse to grant the lease on that ground.***
2. ***specified in a notice, the period within which the applicant may make appropriate proposals to correct or remedy the defect or omission which forms the basis of the ground for intended refusal; and***
3. ***the applicant has not before the expiration of that period made the proposals".***

In the case of **Welt Machinen Engineering Ltd v China Road & Bridge Corporation & Anor (Civil Suit 16 of 2014) [2016] UGHCCD 17** BEFORE HON. LADY JUSTICE H. WOLAYO The plaintiff through its advocates sued the defendants jointly and severally for the following orders:

1. Permanent injunction
2. A declaration that the defendants have no legally recognizable rights to extract /mine granite stones from the suit land
3. An order of eviction
4. General damages for trespass on the plaintiff's location licence area
5. An order against the defendants to account for the proceeds of the 1st defendant's unlawful activities
6. Aggravated and exemplary damages
7. Interest and costs

It was observed that Section 2 of the Mining Act describes '*holder*' as

a person to whom a licence is granted under the Act and includes every person to whom that licence is lawfully transferred or assigned.'

Under article 244 (1) of the Constitution as amended, the entire property in and the control of, all minerals and petroleum in, or on or under any land or waters in Uganda are vested in the government on behalf of the Republic of Uganda.

Article 244(2) mandates Parliament to make laws for management of minerals.

Article 244(6) authorises Parliament to regulate exploitation of any substance excluded from the definition of minerals when exploited for commercial purpose.

Under sub article (5) mineral does not include clay, murram, sand, or any stone commonly used for building.

Under section 2, industrial minerals include rock, gravel, granite, sand, sand stone among other minerals, commercially mined by a person for use in Uganda or industrially processed or semi finished products and may include such minerals as the Minister may from time to time declare in the gazette.

Building minerals include rock, clay, gravel, sand murrum among other minerals mined by a person from land owned or lawfully occupied by the person for domestic use in Uganda for building or for his own use of road making and may include such minerals as the Minister may declare in the gazette to be building minerals.

For comparative purposes, i examined the Mining Act 14 of 2010 of Tanzania. Building minerals are referred to as building *materials* and they include all forms of rock, stones, gravel, used for construction of building, roads, dams etc.

Industrial minerals on the other hand include metallic minerals used in industries.

As clearly defined under section 2 of the Mining Act, whether a mineral is a building mineral or industrial mineral is determined both by the Mining Act and whether it is used for domestic or commercial purpose respectively.

Under section 13 of the Mining Act, only the Commissioner of Geological Survey and Mines is authorised to issue licences and therefore authority to mine and not the district local government. Participation in management of minerals by the local government is enabled by the Mining regulations 2004 that require the CAO to endorse applications for licences.

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

In August 2020, Uganda formally joined the Extractive Industries Transparency Initiative (EITI). This requires Government and IOCs/Mining companies to disclose all agreements and contracts. Under the EITI framework, companies publish information on their payments to Government and the latter publishes its receipts from the companies. In turn, this is expected to enhance transparency and accountability and ensure that extractives revenues benefit the citizens. It is was expected that Uganda will publish the first EITI report in February 2022 (18 months from the time of joining EITI).

EITI Standard 2019

The EITI Standard outlines the requirements applicable to countries implementing the EITI as well as the Articles of Association governing the EITI.

This EITI Standard consists of two chapters: chapter one, *Implementation of the EITI Standard*; and chapter two, *Governance and management*.

Implementation of the EITI Standard, includes:

- **The EITI Principles**, which were agreed by all stakeholders in 2003. These Principles lay out the general aims and commitments by all stakeholders.
- **The EITI Requirements**, which must be adhered to by countries implementing the EITI.
- A section on **EITI Board oversight of EITI implementation**, which outlines the time frames that implementing countries must adhere to and the consequences of lack of progress with meeting the EITI Requirements.
- **Overview of Validation**. Validation provides stakeholders with an impartial assessment of progress in EITI implementation towards meeting the requirements of the EITI Standard.
- **The protocol "Participation of civil society"**, which sets out requirements and expectations regarding civil society participation in EITI implementation.
- **Expectations for EITI supporting companies**.
- **The Open data policy**.

EITI's Governance and management

It includes: the Articles of Association, which address how the EITI Members' Association is governed and the EITI Openness policy, which addresses how the EITI itself should be transparent. Each constituency of the Association has agreed Constituency guidelines. It also includes the EITI Association code of conduct which establishes expectations for conduct for all EITI Board Members, their alternates, Members of the EITI Association, national and international secretariat staff and members of multi-stakeholder groups.

Implementation of the EITI Standard

1. The EITI Principles

The EITI Principles lay out the general aims and commitments by all stakeholders.

2. Becoming an EITI implementing country

A country intending to implement the EITI is required to undertake a number of steps before applying to become an EITI country. These steps relate to government commitment (1.1), company engagement (1.2), civil society engagement (1.3), the establishment of a multi-stakeholder group (1.4) and agreement on an EITI work plan (1.5). When the country has completed these steps and wishes to be recognised as an EITI implementing country, the government should submit an EITI Application to the EITI Board.

3. Requirements for EITI implementing countries

The EITI Requirements are minimum requirements and implementing countries are encouraged to go beyond them where stakeholders agree that this is appropriate. Stakeholders are encouraged to consult additional guidance materials on how to best ensure that the requirements are met.

4. EITI Board oversight of EITI implementation

This section outlines the procedures and criteria that the EITI Board uses in overseeing and validating EITI implementation. This includes the time frames established by the EITI Board for publication of EITI data and oversight of the Validation process.

5. Overview of Validation

Validation is an essential feature of the EITI process. It serves to assess performance and promote dialogue and learning at the country level. It also safeguards the integrity of the EITI by holding implementing countries to the same global standard. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is in line with the provisions of the EITI Standard. The Validation report, in addition, seeks to identify the impact of the EITI in the country being validated, the

implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

6. Protocol: Participation of civil society

The civil society protocol sets out requirements and expectations regarding civil society participation in EITI implementation.

7. Expectations for EITI supporting companies

Supporting companies uphold the EITI Standard through reporting in EITI implementing countries where they operate. Supporting companies are also encouraged to participate in multi-stakeholder groups and to actively engage in the EITI process in implementing countries.

EITI supporting companies further support EITI implementation through their membership in the EITI Association, by meeting this set of Expectations and an annual financial contribution to the international management of the EITI.

8. Open data policy

This policy contains recommendations on open data in implementation of the EITI within the agreed scope of EITI implementation at the national level. It complements the requirements regarding open data as per Requirement 7. It builds on lessons emerging from national level implementation and emerging international best practice and encourage systematic disclosure.

Governance and management

9. Articles of Association

The Articles of Association are an integral part of the EITI Standard. The Articles were reviewed at the Global EITI Conference in Paris 2019 and adopted by the Members' Meeting on 17 June.

10. EITI Openness policy

The documents of the EITI are public, except as otherwise provided in the EITI Openness policy.

11. EITI Constituency Guidelines

The report of the International Advisory Group, as adopted by the Oslo Conference in October 2006, recommended that 'Each of the constituencies should agree how they wish to be represented on the proposed Board. This requires prior consideration by each constituency of how they define those eligible (i) to be selected as representatives; and (ii) to be involved in the selection process'.

The constituencies are defined in the EITI Articles of Association, which also determine the size of the constituencies' membership on the association and the number of seats on the EITI Board. Some of the EITI constituencies are informally sub-divided.

12. EITI Association Code of Conduct

The EITI Board adopted the Code of Conduct in March 2014.

This Code of Conduct applies to all EITI Board members, their alternates, Members of the EITI Association, secretariat staff (national and international), and members of multi-stakeholder groups.

THE PHYSICAL PLANNERS' REGISTRATION ACT 2021 AND PHYSICAL PLANNING AMENDED ACT 2020

This is intended for better coordination of the sector, The Act will ensure physical planners play a more effective role in all physical planning matters in the Country based on the law, and are made more responsible and accountable for their professional conduct.

The Ministry for Lands, Housing and Urban Development laid out strict new procedures for the granting of building and construction permission through district, urban and sub-county physical planning committees, the guidelines are designed to guide planners and developers on proper land usage and structured development.

What are Requirements?

Under the new guidelines, prior to commencing a project, property developers must first apply for development permission and obtain a development permission certificate.

However, the application for development permission must be accompanied by a development concept, prepared by a qualified physical planner.

This this a change from old procedures in which the application is accompanied by architectural plans or structural drawings.

Physical Planners have also been provided with guidelines for preparation of a development concept, it is the duty of the physical planner to assess and advise on what the developer intends to do with a particular piece of land.

Therefore, the development concept prepared by the physical planner guides on how the land will be developed, as opposed to the design concept prepared by the architect that explains the structure of buildings to be erected upon the land, attaining architectural building plans before formal clearance is an unnecessary expense.

“By the time one submits the architectural plan for a hotel, for instance, they have already invested over USh7 million, and will do whatever it takes to have the project happen. But if you submit your application early enough, it prevents people from submitting wrong things.

Physical planners will set the standards for a planned building, such as the number of floors that are permitted, and provisions for adequate parking space in the case of an apartment or commercial building, etc.Only after the development is approved will building plans then be required.

The physical planner should be part of the physical planning committee from your nearest local government office who understands the area and knows what is acceptable and what is not. Their role is to guide one from the beginning or inception of the development. When they have cleared you, the next stage is to get an architect to prepare building plans which you will submit for approval

This is intended to will solve the problem of authorities endorsing buildings according to architectural plans alone, without consideration of the environment. e.g the need to end this mess of a church or mosque being built next to a discotheque, among others, one should seek clearance before engaging the services of an architect to make plans for a project that may never be given approval to proceed. that just because you may own land, you cannot use it as you wish without clearance by the NBRB, all developments are regulated under the Physical Planning Act, 2010 which regulates land use planning, and the Building Control Act, 2013 which regulates designing and building operations, the regulations consider more than just construction; they also tackle the environment and public safety.

The intention is to reorganising the country as per the preamble of the Building Control Act. It is an act to consolidate, harmonise and amend the law relating to the erection of buildings and to provide for building standards, to promote and ensure planned, decent and safe building structures that are developed in harmony with the environment. Let the planning happen and the building come next. Let no construction take place where it is not planned.

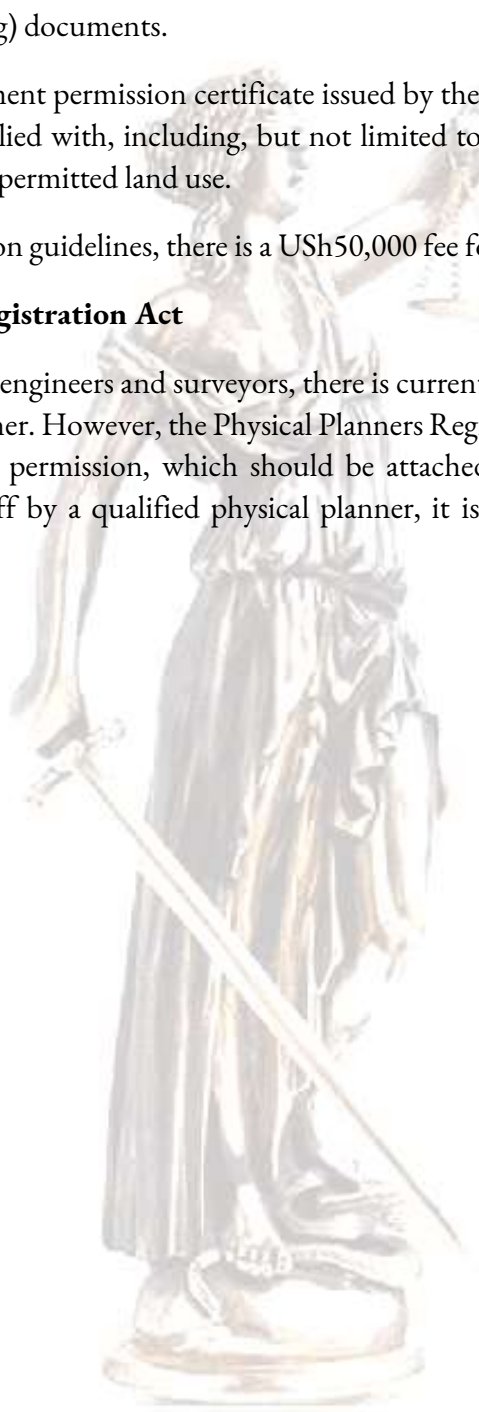
Under the new rules, the application form developers are required to submit must have all the relevant sections fully completed, and reflect accurate details of the owner, the developer, and the proposed development. It can then be submitted to the relevant office of the Physical Planning Authority with all relevant (accompanying) documents.

The resulting development permission certificate issued by the Physical Planning Authority shall bear the conditions to be complied with, including, but not limited to the expected parking provisions, building height limitations, and permitted land use.

Per the new construction guidelines, there is a USh50,000 fee for development permits.

Physical Planners Registration Act

Unlike with architects, engineers and surveyors, there is currently no law that requires the registration of a qualified physical planner. However, the Physical Planners Registration Act, stipulates that the application form for development permission, which should be attached to the development concept, should be prepared and signed off by a qualified physical planner, it is amended to refer to a registered physical planner.



EXAMPLE

Assuming it were possible, what steps would Muzamir have to take? Draft the documents he would use in the circumstances.

Possible steps to be taken to obtain a certificate of title are provided for under **Section 78 to section 91, part V of the Regestration of Titles Act.**

Apply to the Registrar or commissioner of lands for a vesting order under **Section** 78 **of the Regestration of Titles Act.**

The form of the application is provided for under. **Section 79.** Every application under section 78 shall be (a) in writing in the form or to the effect of the Sixth Schedule to this Act, and shall include the several particulars mentioned or referred to in that Schedule;

(b) Signed by the applicant, or in the case of a corporation by a person authorised in that behalf in writing under the seal of the corporation;

(c) Attested by at least one witness being a person mentioned in that behalf in section 147;

(d) Supported by a statutory declaration by the person signing it that the several statements in it are true; and

(e) Accompanied by a survey plan (with field notes) of the land.

Upon acceptance by the registrar under **Section 80**, the Registrar shall advertise a notice of the application in the gazette at the expense of the applicant and will cause such notice to be served on each person(s) with interest in the land

Section 81 of the Regestration of Titles Act.The applicant shall cause the copy of the notice of the application to be posted in a conspicuous place on the land or at such place as the commissioner shall direct for not less than three months

Section 82 of the Regestration of Titles Act. The commissioner of land or a registrar shall grant the application after a period of not less than 3 months or more than 12 months from the date of advertisement of the notice if no caveat has been lodged against the grant.

Section 83 of the Regestration of Titles Act. After the expiration of such period, if the registrar of commissioner for land is satisfied that the applicant has acquired a title by possession cancel the existing certificate and issue a new certificate of title to the applicant.

Section 87(a) of the Regestration of Titles Act Cap 230 and also under **Section 89 of the Regestration of Titles Act** the commissioner shall on granting the application make entries in the register

similar to those entered by virtue of a vesting order by court under **Section 166 of the Regestration of Titles Act**, **Section 91 of the Regestration of Titles Act** provides that any certificate of title issued by the registrar upon the granting of any application under this Part of this Act shall be issued and registered in the manner prescribed by **Section 37 of the Regestration of Titles Act**, and thereupon the person named in the certificate of title shall become the registered proprietor of that land. (2) The certificate shall be dated the date of the granting of the application by the registrar.

Documents required.

Application is by formal letter meeting all requirements in form under the 6th schedule of the RTA.

Statutory Declaration.

Survey plan

Notice of the publication.

Fees

22nd schedule of the Regestration of Titles Act, item 7 provides that for every publication under s.78 pay 0.5 % of the value of the land.

Certificate issued 10.000.Item i

Form in sixth schedule.

SUI GENERIS AND CO. ADVOCATES

P.O Box 0000

Kampala.

Date: 27th November, 2018

To the Commissioner for land Registration

.....

Dear Sir/ Madam,

RE: APPLICATION FOR A VESTING ORDER IN LAND COMPRISED IN MAWOKOTA BLOCK 83 PLOT NO.674.

I, Muzamir Mudde of ....., apply for a vesting order in the piece of land comprised in Mawokota Block 83 Plot NO. 674 measuring approximately 108 acres, which land is delineated coloured red upon the plan numbered .....in the schedule to this application for an estate free from encumbraces and I declare;

That I have been in exclusive possession of the said land for over 32 years unchallenged by the registered proprietor, one Zubair Nkumba.

That there are no documents and any other evidence affecting such land in my possession and under my control other than those ascertaining my rights on the land.

There are no mortgages or encumbrances registered on the above-mentioned title or land description.

That the present value of the land, including all improvements does not exceed Ugx shs.....

Dated at Kampala this 27th day of November, 2018.

Name and signed by .....

MUZAMIR MUDDE

In the presence of .....

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 230.

AND

IN THE MATTER OF LAND COMPRISED IN MAWOKOTA BLOCK 83 PLOT NO. 674.

AND

IN THE MATTER OF AN APPLICATION FOR AVESTING ORDER

STATUTORY DECLARATION.

(Pursuant to Section 79 of the Regestration of Titles Act Cap 230)

I, Muzamir Mudde of SUI GENERIS and CO. Advocates, do hereby solemnly declare and state as follows;

That I am a male adult Uganda of sound mind, the applicant in this matter and make this oath in that capacity.

That I have been in exclusive possession of the land comprised in Mawokota Block 83 Plot No.674 measuring approximately 108 acres in size for over 32 years unchallenged by the registered proprietor, one Zubair Nkumba.

That the above-described land is registered in the names of one Zubair Nkumba.

That I have various projects on the same land including a ranch from which I get the animals for my project carried on, on the same described land.

That I make this oath in support of my application for a vesting order in respect of the above-described land.

I hereby confirm and declare that whatever I have stated above is true and correct to be best of my knowledge.

Dated at Kampala by the said Muzamir Mudde this 26th, day of November, 2018.

.....

DEPONENT

BEFORE ME

.....

COMMISSIONER FOR OATH

Drawn and filed by:

SUI GENERIS and CO. Advocates.

P.O Box0000

Kampala

Lodging a caveat

What steps could Zubair take to resist Muzamir's actions and what would be the grounds of the objection?

Zubair can object to the grant of a certificate by lodging a caveat.

Section 86. Provides for Caveat forbidding grant of application.

(1) A person claiming any estate or interest in the land in respect of which any such application is made may before the granting of the application lodge a caveat with the registrar forbidding the granting of the application.

(2) The caveat shall in all other respects be in the same form and be subject to the same provisions and have the same effect with respect to the application against which it is lodged as a caveat against bringing land under the operation of this Act.

A caveat acts as a statutory injunction to the registrar to prevent registration of any dealings, which might affect an alleged interest of the person lodging it (the caveator) caveat. A caveat forbids registration of any person as registered proprietor or registration of any instrument affecting the applicant's interest on the land.

A caveat is provided for under **S. 20 (1) of the Regestration of Titles Act,** Any person claiming any estate or interest in the land described in any notice issued by the registrar under this Act may, before the registration of the certificate, lodge a caveat with the registrar in the form in the Fourth Schedule to this Act forbidding the bringing of that land under this Act.

Section 20(2) of the Regestration of Titles Act Every caveat lodged under subsection (1) shall be signed by the caveator or by his or her agent, and shall particularize the estate or interest claimed; and the person lodging the caveat shall, if required by the registrar, support the caveat by a statutory declaration stating the nature of the title under which the claim is made, and also deliver a perfect abstract of the title to that estate or interest.

(3) No caveat under this section shall be received unless some address or place in which a post office is situated shall be appointed in it as the place at which notices and proceedings relating to the caveat may be served.

In **MUSISI V GRINDLAYS BANK SCCA 5/1986** COURT held that **Section 139of the Registration of titles Act** requires that no dealings in the land should be done while there is a caveat prohibiting the same

Procedure;

To lodge a caveat, the applicant must have in his or her possession

Two sets of embossed documents duly witnessed by an advocate and signed by the person who is placing the caveat and dated.

A statutory declaration (affidavit) signed by the deponent and a commissioner for oaths

Two pass port photo graphs of the person placing the caveat.

The applicant presents the full set of original documents and a photocopy of the same to the office of the titles for processing. The photo copy is stamped, received and returned to the applicant.

The applicant checks with the office of tittles after 10 working days to confirm entry of the caveat upon the registration.

He has to be in possession of the following documents

1) Caveat

2) Affidavit

3) Set of passport photographs

4) General receipts of payment.

5) Pay fees of 10,000 under 22nd schedule RTA, and also a stamp duty of 10,000 under item 19 of the Second Schedule of the Stamp Duty Act 2014 as amended in 2016.

However, lodging a caveat serves as an interim measure usually pending judicial determination of the caveator's claim over the land. Therefore, Zubair should file a case before Court and seek an injunction restraining registration of Muzamir and determine whether the land is subject to adverse possession.

Grounds

Zubair's grounds for objection would be that he is the registered proprietor of the property and his title is under **Section 59 and 64 of the Regestration of Titles Act**, paramount in absence of fraud. He also can claim eviction of Muzamir for trespass. He would claim that was Muzamir is a trespasser on the suit land and could not have acquired any interest whether legal or otherwise.

The essentials of adverse possession as stated in the case of **HOPE RWAGUMA** V **JINGO LIVINGSTONE MUKASA HCCS 508 OF 2012** have not been fulfilled notably, it is not shown on what date Muzamir came into possession; the grazing of animals does not amount to possession, the factum of possession was not known to Zubair.

EXAMPLE

BRIEF FACTS

Major Allan Nkusi who just received his retirement terminal benefits from UPDF is interested in acquiring properties of Brenda Komugabe, land comprised in LRV 1289, Folio 15 , Plot No Misc 437, Ntinda-Kampala developed with the commercial house in occupation of her tenants, land in her children's names comprised in Kyadondo Block 83, Plot 818 Bubale.

Further still, he intends to buy other pieces of land from Brenda Komugabe using his company Reach the Rich Ltd to wit FRV 98, Folio 27, Plot 11 Kyotokyamandwa partly used by Brenda's family for cattle, sheep, goats rearing and the other 20 acres being in use for subsistence and commercial farming and the other remaining part being in exclusive use of Bitumen Byekwaso who inherited it from his late father 40 years ago. There is also land comprised in Kyandodo Block 224, plot 620, Kisugu, developed with a residential house in occupation of Brenda Komugabe's entire family.

ISSUES

a) What the pertinent aspects of Komugabe Brenda's land are as discerned from the certificates of title?

b) What are the requisite steps and inquiries to undertake to establish the viability of purchasing Brenda's land?

c) What are the necessary documents to be drafted?

d) Whether there are any identifiable third-party rights and legal factors that substantially affect the purchase of Brenda's land?

e) What is the most appropriate document to conclude the sale and purchase of Kyadondo Block 244 Plot 620 Kisungu land?

f) What steps would be undertaken to cause Nkusi obtain legal interest in this land?

g) What are the levies, duties and fees payable in the in the process of obtaining legal interest in this land?

h) What are the likely ethical issues that may arise in the course of completion of these transactions and how to address them?

LAW APPLICABLE.

The 1995 Constitution of Uganda as Amended.

The Registration of Titles Act Cap 230.

The Land Act Cap 227 as amended.

The Land Regulations of 2004 as Amended.

Physical Planning Act of 2010, No. 8 of 2010.

The Survey Act Cap 232

Stamp's Act Cap 342 as Amended.

Registration of Documents Act Cap 267.

The Advocates Professional Conduct Regulations S.1 267-2

Issue 1. What are the pertinent aspects of Komugabe Brenda's land as discerned from the certificates of title?

Certificate one

Cover page- The cover page is descriptive and shows that the title is issued by the Uganda government, the laws under which it is issued, the county, block and a plot which all give the description of the land.

It also bears the seal of the issuing authority.

Part 1;

This part describes the type of tenure, size of the land, location, district, County, Township, Block and plot number and the endorsement and seal of the Registrar.

It also shows easements and any other rights existing on the land.

Part II of the title.

Part II of the title is about ownership. It shows previous and current ownership and specifically shows the date of registration, instrument number, previous and current proprietors' addresses, father's name, clan, encumbrance, price paid per acre and signature of the registrar. So, we are able to figure out our current proprietor Brenda.

Deed plan

The deed plan gives detailed geographical description.

It shows the location, computed dimensions and size of the land.

The deed plan can be used for identifying physical features near the titled land. It provides for various plot numbers, easements, rights, highways etc.

Part III of the title

This part provides for encumbrances if any registered in respect to the land. It provides for the date of registration, instrument number, names and addresses of service for mortgagee, creditor, caveator etc, particulars of encumbrances or entry and Registrar's endorsement. In our title 1, there is a subsisting lease registered on 21st April 1971, instrument number Kla 60551 by Jean Barker of P.o Box 1337 Kampala, lease for 99 years from 17th March 1965 and a withdrawn caveat by Paulo Wandera which was withdrawn on 1st November 1996 at 9:40 under Kampala instrument 181040.

It also shows there was a caveat lodged by Paul Wandera but the same was withdrawn in 1996 before selling to Brenda.

Certificate two

Cover page.

This gives a description of the land and the type of tenure system.

The above is the free hold title and is one of the land tenure systems provided for in the constitution under **Article 237(3) (a).** Free hold system allows for holding of the land in perpetuity and the owner has full powers to use the land they want to.

It also has the volume number and folio number. The folio number is 27.The folio number is distinct for every property and is what identifies the property in the registry.

It shows the size, location of the land, the stamp and signature of the registrar.

It also has a date on which the title was issued. 5th March 1960.

Part II.

Ownership.

This part shows the different owners from whom the title has revolved from up to the current owner.

Once a sale has occurred, the name and address of the former owner is crossed out and the name and address of the new owner is written. The signatures of the registrar and the vendor are written besides the crossed name of the owner, the instrument number and the date and time at which the transfer was registered.

The instrument number represents the number that was given when the transfer forms were registered.

Deed plan.

The deed plan gives detailed geographical description and plot number and also shows the location, computed dimensions and size of the land.

The deed plan can be used for identifying physical features near the titled land.

Part 3

This is the encumbrance page. This shows the equitable interests on the land or any other encumbrances on the land. This land has no encumbrance.

Certificate three

The land in document three is registered under the lease hold register under the registration of titles act cap 230.

Lease hold is one of the land tenure systems provided for in the constitution under article 237(3) (a).

The front page of the certificate of title displays a description of land. It gives the plot no, location of the land, and district. It also shows the volume number and folio whose importance is to help in identifying the piece of land.

The description of land on the certificate of title is meant to clearly state where the land being registered is situate that is plot number 437 at Ntinda Kampala . These descriptions can as well include the street number, the road name where the land is situated and the township or municipality and district.

The certificate of title also contains expressly the size of the land and in this title the land is 0.199 of a hectare. All these are for purposes of properly situating the land in that even if a person was to carry out due diligence, they would know where the land is and easily locate it by searching at the registry of lands.

The next description on the certificate of title is the term of the lease that is five years and the lease is subject to the implied conditions and covenants under the Registration of Titles Act Cap 230 and the lessee is bound by any encumbrances if any entered in the encumbrance register.

The leasehold title is also subjected to a right of way by other members of the public and that is why there is a word easement on the certificate of title.

The next feature is the proprietorship of the lease. The lease according to the certificate belonged to Patrick Moga of P.O BOX 7664 Kampala

Next Patrick Moga sold his lease to Afzal Khan of P.O BOX 10516 Kampala.

There is a provision of a column for inserting the date the lease was registered as well as the day it was sold and the time the entries were made in the register.

The date of issue of title is the next pertinent issue which is the 14th of January 1984.

There under is the signature of the registrar of titles and the seal thereto.

The current owner of the lease is Komugabe BRENDA OF P.O BOX 445195 KAMPALA.

The most important feature of this title is that a lease agreement between the lessor and the lessee must be attached on the register. As such the lease in question was made on the 16th day of December 1983 under the Public Land Act and the rules between Uganda Land Commission the lessor and Patrick Moga of P.O BOX 7664 Kampala who is the lessee .

The lease agreement contains or stipulates the terms and conditions under which the lease is granted. That the lease of the demised premises is granted in return of a consideration of 80,000 shillings paid to the lessor and the lessor acknowledges receipt.

This money shall be paid yearly in two installments one installment at the beginning of January each year and another in July and that these installments shall be equal in value.

The third paragraph in a lease agreement contains the conditions that the lessee agrees to;

To observe and perform all conditions and covenants implied by law in the lease.

The lease agreement fully contains the terms and conditions that both the lessor and lessee will follow or abide by and at the end of the lease are signatures of the parties and witnesses thereto. Once the lessee passes on the lease to another person the person acquires the lease subject to the terms and conditions and the lease is registered in the volume as an encumbrance on the freehold or mailo title of the leased land.

Further the lease agreement contains an automatic renewal clause of 49 years.

The next element of the title is the deed plan which shows the accurate location of the land and the easements on the land and other physical features like swamps on the land. The main purpose of the deed plan is to show location basically of the demised premises.

The next pertinent issue is the page for **encumbrances** on the title. This page is meant to register registrable third-party interests in the land and in this case, we notice that there is actually no encumbrance on the land.

In conclusion therefore the pertinent distinctions between a lease hold title and other titles is that it is formed by contract between the parties, then it runs for a specific period of time compared to freehold and mailo which are owned in perpetuity. Then the tenant is usually required to pay a fee as rent or premium for a certain period of time and lastly the lessee only uses the land in line with the terms and conditions laid down in the lease agreement.

Certificate four.

The pertinent aspects of land comprised in Kyadondo Block 83 plot 818, Bubale.

The first pertinent aspect, at the cover page shows the land is registered under the laws of Uganda as it is titled 'UGANDA' at the start and is registered under the registration of Titles Act as titled.

It is also showing the location of the property and that it's located in Wakiso District, Kyadondo County at Block 83, plot 818. Complying with a format and procure laid down in section 38 and the 3rd schedule of the Registration of Titles Act cat 230.

It is showing the description of the property in part 1 as the land situate at Bubale and its private Mailo Land. Mailo ownership is one of the land tenure systems provided for in the constitution under article 237(3. This system allows for the ownership of land in perpetutity but also allows for the separation of ownership on the land from the ownership of the developments on the land by a lawful or bonafide occupant.

The title also shows the area in hectares occupied by the land as 0.6150 counter signed by the registrar and the proprietor of the land, indicating the authenticity of the title issued.

Part 2 is indicating the ownership of the land title as Phylis Koku who is still a minor until the 10th may 2025 and Fillian Mpako alos aminor until 17th July 2023 c/o P.O.BOX 44195,Kampala, and that acquired the said land property on 6/09/2017 at 11:45am , who hand acquired the same land from Malyanga Mukasa and it is well signed by the registrar acknowledging the same.

It shows the location, hectares, and all the boarders of the land of Block No 83 Plot 818 as it was surveyed and signed by the surveying officer on the 26/07/2017 It also contains a deed plan.

The last pertinent aspect is that the land has no any encumbrance attached to it, which means that there is no person claiming any interest in the suit land.

Example

Advise the client on all the requisite steps and inquiries you would undertake to establish the viability of the transaction. Draft any documents you would use at this stage.

Article 237 (1) of the constitution of the Republic of Uganda, 1995 provides that land in Uganda belongs to the citizens of Uganda and shall rest in accordance with the lad tenure system provided for in this constitution.

Article 236 3) of the Constitution 1995 provides that land in Uganda shall be owned in accordance with following land tenure systems.

a) Customary

b) Freehold

c) Mailo and

d) Leasehold.

Section 2 of the Land Act, Cap 227 as amended provides that subject to article 237 of the constitution, all land in Uganda shall rest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems.

The client is required to carry out due diligence and specific inquires in order to ensure that the various properties he intends to acquire are legally purchased. In case of any claim from any persons, he would be able to raise the defence of bonafide purchaser for value without notice.

Before an interested purchaser transacts in registered land, there are quite a number of pertinent steps that must be taken to safe guard the interests of a potential purchaser.

Particulars of the land

The intending purchaser should be availed with the particulars of the subject land in terms of description. It must have a block and plot, who is registered on the title, location of the land, how many acres etc.

The purpose of the particulars is to enable an intending purchaser to cause a search at the relevant land registry to confirm not only the proprietorship but also the existence of a white page with corresponding particulars like those on the duplicate.

UGANDA BROADCASTING CORPORATION VS SINBA (K) LIMITED & 2 OTHERS VS SINBA (K) LIMITED CIVIL APPLICATION NO. 12 OF 2014 Court found that

the purchaser did not make a search at the land registry to ascertain the proprietorship of the property the subject of sale. And held that she had a duty and obligation to ascertain the proprietor of the property even before attempting to bid for it. Had she done so she would have found out that the property she was bidding for did not belong to the respondents. At least she was on full notice. It appears that she actually was well aware of the fact that the respondent was not the registered proprietor but she went ahead to buy the property anyway. She cannot turn around and contend that she is an innocent purchaser for value without notice

Search.

Section 201 of the Registration of Titles Act Cap 230 provides that any person may, on payment of the fee for the time being payable in that behalf, inspect the Register Book during the hours and upon the days of business.

Subsection 2 further provides that the registrar, on payment of the fee for the time being payable for a certified copy, shall furnish to any person applying for it a certified copy of any certificate of title, caveat or registered instrument affecting land under the operation of this Act; and every such certified copy signed by the registrar and authenticated by the seal of the office of titles shall be received in evidence in any court or before any person having by law or by consent of the parties authority to receive evidence as prima facie proof of the original certificate of title.

In the case of **FATHER NARSENSIO BEGUMISA AND ORS V ERICK TIBEBAGA SCCA NO 17/2002**. court opined that the purchaser must carry out all due diligence by cross checking the title at hand /examine the certificate of title and all its pages to ensure that all the pages reflect the essential features of a valid certificate of title.

The intending purchaser, Nkusi should therefore after having examined the certificates of title, conduct a search at the land registry to confirm the particulars.

In regards to location, whether the cover page corresponds with part that provides for the Block Number, County, District, and Plot Number.

The purchaser should ensure that the seal and the stamp of the registrar of titles is valid.

Easements on the physical land should be checked thoroughly in part I and the Deed plan print.

The signature of the purported vendor and name and other previous owners. The name of the current owner should correspond with the vendor. Encumbrances on the title should be brought to the attention of the client.

The procedure is that you write a formal/ordinary letter to the registrar of titles. The fees payable on the application letter is 10,000 payable to URA under the Registration of Titles (fees) (amendment) Rules 1998

Spousal Consent.

Also, the intending purchaser should find out whether the land is subject to spousal consent or if there are any equitable interests on the land.

Section 38A of the Act as amended gives every spouse security of occupancy on family land which means a right of access to and a right of residence therein. It provides that every spouse shall in every case have the right to use the family land and to give or withhold his or her consent to any transaction referred to under **Section 39** which may affect his or her rights. Family land is defined to mean land on which is situated the ordinary residence of a family and inclusive of where the family derives sustenance.

Section 39 (1) of the Land Act Cap. 227 as amended by the Land Amendment Act No. 1 of 2004 prohibit the mortgaging of family land except with the prior consent of a spouse.

ALICE OKIROL VS. GLOBAL CAPITAL SAVE 2004 LIMITED HCCS NO. 149/2010; HELD; The requirement for spousal consent is intended to provide security of occupancy on family land unless a spouse consents to doing away with it. That in the absence of written spousal consent to mortgaging the property in issue for the amount stated in the mortgage, the mortgage created over it is void.

If the land is family land, then consent of spouse must be availed in writing.

Physical visit and opening of boundaries

The person must verify the authenticity of the certificate of title presented by the vendor. This is because the registry of land is authorised under the law to create a special certificate of title where the duplicate is misplaced, destroyed or obliterated. Where a special certificate is issued a white page indicates so and the title itself contains the words 'special certificate'

A certificate of title must contain the particulars of the land that correspond with the ground. It is therefore important for the intending purchaser to cause a boundary opening to confirm whether the boundaries are in tandem/ consistent with the particulars of the land. This is important in case of fraud and also where there is a mistake/error on the title.

