

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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First Edition 2022

ISBN: 97899704457776

First published in Uganda by:

Jescho Publishing House

A member of Jescho Group Ltd

Maria's Galleria, Level 3 Room 17,

Luwum Street,

Kampala (U), East Africa.

Tel: +256 393 256 545, +256 782 395 293

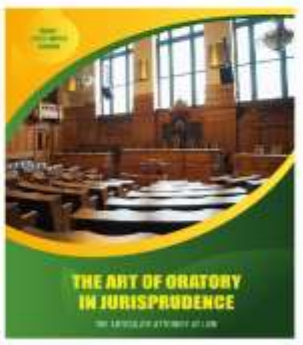
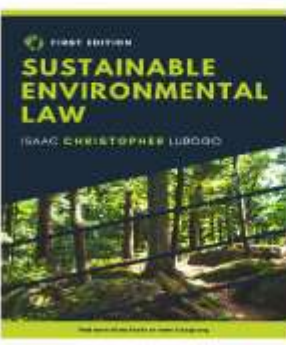
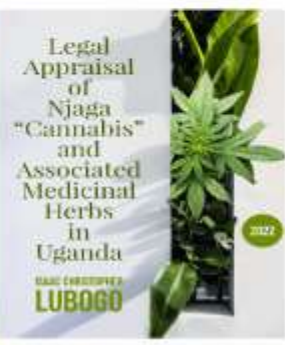
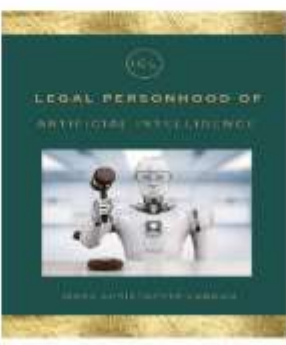
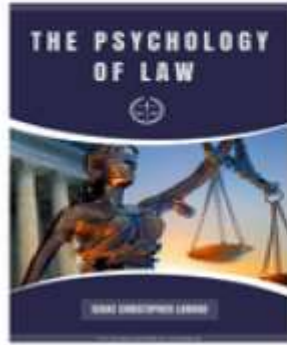
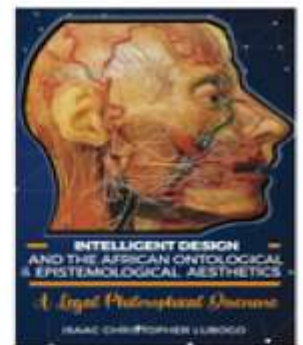
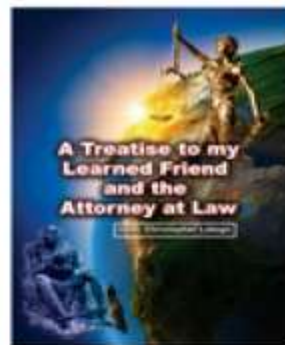
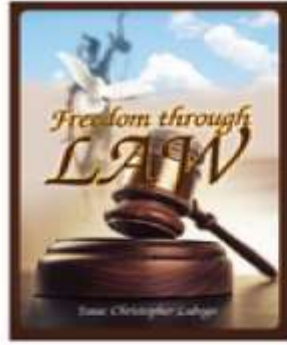
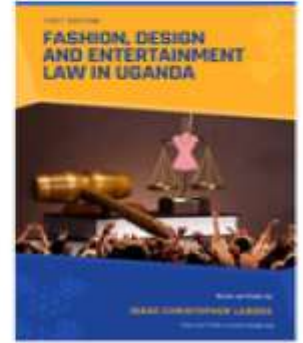
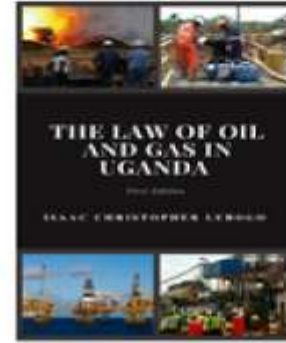
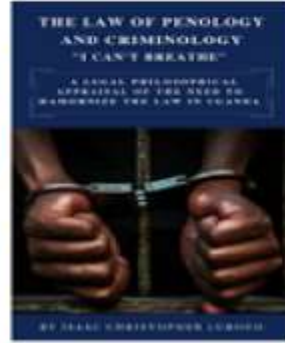
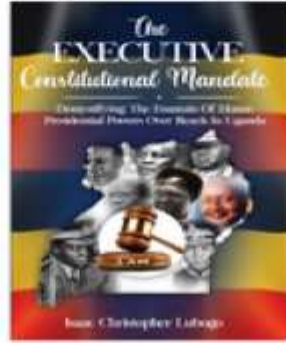
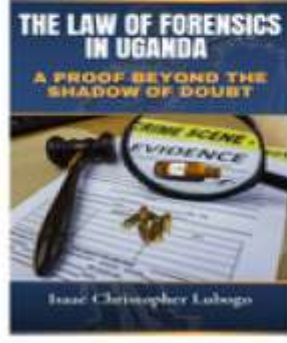
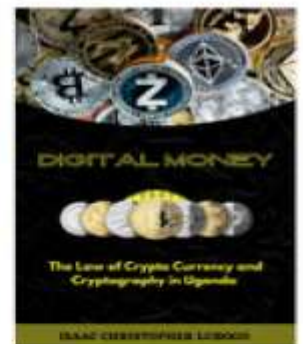
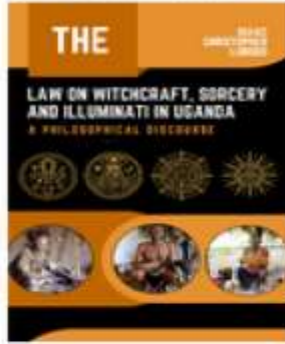
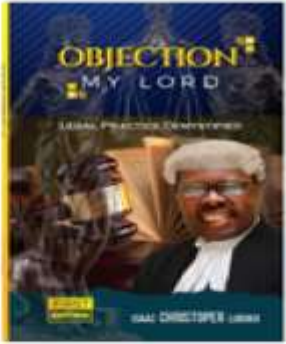
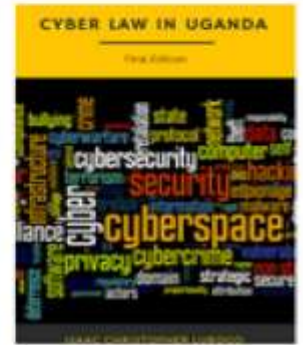
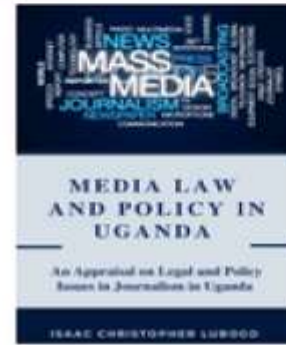
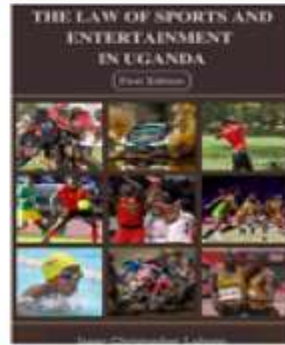
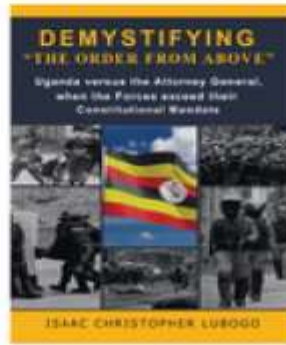
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ISAAC CHRISTOPHER LUBOGO'S WORKS



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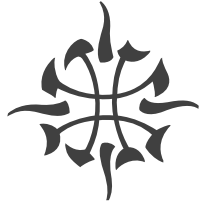
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DEDICATION



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

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*Obey God's law first before considering
the laws of man.*



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ACKNOWLEDGEMENT



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 *Hysaght v Edwards*¹, the court held that, the moment 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 possession.

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

¹(1876)2 Chd 499

S.43 (2) of the land Act defines "freehold tenure" 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 incidents of freehold under S.43 (2)(a) of the land act are perpetual existence and full ownership.

MAILLO TENURE.

S.3(4) of the land Act, describe maillo tenure as a form of tenure which derives its legality from the constitution and its incidents from written law. Under s.3(4)(c) a maillo owner is entitled to enjoy all powers of ownership of a freehold owner subject to the customary and statutory right of "lawful" or "bonafide" occupants of the land.

"LAWFUL" AND "BONAFIDE" OCCUPANTS

LAWFUL OCCUPANTS.

S.29(1) of the land Act defines who is a lawful occupant

BONE FIDE OCCUPANT.

S.29 (2) of the land Act defines who a bona fide occupant is Both lawful occupants and bona fide occupants are considered tenants by occupancy. (S.1 of the land Act). Tenants by occupancy enjoy security of occupancy under s.31 of the land Act. Under s.32A of the land Act, a tenant by occupancy can only be evicted for non-payment of ground rent.

CUSTOMARY TENURE

s.3(1) of the land Act, defines customary land tenure as a system to land ownership governed and regulated by customary principles and usually some times by customary authority. The customs must however not be repugnant to nature justice equity and good conscience in contravention with any written law. S.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.

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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? (s.2 and 3) (5) of the land Act) A lease can be granted for any duration except in case of a lease to a non-Ugandan citizen. S.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 S.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. The provision reverse the common law poeticism 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 have no power to create a term which is uncertain. However, despite s.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 contracts². Under S.40(3) of the land Act, a non-citizen cannot be grounded a lease exceeding 99years.

Exclusive Possession.

Under s.3(5)(c) of the land Act, a lessee grants or is deemed to grant, the lessee exclusive possession of the land.in *street v. Mountford (1958)*³, 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 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 occupied has exclusive possession. If the landlord retains general control over the premises, it is a strong indication that the occupiers has no exclusive possession and therefore he/she is a mere licensee. In *City Council of Kampala V Mukiiibi (1967) EA368*, the P/Fs leased certain premises to the defendant subjects to a covenant that the tenant should not part with possession of sublet without their consent. The defendant allowed hair chessors to use the premises paying him a daily fee. The P/Fs sought to terminate the lease on the ground that the defendant parted with

² Sands V Mutual Benefits Ltd (19971) EA 156

³ 2 ALLER 289 at 292

possession in breach of the tenancy agreement. The court held that a tenant is not in breach of a covenant not to part with possession or sublet unless he or she gives exclusive possession to another person in this case the court found that although the defendant allowed hairdressers to use the premises subject to payment of a daily fee, he did not give them exclusive possession.

Creation of A Lease

Under s.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**⁴, 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**⁵, 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.

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 remainder 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.

⁴ (1972)1 ULR 37

⁵ (1920-29) 3 ULR 193

OBJECTION MYLORD

REPUBLIC OF UGANDA.

IN THE MATTER OF THEREGISTRATION OF TITLE 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 OF THE LEASE AF LAND COMPRISED IN..... (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 “lessor”
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

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in.....(location).....(meaning) for a term ofYears and on theday of2022.

1.2. The lessee shall 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 other purpose other than.....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.....

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In the presence of:

1.

.....

2.

.....

SIGNED AND RECEIVED BY

.....

.....

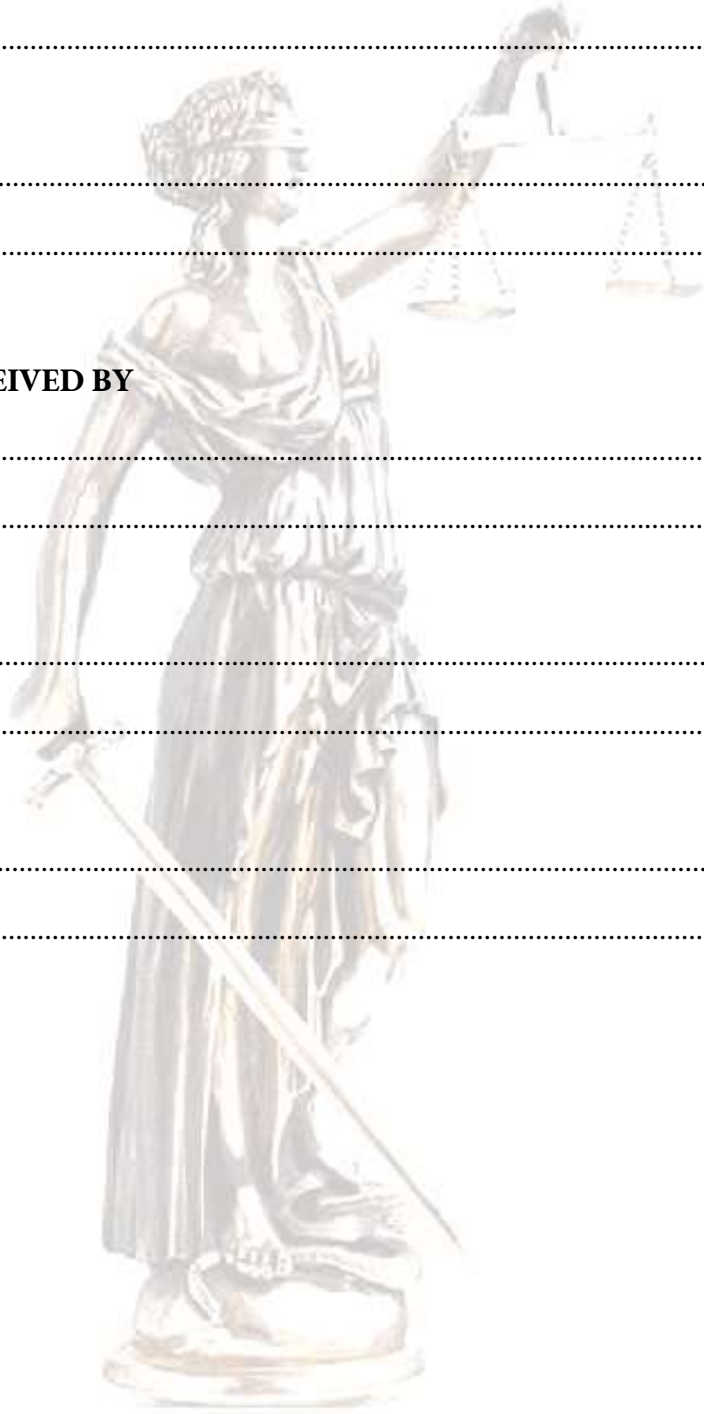
in the presence of

1.

.....

2.

.....



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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 MATTER OF 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 AGREEMENT is made this 20th day of October 2022.

Between

JOHN ROYAL BYENKYA, C/O SUI GENERIS & CO. ADVOCATES, P.O BOX 7117, KAMPALA herein after referred to as the “VENDOR” which expression shall unless context so admits include his duly 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

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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.

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- 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 WITNESS 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.