FR. NASCENSIO BEGUMISA V ERIC TIBEBAGA The appellants pleaded that they were rightful customary owners of the suit land, which was different from, and was located about 2-3 kilometers away from the land described in the certificate of title. **Court found that** Block 53 Plot 9 was in Masya parish, and that the suit land was not surveyed, and that it was located in Block 59 in Kijubwe parish. Court **held** that the significance of that evidence lies in the elementary principle of the land registration system under the Reestration of Titles Act, namely that a certificate of title relates to only one parcel of land.

Mulenga; "In my view, it follows that the inviolability of a certificate of title is circumscribed in as much as it is confined to the particulars in the certificate. The court therefore, cannot receive the certificate as evidence of particulars, which are not set forth in it. For that reason, and particularly in view of the defence, the respondent also had to show that the particulars in Exh.P1, relate to the suit land on the ground. He fell far short of doing that. The certificate of title, Exh.P1, does not relate to the suit land. It was issued to the respondent in error because it relates to land for which he did not apply. Much as I agree with the trial judge that the respondent cannot be held responsible for that error, I do not accept that he can take advantage of the error and use the certificate to prove ownership of land to which the certificate does not relate"

The question of conducting a search is further discussed in **UGANDA POSTS AND TELECOMMUNICATIONS V LUTAAYA CA 36/1995** where Court held that the mere search on the register is not enough. The person ought to inquire beyond the register.

Therefore, an intending purchaser should undertake a physical visit to the land /physical search to ensure that the particulars of the title reflect onto the land otherwise regarded as boundary opening. One ought to discover the following;

What is on the land?

Inquiry from the locals, local authority to ensure that the respective pieces of land belong to Brenda Komugabe.

Check with the planning Authority and find out the use under which that land is put. It may be a road reserve.

Check with NEMA whether such land is put under use by the authority; such land may be declared on wet land.

Find out whether the land suits the purpose of your client who is a buyer. He could be planning to bring onto the land developments which are not allowed in such an area or may be such business cannot be sustained in such area.

Consult a surveyor in clarifying and verifying the dimensions, measurements etc on the land in question to be very sure of what your client is going to buy.

The purchaser should further find out third party rights (equitable interests) in the land such as leases, bonafide occupants among others.

It was stated in by Vaughan Williams in **HUNT. v. LUCK. [1899 H. 110.] 1902** that "... if a purchaser or a mortgagee has notice that the vendor or mortgagor is not in possession of the property, he must make inquiries of the person in possession ... and find out from him what his rights are, and if he does not choose to do that, then whatever title he acquires as purchaser or mortgagee will be subject to the title or right of the [person] in possession."

It was further stated in **DAVID SEJJAKA NALIMA —VS- REBECCA MUSOKE, SCCA NO. 12/85** that where a party abstains from making inquiries for fear of learning the truth about a property he is purchasing, that party may be found not to be a bona fide purchaser for value and fraud may be properly ascribed to him.

Therefore, in order to be a bonafide purchaser for value without notice it is pertinent to carry out a physical search and ascertain any third-party rights in the land.

Documents;

APPLICATION FOR A SEARCH STATEMENT

SUI GENERIS&CO ADVOCATES

PLOT 24 LD TOWERS 2ND FLOOR

P.O.BO BOX 0000 KAMPALA

20TH OCTOBER 2018

TO THE REGISTRAR OF TITLES

KAMPALA CITY COUNCIL AUTHORITY

Dear Sir/Madam;

RE: APPLICATION FOR SEARCH STATEMENT ON KYANDONDO BLOCK 224 PLOT 620, KISUGU, FRV 98 Folio 27, Plot 11 KYOTOKYAMANDWA, LRV 1289 FOLIO 15 PLOT NO. MISC 437, NTINDA, KAMPALA and KYADONDO BLOCK 83 PLOT 818 BUBALE.

We act for and on behalf of our client **Major Allan Nkusi** upon whose express instructions, we write to you as follows;

That our client is desirous to purchase the land whose particulars are stated here in above. In the circumstances, we kindly request your good office to conduct a search of the above reference title and avail us with the information in that respect so that we can diligently advise our client. The requisite fees have been paid.

We shall be most obliged.

.....

SUI GENERIS &CO. ADVOCATES

1.c. Whether there are any identifiable third-party rights and legal factors that substantially affect the purchase of Brenda's land?

According to**Article 26**[23]**"**Every person has a right to own property either individually or in association with others.**"** Furthermore**Section (2) of theLand Act** supported by**Article 237** of the Constitution gives

[23] 1995 Constitution of the Republic of Uganda

ownership of the land to the citizens of Uganda and this right is to be exercised by owning land in accordance with the following land tenure systems;

Customary

Freehold

Mailo

Leasehold

FAMILY PROPERTY/SPOUSAL CONSENT;

Article 31(1) (b) provides that a man and woman have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

Section 38A (1) of the Land Act as amended by the Land Amendment Act, No. 1 of 2004 guarantees security of occupancy of a spouse on family land and family land. The security of occupancy prescribed under subsection (1) means a right to have access to and live on family land.

Subsection (3) provides that for the purposes of subsection (2), the spouse shall in every case have a right to use the family land and give or withhold his or her consent to any transaction referred to in section 39, which may affect his or her rights.

Subsection (4) of that section defines family land to mean land

(a) On which is situated the ordinary residence of a family;

(b) On which is situated the ordinary residence of the family and from which the family derives sustenance;

(c) Which the family freely and voluntarily agrees shall be treated to qualify under paragraph *(a)* or *(b)*; or

*(*d) Which is treated as family land according to the norms, culture, customs, traditions or religion of the family?

"ordinary residence" is defined to mean the place where a person resides with some degree of continuity apart from accidental or temporary absences; and a person is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period;

"Land from which a family derives sustenance" means

a) Land which the family farms; or

(b) Land which the family treats as the principal place which provides the livelihood of the family; or

(c) Land which the family freely and voluntarily agrees, shall be treated as the family's principal place or source of income for food.

And subsection (5) provides that for the avoidance of doubt, this section shall not apply to spouses who are legally separated."

Section 39 (1) of the Land Act Cap. 227 as amended by the Land Amendment Act No. 1 of 2004 prohibit transactions on family land except with the prior consent of a spouse.

Subsection (2) of that section provides that the consent required shall be in the manner prescribed by the regulations.

Regulation 64 (1 of the Land Regulations 2004 prohibits the recorder or registrar from registering any transaction where) the consent required under section 34 or 39 of the Act is not produced, except where there is an order of the tribunal or a court to dispense with that consent. Regulation 64 (3) provides that the consent shall be in Form 41 specified in the first schedule to the Regulations.

In **ALICE OKIROR & ANOR V GLOBAL CAPITAL SAVE 2004 AND ANOR HCCS NO 149/ 2010,** it was emphasised that the consent can only be in writing as specified in that form.

Under **Subsection (4)** Where any transaction is entered into by a purchaser in good faith and for value without notice that subsection (1) of this section has not been complied with, the transaction shall be void but the purchaser shall have the right to claim from any person with whom he or she entered into the transaction, any money paid or any consideration given by him or her in respect of the transaction.

In **INID TUMWEBAZE v MPWEIRE STEPHEN & AN'OR HCCS NO 39/2010**

Per : Hon Mr. Justice Bashaija K Andrew.

According to the facts of the instant case, Ssenkima John Bosco, the husband to the Appellant, pledged as security for money borrowed the property where he lived with his spouse, Inid Tumwebaze (the Appellant) to Mpweirwe Steven. Senkima had, however, not procured consent from; nor informed his spouse Inid Tumwebaze. The Respondent's main contention is premised on the position that by the time of the attachment the suit property had been demarcated off the homestead; implying that the two were separate and that the banana plantation could not be subject of spousal consent under **Section 39**

Held; This act and / or omission evidently runs counter the spirit and letter of S**ection 39(1) (c) (i) (supra)** which categorically prohibits transactions in such land as the one in question. To argue that the banana plantation had been demarcated from the homestead would be to defeat the stipulation of **land on which the person ordinarily resides with his or her spouse and from which they derive their sustenance**‖; for it is inconceivable that a homestead without the banana plantation in this case would provide the

sustenance contemplated by the law. Therefore, even transacting in family land on which the banana plantation was in this case would require spousal consent as it formed part **of land on which the person ordinarily reside**. Needless to emphasise that the said provisions of the law are mandatory and cannot be circumvented.

Court found that clearly, the whole dealing in the land was void *ab initio* for want of spousal consent, and to that extent, the Respondent is precluded from hiding under the argument that **Section 39(supra)** does not apply where it is sought to sell family land in execution of a judgment debt against the land owner. The law on illegalities well is settled. In the case of **MAKULA INTERNATIONAL LTD V CARDINAL WAMALA (1982) HCB 11** cited by Counsel for the Appellant, it was held, inter alia, that:

A court of law cannot sanction what is illegal, an illegality once brought to the attention of court, overrides all questions of pleading, including any admission made thereon.

It is thus settled law that an illegality supersedes everything else raised by the parties, even in the instant case.

The facts show that land comprised in **Kyadondo Block 244 Plot 620, Kisugu,** which is developed with a residential house in which Brenda resides with her husband and other family members. This means that this is family land on which the family ordinarily resides. As such the husband of Brenda has rights in the said and land and his consent prior to any transaction is needed.

Land comprised in **FRV 98 Folio 27, Plot 11 Kyoto kyamandwa** has a farm with cattle, goats and sheep. Part of the land measuring about 20 acres is used by Brenda's family and has a large banana plantation used for both sale to marketers and for subsistence and from which Brenda's husband Harry collects food, fruits and vegetable for the family every weekend.

This land is also family land as land from which the family derives sustenance. Spousal consent is necessary.

Therefore, Brenda's husband Harry has rights and interest in the two plots of land. His consent is necessary for any transaction on the land.

Bonafide Occupant

Article 237(1) of the constitution, 1995 provides that, land in Uganda belongs to the citizens of Uganda and shall rest in them in accordance with the land tenure systems provided for in this constitution.

Article 237 (8) of the constitution supra, stipulates that, upon the coming into force of this constitution and until parliament enacts an appropriate law under clause (a) of this article, the lawful or bonafide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.

Sec 1 (e) of the Land Act supra, stipulate that bonafide occupant has the meaning assigned to it in **Section 29**

Section 29(2) (a) of the Land Act, Cap 227 defines Bonafide occupant to mean a person who before the coming into force of the constitution has occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more;

Section 1 (dd) of the Land Act, cap 227 provides that, a tenant by occupancy on registered land shall enjoy security of occupancy on the land.

Section 31 (2) of the land Act supra, stipulates that, a tenant by occupancy referred to in subsection (1) shall be deemed to be a tenant of the registered owner to be known as a tenant by occupancy subject to such conditions as are set out in this Act or as may be prescribed.

Section 31 (9) Land Act Supra., provides that for avoidance of ... the security of tenure of a lawful or bonafide occupant shall not be prejudiced by reason of the fact that he or she does not possess a certificate of occupancy.

Section 35 (1) of the Land Act as amended provides that a tenant by occupancy who wishes to assign the tenancy shall, subject to this section, give the first option of taking the assignment of the tenancy to the owner of the land.

Subsection (2) thereof, provides that, the owner of land who wishes to sell the reversionary interest in the land shall, subject to this section give the first option of buying that interest to the tenant by occupancy.

This means that the tenant can sell his/her assignment to the title holder and the title holder can sell his/her reversion to the tenant. Subsection (3) stipulates that such transactions are on the basis of willing buyer willing seller.

The Land (Amendment) Act 2010 introduces Section 35 (1) (1a) which makes it an offence for the tenant to sell without giving the first option to the landlord.

The facts show that; part of the land comprised in **FRV 98 Folio 27, Plot 11 Kyotokyamandwa** is exclusively occupied by Bitumen Byekwaso aged 70, who inherited the same from his father 40 years ago and has his own banana plantation on it.

This means that Bitumen Byekwaso is a bonafide occupant on registered land and has an interest in the land. In case of sale, he should be given the first priority.

OTHER INTERESTS OF THIRD PARTIES.

THE TENANTS

The tenants as 3rd parties to this property have rights however their rights extend only as far as their prepaid rent runs. Therefore, their interests expire at the expiration of their tenancy. Furthermore, as tenants, they are entitled to notice as of practice.

It should however be understood that the terms of the tenancy agreement are also are determinant as to whether the tenants are entitled to notice when the property, they are renting is being sold off.

Land comprised in **LRV 1289 Folio 15 Plot No. Misc 437, Ntinda,Kampala,** on which there is a large commercial building fully occupied by tenants.

Tenants have interest in land subject to the tenancy agreement. Tenants are only entitled to notice on termination.

LAND IN THE NAMES OF MINORS.

Land comprised in **Kyadondo Block 83 Plot 818, Bubale,** registered in the names of Brenda's children. This land is registered in the names of two minors **Phylis Koku (**a minor until 10th May 2025) and **Fillian Mpako (**a minor until 17th July 2023) who have every right to own this land but cannot transact in this said land.

For Brenda and Major Nkusi to transact in this land there has to be an appointment of **"guardian of property."** Brenda needs to apply to the High Court for guardianship of this land in accordance with **article 139(1**) of the Constitution and **section 14 of the Judicature Act** which give the High Court unlimited original jurisdiction in all matters. **Section 98 of the Civil Procedure Act** empowers the High Court to invoke its inherent powers to grant remedies where there are no specific provisions. Also, the application is made under S. 43B of the Children Act as amended.

The Application must be in the minor's best interests that the applicant be granted legal guardianship to enable her sell the land that is the **welfare principle** in accordance with **section 3** of the **Children Act as amended.** In all matters concerning children, the best interests of the child shall be the primary consideration. This is also contained in Article 34 of the Constitution

The best interests of the child set out by the Children Act include the ascertainable wishes and feelings of the child in light of his or her age and understanding; the child's physical, emotional and educational needs; the child's age, background and other circumstances relevant in the matter.

In the case of **AJIDIRU LULUA JENIFER V NDERA JUSTINE ANGUZU AND ASIANZO JOVIA ANGUZU MISCELLANEOUS CIVIL APPLICATION NO. 0031 OF 2016 HON.**

JUSTICE STEPHEN MUBIRU held that "In matters of this nature, where the legal property rights of children are involved, yet by virtue of their status as legal incompetents, the children do not have the capacity to safeguard those rights on their own, courts are expected to exercise a *parenspatriae* authority.

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

In this case court granted a guardianship order to the child's biological father authorizing him to sell and/or dispose of land comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe registered in the names of Valeria Nakyonyi Gozaga (a minor) for the benefit of the minor.

IN RE MARVIN KAKOOZA where the applicant, who is child's biological mother, sought an order that would enable her to sell the land she jointly owned with the child, that it is for construction of the family's residence and paying the minor's school fees, court held that such order should not be denied as it is for the welfare and best interests of the minor. Court thus granted guardianship to the biological mother of the child.

Therefore, Brenda should apply for a guardianship order to allow him sell the property in the names of her children if such a sale is within the children's best interests.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 230 AND

IN THE MATTER OF THE LAND ACT CAP 227

AND

IN THE MATTER OF AN AGREEMENT OF SALE OF 0.30 HECTARES OF LAND SITUATE AT KISUGU ZONE, KYADONDO COUNTY WEST MENGO DISTRICT,

COMPRISED IN BLOCK 244 PLOT 620.

REGISTERED PROPRIETOR: BRENDA KOMUGABE ARIKO

SALE AGREEMENT

THIS AGREEMENT OF SALE is made and executed this..... day of.....**,** 2018

BETWEEN

BRENDA KOMUGABE ARIKO of Kyadondo Block 244 Plot 620, Kisugu (Hereinafter referred to as "the **seller/vendor**" which expression shall include his legal representatives, successors in title, agents and assignees) on the one hand.

AND

REACH THE RICH UGANDA LIMITED C/o Ms Firm C1, Kagugube Road Wandegeya Kampala District (Hereinafter called "**the purchaser**" which expression shall where the context so permits include her successors in title, legal representatives and assignees) on the other hand.

Both of whom are collectively referred to as the "parties"

WHEREAS:

The Vendor is a registered proprietor of the land Comprised in Kyadondo Block 244 Plot 620 at Kisugu Measuring 0.30 Hectares (Hereinafter referred to as the Property)

AND WHEREAS The Vendor is desirous of selling the said property and all the buildings on it to the purchaser and the purchaser is also willing to buy the same;

AND WHEREAS the vendor warrants good title to the above property

THEREFORE, THIS AGREEMENT WITNESSETH as follows:

AGREEMENT

Subject to the terms hereof and in consideration of the price set out and payable as prescribed in Clause 2 below, the Vendor hereby agrees to sell and assign all their legal and equitable title and interests in the Property and assets within the said property to the Purchaser and the Purchaser hereby agrees to purchase the same.

2 CONSIDERATION.

In consideration of the sum of UGX **320,000,000/= (Uganda Shillings Three hundred twenty Million only),** being the agreed value.

3 MODE OF PAYMENT

3.1. Upon execution of this agreement the parties have agreed for the payment of the said Land to be in three equal monthly installments not beyond 30th January 2019.

3.2. The first installment of 110,000,000/= (**one hundred ten million shillings)** shall be paid on 30th October 2019.

3.3. Failure to pay within the stipulated time, the parties shall treat the contract as repudiated and the vendor shall refund the purchaser's money already paid.

4 INCUMBERANCES AND INDEMNITY

The property is sold on the understanding that it is free from enquiries or encumbrances OF ANY DESCRIPTION and the Vendor undertakes to indemnify the Purchaser against all actions, proceedings, claims costs, losses and all expenses whatsoever which may be suffered or incurred in respect of the property as a result of any encumbrances which may have not been disclosed to the Purchaser by the Vendors if the same arise in breach of the Vendor's promises herein.

TRANSFER:

The vendor agrees to procure the granting or completion, as the case may be, all consents, certificates of title, duly signed transfer forms, passport sizes photographs, copy of national id, and approvals as shall be necessary to transfer ownership of her interest into the purchaser's name, her nominee and for the purpose of duly carrying out and fulfilling this agreement to its entirety.All transfer, survey fees and other expenses for the transfer and or subdivisions of the property into the name of the purchaser shall be borne by the purchaser.Whenever called upon the vendor shall give to the purchaser all the necessary assistance to enable her to complete this transaction effectively.

POSSESSION:

The vendor shall provide vacant possession of the property to the purchaser, after payment of the first installment and the purchaser shall take immediate possession of the same thereafter.

ENUREMENT:

This agreement of sale will ensure for the benefit of and be binding upon the parties hereto and their successors in title and assignees.

TAXES AND OTHER DISBURSEMENTS:

All taxes and disbursements for and incidental to the acquisition of a certificate of title and all transfers for the purchaser shall be met by the purchaser.

GOVERNING LAW:

This agreement will be governed, construed and enforced in accordance with the laws of Uganda.

LEGAL FEES:

Parties shall meet all necessary legal fees for the witnessing Advocate(s) to these presents.

SPOUSAL CONSENT

The property is subject to spousal consent under the Land Act Cap 227 as amended which is **hereby attached**

LOCAL AUTHORITIES

The Vendor undertakes to introduce the purchaser or his agents to the local authorities as the new owner of the property

SEVERABILITY:

If any provision of this agreement is invalid or unenforceable for any reason whatsoever, such invalidity or un-enforceability will not affect the validity or enforceability of any or all of the remaining provisions of this agreement which shall continue in full force and effect and be construed as if this agreement had been executed without the invalid or unenforceable provisions.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first above written.

SIGNED and Delivered for

And on behalf of the said;

.....

BRENDA KOMUGABE ARIKO

{VENDOR}

SIGNED and Delivered for

And on behalf of the said

.....

DIRECTOR OF REACH THE RICH UGANDA LIMITED

{PURCHASER}.

In the presence of:

Name: **Signature:** **Contact**

..... **.....** **.....**

..... **.....** **.....**

All In the presence of

.....

ADVOCATE

Drawn and Drafted by:

SUI GENERIS ADVOCATES

P.O.BOX 112211

LDC, level 3 Suit 1

Kagugube Rd, Kampala

Uganda

EXAMPLE

Advice the senior Partner on:-

The steps that you would take to cause the client to obtain the legal interest in the land (Draft the most pertinent documents)

Title by registration as a feature of the Torrens system, is where the interests in land are created or transferred by registration under the **Regestration of Titles Act**. **Section 54 of the Regestration ofTitles Act** provides; No instrument until registered in a manner herein provided shall be effectual to pass any estate or interest in any land under the operation of this Act, or to render such land liable to any mortgage. But upon such registration, the estate or interest comprised shall pass...or be liable to the ... conditions set forth in the instrument or by this Act.

The operation of **Section 54** is illustrated in the case of **„LUMU V LINDO MUSOKE"** where it was held by **Musoke J**, that the agreement for sale of land did not transfer any interest in the disputed land to the defendant. It merely gave him a contractual right entitling him to bring an action against the plaintiff for damages or for specific performance if the plaintiff refused to execute in his favour the statutory transfer.

The case of **„ZIMBE V KAMANZA'**further reiterates the principle as propounded by S.54 viz; that title does not pass until a transfer is registered under the Registration of Titles Act. That no man can become the owner of land until a statutory transfer of land to him has been registered.

The general rule is that no one can transfer an estate or interest unless it is registered as required in the Regestration of Titles Act by the registrar. Title does not pass by mere execution of sale agreements. In **NDIGEJJERAWA V KIZITO AND KUBULWAMWANA,** both the buyers executed documents but none of them got the title.

Therefore, in order for Maj Nkusi to obtain legal interest in the land, he must have the land brought under the operation of the Registration of Titles Act by having it registered.

Execution of an agreement for sale.

Having carried out due diligence and inquiries, the parties should execute an agreement for sale.

The Regestration of Titles Act does not provide for any mandatory requirement to execute an agreement of sale of land and a sale agreement is not an instrument for purposes of passing an interest in registered land. Refer to **Section 54 of Regestration of Titles Act and ZIMBE V TOKANA KAMANZA**

The Contracts Act provides for formalisation of a contract in writing. A sale agreement contains evidence of the subject matter purchased, the acreage ad the consideration paid.

The agreement must be duly signed by the parties. Where the parties to the agreement or any of them is an illiterate, it is mandatory under **Section 2 and 3 of the Illiterates Protection Act** to include a certificate of translation certifying that the contents were read and translated to the parties before they appended their respective signatures thereto.

REGISTRATION OF SALE AGREEMENT.

There is no mandatory requirement to have the agreement of sale registered save that for purposes of evidence in any proceedings in court an unregistered agreement may not be admitted in evidenced for want of payment of stamp duty.

It should be noted that an agreement for sale attracts stamp duty. Under **Section 32 of Stamp Duty Act** 2014, any instrument on which a duty is chargeable is inadmissible in evidence unless that instrument is duty stamped as an instrument on which duty chargeable thereon has been paid.

WASUKIRA FRED V. M/S HARMONY GROUP LTD HCCS NO40/ 6. In the instant application, the plaint was supported by an agreement for commission payments/remittances signed by the 1st and 2nd plaintiffs as Managing Director and company Secretary respectively on which no stamp duty was paid.

Held; Where a cause of action is based on a document where stamp duty must be paid and the duty is not paid a cause of action cannot in law be based on such document. Generally, under Section 42 of the Stamps Act (now 32 of Stamp Duty Act 2014), any instrument on which a duty is chargeable is inadmissible in evidence unless that instrument is duty stamped as an instrument on which duty chargeable thereon has been paid. If the plaintiff wanted to rely on such unstamped instrument, they ought to have sought leave of court to have the duty paid. The plaintiffs however have not sought leave of court to do so. Therefore, the plaintiffs cannot rely on the unstamped agreement as evidence in this suit.

HOUSING FINANCE BANK LTD AND SPEEDWAY AUCTIONEERS VS EDWARD MUSISI JUDGMENT. CASE NUMBER. CIVIL APPEAL 22 OF 2010 Held; The stamp duty for the agreement of sale had not been paid in accordance with section 42 of the Stamps Act. That notwithstanding the land could not be transferred into the names of the buyer without paying the stamp duty and other taxes connected with land transfers.

Therefore, for evidential purposes, the sale agreement should be registered under the **Registration of Documents Act Cap 81** and also pay the requisite stamp duty.

EXECUTING A TRANSFER INSTRUMENT

An interest in registered land can only pass upon execution and registration of a proper instrument. Section 54 Regestration of Titles Act, **NDIGEJJERAWA V KIZITO AND SEBANE KUBULWAMWANA (1952) 7 ULR 31.** WHERE **AINLEY.J** gave his judgment that "... No document or instrument can be registered unless it fulfils the requirements, and no instrument (however perfectly it fulfils the statutory requirements) is effectual to transfer any interest in land unless it has been registered..."

The proper instrument for purposes of registration is a transfer form which must be in the form set out in the **Regestration of Titles Act** should be properly executed by the parties and must be duly attested by the legally designated persons.

Section 147 of the Regestration of Titles Act, provides that an instrument shall be duly executed if attested to by one witness. Further Section 148 of the **Regestration of Titles Act** requires the signature to be in Latin character.

SUPREME COURT CIVIL APPEAL NO. 4 OF 2006 - FREDRICK J. K ZAABWE VS ORIENT BANK LIMITED & OTHERS HELD. Per **KATUREEBE, JSC.**

In my view, the rationale behind **Section 148** requiring a signature to be in Latin character must be to make clear to everybody receiving that document as to who the signatory is so that it can also be ascertained whether he had the authority or capacity to sign. When the witness attesting to a signature merely scribbles a signature, without giving his name or capacity, how would the Registrar or anyone else ascertain that that witness had capacity to witness in terms of **Section 147 of the Registration of Titles Act? Held** that where the signatures to a mortgage are not in Latin character, the mortgage is not validThe attesting witness must sign the transfer instrument having witnessed the transferor of transferee sign.

Where the transferor or transferee is illiterate, the attesting witness must execute a certificate of attestation. This is to certify and confirm that the contents were understood. **Section 3 of the Illiterate Protection Act (Cap) 78 of the Laws of Uganda 2000**, enjoins any person who writes a document for or at the request or on behalf of an illiterate person to write in the jurat of the said document his/her true and full address. This shall imply that he/she was instructed to write the document by the person for whom it purports to have been written and it fully and correctly represents his/her instructions and to state therein that it was read over and explained to him or her who appeared to have understood it.

Section 92 of the Registration of Titles Act Cap 230 provides that the proprietor of land may transfer the same in one of the forms of transfer in the Seventh Schedule to the Act.

The transfer form shall be accompanied by the consent form of the spouse(s). Since Maj. Nkusi intends the piece of land to be owned by his company, a registered Board Resolution of the Company Director(s) of **Reach the Rich Uganda Limited** is necessary.

Therefore, the parties should execute a transfer instrument, sign it and have it attested.

VALUATION AND STAMP DUTY

A transfer instrument is incapable of being effectively registered unless the requisite stamp duty is duly paid. Valuation for purposes of payment of stamp duty is done by the chief government valuer who certifies the amount payable by the transfer and it's usually 1.5% of the whole consideration as per Stamps (Amendment) Act 2016.

EDWARD MUSISI VS HOUSING FINANCE CO.(U) LTD AND SPEEDWAY AUCTIONEERS JUDGMENT. Case Number. Civil Appeal 25 of 204Held; The stamp duty for the agreement of sale had not been paid in accordance with **Section 42 of the Stamps Act (now 32 of Stamp Duty Act 2014.)** That notwithstanding the land could not be transferred into the names of the buyer without paying the stamp duty and other taxes connected with land transfers.It's a requirement of the law that the intending transferee discloses the consideration paid in the transfer instrument and consent form and any under valuation of the property by the transferee may amount to fraud if it was intended to defraud government of its revenue.

WAKANYIRA V KAVUYA AND 2 OTHERS (CIVIL APPEAL 36 OF 2010) [2021] UGCA 105COUNSEL for the plaintiff further referred to a decision of Justice Alfred Karokoora (J. as he then was) in the case of **SAMUEL KIZITO MUBIRU & ANOTHER VS G.W. BYANSIBA & ANOTHER** [1985] HCB 106, where he held that by Public Policy any transaction designed to defraud the Government of its revenue is illegal.

Held Per **Hon. Mr. Justice Geoffrey Kiryabwire**

I find that there is a difference between not paying stamp duty on a sale agreement and not paying stamp duty on a transfer form. There is no doubt that by failing to pay due tax is contrary to public policy. In attacking which document should be scrutinized I think it should be the transfer form. This present case should be distinguished from the **Mubiru case** (Supra) because in that case the plaintiff sought protection in a land transaction that he was a bona fide purchaser for value without notice. However, the Judge in that case rightly pointed out that you cannot be a bona fide purchaser if you do not pay Government tax

The transferee must also pay registration fees which is payable to the local authority.

Filing of documents.

Upon payment of the requisite fees the transferee has to submit the duplicate certificate of title, signed transfer forms, photographs and valid identification with evidence of payments which must be paid in the relevant land registry. The land office normally checks the submitted documents, passes them if they are competent, gives them or allocates an instrument number where after will be effected in the names of the transferee.

Also, on lodging the documents, the registration fee should be paid as provided for under the Registration of Titles (Fees) Rules S.I 230-1

Section 92(2) of the Regestration of Titles Act provides that upon registration of the transfer, the estate and interest of the proprietor shall pass to the transferee and the transferee shall thereupon become the proprietor thereof.

Upon registration a person whose name appears in the title is deemed to be a registered proprietor. **Section 59 Regestration of Titles Act**

DAAKA NGANWA V RUKYEMA & ANOR (HCT-05-CV 8 OF 2000) [2012] UGHC 241HELD

Where a duly registered proprietor exists, as is the case presently, the certificate of title is conclusive evidence of ownership and therefore no further proof of ownership is required save for where there are allegations of fraud.

Therefore, any purchaser of land under the Torrens system must be diligent to follow the above steps in order to acquire a valid title (legal interest) that cannot be impeached in light of the defence of bonafide purchaser for value without notice.

Therefore, in order to secure a legal interest for Maj. Nkusi, the above procedure should be followed to ensure an effective transfer of the land from Brenda to Maj. Nkusi.

BRIEFLY, the following steps should be undertaken.

Step 1

Applicant must have in possession the following;

The Land transfer forms as provided in **Section 92 of the Registration of the Titles Act Cap 230**.

Spousal consent form under **Section 39(2) of the Land Amendment Act of 2004**

A photocopy of duplicate certificate of title

Two (2) authentic passport photos of both buyer and seller

Land sale agreements as provided for in the 21st Schedule of the Registration of Titles Act Cap 230

A Registered Board Resolution of the Company Director(s) of **Reach the Rich Uganda Limited**

Consent to transfer forms.

Step 2

The property must be assessed at the market value, by the government valuer for purposes of the applicant paying for Stamp duty which is 1.5%

The applicant checks after 3 working days to collect assessment forms

Step 3

Pay Stamp duty and Registration fees in the bank and get a receipt and transfer forms embossed by Uganda Revenue Authority after the valuation of the land by the government valuer

Transfer form should be embossed with a sticker by Uganda Revenue Authority

Pay Registration fees at Land Registry 20,000/= for a Company or 10,000/= for an individual

Step 4

Submit all documents together with duplicate Certificates of title, Receipts and Photocopies of all documents

Photocopy of the transfer forms, stamped and Received to the office of Titles.

The registrar will Cancel the name of the registered proprietor and enter the new name in the Registration book.

The Applicant is asked to check after 10 working days to collect the title

TRANSFER FORM

THE REPUBLIC OF UGANDA

TRANSFER OF LAND, MORTGAGE OR CHARGE

MAILO; KYADONDO BLOCK 244 PLOT 620

FORM 1.

TRANSFER OF LAND

I Brenda Komugabe Ariko (transferor) being the Registered Proprietor of the Land Comprised in the above-mentioned block in consideration of the sum of three hundred Million shillings (320,000,000/=) paid to me by the Reach the Rich Uganda Limited (Transferee) on or before the execution of these presents the receipt of which I acknowledge hereby transfer that land Reach the Rich Uganda Limited for all my estate and interest in the land.

Dated this .....day of ....., 2018

Signed by (Transferor) .....

In the presence of .....

Signed by (Transferee) .....

In the presence of .....

CONSENT FORM

THE REPUBLIC OF UGANDA

THE LAND ACT CAP 227

THE LAND REGULATIONS 2004

CONSENT BY SPOUSE(S) TO TRANSACTION IN LAND

Location of the Subject of Consent

Village/Zone **KISUGU**

Parish/Ward

Subcounty/Town **SAABAGABO**

County/Division **KYADONDO**

District **WEST MENGO**

Approximate area (ha) **0.30**

If Land is registered, state

BLOCK **244**

PLOT **620**

Use or Occupation of the Land, **housing**

State the nature of the transaction

Sale of land.

I/We, being the spouse(s) of the owner of the above Land and the Land under the provisions of Section 39 of the Act grant consent/ I do not grant consent to the transaction

Reasons for refusal .... NIL

Name and signature/thumbprint

(i) ....

(ii) ....

(iii) ....

Date .....

ii) All the duties, levies and fees that would be required to be paid in the process of 2b (i) above.

Stamp duty 1.5% of the value of the land under the Stamps (Amendment) Act 2016 second schedule which is 4,800,000.

A search fees paid through the Bank 10,000/= under 22nd schedule of RTA

Registration fees is 10,000/= (extra plots 5,000/= each)

A search of the registry book where reference to the volume or block and plots ..10,000/=

Counsels' fees

(iii)The pertinent ethical challenges that may arise in this transaction and how you would address them.

Acting ethically involves adhering to the letter of the code of professional ethics in the first place and also in morally appropriate manner.

The ethical conduct of advocates is generally governed by the **Advocates Act cap 227** and the **Advocates (professional conduct) regulations SI 267-2**

The following are the pertinent ethical challenges that may arise in the transaction.

Diligent and competent service;

An advocate has a duty to perform their services diligently and competently.

Regulation 12 of the **Advocates (Professional Conduct) Regulations** is to the effect that every advocate must advise his clients in their best interest, and no advocate should knowingly or recklessly encourage a client to enter into, oppose or continue any transaction in respect of which a reasonable advocate would advise that to do so would not be in the best interest of the client or would be an abuse of court process.

Competent advice is therefore crucial as an ethical consideration in such a transaction. The advocate must be well equipped with all the relevant legal requirements to advise accordingly.

Disclosure;

Disclosure is the act or process of making known something that was previously unknown.[24]

An advocate has a duty to notify his client of all the developments concerning the transaction. This is because he client also suffers the consequences even when they do not have the actual knowledge from their clients.

In **DAVID SEJJAKA NALIMA V REBECCA MUSOKE CACA NO. 12 OF 1985** the appellant appealed claiming that he was a bonafide purchaser for value without notice. Court held that since the appellant's advocate knew of the rightful owner, the knowledge was imputed on the appellant and therefore the appellant knew.

This challenge must therefore be dealt with by disclosing everything from the beginning.

[24] Bryan A. Garner, Black's Law Dictionary, eighth edition, p1399.

Lawful legal Fees;

The advocate must bill the client according to legal requirements that have been established by the law.

Regulation 28 of the **Advocates (Professional Regulations) Regulations** is to the effect that an advocate must not charge a fee which is below the specified fee under the **Advocates (Remuneration and Taxation of costs) Rules.**

Dealing with unrepresented parties;

When a lawyer is dealing with an unrepresented party then they must ensure transparency. An advocate must desist from giving the unrepresented party advise except advice him to get independent representation.

Over valuing land;

There is also a challenge as some advocates over value the land after negotiating independently with the vendors. This is so that they can make a profit out of the sale on top of the legal fees.

This can be solved by involving the client every step of the way throughout the entire transaction. The client ought to be appraised on the progress at every crucial step of the process.

Balancing the client's needs and abiding by the law;

Sometimes clients want advocates to do things which are outside the confines of the law. An advocate must always ensure that the law comes before a client's needs.

When the clients insist on doing something which will break the law then the advocate may withdraw from representing the client.

Regulation 3 (1) (b) of the Advocates (Professional conduct) regulations S.I 267-2 is to the effect that an advocate may withdraw from representing a client where the client instructs the advocate to do anything which leads to professional misconduct.

Other challenges;

Fraud or forgeries or bribery; ensuring that there are no forgeries committed.

Invalid documents; ensuring that the documents are executed in accordance with the law.

Spousal consent; getting spousal consent is a bit tricky. Counsel should ensure that the parties are legally married and the person giving spousal consent is the true husband of Brenda.

AN ILLUSTRATION OF A CAVEAT.

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP. 230

AND

IN THE MATTER OF KYADONDO BLOCK 216 PLOT 1810

AFFIDAVIT IN SUPPORT OF CAVEAT

I, **.....** Of P. O. Box 778, Kampala solemnly make oath and state as follows:

1. That I am an adult male Ugandan of sound mind and the registered proprietor of the above land.

2. That sometime in January, 2013, three men came to my home in Kisaasi and informed me that there was a serious plot by people whom I had a land dispute with to kill me.

3. That the said three men threatened me that if I did not give them Shs.62,000,000/= to avert the threat, it would be carried out in a few days time.

4. That since I did not have money, the said three introduced me to a man who claimed to be a money lender and they coerced me to sign several agreements and land transfer documents and to hand over the duplicate Certificate of Title to my land described above.

5. That when I regained my liberty, I reported the said three men to Kiira Road Police Station under Ref: No. SD. Ref: 11/27/01/2013. **A copy of the Reference chit is attached hereto and marked annexture "A"**.

6. That the Kiira Road Police and the Special Investigations Unit Police at Kireka are investigating this crime but they have not yet arrested the suspects.

7. That I have genuine fears that these four fraudsters may register some dealings on my land.

8. That I swear this affidavit in support of a caveat to stop registration of dealings on this land.

5. That I depone to matters within my knowledge.

OBJECTION MY LORD

SWORN by the said }

..... **}** **.....**

this ... day of ....., 2013} DEPONENT

BEFORE ME:

_____

COMMISSIONER FOR OATH

DRAWN & FILED BY:

SUI GENERIS & CO - Advocates

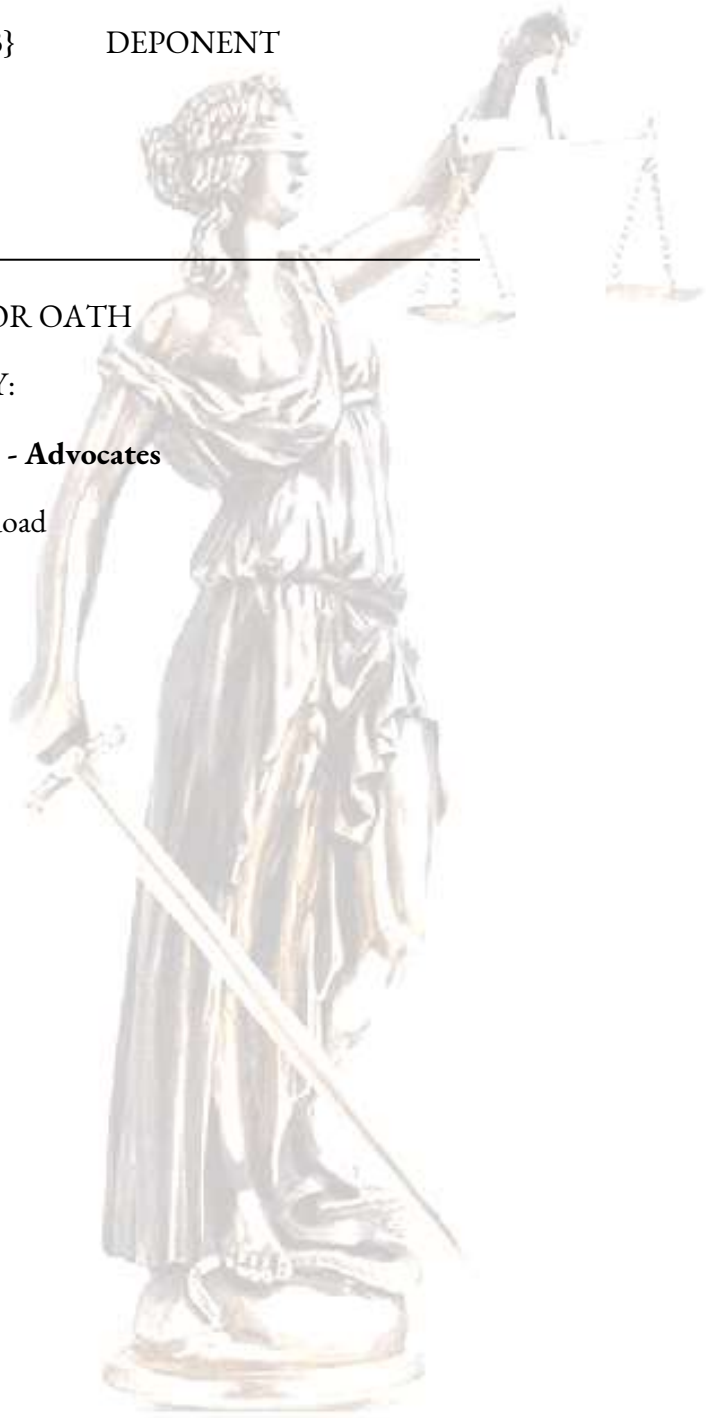
Plot 10 Clement Hill Road

P. O. Box 21161

Tel: 341295/6

Fax: 343168

KAMPALA



A CAVEAT

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT, CAP. 230

MAILO REGISTER

KYADONDO BLOCK ..... PLOT NO. .....

LAND AT .....

The Commissioner Land Registration

KAMPALA

CAVEAT

TAKE NOTICE that **.....** claims interest in the above property as registered proprietor deprived of land through fraud and forbids the registration of any person as transferee or proprietor of any estate or instrument affecting her interest until after notice of such intended registration is first given to him and he consents thereto in writing.

HE APPOINTS the chambers of **SUI GENERIS & CO-Advocates, Plot 10 Clement Hill Road, P.O. Box 21161, Kampala** as the place at which notices and proceedings relating to this caveat may be served.

DATED at Kampala this ..... day of ..... 2013.

SIGNED by the said } _____

..... } CAVEATOR

This.....day of....., 2013}

In the presence of:

DRAWN & PRESENTED FOR REGISTRATION BY:

SUI GENERIS & CO - Advocates

Plot 10 Clement Road P.O. Box 21161, Tel: 341295/6, KAMPALA

AN AFFIDAVIT IN SUPPORT OF CAVEAT

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP. 230

AND

IN THE MATTER OF KYADONDO BLOCK 216 PLOT 1810

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4. That since I did not have money, the said three introduced me to a man who claimed to be a money lender and they coerced me to sign several agreements and land transfer documents and to hand over the duplicate Certificate of Title to my land described above.

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8. That I swear this affidavit in support of a caveat to stop registration of dealings on this land.

5. That I depone to matters within my knowledge.

SWORN by the said }

..... **}** _____

this ... day of ....., 2013} DEPONENT

BEFORE ME:

_____

COMMISSIONER FOR OATH

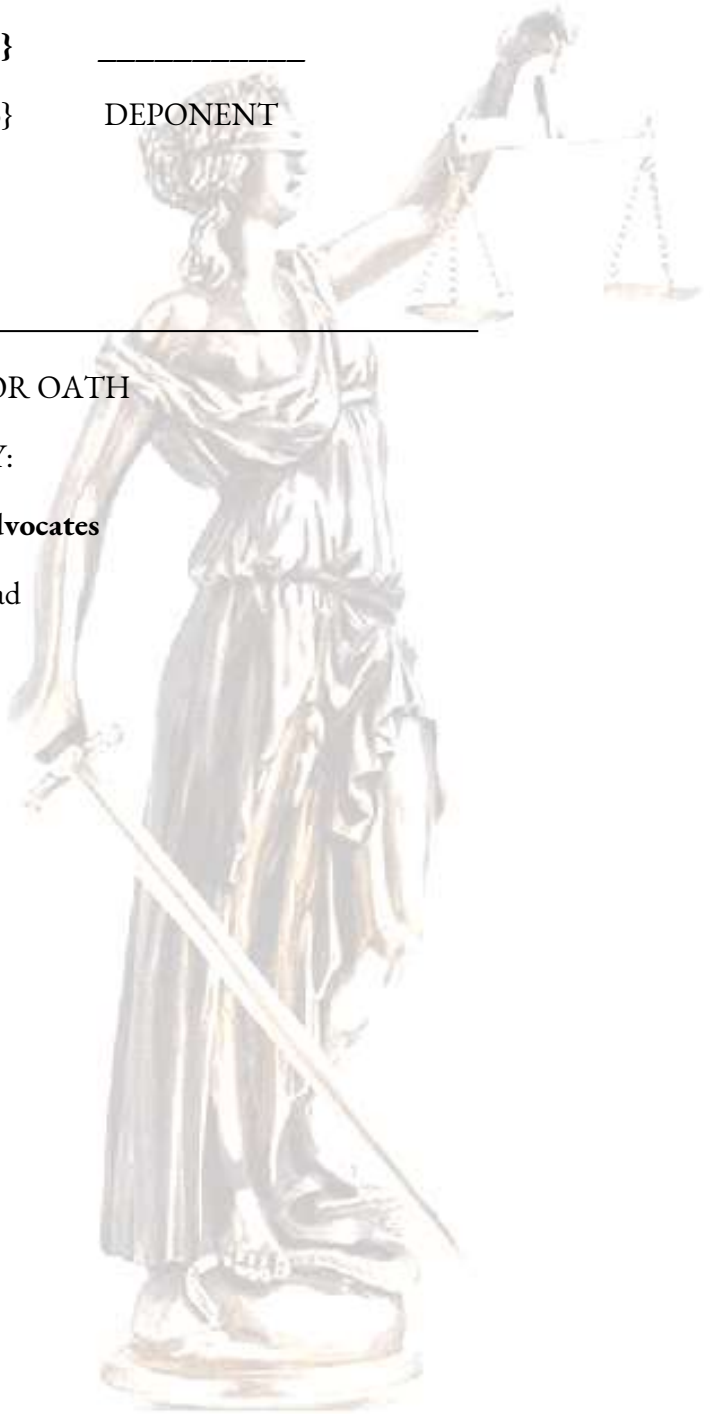
DRAWN & FILED BY:

Sui Generis & Co- Advocates

Plot 15 Kakungulu Road

P. O. Box 3671

KAMPALA



APPLICATION FOR TRANSFER OF LAND

The Commissioner of Lands & Surveys,

P.O. Box 7061,

KAMPALA.

APPLICATION FOR CONSENT TO TRANSFER OF SUB-LEASE PUBLIC LAND

(To be submitted in duplicate)

Leasehold Register Volume ..... Folio .....

Block ..... Plot No. .....

Land Situate at .....

Area .....

User .....

Tenure .....

Details of land development carried out .....

IF LEASEHOLD,

(a) Initial period/Full term (tick as appropriate)

(b) Attach ground rent receipts for last five years

I/WE HEREBY APPLY for consent under Section 22(5) (c) (i) of the Public Lands Act, to Transfer/Sub-Lease the above premises and also under Section 10 of Decree 3 of 1975.

FROM

Name .....

Address .....

Nationality .....

TO

Name .....

Address .....

Nationality .....

TRANSFER

Consideration .....

SUB-LEASE

Premium (if any) ..... Rent .....per annum

Term ..... Rent ..... per annum.

I, the undersigned hereby declare that all the covenants in the lease have been complied with, and that the information given in this application is current to the best of my knowledge and belief.

Signature of Applicant/ or his/ their Advocate

FOR OFFICIAL USE:

For the purposes of the Stamp Act Cap. 172 and the Finance Act I hereby access the value of this property as:

Ug. Shs. .....

(in words) Ug. Shillings .....

.....

Date .....

OBJECTION MY LORD

CHIEF GOVERNMENT VALUER

For purposes of Section 22 (5) (c) (ii) of the Public Lands Act, 1969 and Section 10 of the Decree No. 3 of 1975; I hereby CONSENT/DO NOT CONSENT to the zoning scheme to the above application for TRANSFER/LEASE.

COMMISSIONER FOR LANDS AND SURVEYS

THE REGISTRATION OF TITLES ORDINANCE

DISTRICT .....

BLOCK ..... PLOT .....

Mailo/Freehold Register Volume ..... Folio .....

TRANSFER

I .....

.....

of .....

(Address)

son of/daughter of .....

in consideration of the sum of shillings ..... paid to me by the

Purchaser on or before the execution of these presents the receipt where of I hereby acknowledge DO HEREBY TRANSFER all that piece of land(part of the land comprised in the above Title) which is delineated on the plan annexed hereto and thereon edged in red and now numbers Plot ..... to .....(herein called "the Purchaser") of .....

(Address)

to HOLD to the purchaser for all my estate and interest herein.

DATED this..... Day of ..... 20 .....

SIGNED by the said .....

Signature of Vendor

In the presence of:

Witness: .....

Address: .....

Qualification: .....

SIGNED by the said .....

Signature of Purchaser

In the presence of:

Witness: .....

Address: .....

Qualification: .....

A Lease Agreement.

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP. 230

LAWS OF UGANDA

KYADONDO BLOCK ..... PLOTS .....& 212

LANDS AT BWEYOGERERE

MENGO, WAKISO DISTRICT AREA..... ACRES

LEASE

THIS LEASE made the 1st day of February, Two Thousand Twelve BETWEEN **.....**of P.O. Box 35905, Kampala herein called the "LESSOR" of the one part, and **.....**of P.O. Box 35905, Kampala herein called "THE LESSEE" of the other part.

WITNESSETH as follows:

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

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

(a) To develop and use the land for industrial/commercial purposes and/or other lawful purposes.

(b) To pay for all electricity, water, telephone and any other utility or service that will be consumed on the land.

(c) To pay all existing and future rates, taxes, assessments and outgoings now or hereafter imposed or charged upon the demised premises or part thereof or imposed or charged upon the lessor and to keep the lessor fully indemnified in respect thereof.

(d) To obey, perform and comply with all local council regulations and those by any other lawful authority.

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

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

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

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

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

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

5. IT IS FURTHER MUTUALLY AGREED as follows:-

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

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

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

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

In the presence of:

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

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

In the presence of:

..... DIRECTOR

DRAWN & FILED BY:

SUI GENERIS Advocates

Plot 10 Clement Road,

P.O. Box 21161

Tel: 341295/6

Fax: 343168

KAMPALA

AN AGREEMENT TO SALE LAND

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT, CAP. 230

BUHUNGIRO BLOCK 261,

PLOT 34 AT KYENGEZA

AGREEMENT TO SALE LAND

THIS AGREEMENT made this ..... day of ....., Two Thousand Thirteen BETWEEN **.....** of Sebuguzi Village, Kapeeka Sub-county, Nakaseke District, Tel: 0774 205 790 (hereinafter called "the Vendor") of the first part AND **.....** ofP.O. Box 21161, Kampala (hereinafter called "the Purchaser") of the second part.

WHEREAS:

(a) The Vendor is the registered proprietor of land measuring approx. 61.013 Hectares and known as Plot 34 Bulemezi Block 261 at Kyengeza, Kapeeka.

(b) The Vendor is desirous of selling and the Purchaser of buying Ten (10) acres out of the said Mailo land free from any encumbrances whatsoever.

NOW THIS DEED WITNESSETH:

5. In consideration of the sum of Shs.20,000,000/= (Twenty Million only) to be paid to the Vendor by the Purchaser as hereinafter provided, the Vendor hereby sells and transfers to the Purchaser the said land and interest therein free from all encumbrances.

6. The said purchase price shall be paid as follows:

a) Shs.20,000,000/= (Twenty Million only) to be paid after execution hereof by the Vendor receipt of which the Vendor hereby acknowledges.

3. The Vendor shall hand over the Certificate of Title to the Purchaser on execution hereof to enable the latter to survey and subdivide the land.

4. The Vendor shall, upon receipt of the full purchase price, hand over the following documents to the Purchaser, namely:

i) Transfer Deed duly signed.

ii) Passport size photos of the Vendor

iii) Copy of the Vendor's Passport or Voters Card

iv) Letter of L.C. 1 Chairman of the area.

5. The Vendor hereby gives the Purchaser a warranty of good title and quiet possession of the said land and hereby undertakes to indemnify the Purchaser of any loss and damage that may be suffered in the event the Vendor's ownership or title thereon is found defective.

6. The Vendor shall pass the possession of the land thereon, if any, free from encumbrances to the Purchaser upon receipt of the full purchase price and the Vendor covenants with and gives warrant to the Purchaser to enjoy quiet possession and peaceful use of the land.

7. The Vendor hereby undertakes to execute and/or deliver any other documents, instruments or deeds or otherwise that may be necessary to carry out and give effect to the terms and conditions of this Agreement.

8. The Purchaser shall not take over nor be liable for any liabilities of the Vendor howsoever arising prior to the handover of the property. The Vendor shall compensate and remove any cultivators/squatters from the land hereby sold.

9. The Purchaser shall bear all fees, taxes and other Government charges, if any, and Advocates fees in relation to this agreement and other subsequent registrable dealings on this land.

10. This agreement shall be governed, construed and enforced in accordance with the Laws of Uganda.

IN WITNESS WHEREOF the parties hereto have hereunto put their respective hands the day and year first above written.

SIGNED by the said }

..... }

and I certify that the above instrument }

was first read over and explained to } _____

him in Luganda Language by } VENDOR

..... when he }

appeared to fully understand the same }

in the presence of:

.....

ATTESTING WITNESS

SIGNED by the said **.....** }

..... }

whose Common Seal was }

affixed hereunto }

In the presence of } PURCHASER _____

DRAWN & FILED BY:

SUI GENERIS Advocates

Plot 10 Clement Hill Road,

P.O. Box 21161 Tel: 341295/6 Fax: 343168

KAMPALA.

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT, CAP. 230

Bulemezi BLOCK .... PLOT ..... AT .....

AGREEMENT OF SALE OF LAND

THIS AGREEMENT made this ..... Day of ..... Two Thousand Thirteen

BETWEEN

.....

AND

.....

DRAWN & FILED BY:

SUI GENERIS Advocates

Plot 10 Clement Hill Road,

P.O. Box 21161

Tel: 341295/6

Fax: 343168

Email: kbwadvocates@gmail.com

KAMPALA.

THE REPUBLIC OF UGANDA

TENANCY AGREEMENT

THIS AGREEMENT is made this ... day of December, Two Thousand and Twelve Between **.....** of P.O. Box 21161, Kampala (hereinafter called the "Landlord") which expression shall where the context so admits include his successors in title and assigns) of the one part AND **.....**of P.O. Box 3936, Kampala, (hereinafter called the "Tenant") which expression shall where the context so admits include his successors in title and assigns) of the other part.

WITNESSETH as follows:

1. The Landlord being the owner of residential premises situated at ....., Kampala and comprised in Block 208 plot 551 HEREBY DOES LET to the tenant RESIDENTIAL PREMISES described for purposes of this agreement as **UNIT TWO** thereon unto the Tenant on the conditions following:

(a) The term of the tenancy shall commence on the 1/1/2013 and shall continue for one year or until determined by 3(Three) months notice in writing given in advance by either party.

(b) The rent shall be Shs.400,000/= (Shillings Four Hundred Thousand Only) per month payable 3 months in advance.

(c) The Tenant shall on execution hereof pay a refundable Shs.400,000/= as security for the tenants' obligations to pay water and electricity bills and to maintain the house in tenantable repair and this deposit shall be refundable to the client if at the determination of the tenancy there shall be no existing default of the terms of the lease on the Tenant's part.

THE TENANT COVENANTS WITH THE LANDLORDas follows:-

(a) To pay the rent hereby reserved at the rate and in the manner aforesaid.

(b) To pay electricity, water and telephone consumed on the premises regularly on a monthly basis which will be confirmed by the Landlord or his agents on receipt of copies of receipts at the end of each month without fail.

(c) To keep the interior of the premises including all fixtures and fittings therein and all windows glasses (both external and internal) and all sanitary and water apparatus and electrical fittings in good repair and condition. **IT IS HEREBY FURTHER AGREED** that the Tenants shall paint the interior of demised premises at least once every year AND THAT such painting shall be in the manner agreeable to the Landlord.

(d) To permit the landlord his agents or any person authorised by him upon giving a reasonable period of notice in writing and at a reasonable hour in the daytime and with or without workmen to enter upon the premises or any part thereof and view the state and condition of the said premises and to do such work and things as may be required for any repairs and alterations in or under any part of the premises and should any defects or want of repair be found which the tenants are liable to make good under the stipulations on their part herein contained a notice in writing thereof shall be given to the tenant or left on the premises to make good the same in a proper manner and if the tenant shall not within thirty (30) days after the service of such notice proceed with the execution and completion of the repairs then the landlord will be empowered to enter upon the premises and execute such repairs and the costs thereof shall be a debt due from the tenants to the landlord and be forthwith recoverable.

(e) Not to assign, sublet or part with the possession of the demised premises or any part thereof without the consent in writing of the landlord, **provided** that occupation of the premises by any employee of the tenants shall not be construed as such assigning, subletting or parting with possession.

(f) to keep the premises in a clean condition and free of rubbish, refuse, scrab, bees, ants and other destructive insects or rodents and not to bring or store unto the premises any explosive or inflammable substance.

(g) Not to do or permit or suffer on the premises anything which shall be a nuisance to tenants or occupants of adjoining properties or which is illegal.

(h) To use the premises for residential purposes only for one family.

(i) to make good any damage caused to the demised premises by the bringing in, removal

or shifting by the tenants of any furniture, goods or other articles into or out of the premises or any damage whatsoever caused by the Tenant or their agents.

(j) To deliver to the Landlord on determination of the tenancy the demised premises in such a state of repair and condition as the tenants found them reasonable natural wear and tear expected and in particular to paint the premises at the determination of the Tenancy.

3. **THE LANDLORD HEREBY AGREES WITH THE TENANT as follows:**

(a) To keep the main walls and roof of the premises and buildings and drains, pipes and the main sanitary apparatus, in good tenantable order, repair and condition.

(b) that the tenants paying the rent hereby reserved and performing and observing the agreements, terms and conditions of his part herein contained or implied shall and may

Peaceably and quietly hold and enjoy the premises during the tenancy without any interruptions from or by the landlord or any person rightfully claiming from or under him.

4. **PROVIDED ALWAYS and it is hereby agreed and declared as follows:**

(a) That if the rent hereby reserved or any part thereof shall be in arrears for a space of Fifteen (15) days next after becoming payable as aforesaid whether the same shall have been formally demanded or not or if there shall be any breach non-performance or non observance by the tenant or any of the agreements, terms or conditions hereinbefore contained or implied on the part of the tenant to be performed and observed then in such a case it shall be lawful for the landlord at anytime without first obtaining an order of Court thereafter by himself or through Court Bailiffs or Auctioneers to enter into and upon the premise (including locking up the premises) or any part thereof in the name of the whole and upon such re-entry this tenancy shall absolutely determine and the landlord shall freely enjoy the demised premises in their former state anything herein contained to the contrary in any wise notwithstanding without prejudice to any right of action or remedy of the landlord in respect of any antecedent breach of any of the agreements terms or conditions of the tenant hereinbefore contained and all costs and expense of the re-entry including any loss to or of the tenants' properties shall be borne by the tenants.

(b) Any notice to the tenants shall be sufficiently served if sent to the tenant by registered post or left addressed to them on the premises or left at their last known address in Uganda and shall be sufficiently served on the landlord if delivered to him by registered post or left at his last known address in Uganda or served on his managing agents and any notice sent by post shall be deemed to be given at the time when it was so posted.

(c) Either party may terminate this tenancy agreement by giving the other Three(3) month's advance notice in writing.

(d) If the tenants wish to renew this tenancy after 30/12/2013, they shall serve onto the Landlord a written notice of such intention at least 3 months before expiry of this tenancy and the Landlord may at his

discretion renew the tenancy on such terms as the parties may agree to PROVIDED that in any event rent shall be increased by at least 20%.

IN WITNESS WHEREOF the Landlord and tenant have hereunto set their respective hands the day and year first above written.

SIGNED by the said } _____

..... } **LANDLORD**

In the presence of:

SIGNED by the said }

..... } **TENANT**

In the presence of :

Drawn by:

Sui Generis & Co- Advocates

Plot 10 Clement Hill Road

P. O. Box 21161

Tel: 341295/6

Fax: 343168

Kampala.

Powers Of Attorney.

ATTORNEY APPROVAL

This Attorney Approval (the “Agreement”) is made and effective [DATE],

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

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

NOW THEREFORE, it is further agreed by and between the parties hereto as follows:

TERMS

That their respective attorneys may approve and make modifications, other than price and dates, mutually acceptable to the parties. Approval will not be unreasonably withheld but, if within [NUMBER] business days after the date of this contract it becomes evident agreement cannot be reached by parties hereto, and written notice thereof is given to either party within the time specified, then this contract shall become null and void, and all the monies paid by the Buyer shall be refunded.

IN THE ABSENCE OF WRITTEN NOTICE WITHIN THE TIME SPECIFIED HEREIN; THIS PROVISION SHALL BE DEEMED WAIVED BY ALL PARTIES HERETO AND THIS CONTRACT SHALL BE IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

BUYER	SELLER
Signature	Authorized Signature
Print Name and Title	Print Name and Title

LIMITED POWER OF ATTORNEY

This Limited Power of Attorney (the "Agreement") is made and effective [DATE],

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

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

RECITALS

KNOW ALL MEN BY THESE PRESENTS, that this Power of Attorney is given by Client to Attorney and that the Client hereby appoints Attorney to be its attorney and to do in its name and on its behalf anything that the Client can lawfully do by an attorney, including but not limited to;

1. General Grant of Power

To exercise or perform any act, power, duty, right or obligation whatsoever that Client now has or may hereafter acquire, relating to any person, matter, transaction or property, real or personal, tangible or intangible, now owned or hereafter acquired by Client, including, without limitation, the following specifically enumerated powers. Client grants to Attorney full power and authority to do everything necessary in exercising any of the powers granted here as fully as Client might or could do if personally present, with full power of substitution or revocation, ratifying and confirming all that Attorney shall lawfully do or cause to be done by virtue of this power of attorney and the powers granted here.

2. Collection Powers

To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of money debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pension, profit sharing, retirement, social

security, insurance and other contractual benefits and proceeds, all documents of title, all property, real or personal, intangible or tangible property and property rights, and demands whatsoever, liquidated or unliquidated, now or hereafter owned by, or due, owing, payable or belonging to, Client or in which Client has or may hereafter acquire an interest; to have, use, and take all lawful means and equitable and legal remedies and proceedings in Client's name for the collection and recovery of them, and to adjust, sell, compromise, and agree for the same, and to execute and deliver for Client, on its behalf, and in its name, all endorsements, releases, receipts, or other sufficient discharges for the same.

3. Real Property Powers

To bargain, contract, agree for, option, purchase, acquire, receive, improve, maintain, repair, insure, plat, partition, safeguard, lease, demise, grant, bargain, sell, assign, transfer, remise, release, exchange, convey, mortgage and hypothecate real estate and any interest in it (and including any interest which Client holds with any other person as joint tenants with full rights of survivorship, or as tenants by the entireties), lands, tenements and hereditaments, for such price, upon such terms and conditions, as Attorney shall determine.

4. Personal Property Powers

To bargain, contract, agree for, purchase, option, acquire, receive, improve, maintain, repair, insure, safeguard, lease, assign, sell, exchange, redeem, transfer, hypothecate and in any and every way and manner deal in and with goods, wares, merchandise, furniture and furnishings, automobiles, bills, notes, debentures, bonds, stocks, limited partnership interests, certificates of deposit, commercial paper, money market instruments, and other securities, choses in action and other tangible or intangible personal property in possession, for such price, upon such terms and conditions, as Attorney shall determine.

5. Gift Power

To make gifts of any kind, provided, however, that the aggregate of all gifts to one donee other than a charitable done, in any one year shall not exceed Client's federal gift tax annual exclusion for the year in which the gifts are made, and this authority shall be non-cumulative.

6. Contract Powers

To make, do, and transact every kind of business of whatever nature, and also for Client and in its name, and as its act and deed, to sign, seal, execute, deliver and acknowledge such stock certificates, stock powers, assignments separate from certificate, deeds, conveyances, leases and assignments of leases, covenants, indentures, options, letters of intent, contracts, agreements, closing agreements, certificates, mortgages, hypothecations, bills of lading, bills, bonds, debentures, notes, receipts, evidence of debts, releases and satisfaction of mortgage, judgments and other debts, waivers of statutes of limitation, and such other documents and instruments in writing of whatever kind and nature as may be necessary or proper in the premises, as fully as Client might do if done in its own capacity.

7. Banking Powers

To make, draw, sign in Client's name, deliver and accept checks, drafts, receipts for moneys, notes, or other orders for the payment of money against, or otherwise make withdrawals from any commercial, checking or savings account which Client may have in its sole name or in joint name with its spouse or other person(s), in any bank or financial institution, for any purpose which Attorney may think necessary, advisable or proper; and to endorse and negotiate in its name and deliver checks, drafts, notes, bills, certificates of deposit, commercial paper, money market instruments, bills of exchange or other instruments for the payment of money and to deposit same, as cash or for collection, and cash into any commercial, checking or savings account which Client may have in its sole name or in joint name with its spouse or other person(s), in any bank or financial institution; and to carry on all its ordinary banking business.

8. Tax Returns

To prepare, execute and file reports, returns, declaration, forms and statements for any and all tax purposes including income, gift, real estate, personal property, intangibles tax, single business tax, or any other kind of tax whatsoever, to pay such taxes and any interest or penalty or additions to make and file objections, protests, claims for abatement, refund or credit in relation to any such tax proposed, levied or paid; to represent Client and to institute and prosecute proceedings in court or before any administrative authority to contest any such tax in whole or in part or for recovery of any amount paid in respect of any such tax, to defend or settle any amount paid in respect of any such tax, to give full and final receipt for any refund or credit and to endorse and collect any check or other voucher; to pay any and all such taxes and any interest, penalty or other additional amounts, to employ attorneys, accountants or other representatives and grant powers of attorney or letters of appointment for any of the purposes stated above.

9. Safe Deposit Box

To have access to any safe deposit box of which Client is a tenant or cotenant with full power to withdraw or change from time to time the contents of it; and to exchange or surrender the box and keys to it, renew any rental contract for it, and to do all things which any depository, association or bank or Attorneys may require, releasing the lessor from all liability in connection with it.

10. Employ Agents

To employ and compensate agents, accountants, attorneys, real estate brokers and other professional assistance and to retain and compensate such persons for services rendered; to waive any attorney-client privilege.

11. Motor Vehicles

To apply for a Certificate of Title upon, and endorse and transfer title, for any automobile, or other motor vehicle, and to represent in such transfer assignment that the title to the motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.

12. Settlement Powers

To adjust, settle, compromise or submit to arbitration any accounts, debts, claims, demands, disputes or matters which are now subsisting or may hereafter arise between Client or its Attorney and any other person or persons, or in which any property, right, title, interest or estate belonging to or claimed by Client may be concerned.

13. Legal Actions

To commence, prosecute, enforce or abandon, or to defend, answer, oppose, confess, compromise or settle all claims, suits, actions, or other judicial or administrative proceedings in which Client is or may hereafter be interested, or in which any property, right, title, interest or estate belonging to, coming to or claimed by Client may be concerned.

14. Dividends

To receive all dividends which are or shall be payable on any and all shares of stock in any corporation which may stand in Client's name on the books of such corporation or to which Client may be, in equity or otherwise, beneficially entitled; or to elect to reinvest such dividend, all as Attorney may deem appropriate.

15. Vote Stock

To vote at all stockholder meetings of corporations and otherwise to act as Client proxy or representative in respect of any shares now held or which may hereafter be acquired by Client and for that purpose to sign and execute any proxies or other instruments in its name and on its behalf.

16. Transfer Stock

To sell, assign, transfer, and deliver all and any shares of stock standing in Client's name on the books of any corporation, or to which Client may be, in equity or otherwise, beneficially entitled, and for the purpose to make and execute all necessary acts of assignment and transfer.

17. Insurance and Employee Benefit Plans

To redeem, surrender, borrow, extend, cancel, amend, pledge, alter or change, including change of beneficiary of any insurance policies in which Client may have an interest, as Attorney may deem proper and expedient, and for such purpose to sign and execute any documents, affidavits or forms required in Client's name and on its behalf, except however, Attorney shall have no power and authority over life

insurance policies Client may own on Attorney's life; and to exercise all powers and options involving retirement programs, compensation plans, pension, profit sharing and other employee benefit plans.

18. Social Security and Government Benefits

To make application to any governmental agency for any benefit or government obligation to which Client may be entitled; to endorse any checks or drafts made payable to Client from any government agency for its benefit, including any Social Security checks.

19. Business Interests

To continue to conduct or participate in any business in which Client may be engaged or to carry out, modify or amend any agreement to which Client may be a party, and to sell, exchange, modify or terminate such interest to or with such person or persons as Attorney may deem proper and on such terms and with such security as Attorney may deem appropriate; execute partnership agreements, and amendments; incorporate, reorganize, merge, consolidate, recapitalize, sell, liquidate or dissolve any business; elect or employ officers, directors and Attorneys; carry out the provisions of any agreement for the sale of any business interest or the stock in it.

20. Borrow

To borrow from time to time such sums of money and upon such terms as Attorney may think expedient for or in relation to any purpose or object which Attorney may deem proper or expedient, unsecured or upon the security of any of Client's property, whether real or personal or otherwise, and for such purpose to give, execute in its name, deliver, and acknowledge promissory notes and/or renewals of, mortgages, pledges and guaranties with such powers and provisions as Attorney may think proper or requisite.

21. Debts and Expenses

To pay, compromise, and settle any and all bills, loans, notes or other forms of indebtedness owed by Client at the present time, or which may be owed by Client or incurred by Attorney for Client benefit at any time in the future, and to incur and pay from any of Client's assets or property all reasonable expenses in connection with the control, management, and supervision of Client's property and the maintenance, support, care, and comfort of Client, including reasonable compensation for the services of professionals, and including the fees and charges of such attorneys, accountants or others as Attorney may, in the exercise of discretion, employ in the management of any of Client's affairs.

22. Investments

To invest and reinvest in loans, stocks, bonds, including bonds purchased at a discount but redeemable at face value, securities, real estate, life insurance, annuities or endowment policies or combinations of them, or in any other investment which Attorney may deem proper; to reduce the interest rate at any time and from time to time on any mortgage or land contract; to deal with and give instructions to any brokerage

firm with respect to the purchase, sale or other disposition of securities and other assets, add assets to or withdraw assets from any account in Client's name, and sign any representation, certification or agreement, including agreements regarding margin, option trading, or commodities accounts, that Attorney deems advisable.

23. Restrictions on Attorney's Powers

a. Attorney cannot execute a will or codicil on Client's behalf.

b. Attorney cannot execute any trust on Client's behalf; however, Attorney can enter into a custodial agreement with a bank with trust powers.

c. Attorney cannot divert Client's assets to itself, its creditors or its estate.

d. Attorney shall not exercise, and shall not be vested with any incidents of ownership as to insurance policies insuring Attorney's life, owned by Client.

e. Attorney is a fiduciary, possessing no general or limited power of appointment.

f. Attorney shall not exercise any powers which Client received from Attorney in a fiduciary capacity, and Attorney shall have no authority to exercise any powers, the exercise of which would cause assets of mine to be considered as taxable in Attorney's estate for the purposes of the federal estate tax or the [%] inheritance tax.

24. Interpretation and Governing Law

This instrument is to be construed and interpreted as a general durable Power of Attorney. The enumeration of specific powers here is not intended to, nor does it, limit or restrict the general powers granted here to Attorney. Paragraph headings are for convenience only and are not to be deemed to be part of this instrument. This instrument is executed and delivered in the state of [STATE/PROVINCE], and the laws of the state of [STATE/PROVINCE] shall govern all questions as to the validity of this power and the construction of its provisions.