OBJECTION MYLORD

(PURCHASER)

In the presence of:

SPOUSAL CONSENT. REGULATION 64 FORM 41



ISAAC CHRISTOPHER LUBOGO

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:

OBJECTION MY LORD

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 s.59pf RTA provide that the title is conclusive proof of whatever is entered there on. Under S.20 (1) OF THE RTA, 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*⁶, 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 *zion construction (U) Ltd V Abahire*

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.

⁶ C.A. No.36/1995

OBJECTION MY LORD

Under s.149, of the RTA, 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 **S.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.⁷
- 6) Consent
 - 1) Where the land is family property as defined by s.38(A)(4) of the land act (as amended), then the vendor must acquire the consent of his or her spouse as per s.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.39 of 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 Wakyemba⁸**, the court held that the spousal consent must be in the manner prescribed in form 41 in 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

Article 237(1) of the constitution 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.

⁷ **Amooti Nyaakama V NEMA.**

⁸ **MISC, APP. No.600 Of 2012**

s.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 S.40(2), where the lease is in the excess of five years, it must be registered in accordance with the RTA.

- 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 S.40(4) bars non-citizen from acquiring or holding mailo or freehold. Under S.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 Anor v. Darmonico Properties Ltd and Attorney General*,⁹. 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 S.40(6) of the land Act.

TENANTS BY OCCUPANCY

s.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

⁹ Cost. Ref No.20of 2011

OBJECTION MY LORD

S.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 a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the lease hold certificate of title. 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 4-12 years or more

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

Under S.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 S.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 S.35(8) of the land Act, mandates whoever buys land with existing interests to respect those interests.

RESTRICTION ON ASSIGNMENT OF TENANCY BY OCCUPANCY

Under S.35(1) of 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 an 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

S.1(1) of the RTA defines a proprietor to mean 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.

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

ISAAC CHRISTOPHER LUBOGO

Under S.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 S.1(1) of RTA.

Under S.146(1) of the RTA, 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 RTA.

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

S.147 of the RTA 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***¹⁰. A power of attorney was defined as an instrument in writing whereby one person, as principal appoints 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 corners of the instrument either in express terms or by necessary implication”.

S.148 of RTA 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 affixed a mark instead of signing.

In ***Fredrick Zaabwe***; the court held that the rationale behind S.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.

10

OBJECTION MY LORD

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, BUSOLOSULO 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, BUSOLOSULO 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 BUSOLOSULO**

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 (S.54 and 59 of the RTA) S.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*¹¹ 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 CLR 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 CLR 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.

¹¹ CA No.13 of 1993

OBJECTION MY LORD

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**¹² According to **Mugumba**¹³, 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**, Co¹⁴urt 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 possession

S.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. S.39(7) of the land Act (as amended). Under S.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 S.140(2) of the RTA. 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 S.144 of the RTA by or on behalf of beneficiaries claiming under a will or settlement. Unlike other caveats, where transactions are barred on the land under S.141 of the RTA, for as

¹² CS No. 887 Of 1988.

¹³ Principles Of Law In Uganda Pg.84

¹⁴ (1990)3 WLR 419

ISAAC CHRISTOPHER LUBOGO

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 consents 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 S.140(2) of the RTA, 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 RTA.

Under S.20(1) of the RTA, 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 S.20(2) the caveat in S.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.

OBJECTION MY LORD

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 these 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

COUNSEL FOR THE PLAINTIFF

ISAAC CHRISTOPHER LUBOGO

Drawn and filed by:

SUI GENERIS & CO. ADVOCATES

P.O.BOX 7117,

KAMPALA



OBJECTION MY LORD

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 7117 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

OBJECTION MY LORD

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.

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

S.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

S.21(2) allows the applicant (person bringing land under the act) if he deems 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 S.22(1) upon expiration of one month 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 S.139

Under S.140(2) the caveat lapse upon the caveator giving a 60days 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 don'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 IN BLOCK 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 7117, 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.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE REGISTRATION OF TITLES

ACT, CAP. 230.

**AFFIDAVIT IN SUPPORT OF THE CAVEAT FORBIDDING REGISTRATION OF
CHANGE IN PROPRIETOR OR DEALING WITH THE ESTATE COMPRISED IN
BLOCK 217**

PLOT 19 BUSOLOSULO

I PANTALEO OFWONO, C/O, SUI GENERIS, P.O.BOX 7117, 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 BUSOLOSULO 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

DEPONENT

ISAAC CHRISTOPHER LUBOGO

Before me

COMMISSIONER FOR OATHS

Drawn and filed by:

SUI GENERIS,

P.O.BOX 7117, 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 may be in joint tenancy or tenancy common.

JOINT TENANCY

Where 2 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 in 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 one co-owner has a leasehold 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 deceased 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 **S.54 & 92 of RTA** 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 S. of 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.

OBJECTION MY LORD

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 licensee 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 3 years 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 for 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 S.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 RTA.

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

Lessee could sue for damages and an injunction restraining the landlord. **Dharas & Sans Ltd V Elys Ltd (1963) EA 573.**

Land lord.

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 covenant 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 loss of mesne profits **Kamanyire V Standard Bank (U) Ltd (1977) H 82.**

The action for recovery of damages of mesne 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 V Haji Kasaka & Mbarara Auction Mart (1971) I URC 222**, The v court emphasized that the remedy of distress is only 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 S.103(b) of the RTA, a landlord may exercise the right of re-entry where: -

OBJECTION MY LORD

- 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.
- c) Denial of the lessor's title.

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 continue 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 on 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 Of Title, 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 S.114 of the RTA, 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 Coffee 1976 HCB 12**, the re-entry determines the lease and the refusal of registrar to register the re-entry does 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 its effected), the lessee may apply under S.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.**

Bin the case of ***BILLSON & ORS V RESIDENTIAL APARTMENT LTD, (1992) I ALLER 141***, the HOL 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 S.108(1) of the RTA, 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. **Kalani V Kaurisca No.22 of 1995.** (2) Where the tenant abandons the premises and the landlord re-enters them. **Mariano V Komakech Walter &ORS.**

Under S.108 (2) of RTA, the registrar must enter in the register book a memorandum recording the date of such surrender S.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.***

OBJECTION MY LORD

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 RTA are provided under s.102 & 103 of the RTA. At common law certain come were implied against the landlord e.g (1) 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 licensee 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 invitation of a friend to stay on it may become irrevocable where a proprietary estoppel has been created. The licence can be revoked anytime with reasonable damages.
- 2) A licence coupled with an interest.

This 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. The licence is irrevocable whilst the grant remains in existence and may be assigned provided it is disposed of with the interest of which it is annexed.

The interest granted is a profit à prendre which makes the licence irrevocable. The licence has no independent existence merely as a licence.

- 3) A contractual licence.

This is granted often the terms of a contract which restricts the licensor's right to revoke it. The contract according to the court in *Tanner V Tanner (1975) 1 WLR 346*, the contract may be express or implied.

In *Errington V Errington (1952) 1 KB 290 The CA* held that contractual licence for the occupation of a dwelling 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 purchaser 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 KB*, the 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 *South Works LBC V Mills (2001) 1 AC*, the court held that there is no requirement that the interferer is direct or physical, nor should the acts complained of support an 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.

OBJECTION MY LORD

(2) Obligation not to delegate from this grant.

In *Palmer v fletcher*¹⁵, the court held that it is a principle of general application that a grantor 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 grantor 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 Latimer clark Muirhead and (1894) CH.437*.



¹⁵ (1663) I LEV. 122

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 100years effective 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 before 21st 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 remedy's available to the company in the event that she is about re-enter onto the land.
5. What is the form, procedure and necessary documents for surrender?

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

Under Art-2c (1) of consent, 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 S.40(7)

- a) Which defines a non-citizen to include the cooperate body in which the controlling interest lies with non-citizen S. 40(8)(a) 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, then it's a non-citizen.

OBJECTION MY LORD

Under Art. 237(2)(c) of the consent. A non-citizen can only acquire lease in land but not a mailo or freehold interest. S.40(4) re-emphasizes this position.

Therefore, the parties can enter into a lease agreement in respect to the land subject to provision of the land Act, S.53(5) and S.40 and the provision of the RTA.

S.3(5) of the land defines what lease hold tenure is S.3(5) stipulates the essential requirement of a lease inter alia exclusive possession, duration and payment of rent. S.40(2) of the land Act memo that any lease in excess of 5 years to a non-citizen must be registered in line with the provision of the RTA.

Under S.54 of the RTA no unregistered instrument can pass on an interest in land the RTA S.101 of RTA 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 hearing creates the lease, go ahead and register 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.

ISAAC CHRISTOPHER LUBOGO

**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. 7117, 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.

OBJECTION MY LORD

- 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 99 years 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 UGX 30,000,000 (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 4,000,000 (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 than the 20th days of January of each year for as long as this agreement remains in force.

4. Lessor's obligations and undertaking.

4.1. The lessor 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 in 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-observance 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 calamity including but not limited to earthquakes 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.

OBJECTION MY LORD

- 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)

Joan Nansambu,

In the presence of

Namukasa Maria Rose

Signed by (lessee)

JOHN SOREN (DIRECTOR)

in the presence of

Gukiina Patrick

ISAAC CHRISTOPHER LUBOGO

ADVOCATE

ADVOCATE

Drawn by

SUI GENERIS & CO. ADVOCATES

P.O.BOX. 7117, KAMPALA

UGANDA.



OBJECTION MY LORD

**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 1 of the civil procedure Rules 51 71-1 (as amended))

TAKE NOTICE that this honorable court shall be moved on the.....day of2022 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 7117, KAMPALA
UGANDA*



OBJECTION MY LORD

**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 NANSAMBURESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE MOTION

I, JOHN SEMEI OF SUI GENERIS & CO-ADVOCATES, P.O.BOX. 7117, 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

ISAAC CHRISTOPHER LUBOGO

COMMISSIONER OF OATHS

Drawn and filed by

SUI GENERIS & CO ADVOCATES

LAW FIRM

P.O.BOX 7117, KAMPALA

UGANDA.



OBJECTION MY LORD

**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 MATTER OF THE LEASE COMPRISED IN
KYADONDO BLOCK 237 PLOT 294 AT MUTUNGO
(Hereinafter referred to as “the land”)**

DEED OF SURRENDER OF THE LEASE.

This deed made this 25th day of November 2022.

BETWEEN

Joan Nasambu of SUI GENERIS & CO – Advocates, P.O.BOX 7117 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.

ISAAC CHRISTOPHER LUBOGO

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 S.101 of the RTA, 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: -

OBJECTION MY LORD

- a) The physical planning authorities under S.33(1) of the physical planning Act.
- b) The NEMA.

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 CONTRACTS 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 7117, 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 house and other use whatsoever expect with the express consent of the lesser.

ISAAC CHRISTOPHER LUBOGO

WHEREAS the lessee has constructed 20 of the said 30 residential houses but is cash constructed to construct the other 10 and 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

OBJECTION MY LORD

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 shops 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 periodic tenants.

Issue 2.

Mulunji can distress for rent in arrears and also recover mense profits from banaparte.

Refer to notes under Distress for rent and notes on 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).



OBJECTION MYLORD

NOTICE OF EVICTION TO PERIODIC TENANTS.

SUI GENERIS & CO ADVOCATES

P.O.BOX 7117, 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 7117, 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)

OBJECTION MY LORD

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 dominate.
- The land over which the right is exercised is the serviette land.
- An easement is an interest in land subject to the principle of indefeasibility and is enforceable against any proprietor of the serviette 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*¹⁶, 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*¹⁷, 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.

In *Makumbi (Mrs. E) & Another V Puran Singh Ghana*, 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 some activity connected there with and is reasonably necessary for the better enjoyment of that land.

In *Re Ellenborough Park* (1956) 3 ALLER 667, 9. 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.

¹⁶ (1962)EA 331

¹⁷ (1866) 2 H & C 121

c) The dominant & servient land must not be owned or occupied by the same person.

In *Re Ellerborough Park*¹⁸, the court stated that it's a requirement for an easement that the dominant and servient land must be owned and or occupied by different persons.

d) The right must be capable of forming the subject matter of a grant.

Several things are encompassed here;

- 1) There must be a capable grantor and grantee. In *National Guarantee Manure Co V Donald*¹⁹ 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.

CREATION OF EASEMENTS

Easements may be created by:

- Statute
- Express grant or
- Reservation
- Implied reservation

¹⁸ (1956) 3 ALLER 667

¹⁹ (1859) 4 H & C

OBJECTION MY LORD

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 servient land either orally or writing grants the easement say a 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 Tejsi & ors V A.G of Kenya (1959) EA 630* 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 D.C.O V Patel*, the court stated that the owner of the servient 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 grantor and the grantee will be implied even though it is not expressly reserved or granted in the conveyance. In *Wong V Beamont 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. Which 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 S.62(1) of the Road Act where a part makes an application to the minister. Under S.3 of the Road Act, the minister is the minister in charge of Roads. S.62(3) of the Road Act mandates that the order should only be made upon the owner of the serviette land being adequately compensated. S.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.

OBJECTION MY LORD

REGISTRATION OF EASEMENTS

There is no express provision requiring the registration of easements. S.60 of RTA 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 S.64(2) of RTA registration/ endorsement makes no difference because the section states that easements created by enjoyment or user or subsisting over or upon any land constitutes 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 its 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 servient 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) LR1QB1*. 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 S.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 one 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 S.59 of the RTA 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 an 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.

OBJECTION MY LORD

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)

S.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 S.78 of the RTA any person claiming that they have acquired a title by possession to land registered under this Act, they may apply to the registrar for an order vesting the land in him or her for on estate in fee simple or other estate claimed.

The application according to S.79 of the RTA 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 S.147, 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 application at the applicant's expense and issue any other persons as they deem fit with notices.

The applicant under S.82 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 registrar the registrar must grant the application altogether or in part S.83.

Under S.87 upon lapse of the time appointed in 83, 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.

ISAAC CHRISTOPHER LUBOGO

**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 7117 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 my 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.

OBJECTION MYLORD

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.



ISAAC CHRISTOPHER LUBOGO

**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 7117, 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 annexure "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.

OBJECTION MY LORD

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 7117 KAMPALA

UGANDA



**VESTING ORDER WHERE THERE IS A COMPLETE TRANSFER & IS IN POSSESSION
BUT NO TRNSFER EFFECTED.**

Under S.167 of the RTA 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

OBJECTION MY LORD

SUI GENERIS & CO ADVOCATES

P.O.BOX 7117, 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.

ISAAC CHRISTOPHER LUBOGO

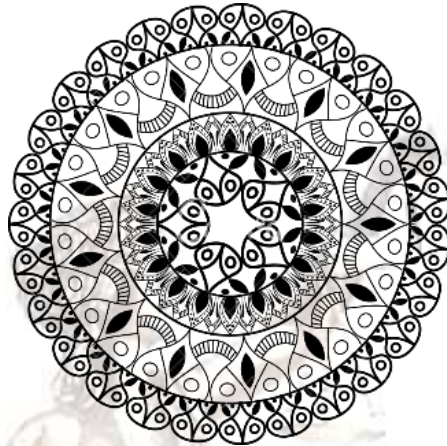
Yours faithfully

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 S.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 S.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

OBJECTION MYLORD

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 RTA.