25. Third-Party Reliance

Third parties may rely upon the representation of Attorney as to all matters relating to any power granted to Attorney, and no person who may act in reliance upon the representations of Attorney or the authority granted to Attorney shall incur any liability to Client or its estate as a result of permitting Attorney to exercise any power, and for the purpose of inducing third parties to rely on this power of attorney, Client warrants that, if this power of attorney is revoked by Client or otherwise terminated, Client will indemnify and save such third party harmless from any loss suffered or liability incurred by such third party in good faith reliance on the authority of Attorney prior to such third party's actual knowledge of revocation or

termination of this power of attorney whether such termination is by operation of law or otherwise. This warranty shall bind Client's heirs, devises and personal representatives.

26. Disability of Principal

This power of attorney shall not be affected by Client's disability. The authority of Attorney shall be exercisable notwithstanding Client's later disability or incapacity or later uncertainty as to whether Client is alive. Any act done by Attorney during any period of Client's disability or incompetency or during any period of uncertainty as to whether Client is alive shall have the same effect as though Client was alive, competent and not disabled, and shall inure to the benefit of and bind Client, its heirs, devisees and personal representatives.

27. Photographic Copies

Photographic or other facsimile reproductions of this executed power may be made and delivered by Attorney, and may be relied upon by any person to the same extent as though the copy were an original. Anyone who acts in reliance upon any representation or certificate of Attorney, or upon a reproduction of this power, shall not be liable for permitting Attorney to perform any act pursuant to this power.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTORNEY CLIENT

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title

Acknowledgment

State of [state]

County of [county]

On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness its hand and official seal.

Signature

Notary

(Seal)

Agreement To Assign

This Agreement to Assign (the "Agreement") is made ans effective the [DATE],

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

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

RECITALS

The parties declare:

A. Prospective Assignor has entered into a lease agreement, as lessor, with [lessee], of [address], [city], [state], referred to as "lessee." A copy of the lease agreement, containing a description of the premises, is attached to this agreement as Exhibit A.

B. Prospective Assignor desires to assign the lease agreement to Prospective Assignee, who will assume all liabilities and duties as well as all rights of Prospective Assignor pertaining to the collection of all rents to become due under the lease agreement after the effective date of the assignment.

In consideration of the mutual covenants contained in this agreement, the parties agree as follows:

1. Prospective Assignor will transfer and assign to Prospective Assignee all right to the collection of all rents required under the lease agreement provisions in the lease dated [date] on the premises described as follows: [set forth description contained in lease].

2. The assignment shall become effective on [date], and shall apply to all rents due thereafter until expiration of the lease agreement term on [date].

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the day and year first above written.

ASSIGNOR	ASSIGNEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title

Assignment Of Assets

This Assignment of Assets (the "Assignment") is made and effective [DATE],

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

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

WHEREAS, on the day of [date], the Corporation was formed by Articles of Incorporation filed with the Registrar of Companies in and for the [State/Province], and;

WHEREAS, it is necessary to transfer certain assets into the Corporation in order to capitalize the Corporation, and;

WHEREAS, Stockholder is desirous of transferring to the Corporation certain assets shown on the attached Exhibit "A," and the Corporation is desirous of acquiring said assets.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter entered into, it is agreed as follows:

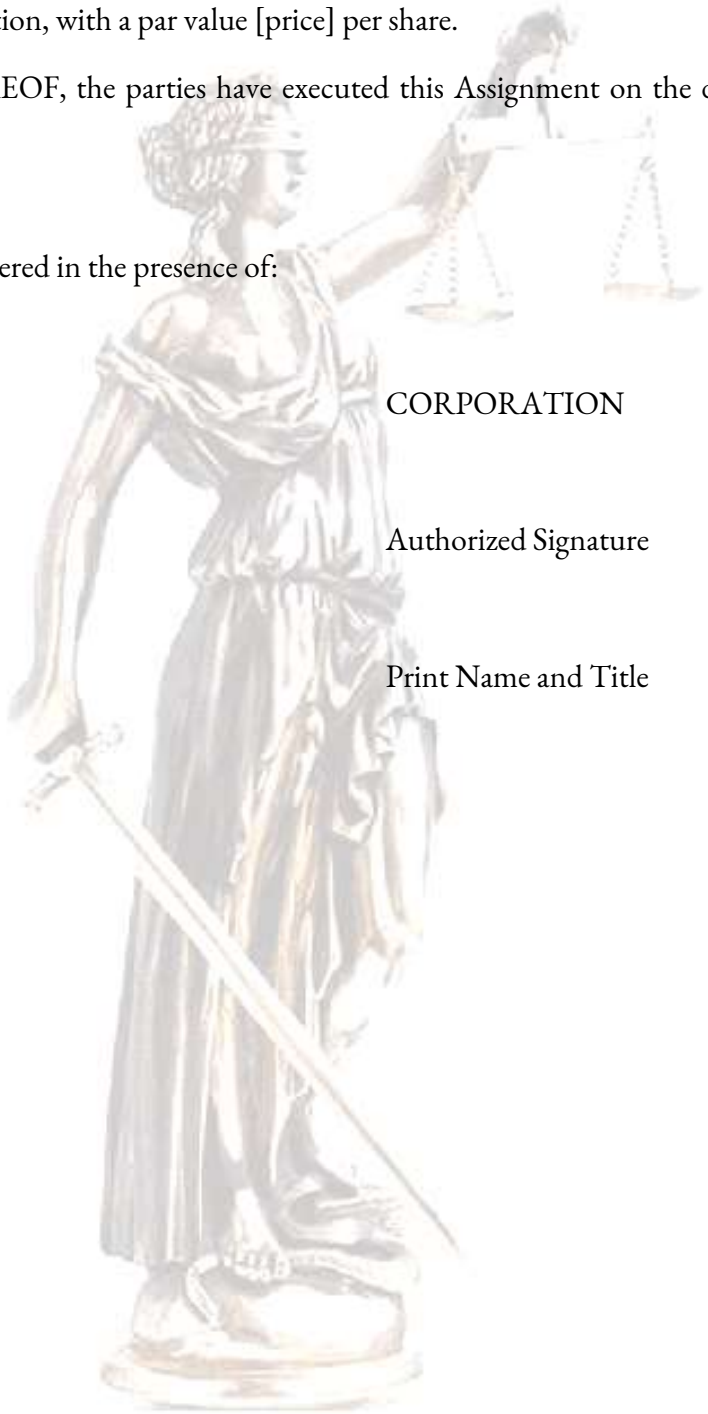
a. Stockholder does hereby transfer and assign those assets listed on the attached Exhibit "A" to the Corporation.

b. In consideration for said transfer the Corporation issues to Stockholder [number] shares of stock in the Corporation, with a par value [price] per share.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year first above written.

Signed, sealed and delivered in the presence of:

STOCKHOLDER	CORPORATION
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title



Assignment Of Contract

This Assignment of Contract (the "Assignment") is made and effective [DATE],

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

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

FOR VALUE RECEIVED, the undersigned Assignor hereby assigns, transfers and sets over to Assignee all rights, title and interest held by the Assignor in and to the following described contract:

[description]

1. TERMS

a. The Assignor warrants and represents that said contract is in full force and effect and is fully assignable.

b. The Assignee hereby assumes and agrees to perform all the remaining and executory obligations of the Assignor under the contract and agrees to indemnify and hold the Assignor harmless from any claim or demand resulting from non-performance by the Assignee.

c. The Assignee shall be entitled to all monies remaining to be paid under the contract, which rights are also assigned hereunder.

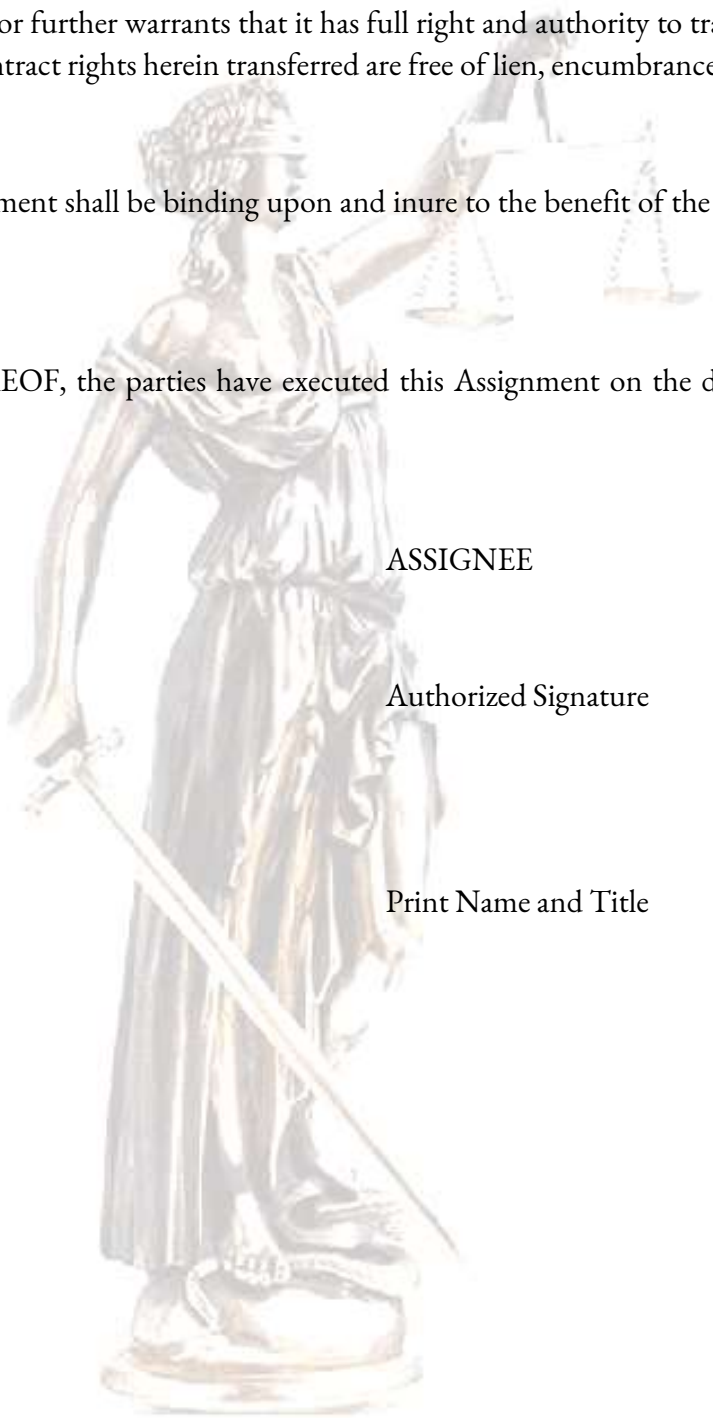
d. The Assignor warrants that the contract is without modification, and remains on the terms contained.

e. The Assignor further warrants that it has full right and authority to transfer said contract and that the contract rights herein transferred are free of lien, encumbrance or adverse claim.

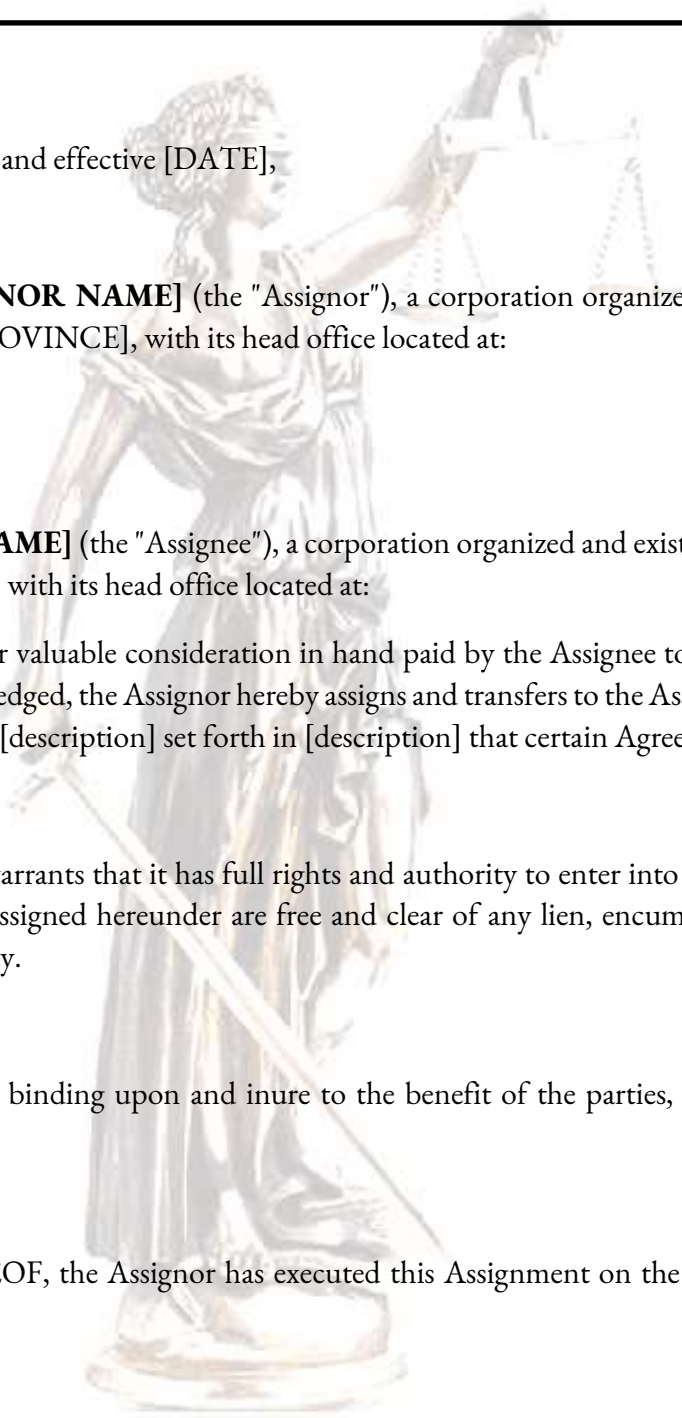
f. This assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year first above written.

ASSIGNOR	ASSIGNEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title



Assignment



This assignment is made and effective [DATE],

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

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

WITNESSETH, that for valuable consideration in hand paid by the Assignee to the Assignor, receipt of which is hereby acknowledged, the Assignor hereby assigns and transfers to the Assignee all of his right, title and interest in and to all [description] set forth in [description] that certain Agreement.

The undersigned fully warrants that it has full rights and authority to enter into this assignment and that the rights and benefits assigned hereunder are free and clear of any lien, encumbrance, adverse claim or interest by any third party.

The assignment shall be binding upon and inure to the benefit of the parties, and their successors and assigns.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the day and year first above written.

Signed, sealed and delivered in the presence of:

ASSIGNOR

Authorized Signature

Print Name and Title

October 31, 2022

Contact Name

Address

Address2

City, State/Province

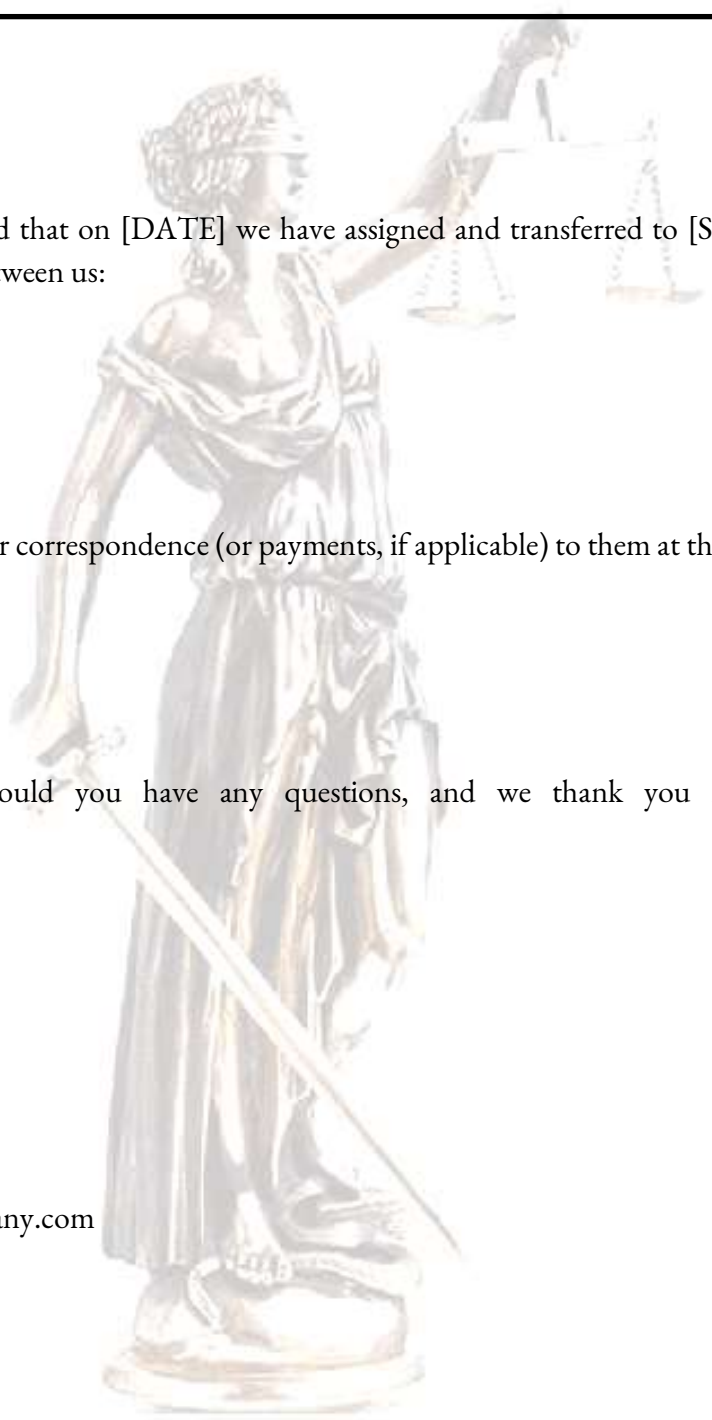
Zip/Postal Code

ASSIGNEE

Authorized Signature

Print Name and Title

OBJECT: NOTICE OF ASSIGNMENT



Dear [Contact name],

You are hereby notified that on [DATE] we have assigned and transferred to [SPECIFY] the following [SPECIFY] existing between us:

[DESCRIBE]

Please direct any further correspondence (or payments, if applicable) to them at the following address:

[INSERT ADDRESS]

Please contact us should you have any questions, and we thank you for your cooperation.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

General Power Of Attorney

This General Power of Attorney (the "Agreement") is made and effective [DATE],

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

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

TERMS

KNOW ALL MEN BY THESE PRESENTS, that this Power of Attorney is given by Client to Attorney and that the Client hereby appoints Attorney to be its attorney and to do in its name and on its behalf anything that the Client can lawfully do by an attorney, including but not limited to;

1. To ask, demand, sue for, recover, collect, and receive all sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities, and demands of every type that are now or may later become due, owing, payable or belonging to Client and have, use, and take all lawful ways and means in Client's name or otherwise for the recovery thereof, by attachments, arrest, distress, or otherwise, and to compromise and agree for them and acquaintances or other sufficient discharges for them;

2. For Client and in its name, to make, seal, and deliver, to bargain, contract, agree for, purchase, receive, and take lands, and tenements, and accept the possession of all lands, and all deeds and other assurances, in the law therefore, and to lease, let, demise, bargain, sell, release, convey, mortgage, and hypothecate lands, and tenements on the terms and conditions and under the covenants as Attorney thinks fit;

3. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of every nature and kind;

4. And also, for Client and in its name, and as Client's act and deed, to sign, seal, execute, deliver, and acknowledge the deeds, leases, mortgages, hypothecations, contracts, charter, bills of lading, bills, bonds, notes, receipts, evidence or debt, releases and satisfaction of mortgage, judgments and other debts, and other instruments in writing of every kind and nature that may be necessary or proper in the premises;

5. GIVING AND GRANTING to the Attorney in fact full power and authority to do and person every act necessary, requisite, or proper to be done as fully as Client might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the Attorney in fact may lawfully do or cause to be done by virtue of this Power of Attorney.

All power and authority granted in this power of attorney will automatically terminate on [date] unless sooner revoked by me.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTORNEY

Authorized Signature

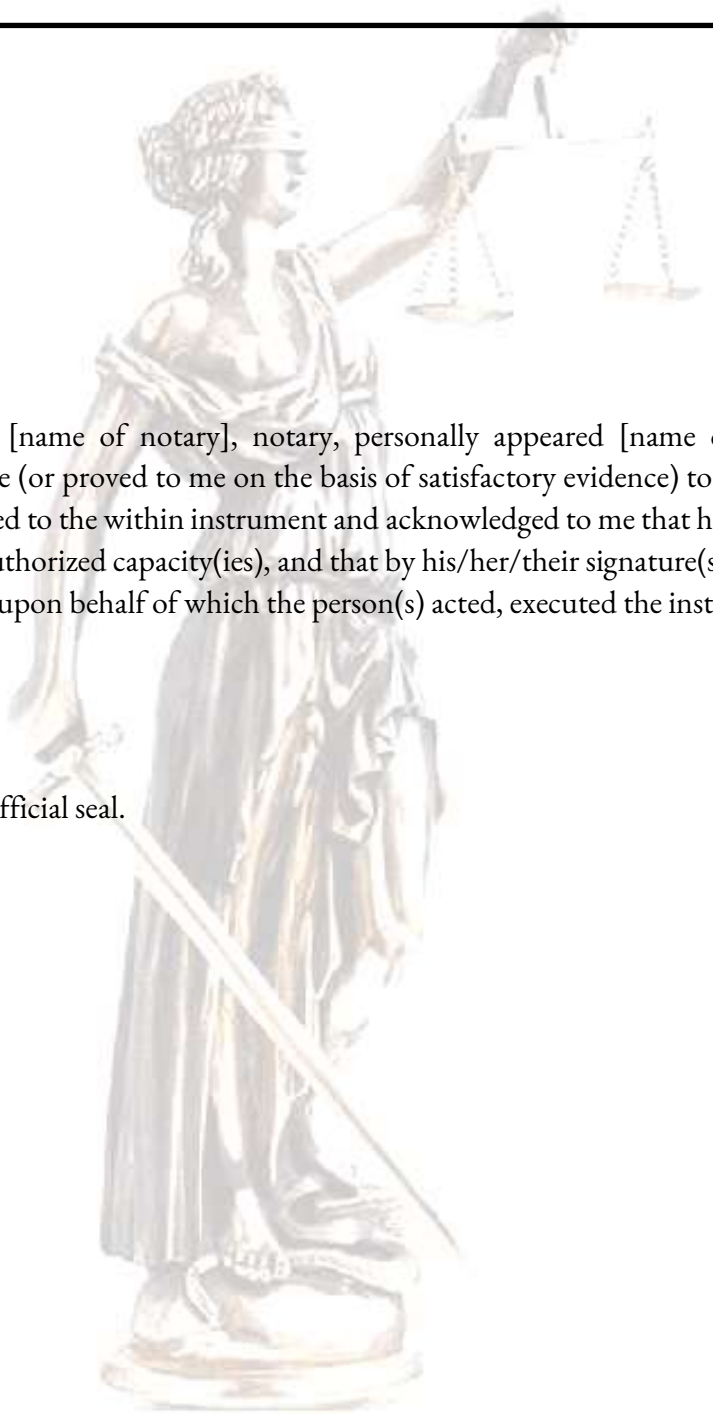
Print Name and Title

CLIENT

Authorized Signature

Print Name and Title

Acknowledgment



State of [state]

County of [county]

On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature

Notary

(Seal)

Revocation Of Power Of Attorney

This Revocation of Power of Attorney (the "Agreement") is made and effective [DATE],

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

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

KNOW ALL MEN BY THESE PRESENTS, that the [General or Special] Power of Attorney executed by [name of principal], constituted and appointed [name of attorney], for the purpose set forth in said Power of Attorney, is hereby wholly revoked, cancelled and annulled.

This document acknowledges that the Client – grantor of the Power of Attorney – hereby revokes, rescinds and terminates said Power of Attorney and all authority, rights and power thereto effective this date.

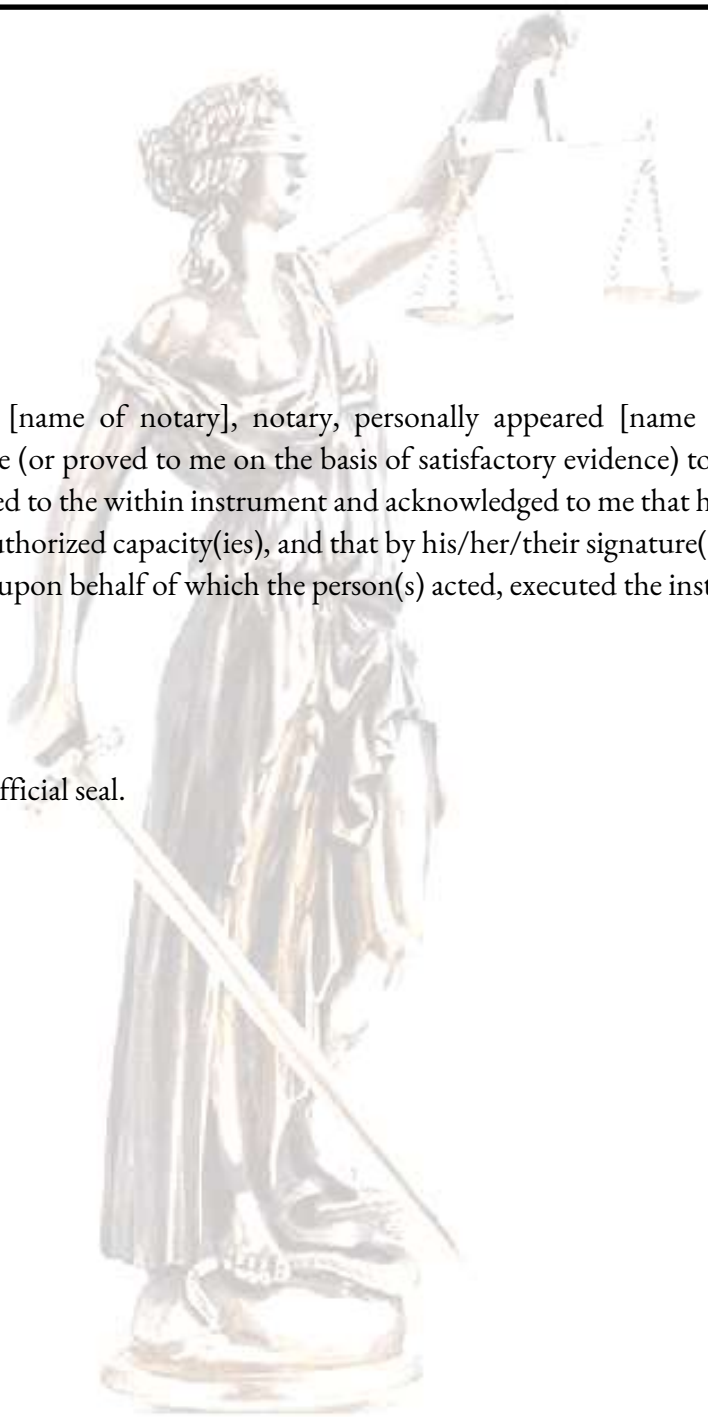
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTORNEY CLIENT

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title

Acknowledgment



State of [state]

County of [county]

On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature

Notary

UNLIMITED POWER OF ATTORNEY

This Unlimited Power of Attorney (the "Agreement") is made and effective [DATE],

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

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

RECITALS

BE IT KNOWN, that Client, do hereby grants an Unlimited Power of Attorney to Attorney, as its attorney-in-fact.

TERMS

1. The attorney-in-fact shall have full powers and authority to do and undertake all acts on Client's behalf that Client could do personally including but not limited to the right to sell, buy, lease, mortgage, assign, rent or dispose of any real or personal property; the right to execute, accept, undertake and perform all contracts in Client's name; the right to deposit, endorse, or withdraw funds to or from any of Client's bank accounts or safe deposit box; the right to initiate, defend, commence or settle legal actions on Client's behalf; and the right to retain any accountant, attorney or other advisor deemed necessary to protect Client's interests relative to any foregoing unlimited power.

2. The attorney-in-fact hereby accepts this appointment subject to its terms and agrees to act and perform in said fiduciary capacity consistent with its best interests as Attorney in his best discretion deems advisable.

3. This power of attorney may be revoked by Client at any time, provided any person relying on this power of attorney shall have full rights to accept the authority of the attorney-in-fact until in receipt of actual notice of revocation.

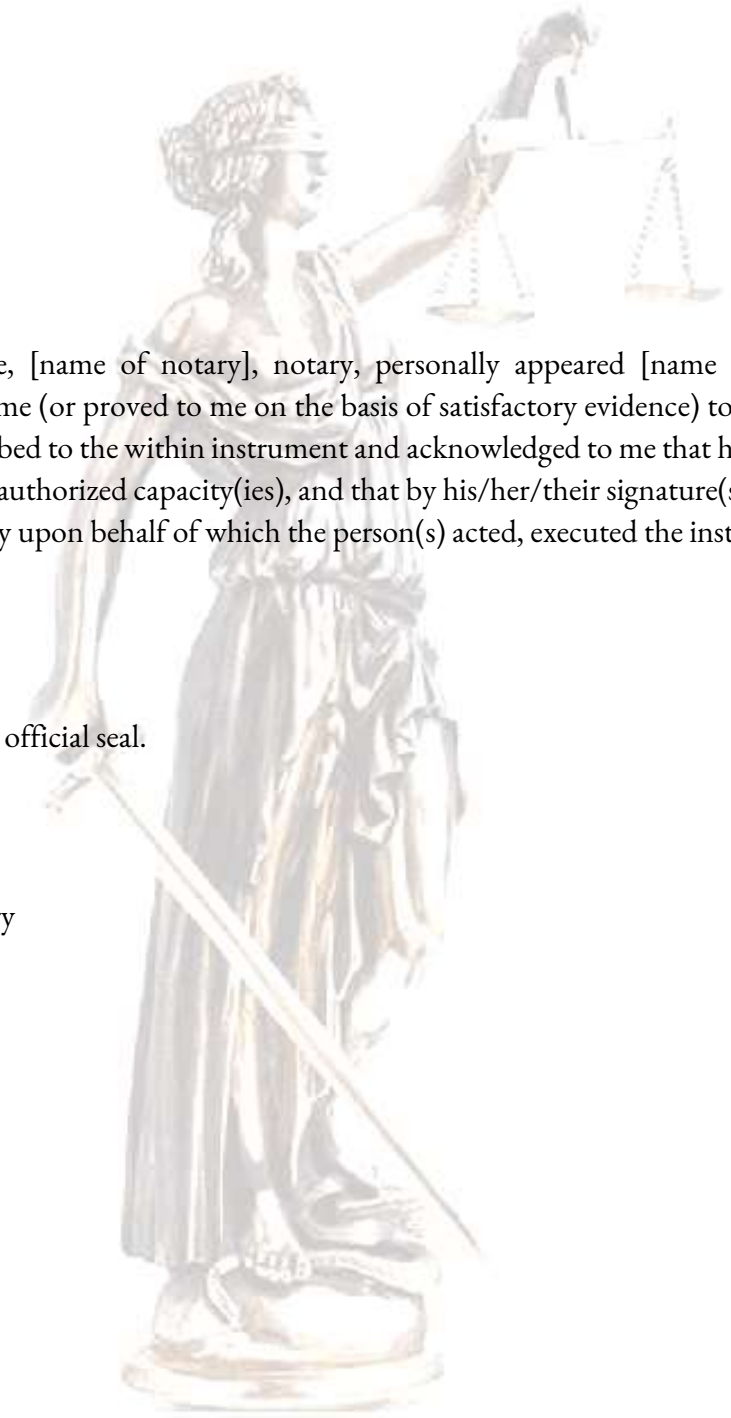
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTORNEY CLIENT

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title

Acknowledgment



State of [state]

County of [county]

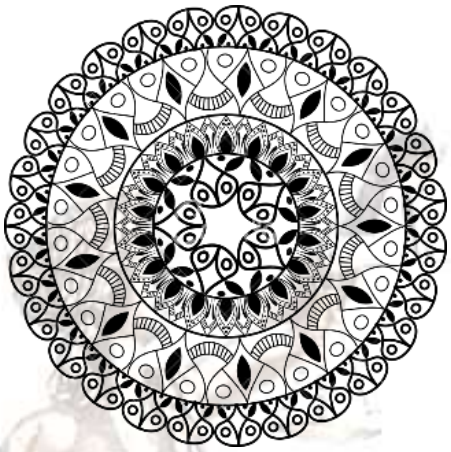
On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature

Notary

(Seal)



LEASING AND REAL ESTATE.

ASSIGNMENT OF LEASE BY LESSEE WITH CONSENT OF LESSOR

This Assignment of Lease (the "Agreement") is made and effective [DATE],

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

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

1. ASSIGNMENT OF LEASE

For value received, Assignor assigns and transfers to Assignee that lease, dated [DATE], executed by assignor as lessee and by [NAME] as lessor, of the following described premises:

[DESCRIBE]

together with all his right, title, and interest in and to the lease and premises, subject to all the conditions and terms contained in the lease, to have and to hold from [DATE], until the present term of the lease expires on [DATE].

A copy of the lease is attached hereto and made a part hereof by reference.

2. ASSIGNOR WARRANTIES AND REPRESENTATION

Assignor covenants that he is the lawful and sole owner of the interest assigned hereunder; that this interest is free from all encumbrances; and that he has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignee agrees to pay all rent due after the effective date of this assignment, and to assume and perform all duties and obligations required by the terms of the lease.

3. CONSENT OF LESSOR

The Lessor, named in the above assignment of that lease executed on [DATE], wishes to consent to this Assignment. The Lessor also consents to the agreement by Assignee to assume after [DATE], the payment of rent and performance of all duties and obligations as set forth in the lease, and releases Assignor from all duties and obligations under the lease, including the payment of rent, after [DATE], and accept Assignee as lessee in the place of Assignor.

4. BINDING AGREEMENT

The assignment shall be binding upon and inure to the benefit of the parties, and their successors and assigns.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the day and year first above written.

ASSIGNOR

Authorized Signature

Print Name and Title

LESSOR

Authorized Signature

Print Name and Title

ASSIGNEE

Authorized Signature

Print Name and Title

Assignment of mortgage

This Assignment of Mortgage (the "Assignment") is made and effective [DATE],

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

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

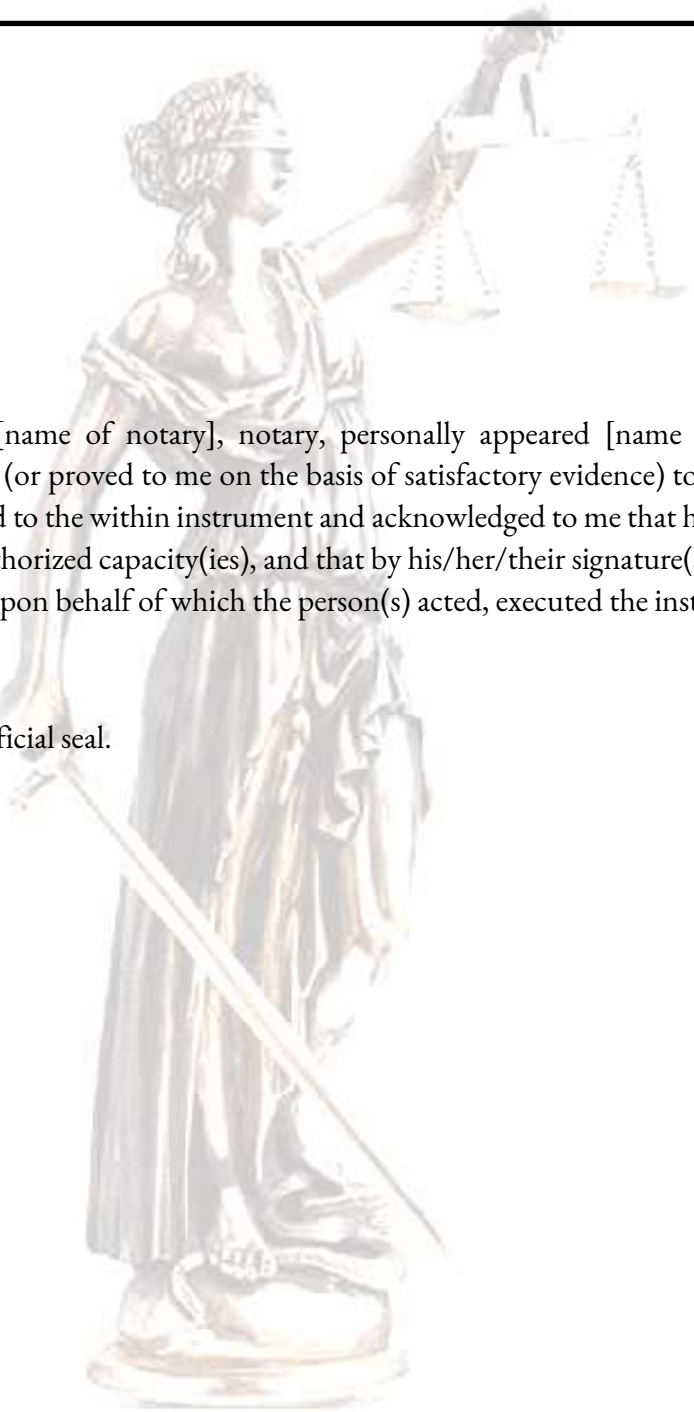
TERMS

For and in consideration of [AMOUNT], the receipt of which is hereby acknowledged by, [NOTARY NAME], of [CITY, STATE/PROVINCE], the Assignor hereby grants, assigns and transfers to Assignee that certain mortgage executed by [NAME], and dated, [DATE], and recorded in [OFFICES], in [CITY, STATE/PROVINCE], in [Book of Mortgage], at page [NUMBER], together with the note described therein and the money to become due thereon with the interest provided therein.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the day and year first above written.

ASSIGNOR	ASSIGNEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title

Acknowledgment



State of [state]

County of [county]

On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature

Notary

(Seal)

Assignment of real estatecontract and sale agreement

This Assignment of Real Estate Contract and Sale Agreement (the “Agreement”) is effective [DATE],

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

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

RECITALS

WHEREAS, Assignor has entered into a certain Real Estate Purchase and Sale Agreement with [NAME] as "Seller" and Assignor as "Buyer" which Agreement was executed on [DATE], by said Assignor and on [DATE], by said Seller for the purchase and sale of certain real property being, lying and situate in [CITY, STATE/PROVINCE], and more particularly described in said Agreement, copy of said Agreement being attached hereto as Exhibit "A"; and,

WHEREAS, Assignor desires to assign, transfer, sell and convey to Assignee all of Assignor's right, title and interest in, to and under said Real Estate Purchase and Sale Agreement; and,

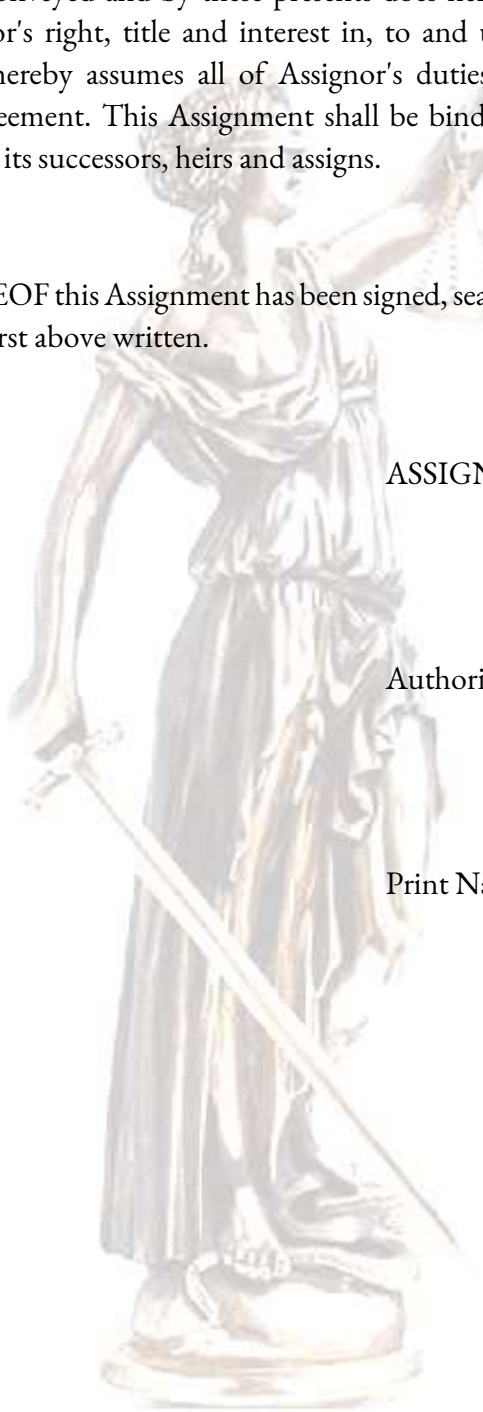
WHEREAS, Assignee is desirous of receiving all of Assignor's right, title andinterest in, to and under said Real Estate Purchase and Sale Agreement;

TERMS

NOW, THEREFORE, for and in consideration of the sum of [AMOUNT]and other good and valuable considerations, the receipt and sufficiency ofwhich are hereby acknowledged, Assignor has assigned, transferred, sold and conveyed and by these presents does hereby assign, transfer, sell and convey unto Assignee all of Assignor's right, title and interest in, to and under said Real Estate Purchase and Sale Agreement. Assignee hereby assumes all of Assignor's duties and obligations under said Real Estate Purchase and Sale Agreement. This Assignment shall be binding upon Assignor and shall inure to the benefit of Assignee and its successors, heirs and assigns.

IN WITNESS WHEREOF this Assignment has been signed, sealed and delivered by Assignor and Assignee as of the day and year first above written.

ASSIGNOR	ASSIGNEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title



Assignment of Real Estate Contract

This Assignment of Real Estate Contract (the "Assignment") is made and effective [DATE],

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

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

TERMS

For value received, which is acknowledged, the Assignor hereby assigns all interest and benefit in an Agreement of Purchase and Sale of [DESCRIBE PROPERTY] between [VENDOR] (the "Vendor") and the Assignor, accepted by the Vendor on [DATE], to the Assignee.

The Assignor stipulates, however, that this Assignment is made completely at the risk of the Assignee without any representations, warranties or collateral assurances of any kind whatsoever with regard to the subject matter of this assignment, its ownership or the right to make this assignment.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the day and year first above written.

ASSIGNOR	ASSIGNEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Titl

ASSIGNMENT OF RENTS BY LESSOR

This Assignment of Rents (the "Assignment") is made and effective [DATE],

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

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

RECITALS

For value received, Assignor assigns and transfers to Assignee, all rents and other sums due and to become due, assign or under that lease Dated [DATE], between Assignor as Lessor, and [NAME], as Lessee;

For the lease of the following described property:

[DESCRIBE]

1. Assignor warranties and representations

a. Assignor is the lawful owner of the above-described lease and of the rental property that is the subject thereof and of all rights and interests therein.

b. The lease is genuine, valid, and enforceable.

c. Assignor has a right to make this assignment.

d. The rental property and rental payments and other sums are free from liens, encumbrances, claims and set offs of every kind whatsoever except as follows:

[DESCRIBE]

e. The balance of rental payments unpaid as of the date of this assignment is [amount] commencing with the next payment due on [date].

2. TERMS AND CONDITIONS OF THE ASSIGNMENT

Assignor understands and agrees that:

a. Assignee does not assume any of the obligations arising under the Lease.

b. Assignor will keep and perform all of his obligations as Lessor under the Lease. In addition, Assignor shall indemnify assignee against the consequences of any failure to do so.

c. Assignor will not assign any other interest in the lease, nor sell, transfer, mortgage, or encumber the property described in the lease, or any part thereof, without first obtaining the written consent of Assignee.

d. Assignee may, at his discretion, give grace or indulgence in the collection of all rent and other sums due or to become due under the lease, and grant extensions of time for the payment of any such sums.

e. Assignor waives the right to require assignee to proceed against Lessee, or to pursue any other remedy.

f. Assignor waives the right, if any, to obtain the benefit of or to direct the application of any security that is or may be deposited with Assignee until all indebtedness of Lessee to Assignee arising under the lease has been paid.

g. Assignee may proceed against Assignor directly or independently of Lessee and the cessation of the liability of Lessee for any reason other than full payment shall not in any way affect the liability of Assignor hereunder, nor shall any extension, forbearance of acceptance, release, or substitution of security, or any impairment or suspension of Assignee's remedies or rights against Lessee in any way, affect the liability of Assignor hereunder.

h. Assignor guarantees due and punctual payment under the terms of the lease, In addition, on any default by Lessee, assignor will, on demand, repurchase the rights assigned hereunder by paying to Assignee the then total unpaid balance of rental payments under the lease.

i. Assignor appoints assignee as his attorney in fact to demand, receive, and enforce payment and to give receipts, releases, and satisfactions and to sue for all sums payable, either in the name of assignor or in the name of Assignee, with the same force and effect as Assignor could have done if this assignment had not been made.

3. NOTICES

Notice of this assignment may be given at any time at Assignee's option. In the event any payment under the lease hereby assigned is made to Assignor, Assignor will promptly transmit such payment to Assignee.

4. BINDING AGREEMENT

This assignment is irrevocable and shall remain in full force and effect until and unless there is payment in full of any obligation, the payment of which is secured by it, or until and unless such obligation is released in writing by Assignee.

IN WITNESS WHEREOF this Assignment has been signed, sealed and delivered by Assignor and Assignee as of the day and year first above written.

ASSIGNOR	ASSIGNEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title

ASSIGNMENT OF SUBLEASE

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

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

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

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

For good consideration, it is agreed by and between the parties that:

1. ASSIGNMENT OF LEASE

Tenant hereby assigns, transfers and delivers to Sub-Tenant all of Tenant's rights in and to a certain lease between Tenant and Landlord for certain premises known as [Describe], under lease dated [DATE].

2. SUB-TENANT'S OBLIGATIONS

Sub-Tenant agrees to accept said Lease, pay all rents and punctually perform all of Tenant's obligations under said Lease accruing on and after the date of delivery of possession to the Sub-Tenant as contained herein. Sub-Tenant further agrees to indemnify and save harmless the Tenant from any breach of Sub-Tenant's obligations hereunder.

3. DELIVERY OF PREMISES

The parties acknowledge that Tenant shall deliver possession of the leased premises to Sub-Tenant on [DATE]; time being of the essence. All rents and other charges accrued under the Lease prior to said date shall be fully paid by Tenant, and thereafter by the Sub-Tenant.

4. LANDLORD'S OBLIGATIONS

Landlord hereby assents to the assignment of lease, provided that:

a. Assent to the assignment shall not discharge Tenant of its obligations under the Lease in the event of breach by Sub-Tenant.

b. In the event of breach by Sub-Tenant, Landlord shall provide Tenant with written notice of same and Tenant shall have full rights to commence all actions to recover possession of the leased premises [in the name of Landlord, if necessary] and retain all rights for the duration of said Lease provided it shall pay all accrued rents and cure any other default.

c. There shall be no further assignment of lease without prior written consent of Landlord.

5. BINDING AGREEMENT

This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

IN WITNESS WHEREOF, the Assignor has executed this Assignment on the day and year first above written.

Signed, sealed and delivered in the presence of:

TENANT

Authorized Signature

Print Name and Title

SUB-TENANT

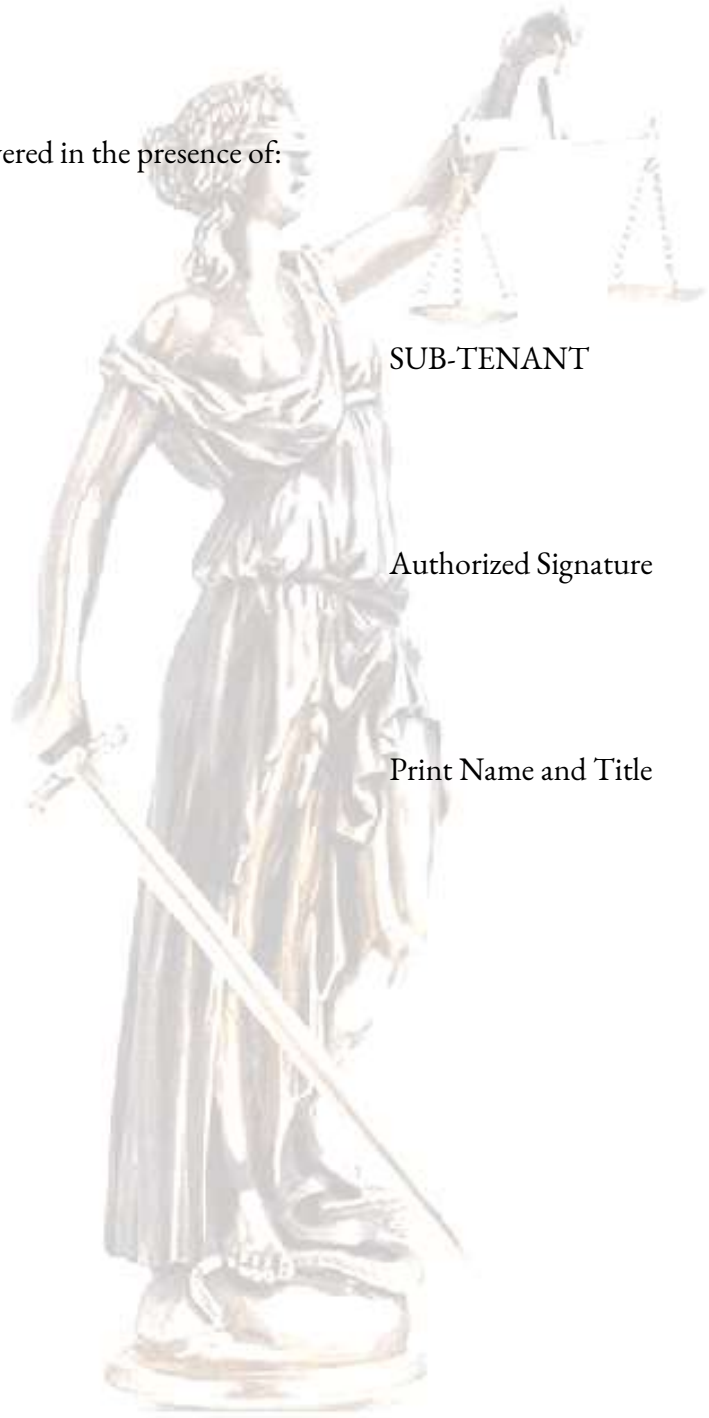
Authorized Signature

Print Name and Title

LANDLORD

Authorized Signature

Print Name and Title



TERMINATION OF LEASE OBLIGATION

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

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

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

TERMS

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

[facts giving rise to this release]

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

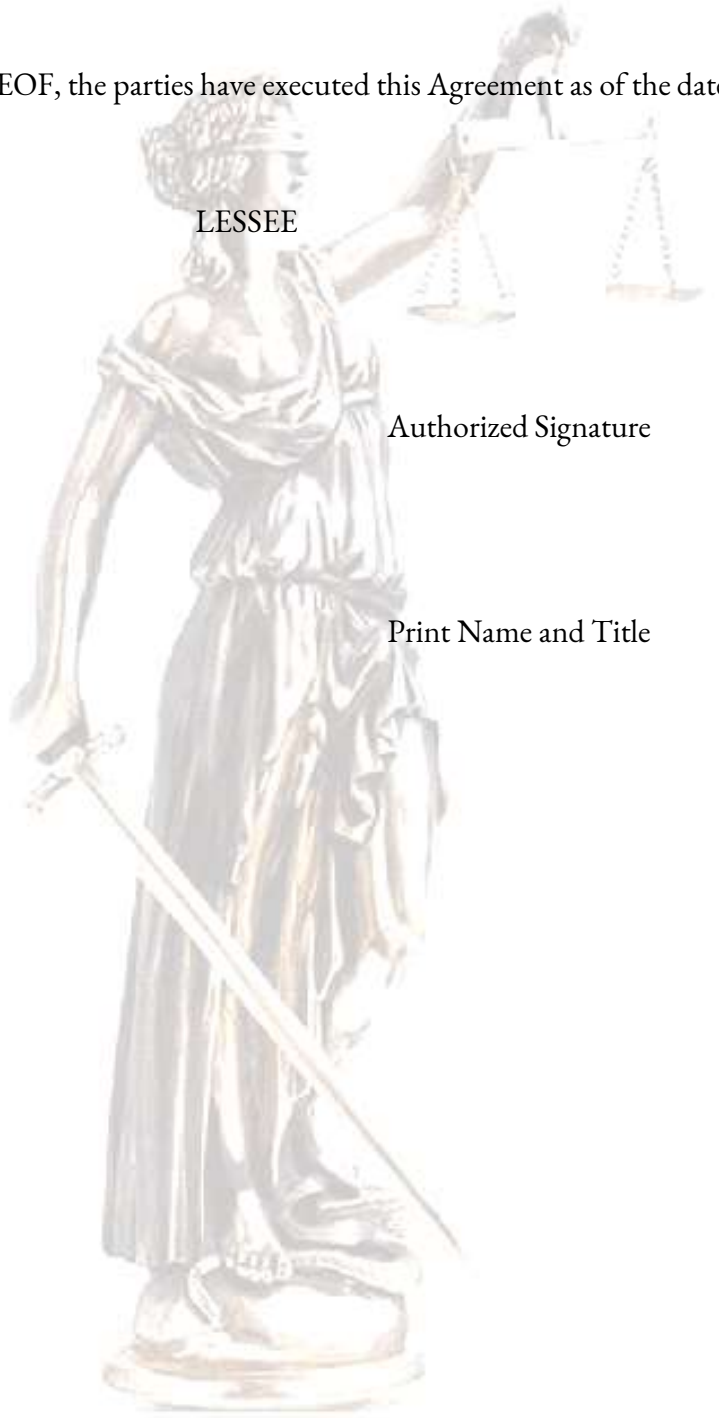
Therefore, in consideration of [amount], from Lessee, receipt of which is hereby acknowledged, Lessor does hereby release Lessee from all obligations and duties of Lessee set forth in the above referenced lease. Lessor, for himself, his heirs, his legal representatives and his assigns also releases Lessee,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

In consideration of the release set forth above, Lessee hereby surrenders all rights in and to the subject leased premises. That possession of said premises shall be delivered up to Lessor immediately upon the execution

of this instrument, and that Lessor is relieved of any responsibilities or obligations under the aforementioned lease.

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

LESSOR	LESSEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title



MORTGAGE

This Mortgage (the “Agreement”) is made and effective [DATE],

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

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

RECITALS

WHEREAS, Mortgagor is justly indebted to Mortgagee in the sum of [AMOUNT] in lawful money of [COUNTRY], and has agreed to pay the same, with interest thereon, according to the terms of a certain note (the "Note") given by Mortgagor to Mortgagee, bearing even date herewith.

1. DESCRIPTION OF PROPERTY SUBJECT TO LIEN: "PREMISES"

NOW, THEREFORE, in consideration of the premises and the sum hereinabove set forth, and to secure the payment of the Secured Indebtedness as defined herein, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Mortgagee property situated in [CITY, STATE/PROVINCE] more particularly described in Exhibit” A" attached hereto and by this reference made a part hereof;

TOGETHER with all buildings, structures and other improvements now or hereafter located on, above or below the surface of the property herein before described, or any part and parcel thereof; and,

TOGETHER with all and singular the tenements, easements, riparian and littoral rights, and appurtenances thereunto belonging or in anywise appertaining, whether now owned or hereafter acquired by Mortgagor, and including all rights of ingress and egress to and from adjoining property (whether such

rights now exist or subsequently arise) together with the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, claim and demand whatsoever of Mortgagor of, in and to the same and of, in and to every part and parcel thereof; and,

TOGETHER with all machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to said property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "Equipment"), now or hereafter located in, upon or under said property or any part thereof and used or usable in connection

with any present or future operation of said property and now owned or hereafter acquired by Mortgagor; and,

TOGETHER with all the common elements appurtenant to any parcel, unit or lot which is all or part of the Premises; and,

ALL the foregoing encumbered by this Mortgage being collectively referred to herein as the "Premises";

TO HAVE AND TO HOLD the Premises hereby granted to the use, benefit and behalf of the Mortgagee, forever.

2. EQUITY OF REDEMPTION

Conditioned, however, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee, at its address listed in the Note, or at such other place which may hereafter be designated by Mortgagee, its or their successors or assigns, with interest, the principal sum of [AMOUNT] with final maturity, if not sooner paid, as stated in said Note unless amended or extended according to the terms of the Note executed by Mortgagor and payable to the order of Mortgagee, then these presents shall cease and be void, otherwise these presents shall remain in full force and effect.

3. COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Mortgagee as follows:

a. **Secured Indebtedness:** This Mortgage is given as security for the Note and also as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind arising, under the Note or this Mortgage, as amended or modified or supplemented from time to time, and any and all renewals, modifications or extensions of any or all of the foregoing (all of which are collectively referred to herein as the "Secured Indebtedness"), the entire Secured Indebtedness being equally secured with and having the same priority as any amounts owed at the date hereof.

b. **Performance of Note, Mortgage:** Mortgagor shall perform, observe and comply with all provisions hereof and of the Note and shall promptly pay, in lawful money of [COUNTRY], to Mortgagee the Secured Indebtedness with interest thereon as provided in the Note, this Mortgage and all other documents constituting the Secured Indebtedness.

c. **Extent Of Payment Other Than Principal And Interest:** Mortgagor shall pay, when due and payable, (1) all taxes, assessments, general or special, and other charges levied on, or assessed, placed or made against the Premises, this instrument or the Secured Indebtedness or any interest of the Mortgagee in the Premises or the obligations secured hereby; (2) premiums on policies of fire and other hazard insurance covering the Premises, as required herein; (3) ground rents or other lease rentals; and (4) other sums related to the Premises or the indebtedness secured hereby, if any, payable by Mortgagor.

d. **Insurance:** Mortgagor shall, at its sole cost and expense, keep the Premises insured against all hazards as is customary and reasonable for properties of similar type and nature located in [CITY, STATE/PROVINCE].

e. **Care of Property:** Mortgagor shall maintain the Premises in good condition and repair and shall not commit or suffer any material waste to the Premises.

f. **Prior Mortgage:** With regard to the Prior Mortgage, Mortgagor hereby agrees to: (i) Pay promptly, when due, all installments of principal and interest and all other sums and charges made payable by the Prior Mortgage; (ii) Promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Mortgagor under the Prior Mortgage, within the period provided in said Prior Mortgage; (iii) Promptly notify Mortgagee of any default, or notice claiming any event of default by Mortgagor in the performance or observance of any term, covenant or condition to be performed or observed by Mortgagor under any such Prior Mortgage. (iv) Mortgagor will not request nor will it accept any voluntary future advances under the Prior Mortgage without Mortgagee's prior written consent, which consent shall not be unreasonably withheld.

4. DEFAULTS

a. **Event of Default:** The occurrence of any one of the following events which shall not be cured within [NUMBER] days after written notice of the occurrence of the event, if the default is monetary, or which shall not be cured within [NUMBER] days after written notice from Mortgagee, if the default is non-monetary, shall constitute an "Event of Default": (a) Mortgagor fails to pay the Secured Indebtedness, or any part thereof, or the taxes, insurance and other charges, as herein before provided, when and as the same shall become due and payable; (b) Any material warranty of Mortgagor herein contained, or contained in the Note, proves untrue or misleading in any material respect; (c) Mortgagor materially fails to keep, observe, perform, carry out and execute the covenants, agreements, obligations and conditions set out in this Mortgage, or in the Note; (d) Foreclosure proceedings (whether judicial or otherwise) are instituted on any mortgage or any lien of any kind secured by any portion of the Premises and affecting the priority of this Mortgage.

b. **Options Of Mortgagee Upon Event Of Default:** Upon the occurrence of any Event of Default, the Mortgagee may immediately do any one or more of the following: (a) Declare the total Secured Indebtedness, including without limitation all payments for taxes, assessments, insurance premiums, liens, costs, expenses and attorney's fees herein specified, without notice to Mortgagor (such notice being hereby expressly waived), to be due and collectible at once, by foreclosure or otherwise; (b) Pursue any and all remedies available under the Uniform Commercial Code; it being hereby agreed that [NUMBER] days' notice as to the time, date and place of any proposed sale shall be reasonable; (c) In the event that Mortgagee elects to accelerate the maturity of the Secured Indebtedness and declares the Secured Indebtedness to be due and payable in full at once, or as may be provided for in the Note, or any other provision or term of this Mortgage, then Mortgagee shall have the right to pursue all of Mortgagee's rights and remedies for the collection of such Secured Indebtedness, whether such rights and remedies are granted by this Mortgage, any other agreement, law, equity or otherwise, to include, without limitation, the institution of foreclosure proceedings against the Premises under the terms of this Mortgage and any applicable state or federal law.

5. Prior Liens

Mortgagor shall keep the Premises free from all prior liens (except for those consented to by Mortgagee).

6. Notice, Demand and Request

Every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request delivered in accordance with the provisions of the Note relating to notice.

7. Meaning of Words

The words "Mortgagor" and "Mortgagee" whenever used herein shall include all individuals, corporations (and if a corporation, its officers, employees or agents), trusts and any and all other persons or entities, and the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them. The pronouns used herein shall include, when appropriate, either gender and both singular and plural. The word "Note" shall also include one or more notes and the grammatical construction of sentences shall conform thereto.

8. Severability

If any provision of this Mortgage or any other Loan Document or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other instrument referred to hereinabove shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

9. Governing Law

The terms and provisions of this Mortgage are to be governed by the laws of the State of [STATE/PROVINVE]. No payment of interest or in the nature of interest for any debt secured in part by this Mortgage shall exceed the maximum amount permitted by law. Any payment in excess of the maximum amount shall be applied or disbursed as provided in the Note in regard to such amounts which are paid by the Mortgagor or received by the Mortgagee.

10. Descriptive Headings

The descriptive headings used herein are for convenience of reference only, and they are not intended to have any effect whatsoever in determining the rights or obligations of the Mortgagor or Mortgagee and they shall not be used in the interpretation or construction hereof.

11. Attorney's Fees

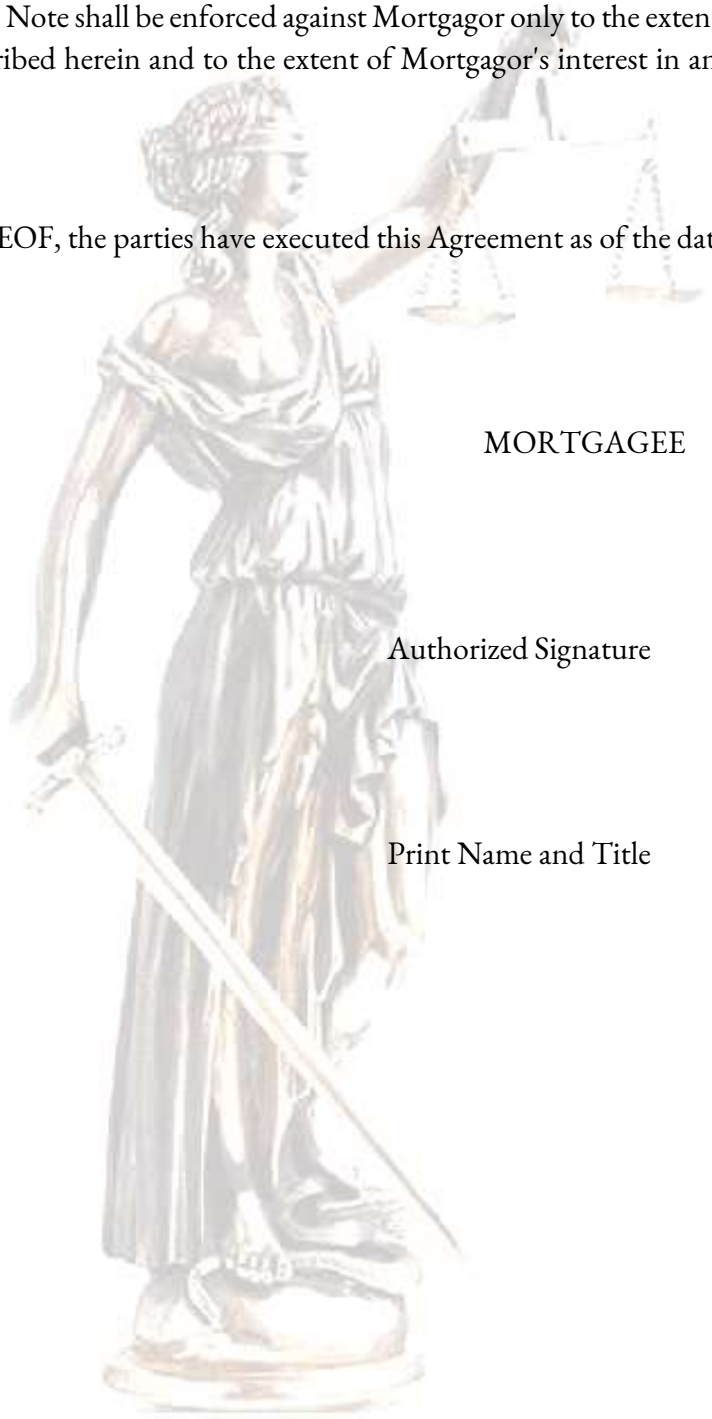
As used in this Mortgage, attorneys' fees shall include, but not be limited to, fees incurred in all matters of collection and enforcement, construction and interpretation, before, during and after suit, trial, appeals and Proceedings. Attorneys' fees shall also include hourly charges for paralegals, law clerks and other staff members operating under the supervision of an attorney.

12. Exculpation

Notwithstanding anything contained herein to the contrary, the Note which this Mortgage secures is a non-recourse Note and such Note shall be enforced against Mortgagor only to the extent of Mortgagor's interest in the Premises as described herein and to the extent of Mortgagor's interest in any personality as may be described herein.

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

MORTGAGOR	MORTGAGEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title



MUTUAL CANCELLATION OF LEASE

This Mutual Cancellation of Lease (the "Agreement") is made and effective the [DATE],

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

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

TERMS

FOR GOOD CONSIDERATION, Lessee and Lessor, under a certain Lease agreement between the parties under date of [DATE] (the “Lease”), do hereby mutually agree to terminate and cancel said Lease effective [DATE] and all rights and obligations under said Lease shall thereupon be cancelled excepting only for any obligations under the Lease accruing prior to the effective termination date.

This agreement shall be binding upon the parties, their successors, assigns and personal representatives.

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

LESSOR	LESSEE
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title

October 31, 2022

Contact Name

Address

Address2

OBJECT: NOTICE OF BREACH OF LEASE

Dear [Contact name],

You are hereby given notice that you are in breach of your tenancy of the premises located at [Address] under the terms of the lease dated [Date], between [LANDLORD] and [TENANT].

You are in breach of the lease because you have failed to comply with the terms and conditions of your tenancy, as follows:

[LIST HOW TENANT HAS VIOLATED THE LEASE IN CLEAR AND CONCISE LANGUAGE]

If this breach of lease is not corrected within [Number] days from the date of this letter, we will have no choice but to exercise all other legal means available to protect our rights under applicable law.

Please consider this letter a final demand for you to remedy this situation. If you fail to comply, the undersigned may commence eviction proceedings against you.

Thank you for your anticipated cooperation.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

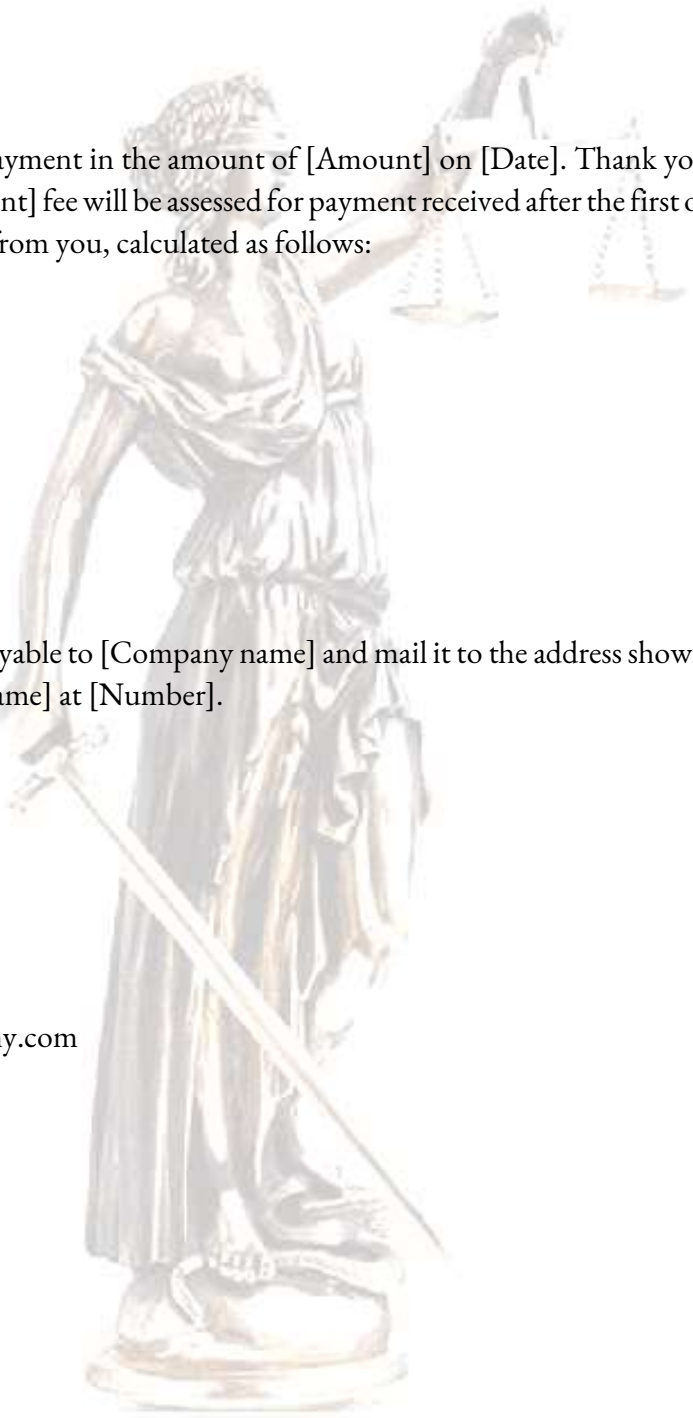
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF LATE FEE OWED



Dear [Contact name],

We received your rent payment in the amount of [Amount] on [Date]. Thank you. If you recall from the rent agreement, a [Amount] fee will be assessed for payment received after the first of the month. Therefore, we still need [Amount] from you, calculated as follows:

Rent Due

Late Fee

Payment

TOTAL

Please make the check payable to [Company name] and mail it to the address shown below. If you have any questions, please call [Name] at [Number].

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE THAT EVICTION WILL BE FILED IN COURT

Dear [Contact name],

It is never a pleasure to write this type of letter but it has come to my attention that your company has failed to comply with the terms of your agreement with us dated [Date]. I understand that you have been given a [NUMBER] day notice in accordance with state and local laws and have failed to move.

Therefore, I have instructed the [Office/Premisse] manager not to accept any payment from you. All amounts you still owe will be offset against your security deposit or collected in a legal action.

If you have not moved out of your [Office/Premisse] by [Date], I will file suit the next day. I will also obtain an injunction forcing your removal, with the aid of the police. The lawsuit will be for the amounts owed under the agreement, the costs of filing suit, attorney's fees and enforcement. I plan to zealously collect these amounts from you. When you are evicted, I also plan to inform credit reporting and other agencies of this action.