The principle is enshrined under section 59, 64 and 181 of the RTA.

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 S.189 (now 181) his title couldn't be impeached or cancelled notwithstanding 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 S.64 of RTA the act guarantees indefeasibility of title subject to the following except.

- a) Encumbrances notified on the folium.

Under S.64 of RTA, 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 S.64 of RTA, 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 ***Charles Nkooja Amooti V Kyazze francis***

- c) Land included by wrong description.

S. 64 of RTA 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.

In *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.

S. 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.

Under S.39(9) of the land Act 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) IAC 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 *Meggary and Wade, Modern 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

OBJECTION MY LORD

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

S.64 of RTA stipulates that the title of a registered proprietor is indefeasible except in case of fraud.

What is fraud?

Katureebe JSC in the case of *FJK Zaabwe V Orient Bank & 5 Ors S.C.C.A No.4 of 2006* defined fraud as an intentional perversion of truth for purposesanother in reliance upon it to part with.....things belonging to him or to surrender.....a false representation of a matter of fact,.....or by conduct, by false or misleading.....concealment of that which deceives and.....deceives another so that he shall actlegal injury.

Bad faith and fraud are synonymous and also synonymous unfairness etc. fraud is distinguishable from negligence as it is always positive intentional. It comprises all acts, missions and concealments involving a breach of a legal or equitable duty and resulting in damage to another.

In *Kampala Bottlers Ltd V Damanico Ltd, S.C.C.A No.22 of 1992*, Wambuzi, CJ stated that it is well established that fraud means actual fraud are some Act of dishonesty.

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 S.177 of the RTA. 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 RTA, 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 Ors* 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 about 130 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 tax 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.

OBJECTION MY LORD

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 inquiries.

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 inquiries 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.07OF 1996* at page 2B, 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 RTA, 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 S.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 S. 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.

OBJECTION MY LORD

- 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 S.181 of RTA 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 in good faith 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 RTA. it is not an equitable remedy although its history stems from the common law. It would not even qualify as a remedy for it is only a defence by a person registered as proprietor under the RTA".

In *bannington njuki v william nyanzi b.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 may be monetary or in money's worth and there is no requirement for such consideration to be adequate. S.181 of RTA 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 S.184 (now 181) of the RTA. In *Gabriel Rugambwa and Anor V Ezironi Bintu Bwambale*,²⁰ court defined a purchase to mean to buy and

²⁰ HCCS 359 (1992)

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.

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*²¹, 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 Babweyaka and OR's*, in which the court held that although mere knowledge of unregistered interests cannot be imported as fraud (S.136 of RTA) 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.

See constructive fraud.

s.136 of the RTA read together with S.64(1) of the RTA limit the notice under S.181 of the RTA to actual notice of the interests entered on the register.

Under S.136 of RTA, actual or constructive notice to the purchaser of the existence of unregistered interests on the land does not amount to fraud or dishonestly.

²¹ (no.1)(1981) AC513

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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 THE STATE OF THE LATE MOSES KONGOLE**
- 2. COMMISSIONER LAN REGISTRATION..... 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. 7117, 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.

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- 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.

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- 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.

OBJECTION MY LORD

Drawn & filed by:

M/S SUI GENERIS & CO ADVOCATES

P.O. BOX 7117,

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.

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List of Authorities.

1. The 1995 constitution 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.

Dated at KAMPALA on this 28th day of January 2020.

M/S SUI GENERIS & CO ADVOCATES

COUNSEL FOR THE PLAINTIFF



OBJECTION MY LORD

FUNCTION AND GENERAL POWERS OF THE COMMISSIONER FOR LAND REGISTRATION (CLR)

Appointment

The CLR is appointed pursuant to S.3(1) of the Registration of titles Act.

Functions of the CLR

- 1) Under S.3(1) of RTA, the CLR has the charge and control of the office of title (registry)
- 2) Under S.37(1) of the RTA, the CLR is charged with the maintenance of the register book. This entails, making entries and cancellations on the Register book.

General power of the CLR

- 1) Power to call for duplicate certificate of title.

Under S.73 of the RTA, the CLR 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 pursuant to S.78 where a party has acquired a resistible interest by adverse possession and under S.167 where there is a complete purchase but transfer has not been effected because the transferor is dead or cannot be found.
- 3) 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 S.170(a) of the RTA.
- 4) Power to correct errors.

The CLR under S.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.

- 5) Power to cancel certificates of titles

Pursuant to S.69 of the RTA (old law) the CLR had power to cancel certificates of title on grounds of error, illegality, fraud and wrongful description

In *Edward Rurangaranga V Mbarara Municipal Council*, SCCA no.10 of the RTA then supreme court relying on 8.69 of the RTA then held that the CLR had the power to cancel a certificate of title on grounds of fraud among others.

However, under S.91(2) of the land Act (as Amended) the powers of the CLR 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 CLR 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 S.91(2) of the land Act.

S.91(2) of the land Act, envisages illegalities not rooted in fraud such as an illegality arising under S.39 of the land Act and S.40 of the land Act but not fraud.

The omission of fraud under S.91(2) 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.

- 6) Power to remove encumbrances.

Pursuant to S.168 of RTA, if the CLR is satisfied that any encumbrance notified on any certificate of title has been fully satisfied, extinguished or otherwise then the CLR can remove the encumbrances.

- 7) Issuance of certificate of title

Under S.38 of RTA, the CLR issues certificates of title for land brought under the operation of Act, under S.70, the CLR is empowered to issue special certificates where the duplicate is lost or obliterated. Under S.72, CLR is empowered to issue substituted certificates of title where the original is missing.

REPLACEMENT OF CERTIFICATES OF TITLE

DUPLICATE CERTIFICATE

Under S.70 of RTA, where a duplicate certificate of title is lost or destroyed or becomes so obliterated as to be useless, a person can apply to CLR 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 CLR 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 S.70 of RTA, 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 S.70 of RTA, 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 CLR requesting for issuance of a special certificate of title with the reasons clearly indicated e.g., lost or obliterated.
- (2) Depone an SD 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.

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- (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 check 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.

OBJECTION MY LORD

LETTER OF APPLICATION FOR SPECIAL TITLE

SUI GENERIS & CO ADVOCATES

P.O.BOX 7117, 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 MENGU.**

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.

ISAAC CHRISTOPHER LUBOGO

STATUTORY DECLARATION.

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. 22

AND

IN THE MATTER OF A STATUTORY DECLARATION BY DOMINIKO MAPAPA.

STATUTORY DECLARATION

I, BENJAMIN RUBAGANO C/O SUI GENERIS & CO ADVOCATES P.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 3 Plot 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 days of Jan 2020.

DEPONENT

BEFORE WE

Original certificate (white page)

OBJECTION MYLORD

Under S.72 of the RTA, here the white page is lost or destroyed or so obliterated as to become illegible the CLR 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.

S.73 empowers the CLR 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 CLR must sign a memorandum upon the copy made stating that if is a 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 its signed and used in place of the original for purposes of dealings.

Procedure for notifying CLR of lost, obliterated or destroyed original.

- (1) A formal letter notifying the CLR that the original certificate of title was obliterated, destroyed or is lost and that a copy be 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.



CONDOMINIUM PROPERTY

S.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.

CREATION OF A CONDOMINIUM PROPERTY.

Under S.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 & must indicate the number of units into which the building is divided S.3 (2).

On application for registration of a condominium plan the Registrar must pursuant to S. 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.

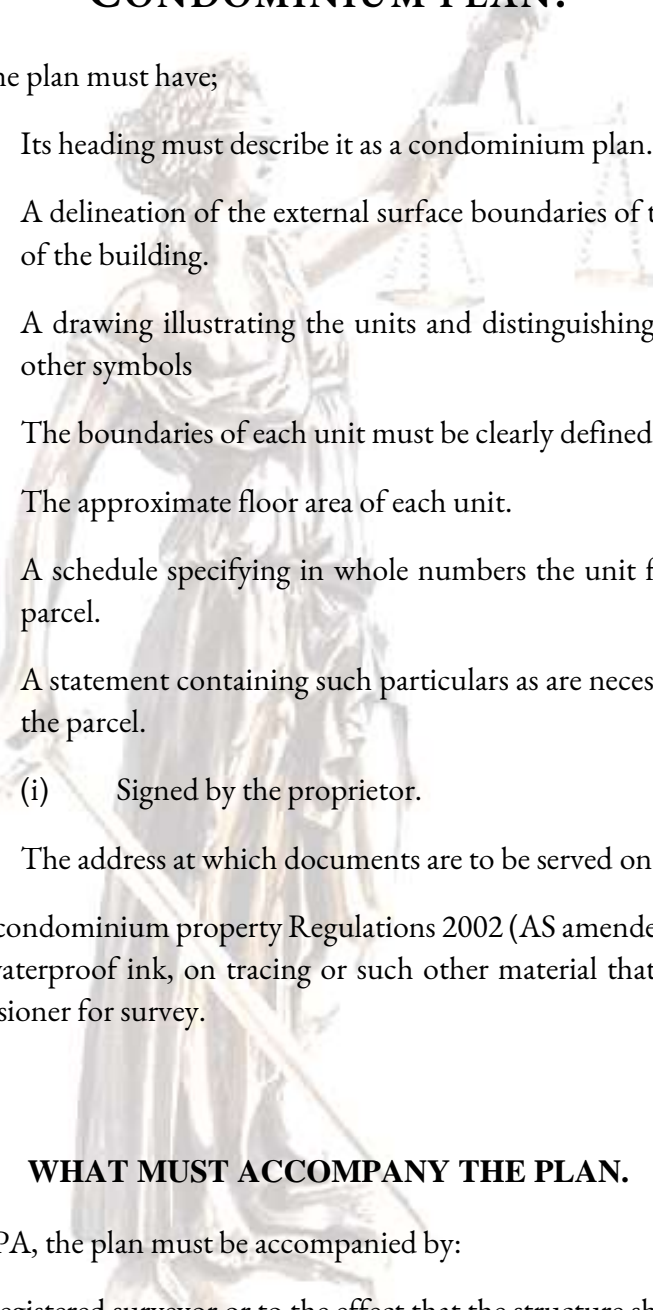
Pursuant to S.5(2) of the Act, a certificate of title issued in respect of a unit comprised in condominium plan is deemed to be issued under the RTA and all registration techniques, procedures and practices applicable under the RTA apply to such certificate of title as per S.5(1) of the CPA.

Under S. 5(3) of the CPA, 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 RTA.

OBJECTION MY LORD

CONDOMINIUM PLAN.

Under S.10 (1) of CPA, 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) A statement 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. 29 of 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 S. 11(1) of CPA, 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. S.792) of CPA.

S.2 of the CPA 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 S.16 of CPA, 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 S.24(1) of CPA 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. S.24(2) (a) of the CPA. S.25 on voting right where the owner is incapable.

OBJECTION MY LORD

THE CORPORATION

Under S.20 (1) of CPA, 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 condominium plan No.....”

MEMBERSHIP.

Under S.20(3) of CPA the membership of the corporation is comprised of the owner of the units in the parcel.

LEGAL PERSONALITY.

Under S.20(4) of CPA, 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 S.21 of the CPA 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 S.21(2).

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- By special resolution acquire or dispose of an interest in immovable property S.21(4)
- The board is mandated to hear complaints from aggrieved members of the corporation. S21(6).

MEETINGS OF THE CORPORATION.

Pursuant to S.28(1) a board shall once in each year, convene an annual general meeting of the owners.

Under S.28(2) of CPA, the first annual general meeting of the owner is to be called within 3 months after the election of the board.

The board referred to in S.28 is constituted under S.27 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 S. 48(1) of CPA, the status may be terminated by a unanimous resolution.

S.2 of CPA defines a unanimous resolution as a resolution supported by all owners of units.

2. Status may also be terminated under S.48(2) where the corporation an owner of a unit 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.*

OBJECTION MY LORD

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 buy land if it is being sold. Power of corporation to evict unit owner.

In *York condominium corporation No. 137 V Hayes*, the court declined to order a unit 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.

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 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 3716724 *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 declined 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

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the eyes of equity, the purchaser becomes the owner from the date of execution of the contract. ***Hysaught v Edwards (1876) 2 cbd 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, ***hysaught v Edwards (1876) 2 cbd 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 risk 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 full 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 ***Hysaught v Edwards***, 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 allibhai and 2 ors v nandlal harjivan karia and 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 of 1995***, the court stated that the principles at common law and in equity is that, in the absence of a contrary intention, time is essential, even though it

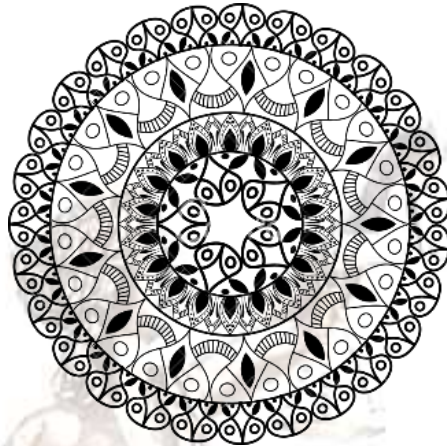
OBJECTION MY LORD

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.





MORTGAGES

Documents to be on file.

Company

- Resolution to borrow
- Power of attorney
- Search result from company Reg.
- Certificate of incorporation.
- Particulars of Directors (form20 of company Act)
- Individual
- Marriage certificate/SD.

General

- Search at land Registration (search certificate)
- Credit worthiness. (Credit references bureaus report)
- Feasibility report
- Boundary opening report.

OBJECTION MYLORD

- Valuation report.
- Duly executed mortgage deed.
- Loan after letter
- Guarantorship undertaking duly signed.
- IDs of borrowers and guarantors
- Photographs of borrowers
- Receipt of payment of stamp duty.

RIGHT OF A MORTGAGOR / REMEDY.

- Discharge of mortgage upon repayment (S.14)
- 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 CLR 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 of 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

OBJECTION MY LORD

PROPER EXECUTION

General parts v NPART should be in latin character

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

S.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.

S.34 (4) of the MA & S.54 & 59 of RTA

Registration of the charge at the company Registry.

S.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

S.39 of land Act, prohibits the mortgaging or pledging of any family land without the consent of the spouse.

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s.5(1) of the mortgage Act, 2009 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.

s.5 (2) (a) further 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 s.5(3), 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 S.6 99(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

S.6 (1)(a)(i) 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 S.6(1)(a)(ii) 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.

s.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 S.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

OBJECTION MY LORD

In *Enid Tumwebaze v Mpeirwe Steven & Anor HCCS No.39 of 2010*, court nullified the sale of matrimonial property due to lack of spousal consent before the said land was mortgaged

s.39 (4) of the land Act emphasizes that the doctrine of bona-fide purchaser for value is not applicable to family land & thus the purchaser is not protected

VARIATION OF MORTGAGES

S.12 of the Mortgage Act

a) Interest Rate

may be varied pursuant to s.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 mortgagee

b) Variation of amount secured

This pursuant to S.12 (2) and is effected by execution of memorandum stating the increment or decrease.

The memorandum as per S.12 (5) 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 S.12(3) & 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 mortgagee remedy for mortgagor where mortgagee deviates from terms review of the terms under s.34 of the mortgage Act, court has the power to review certain mortgages on the application by the persons stated in S.35

S.35 (1) 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

S.68 of the contracts defines a contract of guarantee to mean a contract to perform a promise or to discharge the liability of a 3rd party in the case of default of the 3rd party which may be oral or written

Under s.70 of CA, 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 S.71 (1) of the CA, the liability of a guarantor shall be to the extent to which a principal debtor is liable unless otherwise provided by a contract.

s.7 (12) 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 S.81, where a guarantor as a result of default by the principal debtor, performs the debtor's obligation, the guarantor assumes all rights which the creditor has against the principal

under S.28(1), 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) stipulates that where a creditor loses 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 S.85 (1) & (2)

OBJECTION MY LORD

DISCHARGE OF A GUARANTOR

1. Where the lender & the principal vary the underlying contract without the consent of the guarantor. S.14 of CA
2. Where the principal debtor is released or where the act or omission of the creditor discharges the principal debtor S.75
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 S.80

REMEDIES AVAILABLE TO A MORTGAGE IN CASE OF BREACH

In *Michael 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 **S.19 (4)** of MA, 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 **S.19 (3)** of MA

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 so. If there is noncompliance, the mortgagor must issue a 45 warning days' notice requiring the mortgagor to rectify the default as per S.19 (2) of MA. The flow of the above notice as laid down in s.19 of MA 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 S.20 of MA.

1. Appointment of a receiver.

S.2 of MA defines a receiver to mean a receiver, or a manager, or a receiver and a manager in respect of any land, and includes any person appointed as a receiver. Under S.22(1) of MA, it is 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 S.22(2) of MA.

The appointment of a receiver must be in writing signed by the mortgagee. (S.22(3)). In *Grindslay Bank V Edward Boaz*, 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 lawyer, court found the appointment of a receiver null and void.

The receiver as per S.22(6) of MA is deemed to be an agent of the mortgagor.

The receiver pursuant to s.22(7) 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 S.22(9) of the MA.

2. Mortgagee's action for money secured by the mortgage.

This is provided for under s.21 of the MA.

3. Mortgagee's power of leasing

S.23(1) stipulates that unless otherwise provided in the mortgage 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 S.23(2) of the MA serve a notice on the mortgagor of at least 15 working days.

OBJECTION MY LORD

Under S.23(3), 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 S.24(1) of MA, 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 S.24(2) of MA, 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) A court orders.

All monies received during possession must be disbursed as per S.22(9) of the MA.

5. Power of sale

Under s.26 (1) of MA, a mortgagee 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 mortgagor and the sale must proceed after 21 days from the date of the service s.26 (2)

Under s.26(3), 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 s.27 (1) of MA, mortgagee 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 S.28(2), the mortgagee 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 s.28 (1) (d) 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 Reg.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 Reg. 13 are mandatory

VALUATION OF PROPERTY.

Under Reg. 11(1) of Mortgage Regulations, the mortgagee must before sell the property to ascertain the current moment value & the forced sale value.

Under sub-Reg. 2, the valuation report should not be made more than 6 months before the date of sale

DEPOSIT BY PURCHASER

Under Reg. 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 (Reg.19(2)). The balance upon payment of the deposit should be paid within 21 working days (14(3)) . Failure 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 (Reg.15)

Mere irregularities in conducting the sale by public auction do not initiate the sale. (Reg.16)

OBJECTION MY LORD

PROTECTION OF THE PURCHASER

Under s.29 of the MA, the purchaser is protected

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

s.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 s.3 (4) of the MA

It's created by a deed which is then registered as an in encumbrance on a certificate of title

s.54 and 59 of the RTA. 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 S.2 of M.A

S.3 (5) of MA 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 s.3 (8) of MA when the holder of registered land deposits any of the following;

- i. The certificate of title 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.

OBJECTION MY LORD

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. DPLAINTIFF(MORGAGEE)

VERSUS

PETER JJEMBA KAGGWADEFENDANT
(MORTGAGED)

ORIGINAL SUMMONS

(Under section 3(5)) of the mortgage Act, 2009, and 0.34 r 4 of the CPR)

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 caveat 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 advanced 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.

ISAAC CHRISTOPHER LUBOGO

- 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

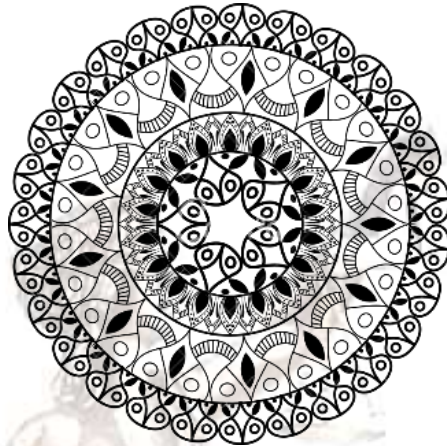
You are hereby required if you desire to be heard upon the determination only of the said questions to appear personally or by Advocate on the of2020 at 9 O'clock or soon thereafter when this court will proceed to make such orders whether by way of declaration or otherwise as the court may think fit 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 hand and this seal of the High Court this of August 2009





EXPROPRIATED PROPERTIES

WHAT IS EXPROPRIATED PROPERTY?

S.2 of the expropriated properties act 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 departed 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 have 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 1st October 1972. The court was invited to decide whether the property was expropriated property and thus the expropriated properties Act applies. The supreme court held that the property affected must have been vested 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?

S.1(B) of the EPA 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 s.1(c) of EPA 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.

S.2(2)(a) of EPA 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 EPA nullified any of the transactions entered mentioned therein, if the transactions was effected between the time 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 EPA 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 s.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*.

OBJECTION MY LORD

OBJECTIVE OF 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 & Registrar 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.

S.8 of the EPA 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 babra HCCA NO.151/95*, before acquiring a 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.

S.12 of EPA deals with compensation. S.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 EP (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 S.12 (1) & (3) of EPA, 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 EPA.

In *Habre international Co. Ltd v Ebrahim Alarakia Kassam & other*²², the appellants sued the respondents in the High Court claim 70,000,000/= as compensation for the developments on the property

²² SCCA No. 4 of 1999

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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 by fr... 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 COA, 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 expired 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 S.12(4) of EPA is the purchase price less the derived or which ought to have been derived from the property or business from the date of such transfer S.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 Art.274 so as to conform to Art.26(2) of the constitution which require 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 S.12(2) and S.12(4) he stated that S.12(2) covers compensation for improvements on the property while S.12(4) caters for compensation of the property as originally purchased.

APPEALS FROM MINISTER'S DECISION

Under s.15 (1) of EPA an aggrieved person may appeal the decision of the minister to the high court.

PROCEDURE.

Reg.15 of the EP (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 S.15 of EPA

In *Moham Musisi Kiwanuka v Asba 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

OBJECTION MY LORD

LAPSE OF 30 DAYS IN WHICH TO APPEAL

In *Habre International Co. Ltd v Ebrahim Alarc Kassam*²³, 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 *Mulwoza & 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.



ENVIRONMENTAL CONSERVATIONS

PUBLIC TRUST DOCTRINE

²³ SCCA No.4/1999

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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, s.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 s.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 s.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 E/A. S.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 E/A

Pursuant to S.111(1) & (2) of National Environment Act, the developer has the duty to carry out the E/A & ensure its quality by ensuring that the competent persons are employed to conduct it in accordance with the National Environment (E/A) rules.

3. Submit E/A report to NEMA for approval

SALE BY COURT

OBJECTION MY LORD

SALE WITHOUT TITLE BEING DEPOSITED IN COURT

S.48 of the CPA 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 Enoch 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 appellants 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 s.34(1) of the CPA. In *Simba (k) limited & 5 Ors v UBC*, the supreme court emphasized that an application brought under S.34(1) of CPA 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 DLB
5. Upon approval they forward to M20
6. Its 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

OBJECTION MY LORD

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 8.201 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

Lakeside v Sam Engola

Formula feeds & 3 ORS v KCB

3. Physical planning authorities for permission and to see whether the lands are available. (Look at park sec. 5 of planning Act)

s.3 of physical planning Act, all the country is a planning area

s.33 (1) of physical planning Act, 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.

S.27 of the land Act

7. The tenants by occupancy then the periodic tenants

Consent

8. Whether the property rates have been paid

1. b) S.29, 31, 35, 36

Kigozi Mayambala

Kampala District Land Board

2. Nature of sell of land is governed by the law of contract.

OBJECTION MYLORD

Description of land

Any rights enjoyed by the property as casements

Consideration

3. Define an instrument (when dealing registration)

S.84 of RTA

S.59 of RTA

S.92 of RTA

- ***Francis Ntabazi v Kashifa***
- S.147 & S.148 attestation of transfer

4. Fees to be paid

- Search fees
- Lodgment
- Registration
- Legal fees
- Perusal fees

5. Ethical consideration

Being counsel for both parties

Failure to carry out due diligence

Witnessing the instruments without a valid Practicing Certificate(P.C)

6. Documents to lodge

- Transfer deed
- 2 passport photos
- PC

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 2.
- The Registration of Titles Act, CAP.

OBJECTION MY LORD

- The Land Act, CAP 227 (as amended)
- The Land Regulations of 2004 (as amended);
- The Succession Act Cap 162;
- The Contract 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 S. 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 S. 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. S. 43F(1)(f) of the Children Act as amended.

In the case of **Ajdiru 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 *parens patriae* 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 S. 43F(1)(f) of the Children Act as amended.

OBJECTION MY LORD

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.



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 PHYLLIS
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 Phyllis 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 Phyllis Koku and Fillian Mpako (minors) for the benefit of the minor.

Costs of this application provided for.

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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 thisday of2018

.....

Counsel for the applicant

SUI GENERIS &Co. Advocates

Given under my hand and seal of this court this.....day of2018

.....

REGISTRAR

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 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 thisday of2018

.....

OBJECTION MY LORD

DEPONENT

BEFORE ME

..... COMMISSIONER FOR OATHS

DRAWN AND FILED BY

SUI GENERIS & CO. ADVOCATES

P.O BOX 7117 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 vs. 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.

OBJECTION MY LORD

Where the contract is breached, the vendor can treat the contract as repudiated and elect to either refuse to accept the repudiation and 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:-

“In the context of contracts for sale of land the vendor’s obligation is to deliver a good title and the purchaser’s obligation is to pay the price. Those are concurrent and mutually dependent obligations in the absence of any provision in the contract to the contrary. If any party informs the other that it cannot or will not complete the contract by the settlement date, he or she commits

anticipatory breach amounting to a repudiation which gives the innocent party a right to terminate

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 **Sihra Singh Santoh Vs Falulu Uganda Ltd HCCs No. 517 of 2004** as follows:

“where one party (A) to a contract has committed a serious breach of contract by defective

performance or by repudiating his obligation under the contract, the innocent party (B) will have a right to rescind the contract *de futuro*, that is, to sue for damages for any loss he must have

suffered as a result of breach. Such a breach by A does not automatically terminate the contract. B

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 futuro* 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 JOY HCT-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 JOY HCT-01-LD-CA-0024 OF 2017** it was

OBJECTION MY LORD

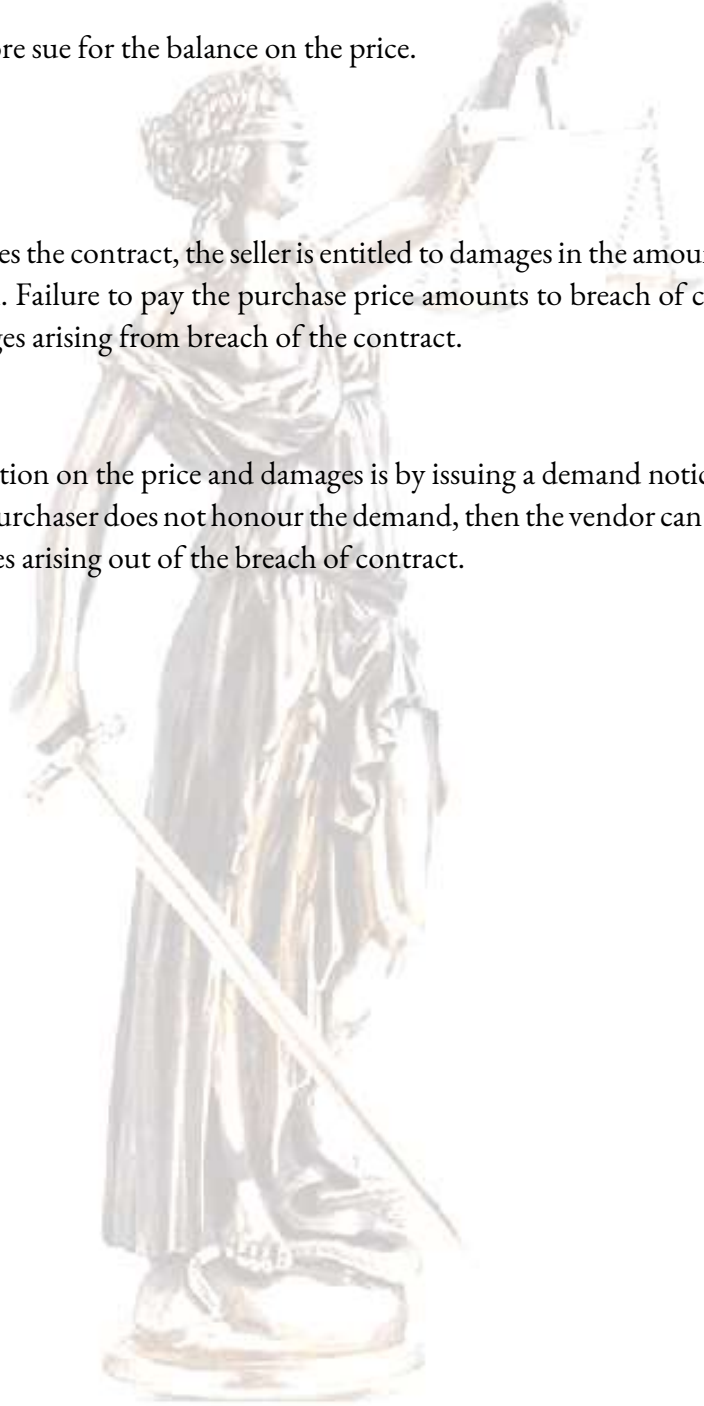
held that It is trite law that where land is bought and any substantial amount is paid on the sale price whether possession has passed on the purchaser or not, the vendor is always entitled to the balance on the sale price and not repossession of the land even if the balances are not fully paid.