This position is not negotiable so please govern yourself accordingly. Feel free to contact me if you have any questions.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: OFFER TO LEASE SPACE IN YOUR BUILDING

Dear [Contact name],

We have now reviewed your property at [Address] (the "Property") and are quite interested in leasing space in the Property. We believe we would be excellent tenants and are prepared to consummate a lease as soon as possible.

As a way to commence our discussions, let us lay out some of the key terms which we believe would be acceptable to us:

Leased Premises:	The [Storey] floor at the Property, consisting of approximately [Number] square feet.
Commencement Date of Lease:	[Date]
Length of Lease:	[Number] years
Monthly Rent:	[Amount] for the first [Number] years of the Lease. [Amount] for the remaining [Number] years of the Lease.
Utilities:	All utilities to be paid for by the Lessee, except for [Describe].
Parking:	Lessee to have [Number] parking spaces in the building.

Use of Leases Premises:	General office use and/or any other legal use.
Improvements:	Lessor to make the following improvements to the Lease Premises prior to Lessee's occupancy: [Describe].
Right to Renew:	Lessee to have the right to renew the Lease for an additional [Number] years, for [Amount] per month rent.
Taxes:	All taxes on the property shall be payable by Lessor.
Assignment & Subletting:	The Leased Premises shall not be assigned or sublet without the consent of Lessor, which consent shall not be unreasonably withheld or delayed.
Form of Lease:	To be mutually agreed upon between Lessor and Lessee.

We are happy to discuss any of these terms and look forward to a long and mutually beneficial relationship. So that you may appreciate how responsible of a tenant we would be, I enclose some background information on our company.

Let us set up a meeting to discuss this as soon as possible.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

OPTION TO EXPAND SPACED LEASE

This Option to Lease Agreement (the "Agreement") is made and effective [DATE],

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

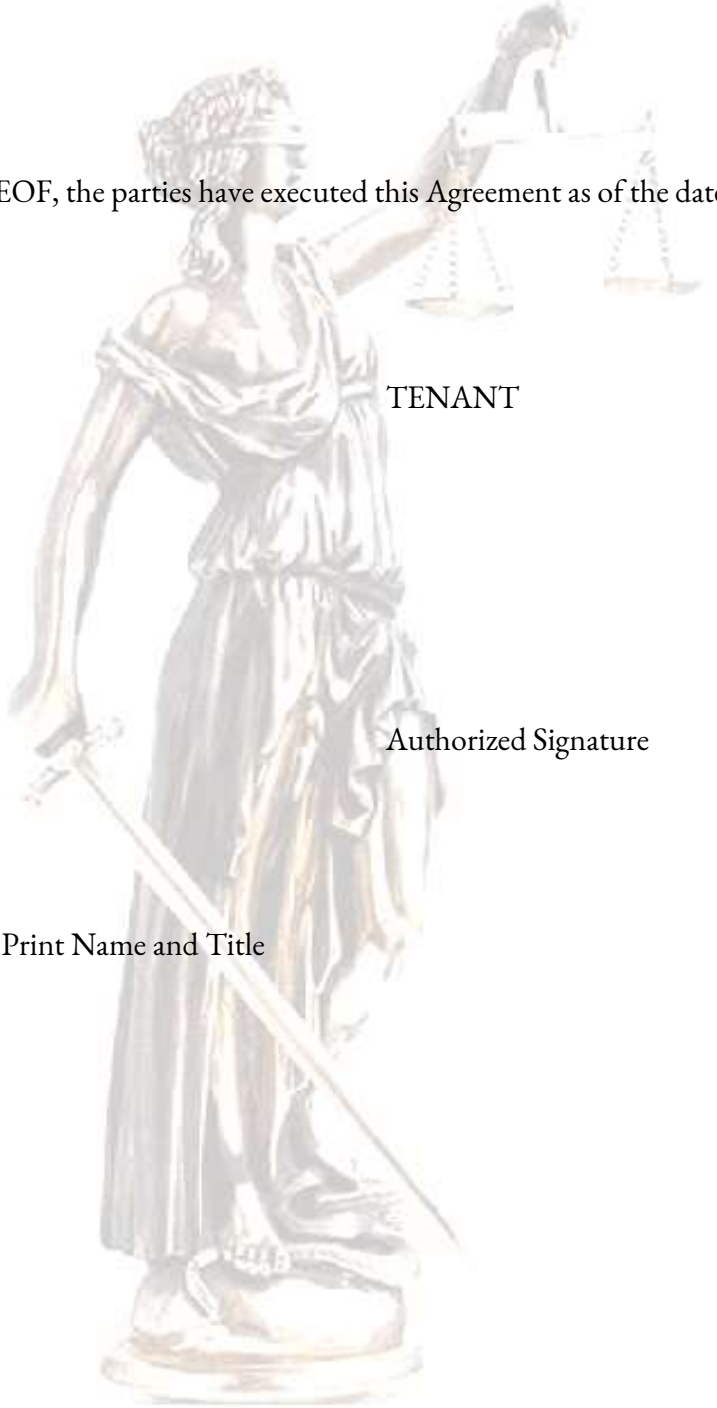
AND: [TENANT NAME] (the "Tenant"), a corporation organized and existing under the laws of the [STATE/PROVINCE], with its head office located at:

TERMS

F. Landlord hereby agrees that Tenant shall be offered the right of refusal to lease all or any portion of [describe other space in the building or designated space] (the "Expansion Space"), as it may become available for lease from time to time. Whenever any portion of the Expansion Space becomes available for lease, Landlord shall provide Tenant with written notice of such availability, which notice shall include the date when Tenant would begin occupancy of such Expansion Space and the rental rate which Tenant shall pay for such Expansion Space.

G. All other terms and conditions shall be those contained in the Lease between Landlord and Tenant and any Expansion Space leased shall be incorporated in the Lease through execution of an addendum to the Lease. Tenant shall then have [NUMBER] days to respond to such offer and to either accept or reject such Expansion Space. Tenant's failure to respond timely to such offer shall be construed as a rejection of Landlord's written offer.

H. Should Tenant reject the offer to lease any particular Expansion Space when offered, Landlord shall have the right to lease all remaining Expansion Space to other prospective tenants, so long as the terms and conditions of such lease are not more favorable than those offered to Tenant.



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

LANDLORD	TENANT
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (the "Agreement") is made and effective [DATE],

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

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

IN CONSIDERATION OF the sum of [AMOUNT] paid by the tenant to the landlord, the receipt whereof is hereby acknowledged, the landlord hereby grants to the tenant, its successors, and assigns, the exclusive option to lease the above-mentioned property as per the attached Lease, upon the following terms and conditions:

1. TERM OF OPTION

This option and all rights and privileges hereunder shall expire the day of [DATE].

2. NOTICE OF EXERCISE OF OPTION

This option is to be exercised by the tenant by written notice delivered personally or forwarded by registered or certified mail, return receipt requested, within the time limited in paragraph 1 to the landlord at the address first above recited.

3. APPLICATION OF OPTION PAYMENT

In the event that the tenant does not exercise his option as herein provided, all sums paid on account thereon shall be retained by the landlord as consideration for this option free of all claims of the tenant, and neither party shall have any further rights or claims against the other.

4. EFFECT OF EXERCISE OF OPTION

In the event that the tenant does exercise its option as herein provided, the sum paid on account of the option shall be applied to the first month's rent, and the terms, covenants, and conditions in the attached Lease Agreement shall become the contract of the parties.

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

LANDLORD	TENANT
Authorized Signature	Authorized Signature
Print Name and Title	Print Name and Title

OPTION TO PURCHASE PROPERTY

This Option to Purchase Property (the "Agreement") is made and effective [DATE],

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

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

RECITALS

This Agreement is entered into upon the basis of the following facts and intentions of the parties:

A. Seller owns that certain real property described in Exhibit A hereto (the Property").

B. Buyer desires to obtain an option to purchase the Property from Seller and Seller is willing to grant such an option to Buyer.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Option

As of the date hereof, the Seller grants to Buyer an option (the "Option") to purchase the Property from Seller upon all of the terms, covenants and conditions hereinafter set forth. This option may be recorded at the election of Buyer.

2. Consideration for the Option

As consideration for the Option, Buyer shall pay to Seller the sum of [AMOUNT] on the date hereof. In the event this option is exercised, all consideration paid for the Option shall be applied against and be deemed to be a payment upon the purchase price. In the event that Buyer does not exercise the Option, the consideration paid to Buyer for the Option may be retained by Seller without deduction or offset.

3. Term and Exercise

Buyer may exercise the Option at any time up to and until [DATE], by giving Seller written notice of his intention to exercise the Option.

4. Purchase Price

The purchase price ("Purchase Price") which Buyer agrees to pay upon exercise of the Option is [AMOUNT] per share, payable in cash.

5. Terms

The other terms applicable to the purchase are as follows:

[describe condition of property; title insurance to be obtained; treatment of deeds of trust and encumbrances; who pays closing costs, etc.]

6. Representations and Warranties of Seller

The Seller represents and warrants to the Buyer that:

A. The Seller has full power and authority to execute and deliver this Agreement, and this Agreement is a valid and binding agreement enforceable against the Seller in accordance with its terms;

B. Neither the execution of this Agreement nor the sale of the Property will constitute a violation of, or conflict with, or default under, any contract, commitment, agreement, understanding or arrangement to which the Seller is a party or by which Seller is bound or of any law, decree, or judgment;

C. Now and up to the time of exercise of the Option, the Seller will have valid title to the Property, free and clear of all claims, liens, charges, encumbrances deeds of trust and security interests other than;

D. [Other representations and warranties as appropriate].

7. Cooperation

Each party shall, upon request of the other party, promptly execute and deliver all additional documents reasonably deemed by the requesting party to be necessary, appropriate or desirable to complete and evidence the sale, assignment and transfer of the Shares pursuant to this Agreement.

8. Purchase and Sale

If Buyer exercises the Option, at a closing (the "Closing"), the Seller shall sell, transfer and deliver the Property, represented by appropriate [identify either warranty deed or quitclaim deed].

9. Survival

All representations, warranties and agreements made by the Seller and by the Buyer in this Agreement shall survive the execution of this Agreement and any Closing and any investigation at any time made by or on behalf of any party hereto.

10. Modification; Assignment

This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by the parties hereto. Buyer may assign his rights under this Agreement with the consent of Seller.

11. Successors

This Agreement will be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective heirs, beneficiaries, executors, representatives and permitted assigns.

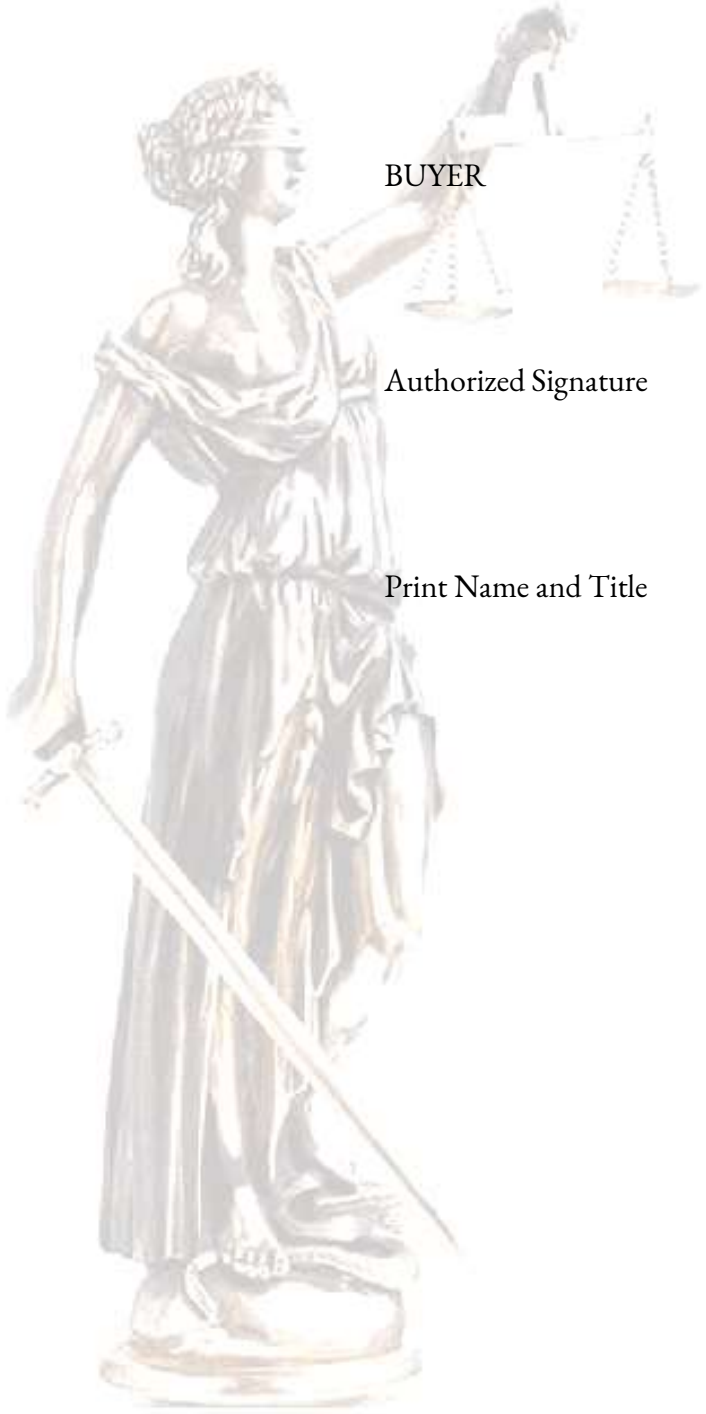
12. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE/PROVINCE].

13. Entire Agreement

This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all agreements, understanding, representations, or warranties, whether oral or written, by or among the parties, previously or contemporaneously made or given.

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



SELLER

BUYER

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EXHIBIT A

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: REQUEST TO INCLUDE LANDLORD IN TENANT'S LIABILITY INSURANCE

Dear [Contact name],

In case you have not had an opportunity to read through the Master Lease, please note that there is an insurance clause that requires the tenant to carry public liability insurance of [Amount] and property damage insurance of [Amount]. The landlord, [Contact name], must be named as additional insured.

Inasmuch as we are sub-leasing these offices to you, please have [Contact name] named also, and ask your agent to send us a notice to that effect.

Thank you very much.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

SUBLEASE AGREEMENT

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

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

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

RECITALS

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

1. DESCRIPTION OF PREMISES

a. Lessee has leased a building consisting of [number] floors and approximately [number] square feet of office space from [name], lessor, of [address], [city], [state].

b. Lessee shall demise to sub lessee the [number] square feet of the building, all located on the [#] floor, as more fully described in Exhibit A, which is attached to and made a part of this sublease agreement.

2. TERM OF SUBLEASE

a. The term of this sublease agreement shall be for an initial period of [number] years, commencing on [date], and terminating on [date], unless earlier terminated by breach of the terms and conditions of this Sublease Agreement.

b. Lessor concurs that sub lessee may remain in possession of the demised premises for the full term of this sublease agreement, despite any change that may occur in the status of lessee or the lease agreement between lessee and lessor.

3. Acceptance of Leased Premises

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

4. Holding Over

Any holding over of the Leased Premises by Sub lessee after the expiration of the Term hereof shall only be with the written consent of Sub lessor first had and obtained and shall be construed to be a tenancy from month to month at a rental per month, or portion thereof, in an amount equal to [%] of the rent due Sub lessor for the month immediately preceding such holding over, and shall otherwise be on the same terms, conditions and covenants herein specified.

5. Sublease Termination and Condition of Premises

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

6. RENT

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

7. Payment of Rent

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

8. Delinquent Payments

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

9. Security Deposit

On execution of this Sublease, Sub lessee shall deposit with Sub lessor a sum equal to [amount] (the "Security Deposit") in order to provide security for the performance by Sub lessee of the provisions of this Sublease. If Sub lessee is in default, Sub lessor may, but shall not be obligated to use the Security Deposit, or any portion of it, to cure the default or to compensate Sub lessor for damage sustained by Sub lessor resulting from Sub lessee's default. Sub lessee shall immediately on demand pay to Sub lessor a sum equal to the portion of the Security Deposit expended or applied by Sub lessor as provided in this paragraph so as to maintain the Security Deposit in the sum initially deposited with Sub lessor. At the expiration or

termination of this Sublease, Sub lessor shall return the Security Deposit to Sub lessee or its successor, less such amounts as are reasonably necessary to remedy Sub lessee's defaults, to repair damages the Leased Premises caused by Sub lessee or to clean the Leased Premises upon such termination, as soon as practicable thereafter. In the event of the sale or other conveyance of the Leased Premises, the Security Deposit will be transferred to the purchaser or transferee and the Sub lessor will be relieved of any liability with reference to such Security Deposit. Sub lessor shall not be required to keep the Security Deposit separate from its other funds, and (unless otherwise required by law) Sub lessee shall not be entitled to interest on the Security Deposit.

10. USE OF PREMISES

a. **Permitted Use:** The Leased Premises are to be used by Sub lessee for the sole purpose of [describe] and for no other purpose whatsoever. Sub lessee shall not use or occupy the Leased Premises or permit the same to be used or occupied for any use, purpose or business other than as provided in this Section a) during the Term of this Sublease or any extension thereof.

b. **Prohibited Activities:** During the Term of Sublease or any extension thereof, Sub lessee shall not:

    i. Use or permit the Leased Premises to be used for any purpose in violation of any statute, ordinance, rule, order, or regulation of any governmental authority regulating the use or occupancy of the Leased Premises.

    ii. Cause or permit any waste in or on the Leased Premises.

    iii. Use or permit the use of the Leased Premises in any manner that will tend to create a nuisance or tend to adversely affect or injure the reputation of Sub lessor or its affiliates.

    iv. Allow any activity to be conducted on the premises or store any material on the Leased Premises which will increase premiums for or violate the terms of any insurance policy(s) maintained by or for the benefit of Sub lessor.

    v. Store any explosive, radioactive, dangerous, hazardous or toxic materials in or about the Leased Premises.

    vi. Use or allow the Leased Premises to be used for sleeping quarters, dwelling rooms or for any unlawful purpose.

vii. Build any fences, walls, barricades or other obstructions; or, install any radio, television, phonograph, antennae, loud speakers, sound amplifiers, or similar devices on the roof, exterior walls or in the windows of the Leased Premises, or make any changes to the interior or exterior of the Leased Premises without Sub lessor's prior written consent.

c. **Operational Permits:** Sub lessee, prior to the Commencement Date, shall obtain and thereafter continuously maintain in full force and effect for the Term of this Sublease or any extension thereof, at no cost or expense to Sub lessor, any and all approvals, licenses, or permits required by any lawful authority as of the Commencement Date or imposed thereafter, for the use of Leased Premises, including but not limited to business licenses.

d. **Compliance With Laws:** Sub lessee shall comply with all federal, state, county, municipal, or other statutes, laws, ordinances, regulations, rules, or orders of any governmental or quasi-governmental entity, body, agency, commission, board, or official applicable to the Leased Premises and Sub lessee's business.

11. UTILITIES AND TAXES

a. **Utility Charges:** Sub lessee shall be responsible for and shall pay, and indemnify and hold Sub lessor and the property of Sub lessor free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the Leased Premises during the Term of this Sublease or any extension thereof and for the removal of garbage and rubbish from the Leased Premises during the Term of this Sublease or any extension thereof. Sub lessor shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Leased Premises and no such failure or interruption shall entitle Sub lessee to terminate this Sublease.

b. **Personal Property Taxes:** Sub lessee shall be responsible for and shall pay before they become delinquent all taxes, assessments, or other charges levied or imposed by any governmental entity on the equipment, trade fixtures, appliances, merchandise and other personal property situated in, on, or about the Leased Premises including, without limiting the generality of the other terms of this Section, any shelves, counters, vault doors, wall safes, partitions, fixtures, machinery, or office equipment on the Leased Premises, whether put there prior to or after the Commencement Date of this Sublease.

c. **Real Property Taxes and Assessments:** Sub lessee shall pay directly to the charging authority all taxes (as hereinafter defined) respecting the Leased Premises. Sub lessee shall pay all taxes on or before [number] days prior to delinquency thereof. Sub lessee shall promptly after payment of any taxes deliver to Sub lessor written receipts or other satisfactory evidence of the payment thereof. As used herein, "taxes" shall mean all taxes, assessments, fees, charges, levies, and penalties (if such penalties result from Sub lessee's delinquency in paying all or any taxes), of any kind and nature, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including, without limitation, all installments of principal and interest required to pay any general or special assessments for public improvements) now or hereafter imposed by any authority having the direct or indirect power to tax, including, without limitation the federal government, and any state, county, city, or other governmental or quasi-governmental authority, and any improvement or assessment district or other agency or division thereof, whether such tax is:

i. levied or assessed against or with respect to the value, occupancy, or use of all or any portion of the Leased Premises (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed), or any legal or equitable interest of Sub lessor in the Leased Premises or any part thereof; or

ii. levied or assessed against or with respect to Sub lessor's business of leasing the Leased Premises, or with respect to the operation of the Leased Premises; or

iii. determined by the area of the Leased Premises or any part thereof, or by the gross receipts, income, or rent and other sums payable hereunder by Sub lessee (including, without limitation, any gross income or excise tax levied with respect to receipt of such rent and/or other sums due under this Sublease); or

iv. imposed upon this transaction or any document to which Sub lessee is a party creating or transferring any interest in the Leased Premises; or

v. imposed during the term of this Sublease or any extension thereof because of a change in ownership of the Leased Premises which results in an increase of real property taxes; or

vi. any tax or excise, however described, imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) in addition to, in substitution partially or totally of, or as an alternate to, any tax previously included within the definition of taxes, or any tax the nature of which was previously included in the definition of taxes, whether or not now customary or within the contemplation of the parties.

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

(1) any proceeding to contest in whole or in part the imposition or collection of any taxes;

(2) negotiation with public authorities as to any taxes.

d. **Proration of Taxes:** Sub lessee's liability to pay taxes shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the lease Term and its commencement and expiration.

e. **Tax Delinquency:** Failure of Sub lessee to pay promptly when due any of the charges required to be paid under this Article shall constitute a default under the terms hereof in like manner as a failure to pay rental when due, and if Sub lessor shall elect to pursue an unlawful detainer action upon said default, then Sub lessor shall be entitled to claim as an amount of additional rent owed for purposes of said unlawful detainer the amount of such taxes due and payable by Sub lessee.

f. **All Other Charges:** Sub lessee shall pay to Sub lessor any and all charges, fees, taxes, and other amounts due from Sub lessor to the master lessor of the Leased Premises prior to its due date, for sums due or owing on or after the date of this Sublease.

g. **Common Area Maintenance Charges:** Sub lessee shall be responsible for, and shall pay to Sub lessor on demand, any and all costs, fees, charges, assessments, expenses or payments for which Sub lessor is obligated or liable under the Master Lease with respect to the operation, maintenance and repair of common area of the Leased Premises. "Common area" shall include, without limitation, those areas in or about the property of which the Leased Premises are a part, which have been set aside for the general use, convenience and benefit of the occupants of the property and their customers and employees, including, without limitation, the automobile parking areas, sidewalks, landscaped areas and other areas for pedestrian and vehicular use.

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

12. MAINTENANCE AND ALTERATIONS

a. **Maintenance by Sub lessee:** Sub lessee shall, at its sole cost and expense, keep in good and safe condition, order and repair all portions of the Leased Premises and all facilities appurtenant thereto and every part thereof which Sub lessor is responsible to maintain or repair as lessee under the Master Lease, including without limitation, all plumbing, heating, air conditioning, ventilating, sprinkler, electrical and lighting facilities, interior walls, interior surfaces of exterior walls, floors, ceilings, windows, doors, entrances, all glass (including plate glass), and skylights located within the Leased Premises, walkways, parking and service areas within or adjacent to the Leased Premises. If the Leased Premises are not so maintained, and such condition continues [number] hours after notice or exists upon expiration or termination hereof, Sub lessor may cause such maintenance to be performed at Sub lessee's expense and/or may obtain maintenance contracts for the Store and charge the Sub lessee for same. Sub lessor shall, when and if it deems necessary, make any and all repairs on the Leased Premises, and Sub lessee hereby consents to such actions by Sub lessor. Sub lessor may charge the Sub lessee for any of the foregoing repairs, if, in Sub lessor's opinion, such repairs are occasioned by Sub lessee's abuse or neglect. Sub lessee shall not modify, alter, or add to the Leased Premises without the prior written consent of Sub lessor.

b. **Damage; Abatement of Rent:** Notwithstanding anything in this Sublease to the contrary, Sub lessee at its own cost and expense shall repair and replace as necessary all portions of the Leased Premises damaged by Sub lessee, its employees, agents, invitees, customers or visitors. There shall be no abatement of rent or other sums payable by Sub lessee prior to or during any repairs by Sub lessee or Sub lessor hereunder.

c. **Alterations and Liens:** Sub lessee shall not make or permit any other person to make any structural changes, alterations, or additions to the Leased Premises or to any improvement thereon or facility appurtenant thereto without the prior written consent of Sub lessor first had and obtained. Sub lessee shall keep the Leased Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Leased Premises at the instance or request of Sub lessee. As a condition to giving its consent to any proposed alterations, Sub lessor may require that Sub lessee remove any or all of said alterations at the expiration or sooner termination of the Sublease term and restore the Leased Premises to its condition as of the date of Sub lessee's occupation of the Leased Premises. Prior to construction or installation of any alterations, Sub lessor may require Sub lessee to provide

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

d. **Inspection by Sub lessor:** Sub lessee shall permit Sub lessor or Sub lessor's agents, representatives, designees, or employees to enter the Leased Premises at all reasonable times for the purpose of inspecting the Leased Premises to determine whether Sub lessee is complying with the terms of this Sublease and for the purpose of doing other lawful acts that may be necessary to protect Sub lessor's interest in the Leased Premises under this Sublease, or to perform Sub lessor's duties under this Sublease, or to show the Leased Premises to insurance agents, lenders, and other third parties, or as otherwise allowed by law.

e. **Plans and Permits:** Any alteration that Sub lessee shall desire to make in or about the Leased Premises and which requires the consent of Sub lessor shall be presented to Sub lessor in written form, with proposed detailed plans and specifications therefor prepared at Sub lessee's sole expense. Any consent by Sub lessor thereto shall be deemed conditioned upon Sub lessee's acquisition of all permits required to make such alteration from all appropriate governmental agencies, the furnishing of copies thereof to Sub lessor prior to commencement of the work, and the compliance by Sub lessee with all conditions of said permits in a prompt and expeditious manner, all at Sub lessee's sole cost and expense.

f. **Construction Work Done by Sub lessee:** All construction work required or permitted to be done by Sub lessee shall be performed by a licensed contractor in a good and workmanlike manner and shall conform in quality and design with the Leased Premises existing as of the Commencement Date, and shall not diminish the value of the Leased Premises in any way whatsoever. In addition, all such construction work shall be performed in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Leased Premises. Sub lessee or its agents shall secure all licenses and permits necessary therefor.

g. **Title to Alterations:** Unless Sub lessor requires the removal thereof, any alterations which may be made on the Leased Premises, shall upon installation or construction thereof on the Leased Premises become the property of Sub lessor and shall remain upon and be surrendered with the Leased Premises at the expiration or sooner termination of the term of this Sublease. Without limiting the generality of the foregoing, all heating, lighting, electrical (including all wiring, conduits, main and subpanels), air conditioning, partitioning, drapery, and carpet installations made by Sub lessee, regardless of how affixed to the Leased Premises, together with all other alterations that have become a part of the Leased Premises, shall be and become the property of Sub lessor upon installation, and shall not be deemed trade fixtures, and shall

remain upon and be surrendered with the Leased Premises at the expiration or sooner termination of this Sublease.

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

13. INDEMNITY AND INSURANCE

a. **Hold-Harmless Clause:** Sub lessee agrees to indemnify, defend and hold Sub lessor, the property of Sub lessor, and the Leased Premises, free and harmless from any and all claims, liability, loss, damage, or expenses incurred by reason of this Sublease or resulting from Sub lessee's occupancy and use of the Leased Premises (other than as a result of the direct gross negligence of Sub lessor), specifically including, without limitation, any claim, liability, loss, or damage arising by reason of:

   i. The death or injury of any person or persons, including Sub lessee, any person who is an employee or agent of Sub lessee, or by reason of the damage to or destruction of any property, including property owned by Sub lessee or any person who is an employee or agent of Sub lessee, and caused or allegedly caused by either the condition of the Leased Premises, or some act or omission of Sub lessee or of some agent, contractor, employee, or invitee of Sub lessee on the Leased Premises;

   ii. Any work performed on the Leased Premises or materials furnished to the Leased Premises at the instance or request of Sub lessee or any agent or employee of Sub lessee; and

   iii. Sub lessee's failure to perform any provision of this Sublease or to comply with any requirement of law or any requirement imposed on the use by Sub lessee of the Leased Premises by any governmental agency or political subdivision.

   iv. Maintenance of the insurance required under this Article shall not relieve Sub lessee of the obligations of indemnification contained in this Section.

b. **Liability Insurance:** Sub lessee shall, at its own cost and expense, secure and maintain during the term of this Sublease, a comprehensive broad form policy of Combined Single Limit Bodily Injury and Property Damage Insurance issued by a reputable company authorized to conduct insurance business in the State of [state/province] insuring Sub lessee against loss or liability caused by or connected with Sub lessee's use and occupancy of the Leased Premises in an amount not less than [amount] per occurrence.

c. **Casualty and Fire Insurance:** At all times during the Term hereof, Sub lessee shall keep the Leased Premises and personal property thereon insured against loss or damage by fire, windstorm, hail, explosion, damage from vehicles, smoke damage, vandalism, casualty and malicious mischief and such other risks as are customarily included in "all risk" extended insurance coverage, including coverage for business interruption, in an amount equal to not less than [number] of the actual replacement value of the Leased Premises and the personal property, fixtures, and other property on the Leased Premises.

d. **Workers' Compensation Insurance:** During the term of this Sublease, Sub lessee shall comply with all Workers' Compensation laws applicable on the date hereof or enacted thereafter and shall maintain in full force and effect a Workers' Compensation Insurance policy covering all employees in any way connected with the business conducted by Sub lessee pursuant to this Sublease and shall pay all premiums, contributions, taxes and such other costs and expenses as are required to be paid incident to such insurance coverage, all at no cost to Sub lessor.

e. **Policy Form:** The policies of insurance required to be secured and maintained under this Sublease shall be issued by good, responsible companies, qualified to do business in the State of [state/province], with a general policy holders' rating of at least "A". Executed copies of such policies of insurance or certificates thereof shall be delivered to Sub lessor and to the Master Lessor under the Master Lease not later than [number] days prior to the commencement of business operations of Sub lessee at the Leased Premises and thereafter, executed copies of renewal policies of insurance or certificates thereof shall be delivered to Sub lessor within [number] days prior to the expiration of the term of each such policy. All such policies of insurance shall contain a provision that the insurance company writing such policy(s) shall give Sub lessor at least [number] days' written notice in advance of any cancellation or lapse, or the effective date of any reduction in the amounts or other material changes in the provisions of such insurance. All policies of insurance required under this Sublease shall be written as primary coverage and shall list the Master Lessor under the Master Lease and the Sub lessor as loss payees and as additional insureds. If Sub lessee fails to procure or maintain in force any insurance as required by this Section or to furnish the certified copies or certificates thereof required hereunder, Sub lessor may, in addition to all other remedies it may have, procure such insurance

and/or certified copies or certificates, and Sub lessee shall promptly reimburse Sub lessor for all premiums and other costs incurred in connection therewith.

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

14. SIGNS AND TRADE FIXTURES

a. **Installation of Trade Fixtures:** For so long as Sub lessee is not in default of any of the terms, conditions and covenants of this Sublease, Sub lessee shall have the right at any time and from time to time during the Term of this Sublease and any renewal or extension of such term, at Sub lessee's sole cost and expense, to install and affix in, to, or on the Leased Premises such items (hereinafter called "trade fixtures"), for use in Sub lessee's trade or business as Sub lessee may, in its reasonable discretion, deem advisable.

b. **Signs:** Subject to any and all requirements now or hereinafter enacted by any municipal, county, or state regulatory agency having jurisdiction thereover and subject to Sub lessor's written consent, Sub lessee may erect at Sub lessee's cost, a sign on the Leased Premises identifying the Leased Premises. Sub lessee shall maintain, at Sub lessee's sole cost and expense, said sign.

c. **Removal of Signs and Trade Fixtures:** In addition to Sub lessor's right to require Sub lessee at the time of installation of any sign or trade fixtures to remove the same upon expiration or sooner termination of this Sublease, Sub lessor may elect, by notice to Sub lessee at least [number] days before expiration of the Term hereof, or within [number] days after sooner termination hereof, to require Sub lessee to remove any sign or trade fixture owned by Sub lessee. If Sub lessor so elects, Sub lessee shall at its sole cost ant expense, upon expiration of the Term hereof, or within [number] days after any sooner termination hereof, remove such sign

or trade fixture owned by Sub lessee. If Sub lessor so elects, Sub lessee shall, at its sole cost and expense, upon expiration of the Term hereof, or within [number] days after any sooner termination hereof, remove such sign or trade fixture, repair any damage occasioned thereby, and restore the Leased Premises to the condition existing as of the Commencement Date or such other condition as may reasonably be designated by Sub lessor in its election.

15. CONDEMNATION AND DESTRUCTION

a. **Total Condemnation:** Should, during the Term of this Sublease or any renewal or extension thereof, title and possession of all of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, this Sublease shall terminate as of the date actual physical possession of the Leased Premises is taken by the agency or entity exercising the power of eminent domain and both Sub lessor and Sub lessee shall thereafter be released from all obligations under this Sublease.

b. **Termination Option for Partial Condemnation:** Should, during the Term of this Sublease or any renewal or extension thereof, title and possession of more than [%] of the floor area of the Leased Premises, and/or more than [%] of the parking area of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, Sub lessor may terminate this Sublease. The option herein reserved shall be exercised by giving written notice on or before [number] days after actual physical possession of the portion subject to the eminent domain power is taken by the agency or entity exercising that power and this Sublease shall terminate as of the date the notice is deemed given.

c. **Partial Condemnation Without Termination:** Should Sub lessee or Sub lessor fail to exercise the termination option described in this Article, or should the portion of the Leased Premises taken under the power of eminent domain be insufficient to give rise to the option therein described, then, in that event:

   i. This Sublease shall terminate as to the portion of the Leased Premises taken by eminent domain as of the day (hereinafter called the "date of taking"), actual physical possession of that portion of the Leased Premises is taken by the agency or entity exercising the power of eminent domain;

   ii. Base Minimum Rent to be paid by Sub lessee to Sub lessor pursuant to the terms of this Sublease shall, after the date of taking, be reduced by an amount that bears the same ratio to the Base Minimum Rent specified in this Sublease as the square footage of the actual floor area of the Leased Premises taken under the power of eminent domain bears to the total square footage of floor area of the Leased Premises as of the date of this Sublease; and

iii. Except to the extent the Master Lessor under the Master Lease is so obligated, Sub lessee, at Sub lessee's own cost and expense shall remodel and reconstruct the building remaining on the portion of the Leased Premises not taken by eminent domain into a single efficient architectural unit in accordance with plans mutually approved by the parties hereto as soon after the date of taking, or before, as can be reasonably done.

d. **Condemnation Award:** Should, during the Term of this Sublease or any renewal or extension thereof, title and possession of all or any portion of the Leased Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, the compensation or damages for the taking awarded shall belong to and be the sole property of the Sub lessor.

e. **Destruction:** (a) In the event the Leased Premises are damaged or destroyed and the total costs and expenses for repairing or reconstructing the Leased Premises exceeds the sum of [amount], Sub lessor, at Sub lessor's option, may:

i. Continue this Sublease in full force and effect by restoring, repairing or rebuilding the Leased Premises at Sub lessor's own cost and expense or through insurance coverage; or

ii. Terminate this Sublease by serving written notice of such termination on Sub lessee no later than [number] days following such casualty, in which event this Sublease shall be deemed to have been terminated on the date of such casualty.

iii. In the event the Leased Premises are damaged or destroyed and Sub lessee will not be able to operate any business thereon for [number] consecutive days, Sub lessee, at Sub lessee's option, may terminate this Sublease by serving written notice of such termination on Sub lessor no later than [number] days following such casualty, in which event this Sublease shall be deemed terminated on the date of such casualty; provided, however, that such termination right shall not be applicable unless Sub lessor has a similar termination right under the Master Lease.

iv. Should Sub lessor or the Master Lessor under the Master Lease elect to repair and restore the Leased Premises to their former condition following partial or full destruction of the Leased Premises:

1. Sub lessee shall not be entitled to any damages for any loss or inconvenience sustained by Sub lessee by reason of the making of such repairs and restoration.