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 theday 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 theday of.....2018.

Our client is aggrieved by the fact that you have since failed to honour your debt obligation despite the various reminders.

OBJECTION MYLORD

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 JOY HCT-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 Nkusi's 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.

OBJECTION MY LORD

A caveat is provided for under **Section 139 of 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 139 of 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 S. 139 RTA 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 titles after 10 working days to confirm entry of the caveat upon the registration.

He has to be in possession of the following documents

ISAAC CHRISTOPHER LUBOGO

- *Caveat*
- *Affidavit*
- *Set of passport photographs*
- *General receipts of payment.*

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.



OBJECTION MY LORD

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 7117 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 7117 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 annexure 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.

OBJECTION MY LORD

I CERTIFY that what is stated herein above is true and correct to the best of my knowledge.

Sworn at Kampala this 20th day of October 2018.

By the said:

Major Nkusi Deponet

.....

Before me

.....

COMMISSIONER FOR OATHS

Drawn and filed by

Sui generis and co.advocates

P.o.box 7117

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 S. 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 RTA provides for the form of application.

Every application under section 78 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.*

S.80RTA: provides that Registrar should advertise the application in the Gazette at the applicant's expense.

S.81 RTA: Applicant shall cause notice to be served.

S.82RTA: After a period not more than 12 months registrar may grant the application unless

the caveat has been lodged forbidding the same.

OBJECTION MYLORD

S. 87 RTA 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 S.167 of the RTA 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.



OBJECTION MYLORD

Application for vesting order

There is no procedure for the application under S. 167. 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 numberedin 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 S.79(a) and (d) of the RTA)

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.

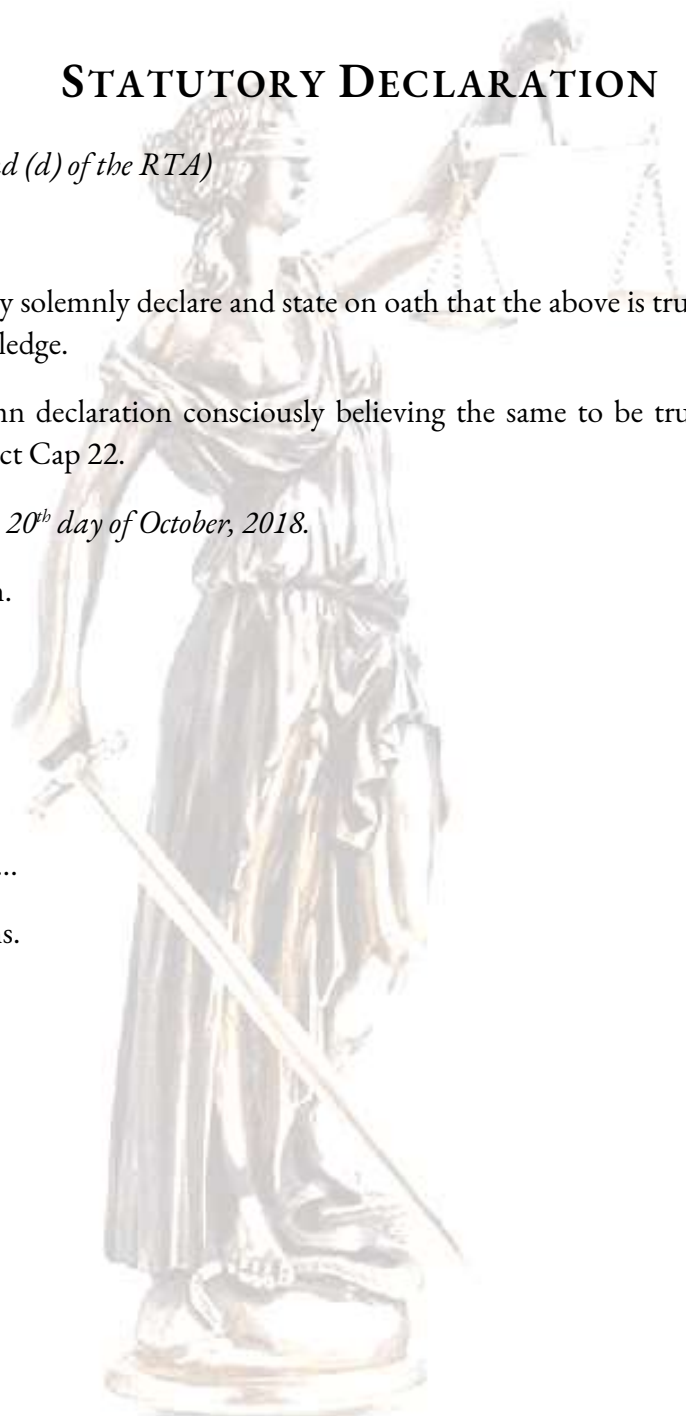
.....

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.

Advise 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.

Sec 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.

Sec 134(1) R.T.A – 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 land (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 give it an instrument number.

He cancels the name of the deceased from the register and in his place register the administrators of the estate as proprietors on both the original and duplicate certificate of title pursuant to sections 134 of the R.T.A , Cap 230.

OBJECTION MY LORD

Once registered has power to deal with the land but must act bonafide.

S. 134(4) RTA 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, 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 RTA 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 s.147 of the RTA cap 230, powers of attorney are duly executed when signed by a person and attested by any witness falling within the ambit of s.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;

OBJECTION MY LORD

- 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/donee/agent
- capacity of person giving powers of attorney

ISAAC CHRISTOPHER LUBOGO

- purpose and object
- date and signatures of donor, donee and witness.

NOTE: under S. 148 RTA 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 RTA.

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.

OBJECTION MY LORD

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 thisday of20.....

Signed byin 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.

S.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.

SEC. 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.

S. 141 RTA prohibits any entry to be made in the Register book while the caveat continues to be in force.

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 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, BOSCO of 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/s SUI GENERIS Plot339, Makerere.**

P.O. Box 7117, Kampala, Uganda, as the place at which notices and proceedings relating to this caveat may be served.

Dated at Kampala this22..... day of ...OCTOBER 2018

..... **BOSCO CAVEATOR**

Signed in the presence of:

ADVOCATE

ISAAC CHRISTOPHER LUBOGO

M/s SUIGENERIS AND COMPANY P.O.BOX 7117, KAMPALA.



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 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 7117, 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 Breda 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



OBJECTION MY LORD

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 is the forum, procedure 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?

S. 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.

OBJECTION MY LORD

A certificate of title is a document signifying ownership.

S. 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.

S.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.
- (5) 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.

S.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.

S. 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.

S. 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.

S. 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 S. 2 (d) of the Land Act Cap 227.

OBJECTION MY LORD

Under S. 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;

S. 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

OBJECTION MY LORD

being rendered so. The important words to observe in that last phrase are the words before the lease takes effect.

Exclusive possession

S.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 negated 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 RTA 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. S. 38 (3) and (6) RTA. 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 S. 38(5) of the RTA. 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 S. 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. S. 59 RTA a person whose name appears on the title is the owner of the property.

ISAAC CHRISTOPHER LUBOGO

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 S. 46(2) and S. 51 RTA.

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.

OBJECTION MY LORD

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 inquiries 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

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.

S. 201 of the Registration of Titles Act Cap 303 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.

OBJECTION MY LORD

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.

Fr. Nascensio Begumisa v Eric Tibebaga supra

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. S. 3 of the Physical Planning Act, the whole of Uganda is a planning area. S. 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 S. 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. S. 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. S. 149 RTA, 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 S. 1, 29 and 31 of the Land Act.

OBJECTION MY LORD

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 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.

What steps would be undertaken to obtain a proprietary interest in the respective parcels of land?

Title by registration as a feature of the Torrens system, is where the interests in land are created or transferred by registration under the R.T.A Act. **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.

The operation of S.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.

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.”

Art 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 land tenure system provided for in this constitution.

Art 237(3) of the Constitution 1995 provides that land in Uganda shall be owned in accordance with following land tenure systems.

OBJECTION MY LORD

- a) Customary
- b) Freehold
- c) Mailo and
- d) Leasehold.

Art 237 (2)(c) of the constitution, 1995 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. Sect 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

Sec 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. Sect 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.

S. 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. S. 101 of the RTA provides that the proprietor of any freehold or mailo land under the operation of this Act may, subject to any law or **agreement** 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 S. 102 of the RTA 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;

Sect 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. S. 54 of the RTA 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** 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.

OBJECTION MY LORD

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 Alier 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 RTA 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 S. 54 of RTA and Zimbe v Tokana kamanza*

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 S.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

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 S.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

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. S. 54 RTA, *Mustafa Ndigejjerawa v Kizito* 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 S. 92 which must be in the form set out in the RTA, should be properly executed by the parties and must be duly attested by the legally designated persons. S. 147 of the RTA provides that an instrument shall be duly executed if attested to by one witness. Further S. 148 of the RTA requires the signature to be in Latin character.

OBJECTION MY LORD

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 attesting witness must sign the transfer instrument having witnessed the transferor or 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.

S. 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

Held; 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

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.

OBJECTION MY LORD

Also, on lodging the documents, the registration fee should be paid as provided for under the second schedule of RTA which is 10,000/= for each of the documents, that is Property A and B.

S. 92(2) of the RTA 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. S. 59 RTA

Ddungu Lillian V Marc Widmer & Another; 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 Company Ltd*

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

OBJECTION MY LORD

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

ISAAC CHRISTOPHER LUBOGO

TO HOLD the same unto the LESSEE for a term of **15 years** (hereinafter referred to as the initial term) commencing the 26th 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:

OBJECTION MY LORD

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 hereinbefore 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.

ISAAC CHRISTOPHER LUBOGO

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.....

.....

OBJECTION MY LORD

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

ISAAC CHRISTOPHER LUBOGO

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

DRAWNED AND FILED BY:
SUI GENERIS & CO ADVOCATES
P.O.BOX 7117 KAGUGUBE RD
KAMPALA UGANDA

Eighth Schedule.

s. 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 comprised*

OBJECTION MYLORD

in 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.

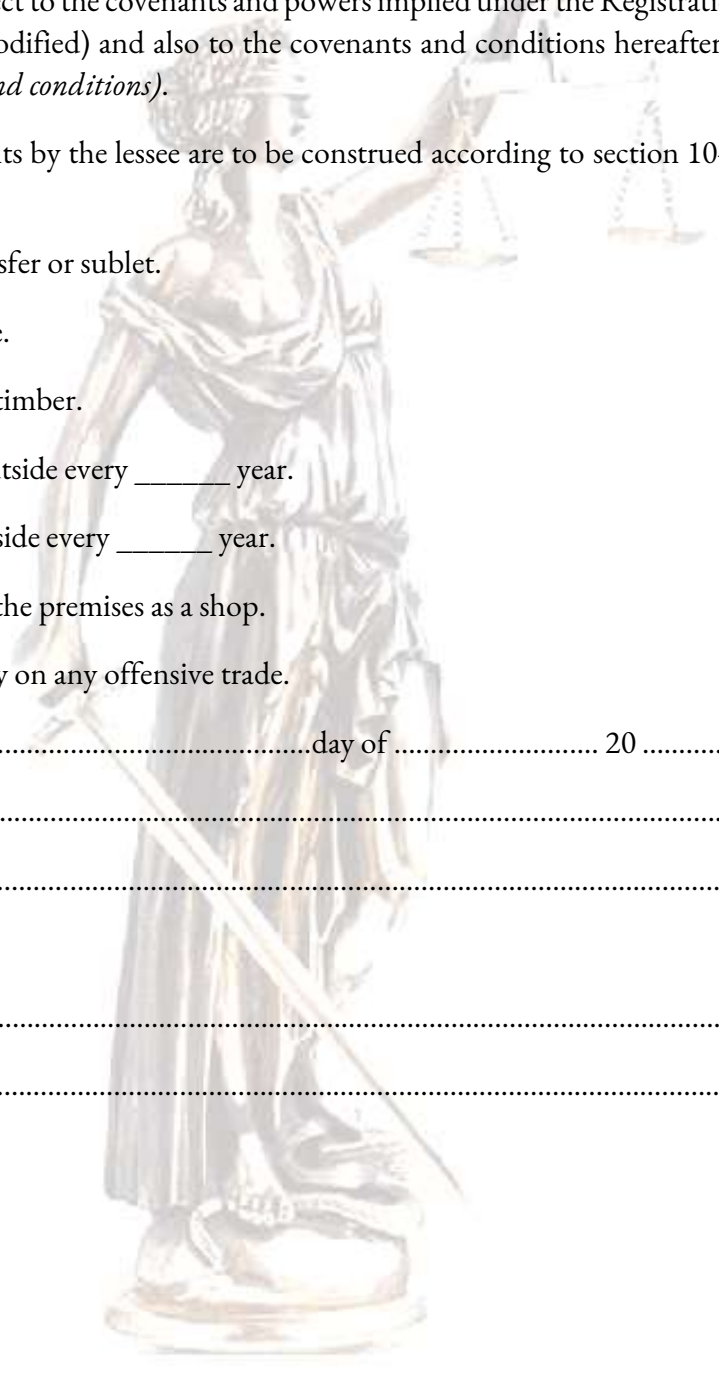
Dated this day of 20

Signed by the lessor,

in the presence of

Signed by the lessee,

in the presence of





OBJECTION MY LORD

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 the above-mentioned folio in consideration of the sum of shs. _____ paid to me by _____ (*insert name and addition of transferee*) on or before the execution of these presents the receipt of which

I acknowledge 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 the land.

Dated this _____ day of _____, 2018

Signed by (Transferor)

In the presence of

Signed by (Transferee).....

In the presence of

ISAAC CHRISTOPHER LUBOGO

Form 53 under Reg 92.



OBJECTION MY LORD

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:

ISAAC CHRISTOPHER LUBOGO

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:

Figure

OBJECTION MY LORD

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 paying USD4000 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 Limited and 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 S. 109 RTA 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.”

OBJECTION MY LORD

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.

S. 108 RTA 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;

S. 112 RTA 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 encumbrance 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.

OBJECTION MY LORD

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 thisday 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 7117 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 RTA 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 P.P.A.1 in the 6th Schedule as per Section 34.

OBJECTION MY LORD

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. (S 54 RTA) According to item 22 of the 22nd schedule of RTA, 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 7117 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. BoxKampala and registered under Instrument Number on2018.

The parties have agreed to change the lease from the date of execution hereof in consideration of the conditions and covenants hereafter set.

ISAAC CHRISTOPHER LUBOGO

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

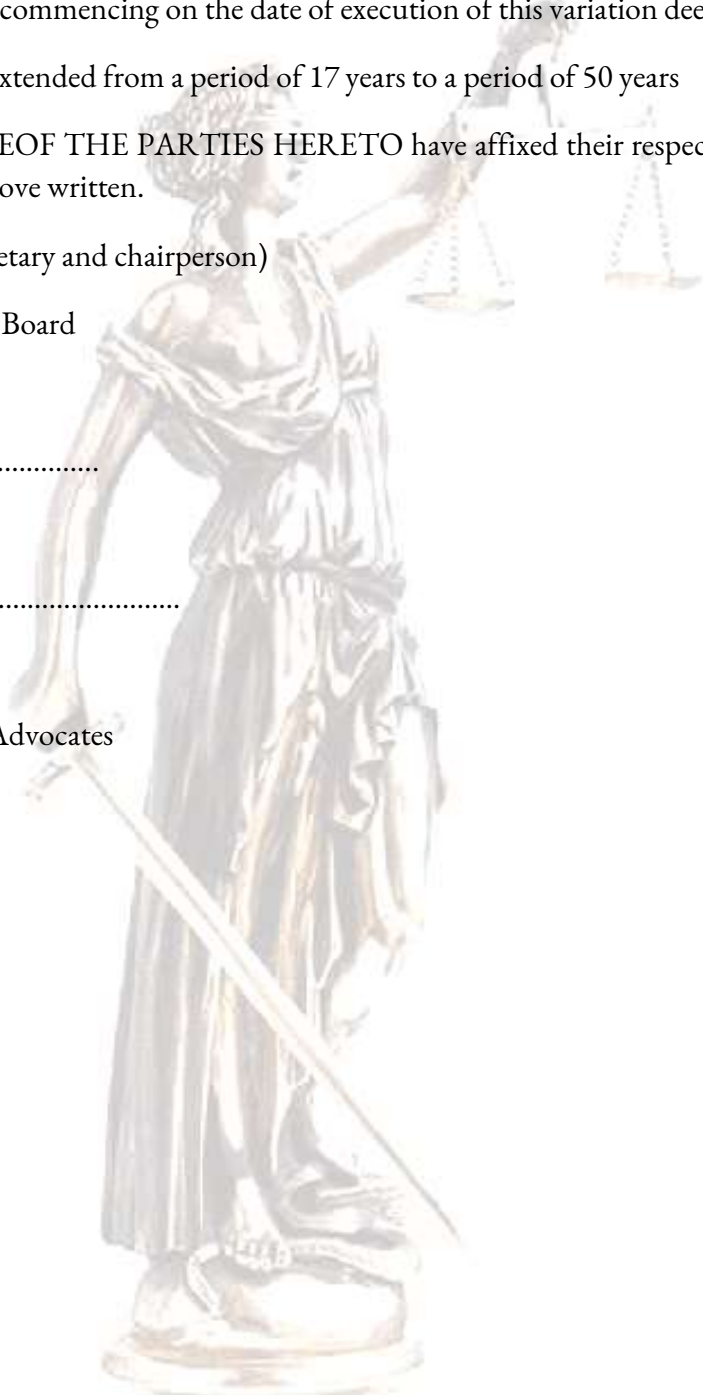
In the Presence of

Drawn and filed by

SUI GENERIS &Co. Advocates

P.O.BOX 7117

Kampala



OBJECTION MY LORD

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 O. 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 pg 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, vol. 38, states at p. 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 *Kanyehamba 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 s.1 (a) means a bailiff for the purpose of distress for rent.

Therefore, application is addressed to either the Chief Magistrate or Grade 1.

OBJECTION MY LORD

In **Male Mabirizi and Anor v Owere Franco and Ors supra** it was held that It 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 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.

S. 103(b) RTA 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.

S.114. 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

OBJECTION MY LORD

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 *Erukana 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, inter alia, 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.

ISAAC CHRISTOPHER LUBOGO

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.

OBJECTION MYLORD

Signed by the said;

.....
Tumwesigye Patrick

Town Clerk KCCA



ISAAC CHRISTOPHER LUBOGO

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 7117,
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 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 of the J.S. the 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 Sbalita Stananzi*** Civil Appeal No. 2 of 1988 (S.C.) (unreported)

OBJECTION MY LORD

(*"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



ISAAC CHRISTOPHER LUBOGO

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 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.

OBJECTION MY LORD

.....
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 7117,

Kampala



ISAAC CHRISTOPHER LUBOGO

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 7117, 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;

.....

OBJECTION MY LORD

DEPONENT

BEFORE ME;

.....
COMMISSIONER FOR OATHS

Drawn and filed by

M/S SUI GENERIS ADVOCATES

P.O Box 7117,

Kampala



EXAMPLE

Whether Muzamir can eventually convert the acquired interests into another 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.

OBJECTION MY LORD

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”.

S. 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.

OBJECTION MYLORD

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)	that the leasehold is authentic and genuine;
(ii)	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

.....
.....

OBJECTION MY LORD

.....

OFFICIAL SEAL

<p>.....</p> <p><i>Name and signature of the Secretary, district land board</i></p>	<p>.....</p> <p><i>Name and signature of the Chairperson, District Land Board</i></p>
---	---

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 Shswill be payable
 - c) compensation to any tenant on the land will be done by the applicant.

OBJECTION MY LORD

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)	Shs
Balance payable (if any)	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 ofyear

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 maybe 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

OBJECTION MY LORD

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 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 HOL holding was on the 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.

OBJECTION MY LORD

The right to survivorship under joint tenancy

This is the second feature of joint tenancy which is also known as **jus accrescendi**. 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. (Mugambwa; Principles of land Law in Uganda at page 146)

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 circumstances 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 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 co ownership

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 are shared amongst the different tenants in

OBJECTION MY LORD

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 RTA

Joint tenancy and tenancy in common is created by registration under the RTA as joint tenancy or tenancy in common respectively. S.56 and s.94 RTA,

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.

S. 94 provides that **94. Proprietor may vest estate jointly in himself or herself and others**

without 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

ISAAC CHRISTOPHER LUBOGO

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- s.186 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 s.275 SA and s.19 (1) TA

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”

S. 57 RTA provides for effect of insertion of the words “no survivorship”

OBJECTION MY LORD

(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.

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). (See: **Black’s Law Dictionary 8th Edition Pg. 548**)

In situations where one has no access to a public road and there is a plot of land between his piece of land and the road then the provisions of the Access to Roads Act cap.350 are invoked.

Section 2 of the Access to Roads Act 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.

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.

Section 7 of the Act 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 **section4** of the Act and such order shall be registered in the register book under the RTA 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.

Procedure for acquiring an order of accessing a public road.

1. There must have been failure of negotiation. **Section2(1)** of the Act provides that the owner of the land should be un able to obtain leave from adjoining land owners through negotiation to construct a road of access to the public road . According to our facts the other neighbour whose land is not fully built up has refused to talk to Muzamir over granting him access on any term, this shows that he or she is not willing to negotiate with Muzamir to allow him get an alternative access to the public road.

2. The application is made to the land tribunal as per **Section2(1)** of the Act. However, Practice direction no 1. Of 2006 gave Courts presided over by Magistrate Grade 1 and above jurisdiction in all matters that were being handled by the District Land Tribunals;

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

OBJECTION MYLORD

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. **Section 2(1) (a)** provides that the application must be in form set out in the schedule to the Act. In **Zziwa v Kafumbe** supra it was held that the application is in a format set out in the Access to Roads Act.

S.2 (2)(b) supra –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.

S.2 (3) supra –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, **section 3(2)**. 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 **subsection 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. **Section 4(1)** 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. According to **section4 (2) (a)** and b, 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. S.5 Supra- 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 S.4 and after giving the other party an opportunity to show cause why the order should not be revoked, make an order revoking the order.

S.6 supra –the width of the road shall never exceed 20 ft.

Section 7(1) of the Act provides that, an order made under section4 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.

Section 7(2) 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.

S. 7(3) 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 R.T.A, Cap 230 –application fees is UGX 10,000

Section 54 of the R.T.A, Cap 230 –provides to the effect that an instrument not effectual unless registered.

Section 65 R.T. A, 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 R.T. A, Cap 230- provides to the effect that a certificate conclusive evidence as to title to easements.

Sec. 8 of the Access to roads Act, Cap 350-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.s.2 form set out in the schedule to the access to roads act, cap 350 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

OBJECTION MY LORD

In the case of **Ahmed 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.



ISAAC CHRISTOPHER LUBOGO

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

(under section 2 of the access to roads act, Cap 350 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	

OBJECTION MY LORD

<p>access, together with the name or names of the respective owner or owners of the land</p>	
<p>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</p>	
<p>6. Whether any crops or building will be damaged or destroyed by the construction of the road of access; if so, to what extent</p>	
<p>7. Maximum width between drains of proposed road of access</p>	
<p>8. Any other facts of which the applicant is aware which may affect the grant</p>	

.....

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 include customary, freehold, leasehold and mailo.

The right to own land is further fortified 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-derogable and can be limited within the meaning of article 43 of the Constitution.

S. 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) 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

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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.

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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 known 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 which 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.

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Keynotes;

Article. 237(1) provides that all land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems.

Art. 26(1) guarantees every person's right to own property either individually or in association with others.

However, Art. 26(1) is not an absolute right as was held in the case of *Uganda National Roads Authority v. Asuman Irumba & Anor*, const. App No.7 of 2014 which the supreme court emphasized that if can be derogated however the derogation must be in with the constitution and other laws in place.

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). Art 237(2) (a) 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 Art. 26(2), 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 Art. 26(2)(b), 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 S.7 of the land Acquisition Act which allowed for the government to compulsorily acquire land and pay lease was unconstitutional as It violated Art 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 Art. 274

- (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. (S.2(1)).

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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 (S.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. S.3(1) & (2).

The declaration must be served on the named persons in the declaration S.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. S.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 S.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 S.4(S.5(3))

Each copy of the notice issued must be served upon the registered proprietor of the land to which the notice relates (S.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.

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The compensation of the land as was held in the case of *Puran Chhand 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 S.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 S.7(3).

The registrar must upon receipt of the endorsement effect the change of proprietorship in the register S.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. Art 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) 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) 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 & Anor 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 S,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 S.7 of the Land Acquisition Act is inconsistent with and contravenes Article

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26. 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.

However, of great importance in regard to this matter is the Supreme Court's judgement on appeal in **UNRA v Iumba Asumani SCCA No. 2 of 2014** where the highest court confirmed the decision of the Constitutional Court. It was held that S.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 is not among the non derogable rights stated under article 44, 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 emergencies.

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 emergencies. Those are the only limits court qualified to be the exceptions where someone can be deprived of their property without prior compensation.

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 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 & ANOR 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 except 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 & Anor vs. AG & Anor HCCS No. 0066/2002** it was held that by both provisions of S. 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). therefore, government can acquire Muzamir's hospital compulsorily subject to prior fair and adequate compensation assessed on fair market value. As stipulated in **UNRA v Irumba**, 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

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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 were 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 RTA** 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 Bryan 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) (supra) 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(supra) further provides that;

“Subject to sections 8 and 29 of this Act 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(supra) 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) RTA*, adverse possession appears to provide the exception to the general principle of indefeasibility of the title.

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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 (supra)* 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 land the title of that person to the land shall be extinguished.

The *RTA* 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 (supra)**.

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 (supra)**, 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 Limitation Act (supra)** 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 (supra)** 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*

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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 hurdle 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 was the nature of her possession; **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 Osoi (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.

OBJECTION MY LORD

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 RTA Act.

Apply to the Registrar or commissioner of lands for a vesting order under section 78 RTA

The form of the application is provided for under. S.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. S, 81 RTA. 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 s.82. The commissioner of land or a registrar shall grant the application after a period of not less than 3 months nor more than 12 months from the date of advertisement of the notice if no caveat has been lodged against the grant. S. 83. 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. S.87(a) RTA Cap 230. Under S. 89 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 S. 166. S.91 provides that (1) 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, 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.

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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 RTA, 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



OBJECTION MY LORD

Form in sixth schedule.

SUI GENERIS AND CO. ADVOCATES

P.O Box 7117

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 numberedin the schedule to this application for an estate free from encumbrances 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

ISAAC CHRISTOPHER LUBOGO

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 RTA 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

ISAAC CHRISTOPHER LUBOGO

BEFORE ME

.....
COMMISSIONER FOR OATH

Drawn and filed by:

SUI GENERIS and CO. Advocates.

P.O Box7117

Kampala



OBJECTION MY LORD

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.

S. 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 RTA (1) 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.

(2) 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 139 of 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 titles 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 S. 59 and 64 RTA 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

OBJECTION MY LORD

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 are the pertinent aspects of Komugabe Brenda's land 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?

OBJECTION MYLORD

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,

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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.

OBJECTION MY LORD

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.

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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.

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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 perpetuity 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

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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.



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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.

Art 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 land tenure system provided for in this constitution.

Art 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.

Sec.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 inquiries 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 v Sinba K Ltd & Ors

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.

S. 201 of the Registration of Titles Act Cap 303 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.

OBJECTION MY LORD

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.

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 RTA, 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.

OBJECTION MY LORD

It was stated in by Vaughan Williams in **Hunt V Luck** 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.





OBJECTION MY LORD

Documents;

APPLICATION FOR A SEARCH STATEMENT

SUI GENERIS & CO ADVOCATES

PLOT 24 LD TOWERS 2ND FLOOR

P.O. BOX 7117 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*²⁴ “Every person has a right to own property either individually or in association with others.” Furthermore *Section (2) of the Land Act* supported by *Article 237* of the Constitution gives 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;

Art 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;

²⁴ 1995 Constitution of the Republic of Uganda

OBJECTION MY LORD

“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 prohibits 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 v Global Capital Save**, 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(supra)*

Held; This act and / or omission evidently runs counter the spirit and letter of *Section 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 resides*. 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 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

Art 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.

Art 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

Sec 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;

Sec 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.

Sec 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.

S.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.

Sec 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

OBJECTION MY LORD

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 *parens patriae* 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.

ISAAC CHRISTOPHER LUBOGO

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 Wandegaya 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:

OBJECTION MY LORD

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

ISAAC CHRISTOPHER LUBOGO

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.