2. Sub lessor and such Master Lessor shall have full right to enter upon and have access to the Leased Premises, or any portion thereof, as may be

reasonably necessary to enable such parties promptly and efficiently to carry out the work of repair and restoration.

f. **Damage by Sub lessee:** Sub lessee shall be responsible for and shall pay to Sub lessor any and all losses, damages, costs, and expenses, including but not limited to attorney's fees, resulting from any casualty loss caused by the negligence or wilfull misconduct of Sub lessee or its employees, agents, contractors, or invitees.

16. SUBLEASING, ASSIGNMENT, DEFAULT AND TERMINATION

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

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

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

business experience, financial stability and creditworthiness of the proposed assignee or sub lessee, and such additional information as Sub lessor may request.

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

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

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

b. **Events of Default:** Sub lessee's failure to timely pay any rent, taxes or other charges required to be paid pursuant to the terms of this Sublease shall constitute a material breach of this Sublease and an event of default if not paid by Sub lessee within [number] days of the date such rent, taxes or charges are payable. Events of default under this Sublease shall also include,

without limitation, the events hereinafter set forth, each of which shall be deemed a material default of the terms of the Sublease if not fully cured within [number] days of occurrence. Such events shall include:

i. Sub lessee's failure to perform or observe any term, provisions, covenant, agreement or condition of this Sublease;

ii. Sub lessee breaches this Sublease and abandons the Leased Premises before expiration of the Term of this Sublease;

iii. Any representation or warranty made by Sub lessee in connection with this Sublease between Sub lessee and Sub lessor proving to have been incorrect in any respect;

iv. Sub lessee's institution of any proceedings under the Bankruptcy Act, as such Act now exists or under any similar act relating to the subject of insolvency or bankruptcy, whether in such proceeding Sub lessee seeks to be adjudicated a bankrupt, or to be discharged of its debts or effect a plan of liquidation, composition or reorganization;

v. The filing against Sub lessee of any involuntary proceeding under any such bankruptcy laws;

vi. Sub lessee's becoming insolvent or being adjudicated a bankrupt in any court of competent jurisdiction, or the appointment of a receiver or trustee of Sub lessee's property, or Sub lessee's making an assignment for the benefit of creditors;

vii. The issuance of a writ of attachment by any court of competent jurisdiction to be levied on this Lease; or

viii. Any event which is an event of default under the Master Lease or which would become so with the passage of time or the giving of notice or both.

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

i. Sub lessor may terminate Sub lessee's right to possession of the Leased Premises by giving written notice to Sub lessee. If Sub lessor gives such written notice, then on the date specified in such notice, this Sublease and Sub lessee's right of possession shall terminate. No act by Sub lessor other than giving such written notice to Sub lessee shall terminate this Sublease. Acts of maintenance, efforts to relet the Leased Premises, or the appointment of a receiver on Sub lessor's initiative to protect Sub lessor's interest under

this Sublease shall not constitute a termination of Sub lessee's right to possession. On termination, Sub lessor has the right to recover from Sub lessee:

1. The worth at the time of the award of the unpaid rent and other charges that had been earned or owed to Sub lessor at the time of termination of this Sublease;

2. The worth at the time of the award of the amount by which (a) the unpaid rent and other charges that would have been earned or owed to Sub lessor after the date of termination of this Sublease until the time of award exceeds (b) the amount of such rental loss that Sub lessee proves could have been reasonably avoided;

3. The worth at the time of the award of the amount by which (a) the unpaid rent and other charges for the balance of the term after the time of award exceeds (b) the amount of such rental loss that Sub lessee proves could have been reasonably avoided; and

4. Any other amount necessary to compensate Sub lessor for all the detriment caused by Sub lessee's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including without limitation any costs or expenses incurred by Sub lessor in recovering possession of the Leased Premises, maintaining or preserving the Leased Premises after such default, preparing the Leased Premises for reletting to a new tenant, or any repairs or alterations to the Leased Premises for such reletting, and all leasing commissions, reasonable attorney's fees, architect's fees and any other costs incurred by Sub lessor to relet the Leased Premises or to adapt them to another beneficial use. Sub lessee shall also indemnify, defend and hold Sub lessor harmless from all claims, demands, actions, liabilities and expenses (including but not limited to reasonable attorney's fees and costs) arising prior to the termination of this Sublease or arising out of Sub lessee's use or occupancy of the Leased Premises.

ii. Sub lessor may, in any lawful manner, re-enter and take possession of the Leased Premises without terminating this Sublease or otherwise relieving Sub lessee of any obligation hereunder. Sub lessor is hereby authorized, but not obligated (except to the extent required by law), to relet the Leased Premises or any part thereof on behalf of the Sub lessee, to use the premises for its or its affiliates' account, to incur such expenses as may be reasonably necessary to relet the Leased Premises, and relet the Leased Premises for such term, upon such conditions and at such rental as Sub lessor in its sole discretion may determine. Until the Leased Premises are relet by Sub lessor, if at all, Sub lessee shall

pay to Sub lessor all amounts required to be paid by Sub lessee hereunder. If Sub lessor relets the Leased Premises or any portion thereof, such reletting shall not relieve Sub lessee of any obligation hereunder, except that Sub lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Sub lessee hereunder to the extent that such rent or other proceeds compensate Sub lessor for the non-performance of any obligation of Sub lessee hereunder. Such payments by Sub lessee shall be due at such times as are provided elsewhere in this Sublease, and Sub lessor need not wait until the termination of this Sublease, by expiration of the term hereof or otherwise, to recover them by legal action or in any other manner. Sub lessor may execute any lease made pursuant hereto in its own name, and the tenant thereunder shall be under no obligation to see to the application by Sub lessor of any rent or other proceeds by Sub lessor, nor shall Sub lessee have any right to collect any such rent or other proceeds. Sub lessor shall not by any re-entry or other act be deemed to have accepted any surrender by Sub lessee of the Leased Premises or Sub lessee's interest therein, or be deemed to have otherwise terminated this Sublease, or to have relieved Sub lessee of any obligation hereunder, unless Sub lessor shall have given Sub lessee express written notice of Sub lessor's election to do so as set forth herein.

iii. Even though Sub lessee has breached this Sublease and may have abandoned or vacated the Leased Premises, this Sublease shall continue in effect for so long as Sub lessor does not terminate Sub lessee's right to possession, and Sub lessor may enforce all its rights and remedies under this Sublease, including the right to recover the rent and other charges as they become due under this Lease.

iv. In the event any personal property of Sub lessee remains at the Leased Premises after Sub lessee has vacated, it shall be dealt with in accordance with the statutory procedures provided by applicable law dealing with the disposition of personal property of Sub lessee remaining on the Leased Premises after Sub lessee has vacated.

v. Sub lessor may exercise any right or remedy reserved to the Master Lessor under the Master Lease (each of which rights and remedies are hereby incorporated herein), and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under applicable law or the equitable powers of its courts, whether or not otherwise specifically reserved herein.

vi. Sub lessor shall be under no obligation to observe or perform any provision, term, covenant, agreement or condition of this Sublease on its part to be observed or performed which accrues after the date of any default by Sub lessee hereunder.

vii. Any legal action by Sub lessor to enforce any obligation of Sub lessee or in the pursuance of any remedy hereunder shall be deemed timely filed if commenced at any

time prior to [number] year after the expiration of the term hereof or prior to [number] years after the cause of action accrues, whichever period expires later.

viii. In any action of unlawful detainer commenced by Sub lessor against Sub lessee by reason of any default hereunder, the reasonable rental value of the Leased Premises for the period of the unlawful detainer shall be deemed to be the amount of rent and additional charges reserved in this Sublease for such period.

ix. Sub lessee hereby waives any right of redemption or relief from forfeiture under any present or future law, if Sub lessee is evicted or Sub lessor takes possession of the Leased Premises by reason of any default by Sub lessee hereunder.

x. No delay or omission of Sub lessor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Sub lessee hereunder.

d. **Receiver:** Upon the occurrence of any event of default as defined in Article 16 b) hereof or in any action instituted by Sub lessor against Sub lessee to take possession of the Leased Premises and/or to collect Base Minimum Rent, or any other charge due hereunder, a receiver may be appointed at the request of Sub lessor to collect such rents and profits, to conduct the business of Sub lessee then being carried on in the Leased Premises and to take possession of any property belonging to Sub lessee and used in the conduct of such business and use the same in conducting such business on the Leased Premises without compensation to Sub lessee for such use. Neither the application nor the appointment of such receiver shall be construed as an election on the Sub lessor's part to terminate this Sublease unless written notice of such intention is given by Sub lessor to Sub lessee.

e. **Attorneys' Fees:** If as a result of any breach or default in the performance of any of the provisions of this Sublease, Sub lessor uses the services of an attorney in order to secure compliance with such provisions or recover damages therefor, or to terminate this Sublease or evict Sub lessee, Sub lessee shall reimburse Sub lessor upon demand for any and all attorneys' fees and expenses so incurred by Sub lessor, including without the limitation appraisers' and expert witness fees; provided that if Sub lessee shall be the prevailing party in any legal action brought by Sub lessor against Sub lessee, Sub lessee shall be entitled to recover the fees of its attorneys in such amount as the court may adjudge reasonable. Sub lessee shall advance to Sub lessor any and all attorneys' fees and expenses to be incurred or incurred by Sub lessor in connection with any modifications to this Sublease proposed by Sub lessee, any proposed assignment of this Sublease by Sub lessee or any proposed subletting of the Leased Premises by Sub lessee.

f. **Cumulative Remedies; No Waiver:** The specified remedies to which Sub lessor may resort under the terms hereof are cumulative and are not intended to be exclusive of any other remedy

or means of redress to which Sub lessor may be lawfully entitled in case of any breach or threatened breach by Sub lessee of any provision hereof. If for any reason Sub lessor fails or neglects to take advantage of any of the terms of this Sublease providing for termination or other remedy, any such failure of Sub lessor shall not be deemed to be a waiver of any default of any of the provisions, terms, covenants, agreements or conditions of this Sublease. The waiver by Sub lessor of any breach of any term, condition or covenant herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, condition or covenant herein contained. None of the provisions, terms, covenants, agreements or conditions hereof can be waived except by the express written consent of Sub lessor. Subsequent acceptance of rent hereunder by Sub lessor shall not be deemed to be a waiver of any preceding breach by Sub lessee of any provision, term, covenant, agreement or condition of this Sublease other than the failure of Sub lessee to pay the particular rental accepted, regardless of Sub lessor's knowledge of such preceding breach at the time of acceptance of such rent.

17. ESTOPPEL

At any time and from time to time, upon request in writing from Sub lessor, Sub lessee agrees to execute, acknowledge, and deliver to Sub lessor a statement in writing within [number] days of request, certifying that this Sublease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications), the commencement and termination dates, the Base Minimum Rent, the other charges payable hereunder the dates to which the same have been paid, and such other items as Sub lessor may reasonably request. It is understood and agreed that any such statement may be relied upon by any mortgagee, beneficiary, or grantee of any security or other interest, or any assignee of any thereof, under any mortgage or deed of trust now or hereafter made covering any leasehold interest in the Leased Premises, and any prospective purchaser of the Leased Premises.

18. Force Majeure – Unavoidable Delays

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

19. Notices

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

20. Amendments

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

21. Accord and Satisfaction

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

22. No Agency Created

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

23. Brokerage Commission

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

24. Sole and Only Agreement

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

25. Severability and Governing Law

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

26. Construction and Headings

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

27. Effect of Execution

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

28. Inurement

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

29. Time of Essence

Time is expressly declared to be of the essence.

30. No Light, Air or View Easement

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

31. Triple Net Lease

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

32. Authority

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

33. Survival

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

34. Waiver

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

35. Recordation

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

36. Transfer of Master Lease

In the event of any assignment or transfer of the Master Lease by Sub lessor to any other party or entity, Sub lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Sublease arising out of any act, occurrence or omission

occurring after the consummation of such assignment or transfer; and the assignee or such transferee shall be deemed, without any further agreement between parties or their successors in interest or between the parties and any such assignee or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of the Sub lessor under this Sublease. Sub lessee hereby agrees to attorn to any such assignee or trustee. Sub lessee agrees to execute any and all documents deemed necessary or appropriate by Sub lessor to evidence the foregoing.

37. Subordination, Attornment

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

38. No Merger

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

39. Right of Sub lessor to Perform

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

40. Modification for Lender

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

41. Sub lessor's Personal Liability

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

42. Breach by Landlord.

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

43. Survival of Indemnities

The obligations of the indemnifying party under each and every indemnification and hold harmless provision contained in this Sublease shall survive the expiration or earlier termination of this Sublease to and until the last to occur of (a) the last date permitted by law for bringing of any claim or action with respect to which indemnification may be claimed by the indemnified party against the indemnifying party under such provision or (b) the date on which any claim or action for which indemnification may be claimed under such provision is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by the indemnifying party and the indemnified party is reimbursed by the indemnifying party for any amounts paid by the indemnified party in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including attorneys' fees incurred.

44. OPTION TO RENEW

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

45. Meaning of Consent

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

46. Quiet Enjoyment

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

47. Master Lease

Notwithstanding anything in this Sublease to the contrary, the rights of Sub lessee shall be subject to the terms and conditions contained in the lease ("Master Lease") between Sub lessor and the owner of the Leased Premises (the "Master Lessor''), as it may be amended from time to time. Sub lessee shall assume and perform and comply with the obligations of the lessee under the Master Lease to the same extent as if references to the Sub lessor therein were references to Sub lessee (all of which obligations are hereby incorporated herein), including, without limitation, the payment of any and all costs, expenses, charges, fees, taxes, payments or other monetary obligations (except for minimum rent and percentage rent) for which Sub lessor is liable or responsible under the Master Lease, as such costs, expenses, charges, fees, taxes, payment or other monetary obligations come due. Sub lessee shall not commit or permit to be committed on the Leased Premises any act or omission which shall violate any term or condition of the Master Lease. Notwithstanding anything in this Sublease to the contrary, the effectiveness of this Sublease shall be conditioned upon Sub lessor obtaining the written consent of the Master Lessor (if such consent is required under the Master Lease), in form and substance satisfactory to Sub lessor, within ten (10) days of the date hereof. If the Master Lease terminates for any reason, this Sublease shall terminate coincidentally therewith without any liability of Sub lessor to Sub lessee.

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

SUB LESSOR

Authorized Signature

Print Name and Title

SUB LESSEE

Authorized Signature

Print Name and Title

EXHIBIT A

TO SUBLEASE

DESCRIPTION OF LEASED PREMISES

HOW TO REGISTER AND TRANSFER A LAND TITLE IN UGANDA

After you have purchased your piece of land – now it's time to transfer your land title into your names. The process seems complicated on the outside but when you look closer, it is simplified into a few steps explained below using land in Kampala as a case study – let's dive in.

REQUEST A SEARCH AND CONSENT FORM

The first step in registering land is always requesting this form. The ministry of Land gives you a request form where you fill out the details about the land to be searched.
The registry also provides a Bank Advice Form, which is used to pay cash in the bank for this search. This form serves two purposes as it is the same form used during the payment of taxes. Even in cases of freehold ownership, one does not have to request consent to transfer. This form will be used to determine the amount of tax payments owed and to make payments.

PAY SEARCH FEE

After obtaining the Bank Advice Form, you can go ahead and make a payment in the designated bank upon which a receipt is granted. This receipt has to be presented at the registry before the search is conducted.

CONDUCT THE SEARCH AND DRAFT THE AGREEMENT

After payment, the search is conducted at the registry. The receipt of payment for the search has to be presented before the search can be conducted. It is also at this point that one picks up the consent to transfer application.
After this, an agreement is drafted. This is usually drafted by a lawyer and although it is not mandatory, this is common practice.

VALUATION OF PROPERTY

This is usually done by the Chief Government Valuer's office. This is to mainly determine the value of the property for transfer purposes, assessment purposes, and also for payment of stamp duty.

OBTAIN CLEARANCE FORM AND ASSESSMENT OF STAMP DUTY

After the valuer has approved the cost of the property, the file is taken to URA where an assessment form for stamp duty is provided. However, anyone purchasing land valued at more than Shs 50m must provide an income tax clearance indicating their source of income for tax purposes.

PAYMENT OF STAMP DUTY

Stamp duty is then paid in the designated commercial bank. Here, it is required that payment is only made at the designated commercial bank. The bank then notifies URA that the payment has been made. There is a reconciliation process between the bank and the revenue authority which takes three working days.

CONSENT TO TRANSFER BY THE LAND BOARD IN KAMPALA

The transfer forms are then taken to the land board in Kampala for consent. Here, the receipts of payment of consent forms must be presented. However, if companies are involved in the transaction, they must file with the company's registry for a special authorization which costs a fee of 20,000 shillings.

ASSESSMENT OF REGISTRATION FEES

The sales agreement is then presented to Kampala Capital City Authority to approve the registration fee. An assessment form is then provided with a registration fee to be paid at the designated bank. The documents include a signed sales agreement, a receipt of payment of the stamp duty, and the company's resolutions to buy and sell.

TRANSFER DOCUMENTS ARE THEN KEPT AT THE REGISTRY OF LANDS

The transfer documents are later stored at the Registry of lands and then transmitted to the Registrar who passes the instrument of transfer. It is then later sent to the commissioner in charge of land registration for verification.

The registrar cancels out the old owner and replaces him with the new owner in handwriting. The buyer and seller are required to provide passport photos for this process.

To round it up, land transfer documents include receipts of payment for registration fees and stamp duties, plus passport photos of both the seller and buyer of the property.

HOW TO TRANSFER MAILO LAND

Step 1 The Applicant must have in his/her possession fully completed set of Transfer forms which include a Transfer form and two Consent forms, A photocopy of the duplicate certificate of title and two authentic Passport photographs of the buyer and seller.

Step 2 The Applicant presents the documents to the Valuation Division for valuation assessment for Stamp duty. The Applicant checks with the Valuation Division within a period of 3 working days to pick the form and proceed to pay stamp duty and registration fees in the Bank. Stamp duty is 1% of the value of the land. Assessment for payment of Registration fees is done by the respective District Cashiers.

Step 3 Pay the fess in the Bank, get a receipt and your Transfer form embossed. Submit all documentation together with the Duplicate Certificate of Title, receipts and photocopies of all documents to the Mailo Registry.

Step 4 The photocopy is stamped 'Received'. The applicant is asked to check after 10 working days.

Step 5 The Applicant presents identification documents and the Photocopies to collect the Duplicate Certificate of Title. The applicant signs for the Title and the Photocopy is stamped 'Returned' on completion. Documents required: Duplicate Certificate of Title, set of Passport photographs, embossed Transfer form and consent form and General receipts of Payment. Fees paid: Stamp duty- 1% of the value of the land; and Registration fees – 10,000/=

TERMINATION OF LEASE OBLIGATION

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

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

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

TERMS

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

[facts giving rise to this release]

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

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

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

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

LESSOR

Authorized Signature

Print Name and Title

LESSEE

Authorized Signature

Print Name and Title

EVICTIONS.

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

Object: 5-Day Notice To Quit

Dear [Contact name],

TAKE NOTICE, that you are hereby required to quit, and deliver up to the undersigned the possession of the premises now held and occupied by you, being the premises known as:

[Describe]

at the expiration of 5 days commencing on [Date] and ending on [Date].

This Notice to Quit specifically terminates any oral/written agreement you may have with respect to the said premises at the date specified above.

THIS IS INTENDED as a 5-day notice to quit, for the purpose of terminating your tenancy aforesaid.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

October 31, 2022

Contact Name

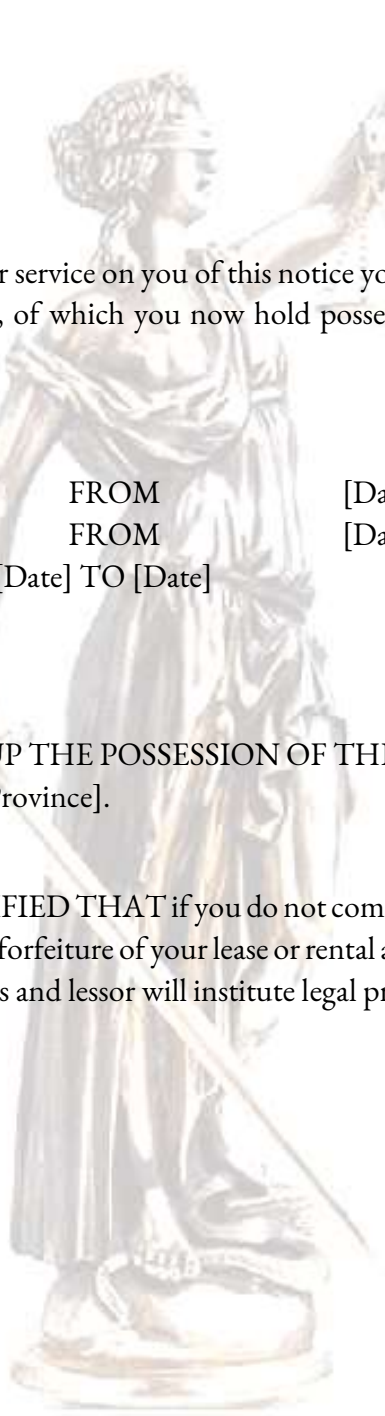
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE TO PAY RENT OR QUIT



Dear [Contact name],

WITHIN THREE DAYS after service on you of this notice you are hereby required to pay the rent of the premises hereinafter described, of which you now hold possession amounting to the sum of [Amount] enumerated as follows:

$ _____ DUE FROM [Date] TO [Date]
$ _____ DUE FROM [Date] TO [Date]
$ _____ DUE FROM [Date] TO [Date]

OR QUIT AND DELIVER UP THE POSSESSION OF THE PREMISES. The premises herein referred to are situated in [City, State/Province].

YOU ARE FURTHER NOTIFIED THAT if you do not comply with either of the above the undersigned does hereby elect to declare the forfeiture of your lease or rental agreement under which you hold possession of the above-described premises and lessor will institute legal proceedings to recover rent and possession of said premises.

Sincerely,

Your name

Your title

Telephone contact

ISAAC CHRISTOPHER LUBOGO

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

October 31, 2022

Contact Name

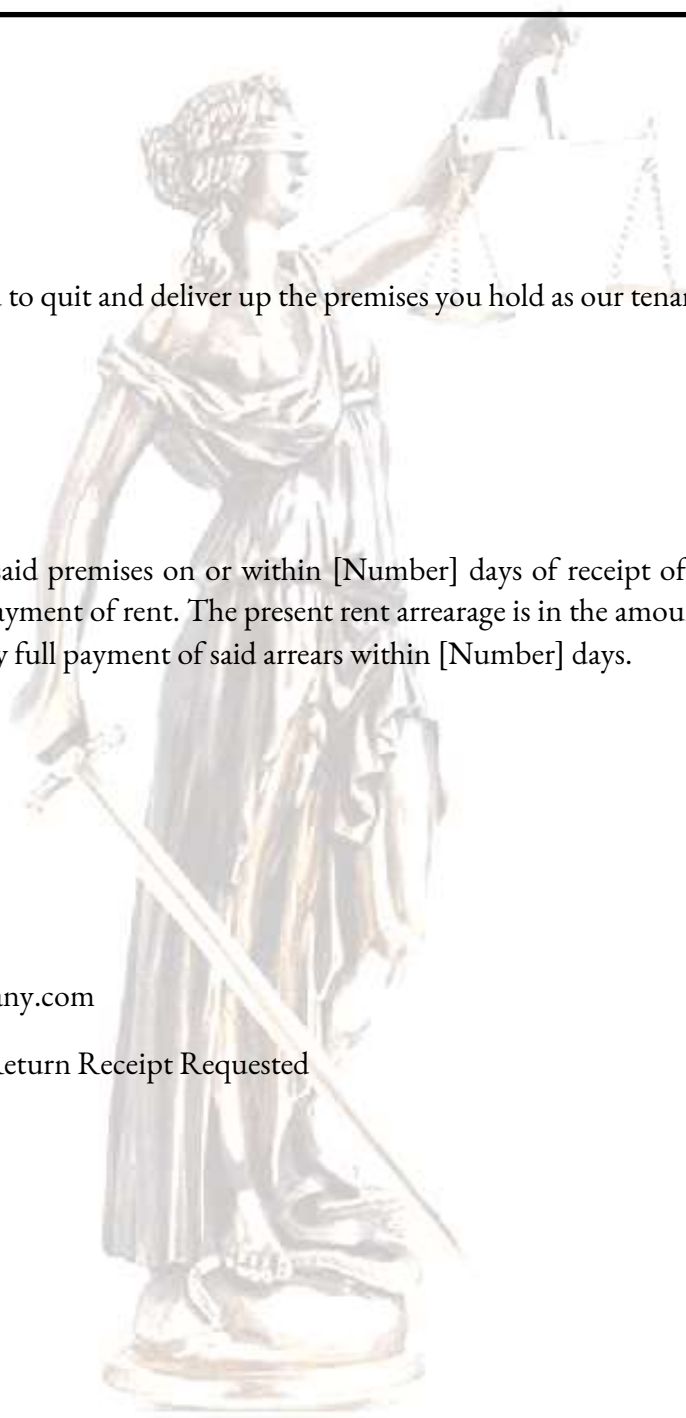
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE TO QUIT FOR NON-PAYMENT OF RENT



Dear [Contact name],

You are hereby notified to quit and deliver up the premises you hold as our tenant, namely:

[Describe premises]

You are to deliver up said premises on or within [Number] days of receipt of this notice.This notice is provided due to non-payment of rent. The present rent arrearage is in the amount of [Amount]. You may redeem your tenancy by full payment of said arrears within [Number] days.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

October 31, 2022

Contact Name

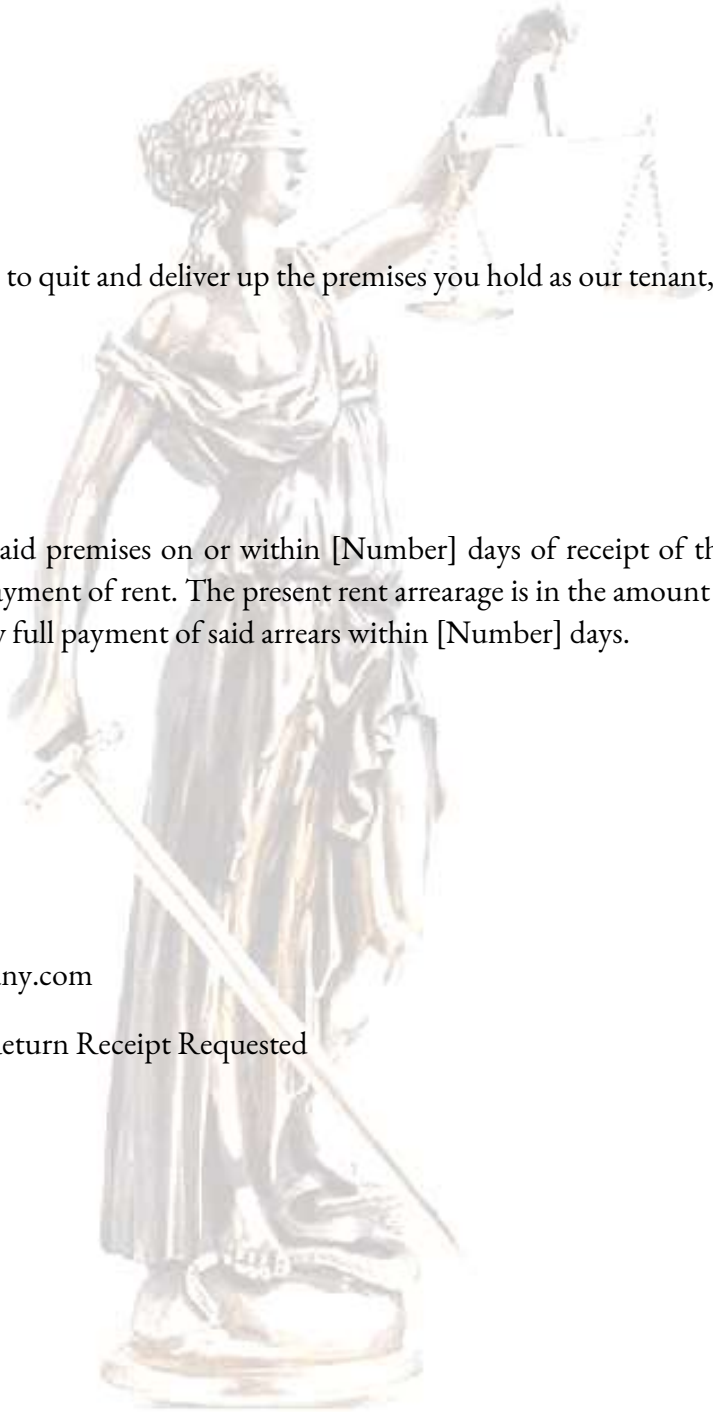
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE TO QUIT FOR NON-PAYMENT OF RENT



Dear [Contact name],

You are hereby notified to quit and deliver up the premises you hold as our tenant, namely:

[Describe premises]

You are to deliver up said premises on or within [Number] days of receipt of this notice.This notice is provided due to non-payment of rent. The present rent arrearage is in the amount of [Amount]. You may redeem your tenancy by full payment of said arrears within [Number] days.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE TO TENANT OF RENT DEFAULT

Dear [Contact name],

This notice is in reference to the following described lease:

[Describe lease]

Please be advised that as of [Date], you are in **DEFAULT IN YOUR PAYMENT OF RENT** in the amount of [Amount].

If this breach of lease is not corrected within [Number] days of this notice, we will take further action to protect our rights, which may include termination of this lease and collection proceedings. This notice is made under all applicable laws. All of our rights are reserved under this notice.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

THE DOCTRINE OF NOTICE.

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF TERMINATION OF LEASE

Dear [Contact name],

This is to notify you to quit and deliver up possession of [ADDRESS], which you presently occupy as our tenant, by [DATE]. This notice is given pursuant to paragraph [Insert paragraph number of lease agreement which provides for termination on 7 days notice] of your lease agreement.

NOTICE IS FURTHER GIVEN that if you fail to vacate the above-described premises on or before the date specified in the paragraph above, the lessor will institute Unlawful Detainer proceedings against you to recover possession of the premises, treble damages, attorney fees and costs.

We remind you of your obligation to leave the premises in a reasonable condition at the end of your tenancy.

Thank you for you cooperation.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF CHANGE IN RENT

Dear [Contact name],

Please be advised that pursuant to the terms of that certain [Lease/rental agreement] dated [Date], your rent for the space at [Address] will increase to [Amount] per month, effective [Date].

Let me know if you have any questions.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

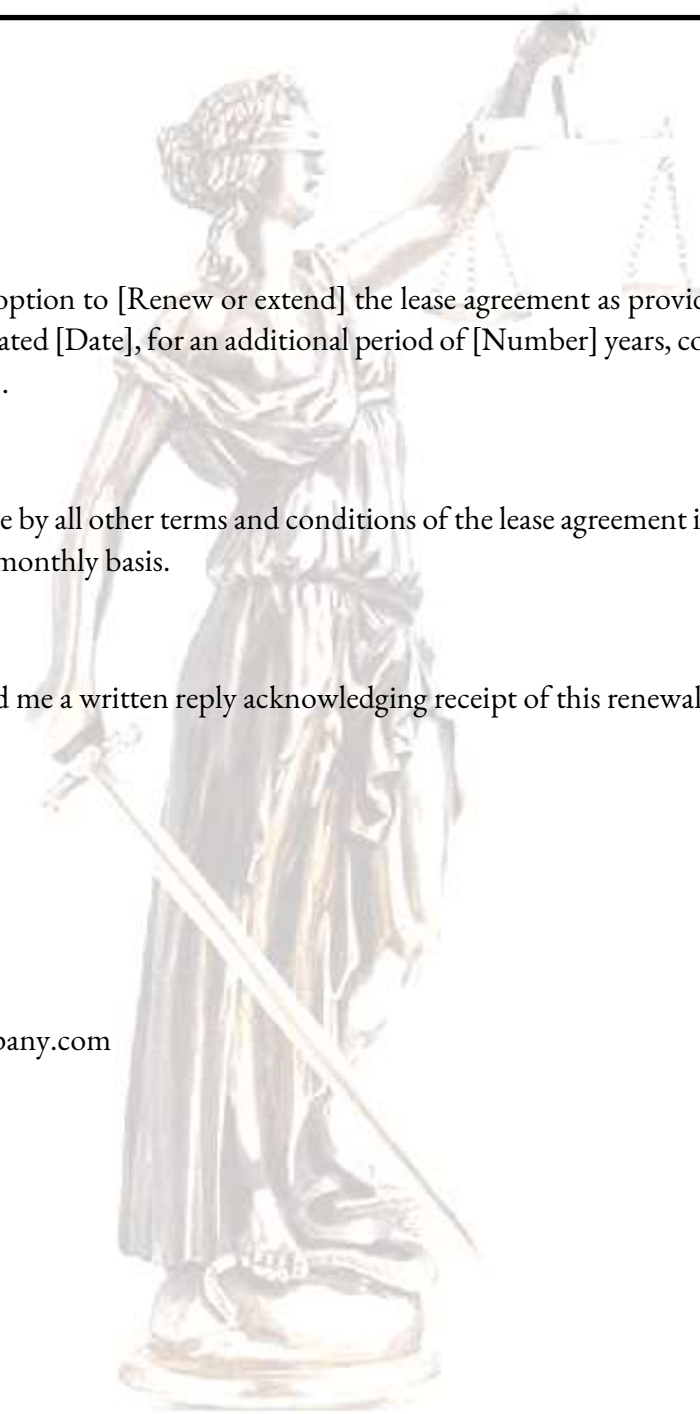
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF EXERCISE OF LEASE OPTION



Dear [Contact name],

I elect to exercise the option to [Renew or extend] the lease agreement as provided in Section [Specify] of our lease agreement, dated [Date], for an additional period of [Number] years, commencing on [Date], and terminating on [Date].

I will continue to abide by all other terms and conditions of the lease agreement including the provision for payment of rent on a monthly basis.