OBJECTION MY LORD

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:

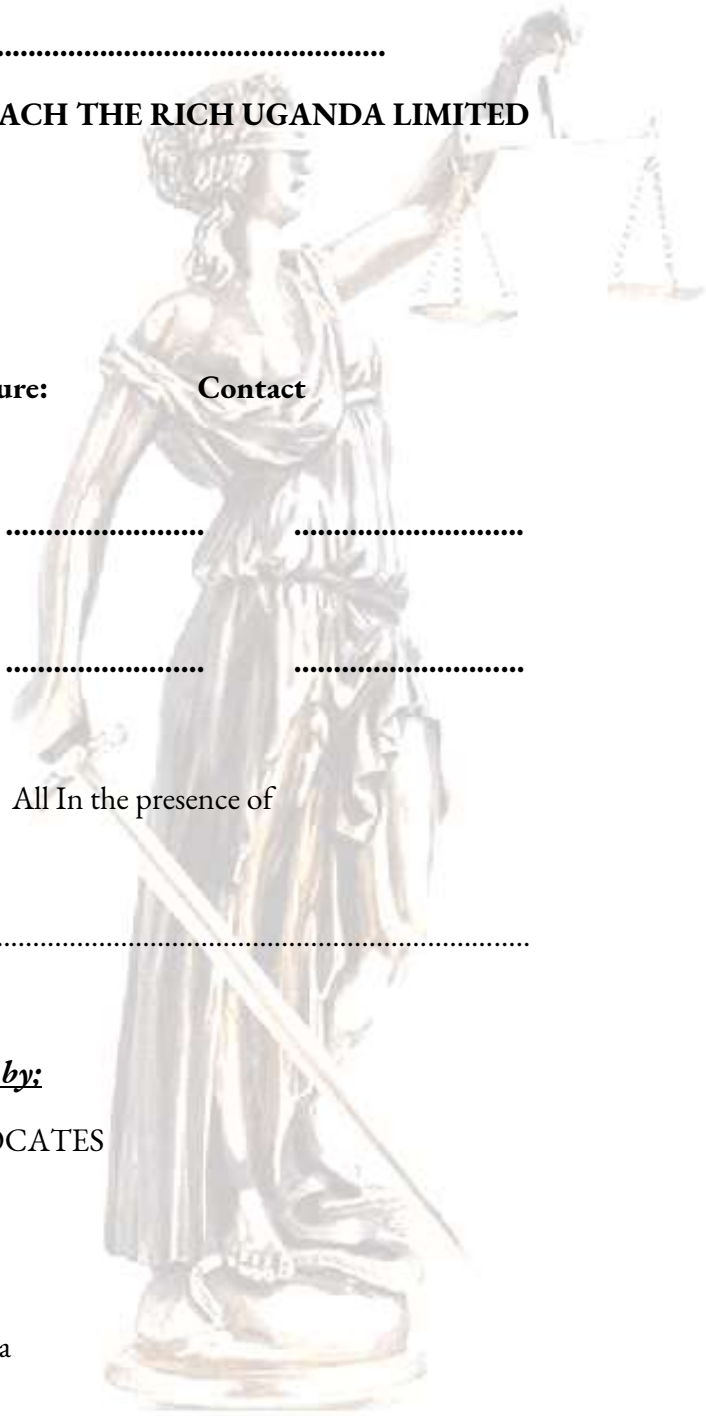
SUI GENERIS ADVOCATES

P.O.BOX 112211

LDC, level 3 Suit 1

Kagugube Rd, Kampala

Uganda



OBJECTION MY LORD



EXAMPLE

Advise 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 R.T.A Act. *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.

The operation of S.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 R.T.A 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 RTA 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 S. 54 of RTA 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 and the consideration paid.

OBJECTION MY LORD

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 S.s 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 evidence for want of payment of stamp duty.

It should be noted that an agreement for sale attracts stamp duty. Under S.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

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 S.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

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. S. 54 RTA, *Mustafa Ndigejjerawa v Kizito* 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 RTA, should be properly executed by the parties and must be duly attested by the legally designated persons.

S. 147 of the RTA provides that an instrument shall be duly executed if attested to by one witness. Further S. 148 of the RTA requires the signature to be in Latin character.

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 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.

S. 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.

OBJECTION MY LORD

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 its usually 1.5% of the whole consideration as per Stamps (Amendment) Act 2016.

Housing Finance Bank V Edward Musiisi

Held; 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

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 Registration of Titles (Fees) Rules S.I 230-1

S. 92(2) of the RTA 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. S. 59 RTA

Ddungu Lillian V Marc Widmer & Another

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 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.

OBJECTION MYLORD

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

ISAAC CHRISTOPHER LUBOGO

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

OBJECTION MY LORD

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.

OBJECTION MY LORD

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.²⁵

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.

²⁵ 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 advice except to advise 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.

OBJECTION MYLORD

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.



ISAAC CHRISTOPHER LUBOGO

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 annexure "A".**

OBJECTION MY LORD

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.

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:

OBJECTION MY LORD

SUI GENERIS & CO - Advocates

Plot 10 Clement Road P.O. Box 21161, Tel: 341295/6, KAMPALA



ISAAC CHRISTOPHER LUBOGO

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
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 Kigowa Ntinda 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.
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8. That I swear this affidavit in support of a caveat to stop registration of dealings on this land.

OBJECTION MY LORD

5. That I depone to matters within my knowledge.

SWORN by the said }
..... } _____
this ... day of, 2013} DEPONENT

BEFORE ME:

COMMISSIONER FOR OATH

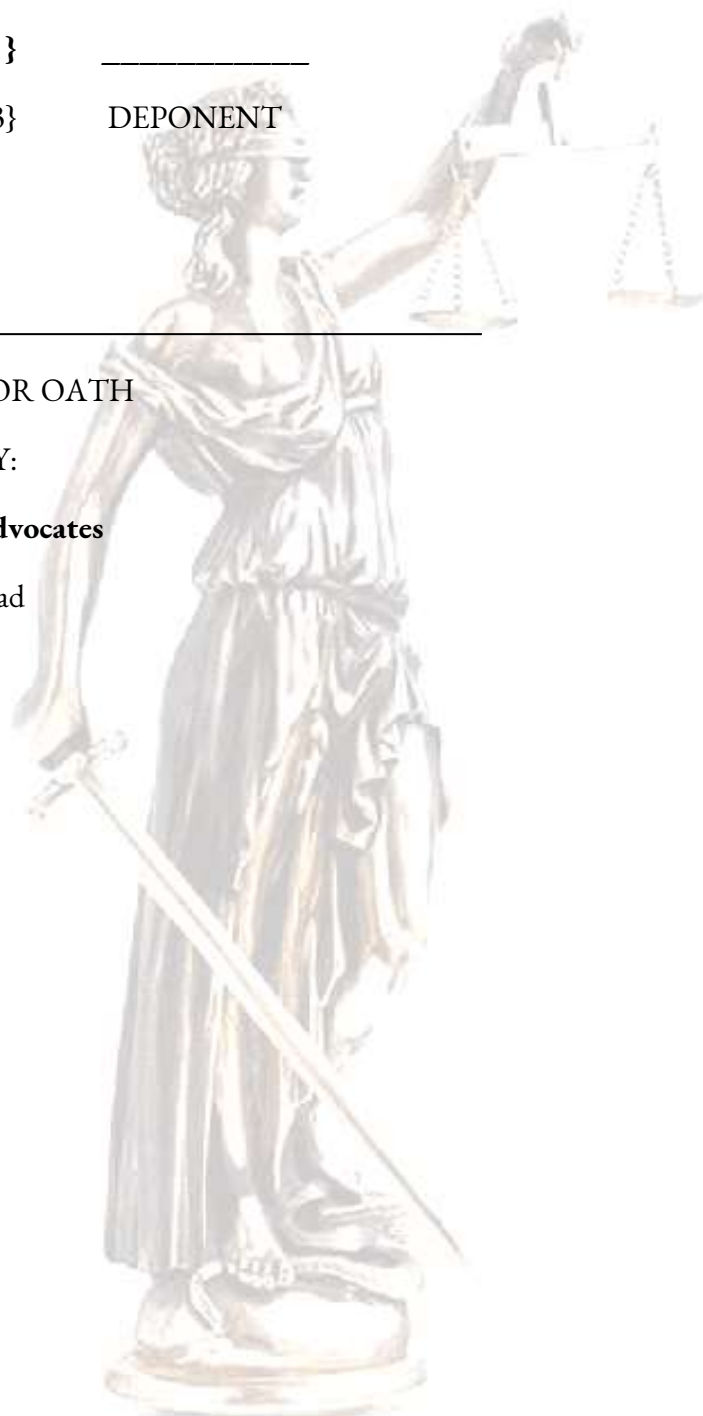
DRAWN & FILED BY:

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

OBJECTION MYLORD

Name

Address

Nationality

TO

Name

Address

Nationality

TRANSFER

Consideration

SUB-LEASE

Premium (if any) Rentper 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

ISAAC CHRISTOPHER LUBOGO

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

Mails/Freehold Register Volume

Folio

TRANSFER

I

.....

of

(Address)

son of/daughter of

in consideration of the sum of shillings paid to me by the

OBJECTION MYLORD

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:



OBJECTION MY LORD

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, andof 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.

ISAAC CHRISTOPHER LUBOGO

(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

OBJECTION MYLORD

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



OBJECTION MY LORD

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 of P.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:

ISAAC CHRISTOPHER LUBOGO

1. 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.
2. 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.

OBJECTION MYLORD

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 }
..... }

ISAAC CHRISTOPHER LUBOGO

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.



OBJECTION MY LORD

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:

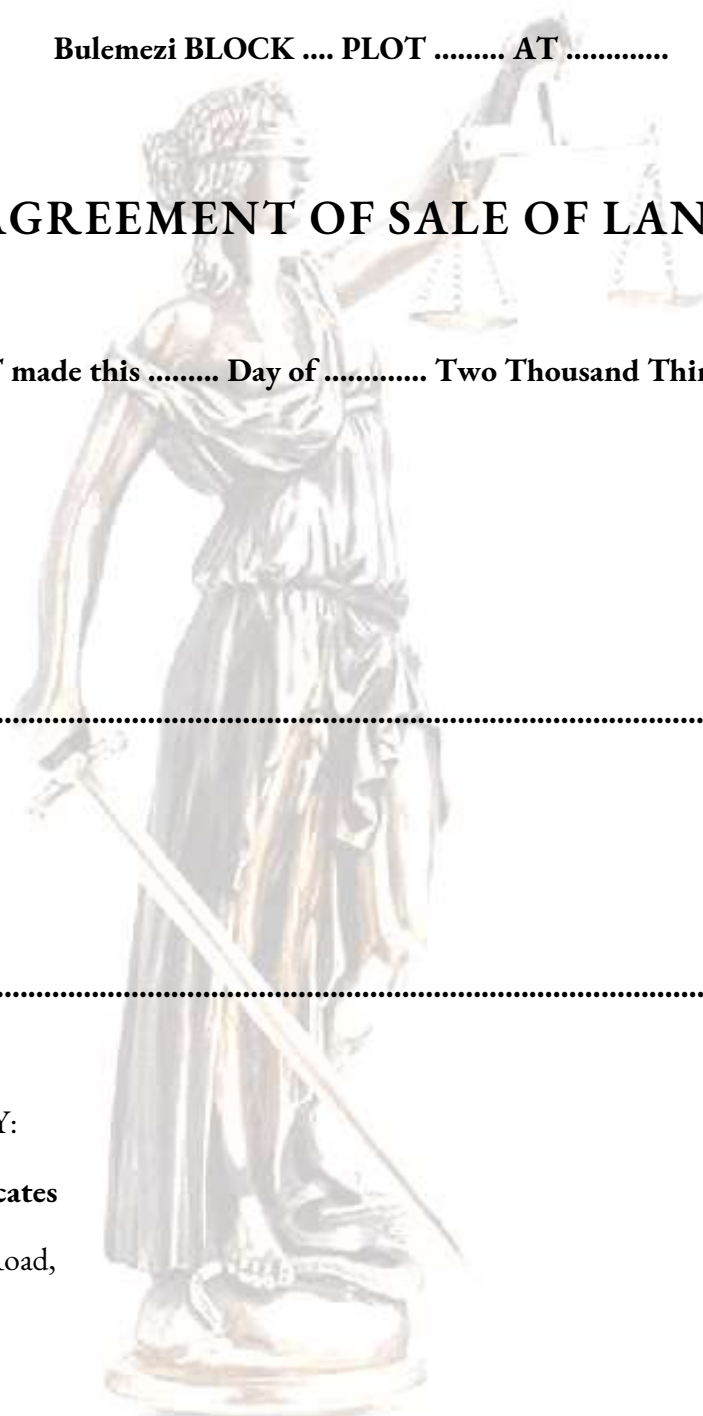
SUI GENERIS Advocates

Plot 10 Clement Hill Road,

P.O. Box 21161

Tel: 341295/6

Fax: 343168



ISAAC CHRISTOPHER LUBOGO

Email: kbwadvocates@gmail.com

KAMPALA.



OBJECTION MY LORD

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 LANDLORD as follows:-

(a) to pay the rent hereby reserved at the rate and

ISAAC CHRISTOPHER LUBOGO

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, scab, bees, ants and other destructive insects or rodents and not to bring or store unto the premises any explosive or inflammable substance.

OBJECTION MY LORD

(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

ISAAC CHRISTOPHER LUBOGO

(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:

OBJECTION MY LORD

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.

OBJECTION MYLORD

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

BUYER

SELLER

Authorized 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

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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 donee, 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

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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,

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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

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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, devisees 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

OBJECTION MYLORD

ACKNOWLEDGMENT

State of [state]

County of [county]

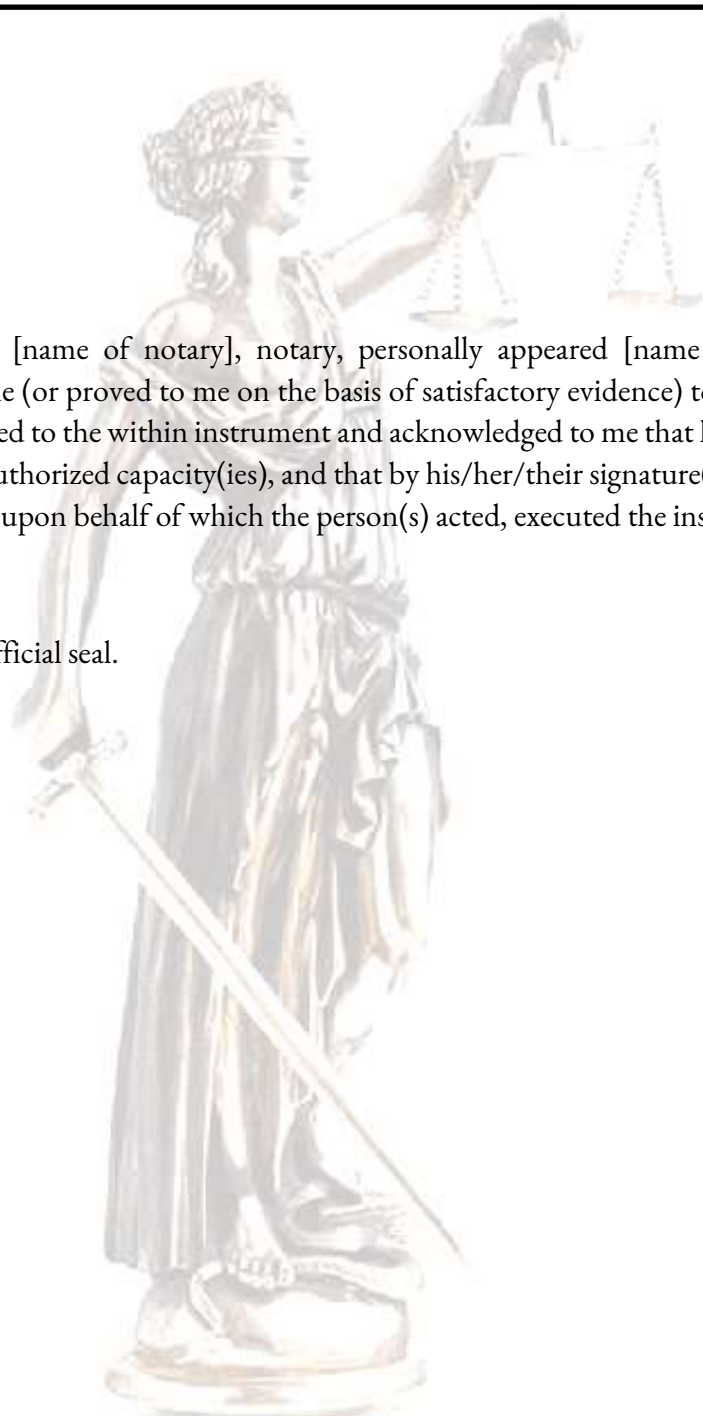
On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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 and 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].