I request that you send me a written reply acknowledging receipt of this renewal notice.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

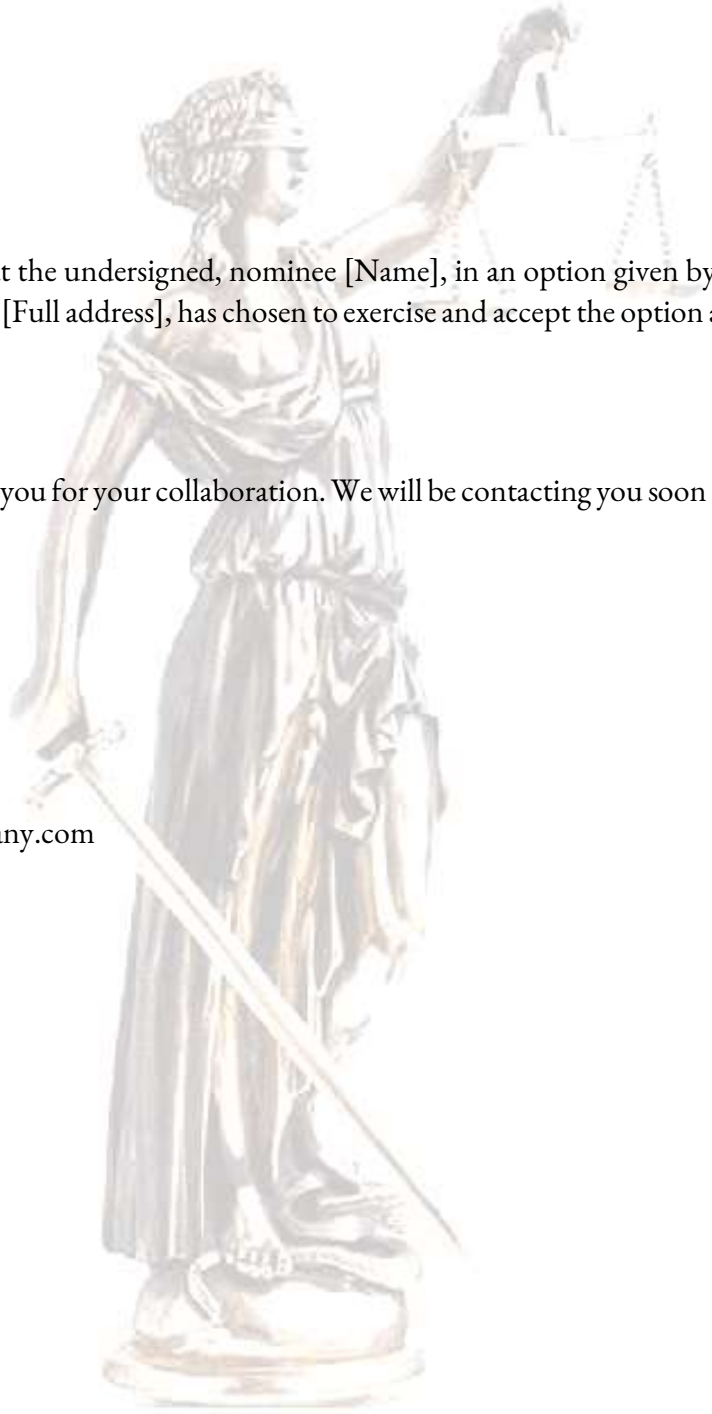
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF EXERCISE OF PURCHASE OPTION



Dear [Contact name],

Please acknowledge that the undersigned, nominee [Name], in an option given by you, on [Date], for the purchase of property at [Full address], has chosen to exercise and accept the option and agrees to all its terms and provisions.

We would like to thank you for your collaboration. We will be contacting you soon to finalize an agreement.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF EXERCISE OF LEASE OPTION

Dear [Contact name],

I elect to exercise the option to [Renew or extend] the lease agreement as provided in Section [Specify] of our lease agreement, dated [Date], for an additional period of [Number] years, commencing on [Date], and terminating on [Date].

I will continue to abide by all other terms and conditions of the lease agreement including the provision for payment of rent on a monthly basis.

I request that you send me a written reply acknowledging receipt of this renewal notice.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF EXERCISE OF PURCHASE OPTION

Dear [Contact name],

Please acknowledge that the undersigned, nominee [Name], in an option given by you, on [Date], for the purchase of property at [Full address], has chosen to exercise and accept the option and agrees to all its terms and provisions.

We would like to thank you for your collaboration. We will be contacting you soon to finalize an agreement.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

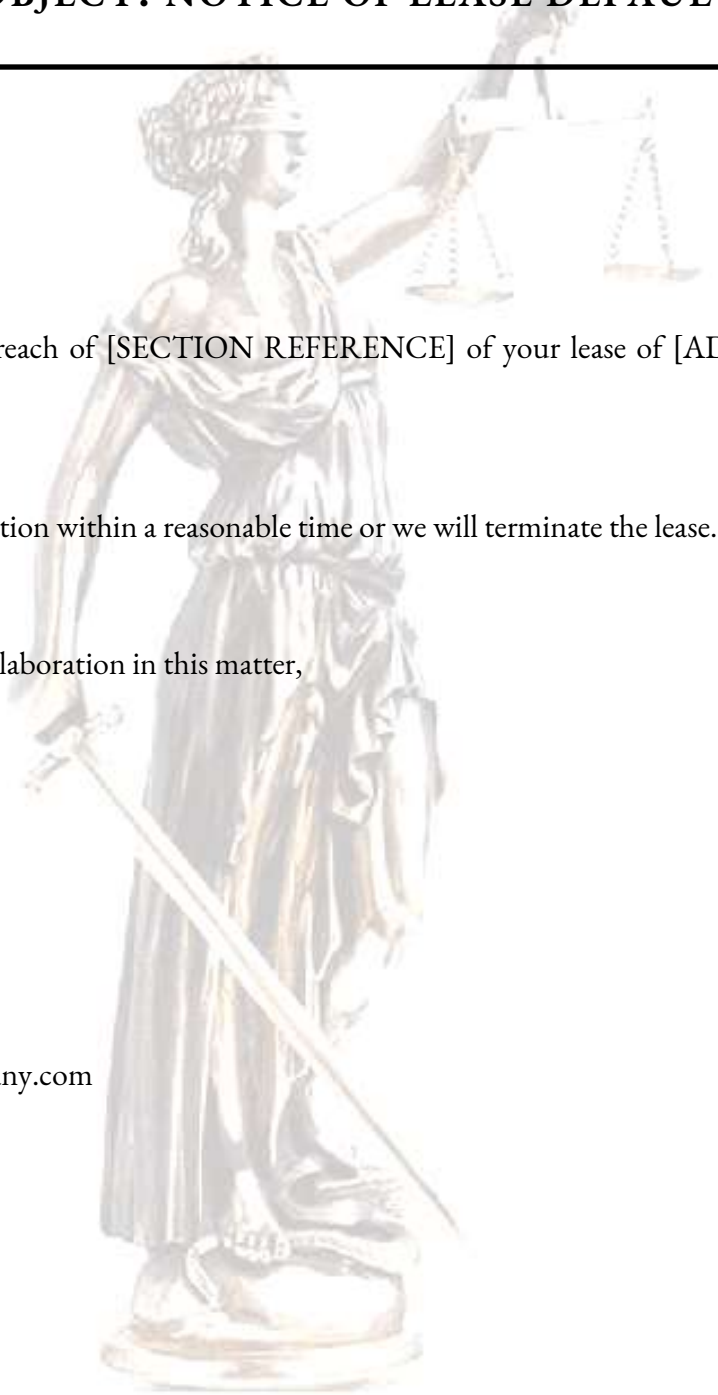
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF LEASE DEFAULT



Dear [Contact name],

You are presently in breach of [SECTION REFERENCE] of your lease of [ADDRESS] by reason of [SPECIFY BREACH].

Please remedy this situation within a reasonable time or we will terminate the lease.

Thank you for your collaboration in this matter,

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

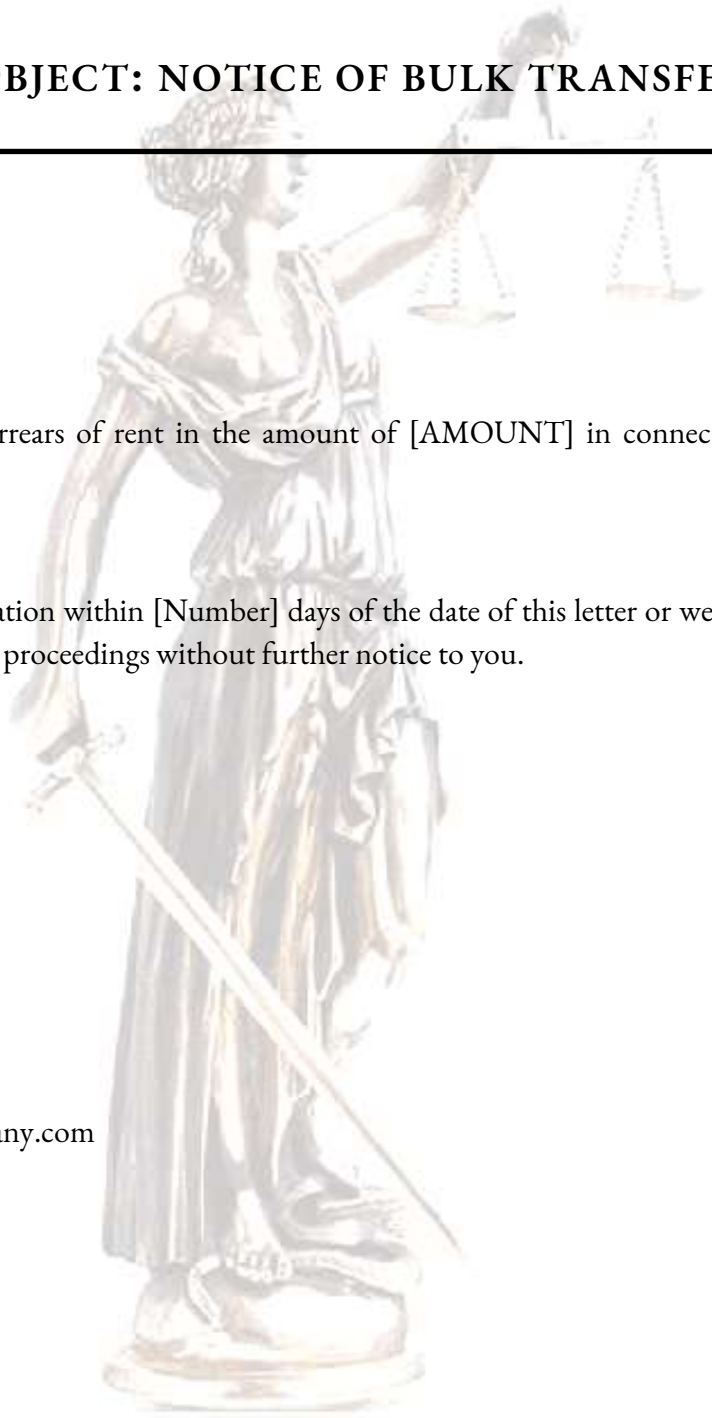
Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF BULK TRANSFER



Dear [Contact name],

You are presently in arrears of rent in the amount of [AMOUNT] in connection with your lease of [ADDRESS].

Please remedy this situation within [Number] days of the date of this letter or we will terminate the lease and institute collection proceedings without further notice to you.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code

OBJECT: NOTICE OF RIGHT OF RESCISSION

Dear [Contact name],

You have entered into a transaction on [Date] which may result in a lien, mortgage or other security interest on your real estate property. You have a legal right under [Law] to cancel this transaction, if you desire to do so, without any penalty or obligation, within [Number] business days from the above date or any later date on which all material disclosures required under the [Law or Act] have been given to you.

If you so cancel the transaction, any lien, mortgage or other security interest arising from this transaction is automatically void. You are also entitled to receive a refund of any down payment or other consideration if you cancel.

If you decide to cancel this transaction, you may do so by notifying [Name] at [Address] by mail or fax sent not later than midnight of [Date]. You may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

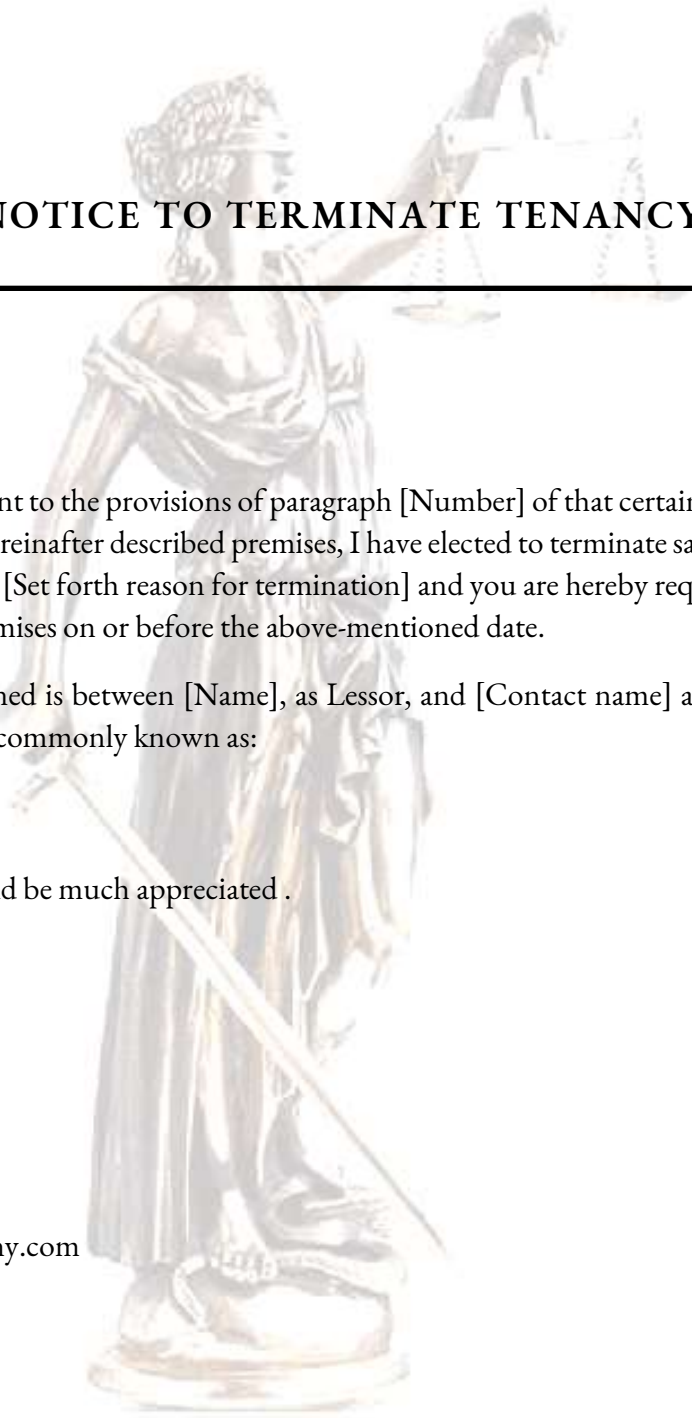
Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECT: NOTICE TO TERMINATE TENANCY-AT-WILL

Dear [Contact name],

Take notice, that pursuant to the provisions of paragraph [Number] of that certain Lease under which you hold possession of the hereinafter described premises, I have elected to terminate said lease as of [Date]; said lease is being terminated [Set forth reason for termination] and you are hereby required to quit and deliver up possession of the premises on or before the above-mentioned date.

The lease above mentioned is between [Name], as Lessor, and [Contact name] as Lessee, is dated [Date] and covers the property commonly known as:

[Describe]

Your collaboration would be much appreciated .

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

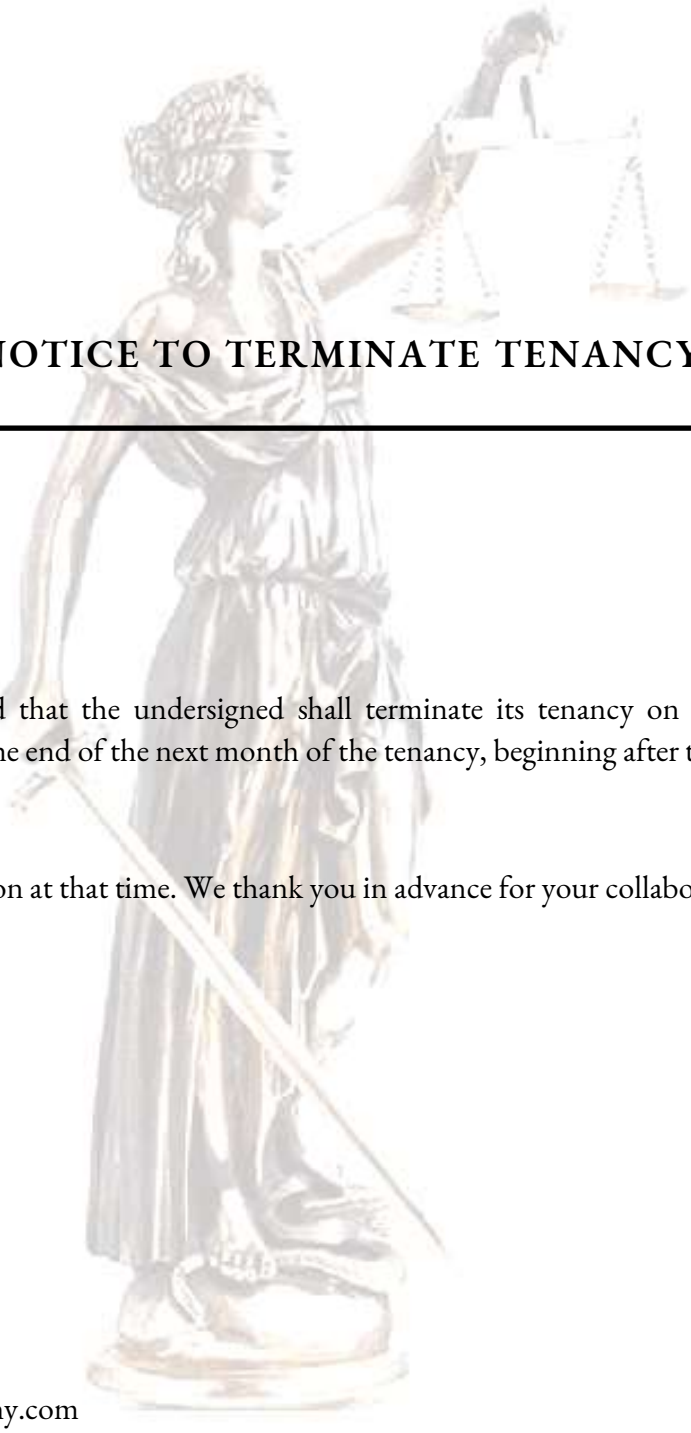
Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECT: NOTICE TO TERMINATE TENANCY-AT-WILL

Dear [Contact name],

You are hereby notified that the undersigned shall terminate its tenancy on the premises known as [Describe], effective at the end of the next month of the tenancy, beginning after this notice.

We shall deliver possession at that time. We thank you in advance for your collaboration.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

October 31, 2022

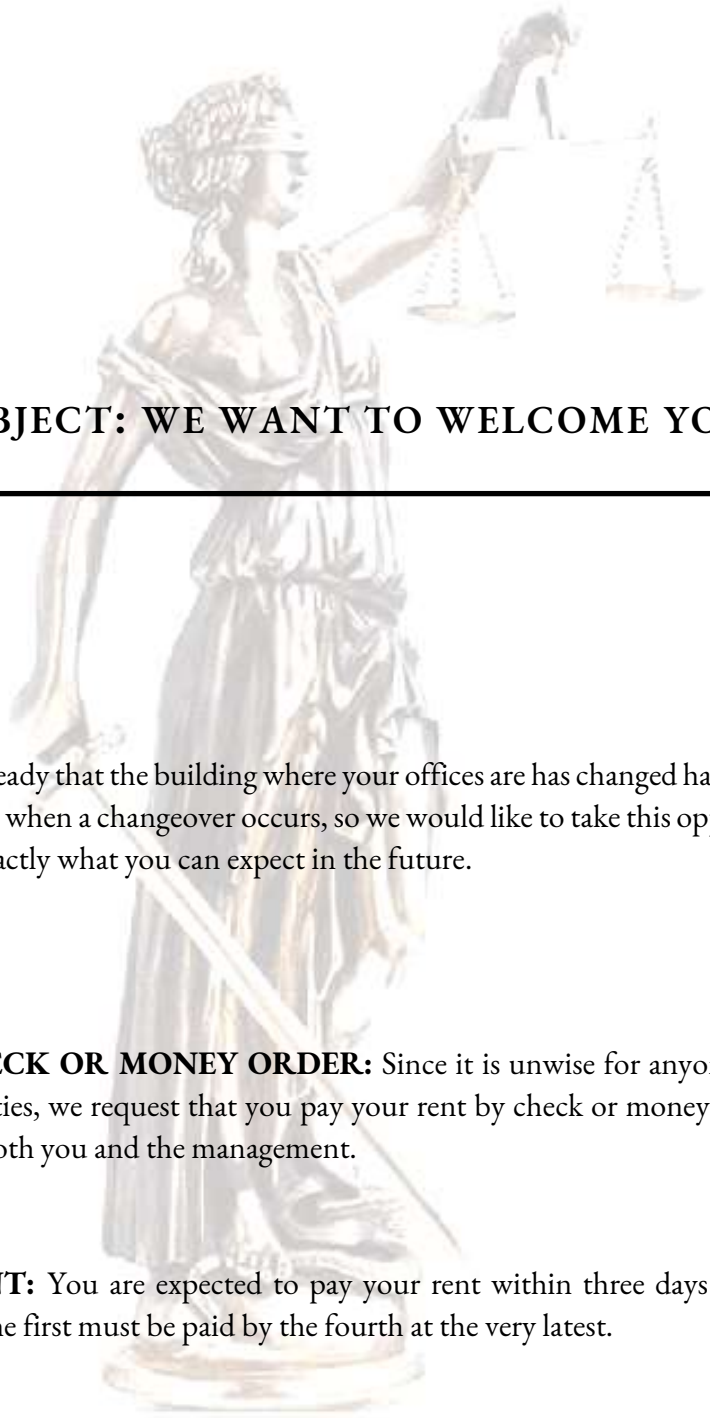
Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECT: WE WANT TO WELCOME YOU!

Dear [Contact name],

You probably know already that the building where your offices are has changed hands. Tenants sometimes feel some apprehension when a changeover occurs, so we would like to take this opportunity to clear the air by letting you know exactly what you can expect in the future.

PAYMENT BY CHECK OR MONEY ORDER: Since it is unwise for anyone to keep or carry cash around in large quantities, we request that you pay your rent by check or money order (made payable to us). This will protect both you and the management.

PROMPT PAYMENT: You are expected to pay your rent within three days after the due date. For example, rent due on the first must be paid by the fourth at the very latest.

MAINTENANCE: We expect you to pay your rent promptly, and you can expect us to respond promptly to any maintenance problems that arise. Sometime within the next week, we will visit you to inspect for any

building maintenance work that should be taken care of. You can help us by making a list of work that needs doing around the house.

RENTAL AGREEMENT: We will stop by soon to explain the standard rental agreement to you, and we will leave you a copy of your own.

We hope that this is the beginning of a long-lasting business relationship and we will do everything possible to answer your needs as promptly as we can.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

A COMMISSIONER FOR OATHS

DRAWN & FILED BY:

The APPLICANT

THE REPUBLIC OF UGANDA
IN THE..... COURT OF.....HOLDEN AT .....
CRIMINAL APPN NO .....OF .....

(Arising from Criminal Appeal NO..... of 20)

..... APPLICANT/ APPELANT
VS
UGANDA..... RESPONDENT/ PROSECUTOR

NOTICE OF MOTION

(Under Article 23 (6), Section 40, 47 of the Criminal Procedure Code Act Cap116, Section 132(4) of the penal Code Act Cap 120)

Take Notice that this Honourable Court shall be moved on the... day of

..... 20.. or soon thereafter as the Applicant will be heard on an Application for orders that.

1. That the Applicant be granted bails pending the hearing of his Bail filed in the High Court / court of Appeal vide Criminal Appeal No..... of 20...

Take further notice that this Application is supported by the Affidavit of.....

the Applicant herein which shall be read and relied on at the hearing but briefly they are as follows.

1. That there is a possibility of substantial delay with the Appeal
2. That the Appeal has a reasonable ground of success.
3. That the Applicant is a first-time offender.
4. That the offence the Appellant was convicted of did not involve personal violence.
5. That it is in the interest of justice that this application is granted.

Dated at ..... this ..... day of .....20.....

APPLICANT

Lodged in the Court Registry this ..... Day of ..... 20..

.....

ASSISTANT REGISTRAR

THE REPUBLIC OF UGANDA

IN THE ..... COURT OF .....

HOLDEN AT.....

CRIMINAL APPN NO..... OF .....20... (ARISING FROM CRIMINAL APPEAL NO..... OF 20.)

..... : APPLICANT/ APPELLANT

VS

UGANDA :: RESPONDENT.

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION:

I..... Of do solemnly make oath and swear/ affirm

that that:

1. I am male / female Adult Ugandan of sound min the Applicant/ Convict herein and therefore having capacity to depone to this Affidavit.

2. That I was charged and convicted to Years in prison for the offence of

..... contrary to section... of the penal code Act.

3. That prior to my conviction I was granted bail by the High/Magistrate court and I dully abided by the terms of the bail and also dully attended court on dates I was scheduled to attend**.(see attached copies of Bail forms for ease of reference)**

4. That I have never been convicted of any other offence and I am a first-time offender.

5. That I have appealed against the decision of the lower court and there I a possibility of success in the Appeal **(attached is a copy of Memorandum of Appeal and records of the lower court proceedings).**

6. That there is a likely hood that the appeal will take a long time to be disposed of by this Honorable Court.

7. That I have substantial sureties within the Jurisdiction of this Honorable court who will undertake that I attend court whenever required.

8. That whatever I have stated herein is true and correct to the best of my knowledge and belief and whatever is from without the source is disclosed.

Sworn at on the

.....day of..... 20... By the said

....

Deponent

BEFORE ME

.....

JUSTICE OF PEACE

Drawn and filed by:
THE APPLICANT

A SENTENCE OF IMPRISONMENT.

THE REPUBLIC OF UGANDA

A WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT

IN THE..... COURT OF.....

HOLDEN AT.....

TO:

THE SUPERINTENDENT OF THE PRISON.....

WHEREAS on the ..... Of .....20... The 1st 2nd prisoner in the case No of the calendar of 20... was convicted before me

.....

Of the offence of ..... under sectionand was sentenced to .....

THIS IS TO AUTHORISE AND REQUIRE YOU, the said Superintendent, to receive the said into your custody in the said prison together with this

warrant, and there carry the aforesaid sentence into execution according to the law.

Given under my hand and seal of this court, this.....day of 20.....

.....

JUDGE/ MAGISTRATE.

THE REPUBLIC OF UGANDA

IN THE..... COURT OF.....

HOLDEN AT.....

CRIMINAL APPEAL NO ..... OF 20...

UGANDA PROSECUTOR

VERSUS

ACCUSED

NOTICE OF APPEAL

TAKE NOTICE that the Convict/ intended Appellant , being dissatisfied with the judgment of the Hon. ..... given at .....on the day

of ..... 20..., intends to appeal to the High Court / Court of Appeal of Uganda against the whole of the said judgment / conviction/ Sentence.

The address of service for the intended Appellant is

..... It is intended to serve copies of this Notice on:

(a) The Registrar, High Court / Court of Appeal of Uganda at Kampala.

(b) The Resident State Attorney

Dated at ..... This.....day of.....20.....

APPELLANT.

LODGED in the High Court Registry at Kampala this day of 20.

REGISTRAR

Under Section 93 of the Land Act Cap 227 provides that the minister may by statutory instrument with the approval of parliament, make regulations generally for better carrying into effect of the provisions of this Act. Therefore, refer to Statutory Instruments of 2004 no.100. The land regulations, 2004.

DOCUMENTS FOR TRANSFERING LAND

THE REGISTRATION OF TITLES ACT

BLOCK ..... **DISTRICT**.....
PLOT .....

Mailo/Freehold/Leasehold Register Volume ..... Folio .....

TRANSFER

I.....

.....of (Address)

P.O.Box..... Mobile Phone no .....

Email.....

Son/daughter of..... of

.....Clan being the registered proprietor of the land comprised in the above Title in consideration of the sum of shillings ..... paid to me by the purchaser on or before the execution of these presents the receipt thereof I hereby acknowledge **DO THEREBY TRANSFER** all that piece of

land (part of the land comprised in the above Title) which is delineated to the plan annexed hereto and thereon edged in red and now Plot number..... to..... ..... (name) herein called the purchaser of (Address) P.O.Box..... Mobile Phone no .....

Email.....

Son/Daughter of.....of ..... clan to **HOLD** the purchase for all my estate and interest herein.

Dated this ..... day of ..... 20___.

SIGNED by the said ....

SIGNATURE OF VENDOR

In the presence of:

Witness (name): .....

Address :(Box no/ Mobile no/ Email): ..... Qualification:.....

Signature.....

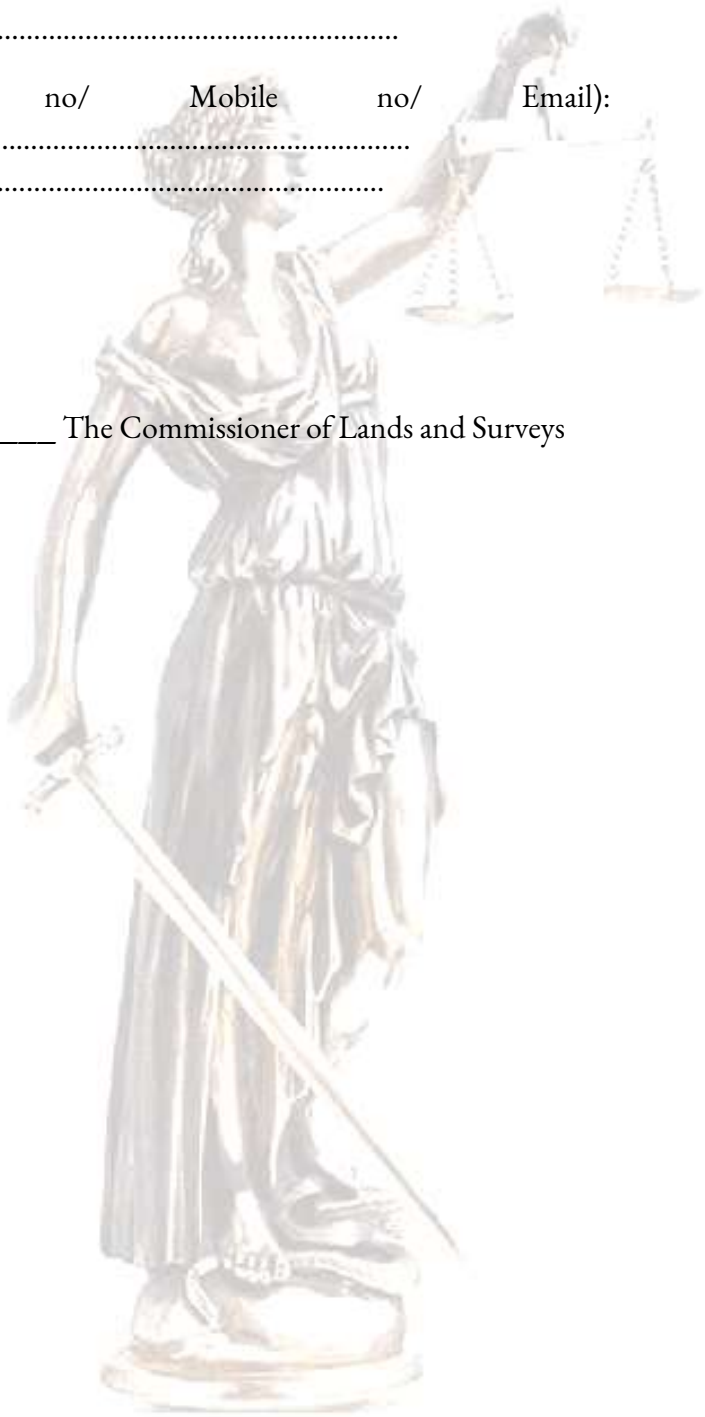
SIGNED by the said ....

SIGNATURE OF PURCHASER

In the presence of:

Witness (name) .....

Address (Box no/ Mobile no/ Email): .....
Qualification:.....
Signature.....



LAND FORM 6

CONSENT

UG.SHS._____ The Commissioner of Lands and Surveys

P. O. Box 7061

KAMPALA

APPLICATION FOR CONSENT TRANSFER

(To be submitted in duplicate)

Freehold/Leasehold Register Volume ..... Folio ..... Block ..... Plot ..... Land situated .....

Area .....
User.....
Tenure.....

Details of Land development carried out.....

(TICK AS APPROPRIATE)

IF LEASEHOLD

(a) Initial period/Full Time

(b) Attach ground rent receipt for last five years.

I/WE HEREBY APPLY for consent under Section 22(5) (c) (i) of the Public Lands Act to the Transfer/Sublease of the above premises and also under Section 10 of Decree No. 3 of 1975.

FROM

Name:.....

Address(Box no/ Mobile no/ Email): .....

Nationality:.....

TO

Name:.....

Address(Box no/ Mobile no/ Email): .....

Nationality:.....

TRANSFER

Consideration: .....

SUBLEASE:

Premium (if any)..... Rent ..... Per Annum

Term ..... Rent ..... Per Annum

.....I am the undersigned hereby declare that the information given in this application is correct to the best of my knowledge and belief.

.....

SIGNATURE OF APPLICANT OR HIS/THEIR ADVOCATE FOR OFFICIAL USE ONLY

For the purposes of the Stamps Act (Cap.172) and Finance Act (No.7 of 1982), I hereby assess the value of the property as:-

Ug. Shs. .....

(Words Ug.Shillings) .....

Date .....

.....

CHIEF GOVERNMENT VALUER

For the purpose of Section 22 (5) (i) of the public Lands Act, 1969 and Section 10 of Decree No.3 of 1975; I hereby

CONSENT / DO NOT CONSENT SUBJECT TO THE ZONING schedule to the above application for **TRANSFER/SUB-LEASE**.

.....

COMMISSIONER FOR LANDS AND SURVEYS Date.....

LAND FORM 6 CONSENT

UG.SHS._____ The Commissioner of Lands and Surveys

P. O. Box 7061

KAMPALA

APPLICATION FOR CONSENT TRANSFER

(To be submitted in duplicate)

Freehold/Leasehold Register Volume ..... Folio ..... Block ..... Plot ..... Land situated .....

Area .....
User.....
Tenure.....

Details of Land development carried out.....

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FROM

Name:.....

Address(Box no/ Mobile no/ Email): .....

Nationality:.....

TO

Name:.....

Address(Box no/ Mobile no/ Email): .....

Nationality:.....

TRANSFER

Consideration: .....

SUBLEASE:

Premium (if any)..... Rent ..... Per Annum

Term ..... Rent ..... Per Annum

.....I am the undersigned hereby declare that the information given in this application is correct to the best of my knowledge and belief.

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SIGNATURE OF APPLICANT OR HIS/THEIR ADVOCATE FOR OFFICIAL USE ONLY

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Ug. Shs. .....

(Words Ug.Shillings) .....

Date .....

.....

CHIEF GOVERNMENT VALUER

For the purpose of Section 22 (5) (i) of the public Lands Act, 1969 and Section 10 of Decree No.3 of 1975; I hereby **CONSENT / DO NOT CONSENT SUBJECT TO THE ZONING** schedule to the above application for **TRANSFER/SUB-LEASE**.

.....

COMMISSIONER FOR LANDS AND SURVEYS Date.....

ABOUT THE BOOK

"Objection My Lord" is a phrase often used in court. This book covers all the nitty-gritty for one to practice law in the best and legal way possible within limits of good conduct and professionalism. Charles Dickens in "The Old Curiosity Shop" has spoken this of lawyers. "If there were no bad people, there would be no good lawyers." I have already listed how the good lawyers conduct themselves in my former book, "Professional Malpractice in Uganda;" this book will thence equip the reader with the practical tools of the legal profession, making them grasp these basic skills in addition to mastering legal professionalism.

This is a package to my Learned Friends, to know the must know and learn to practice within the legal limits and more so, discover the legal exceptions and present such in a legal manner; to distinguish precedents tactically and persuade intellectually where no such exist. It is a summary of legal principles requisite for one to properly establish their case before court. This book is a one stop masterpiece for a reader to grasp the other more practical duties of a lawyer apart from litigation and drawing deeds. By training consistency yet with honest dealings, this book navigates along the professional to the moral and most practical situations encountered by a lawyer while furnishing one with the gist and nothing less. It is a training for every "officer of court" to make use of their greatest tool "the tongue" to not only persuade but also assist court and the state in ensuring justice.

Be blessed to find all you seek and be gifted a package, so much more than you expect in this book.

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