OBJECTION MY LORD

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

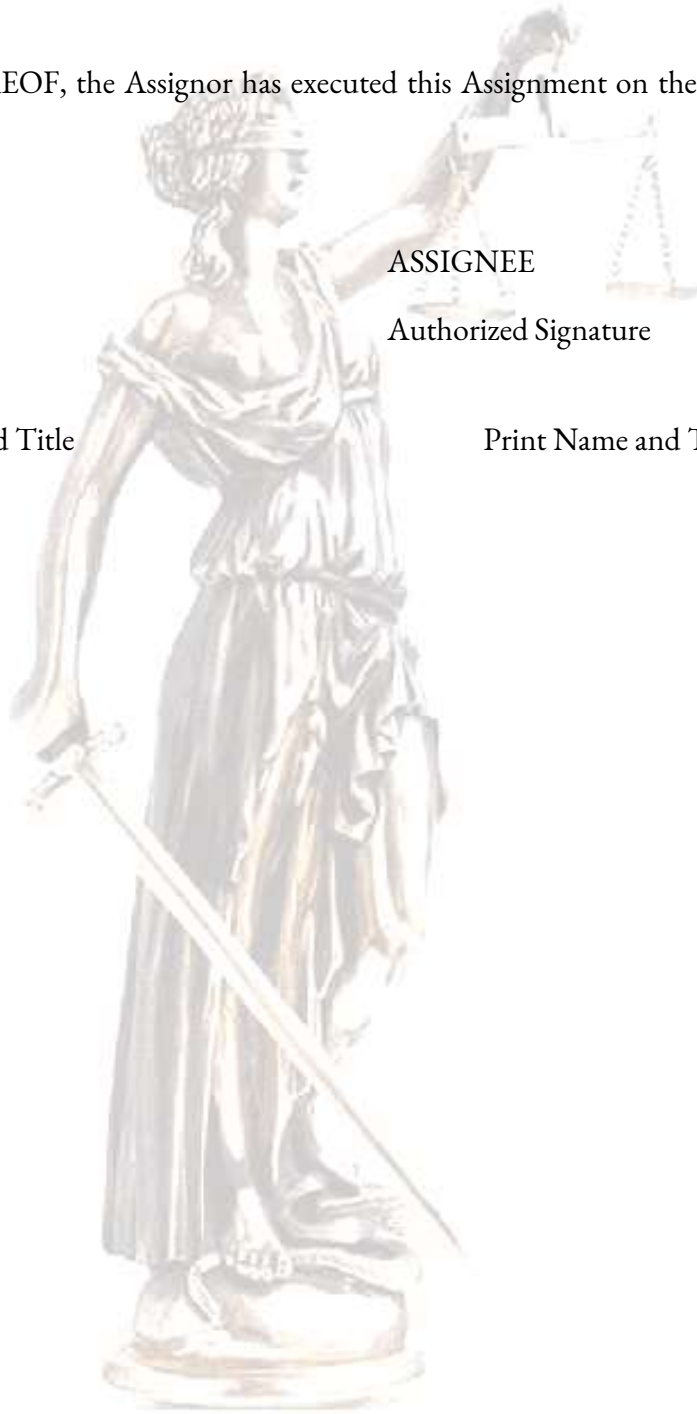
Authorized Signature

Print Name and Title

ASSIGNEE

Authorized Signature

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.

OBJECTION MYLORD

- 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

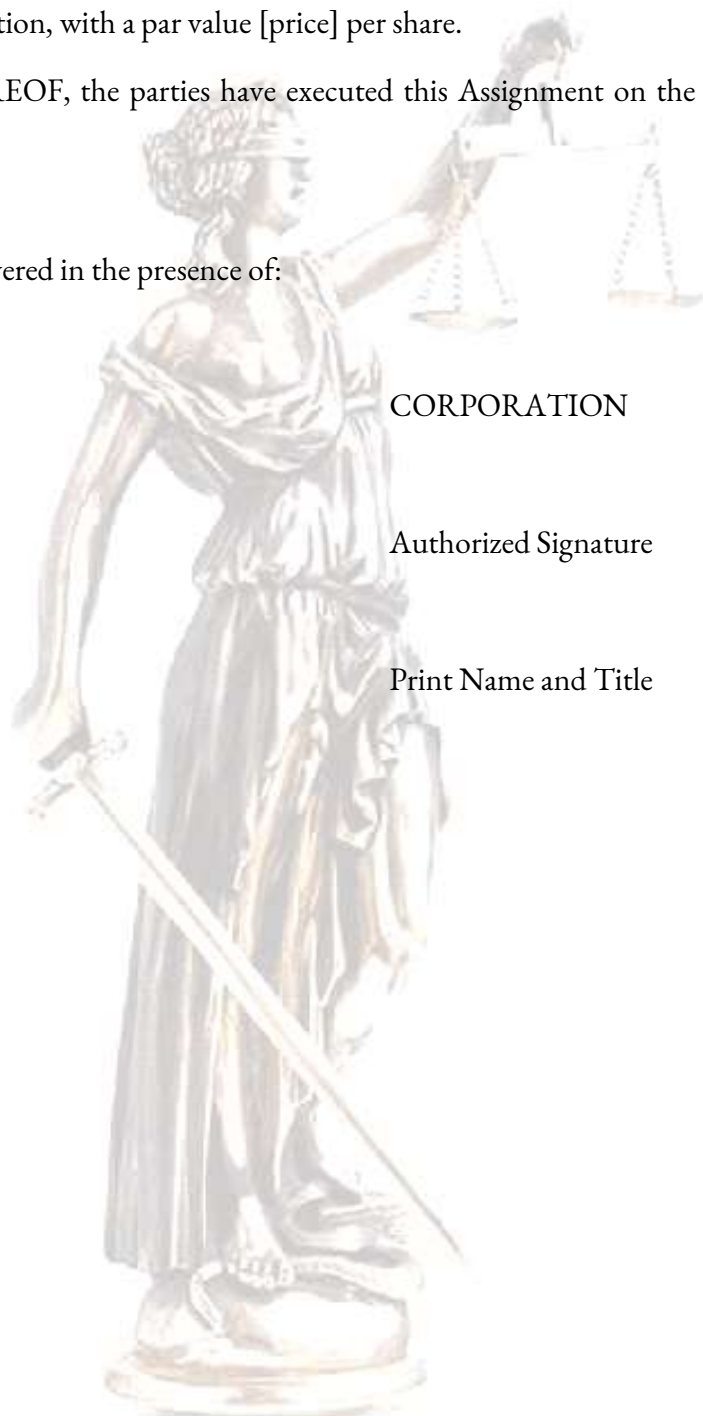
CORPORATION

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.

OBJECTION MYLORD

- 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

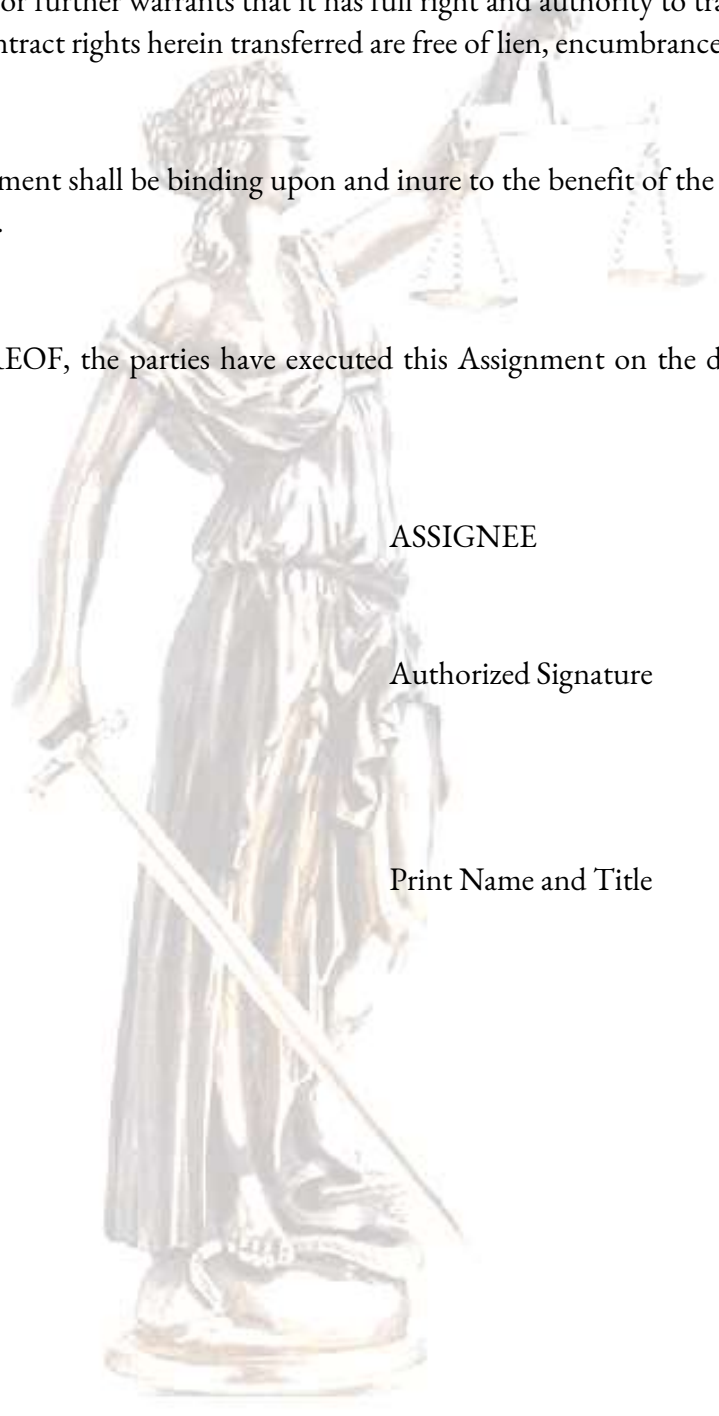
ASSIGNEE

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:

OBJECTION MYLORD

ASSIGNOR

ASSIGNEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



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;

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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

CLIENT

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

ACKNOWLEDGMENT

State of [state]

County of [county]

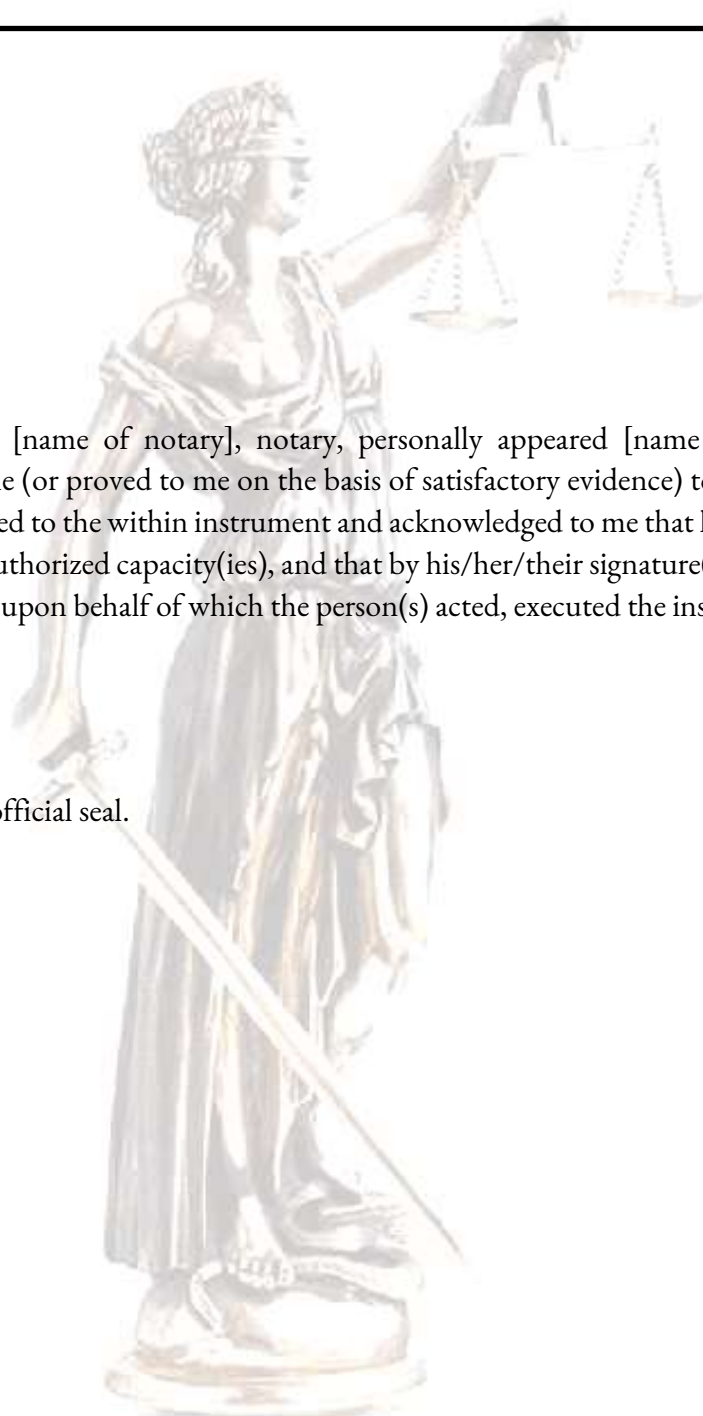
On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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)



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

OBJECTION MY LORD



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

OBJECTION MY LORD

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.

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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.

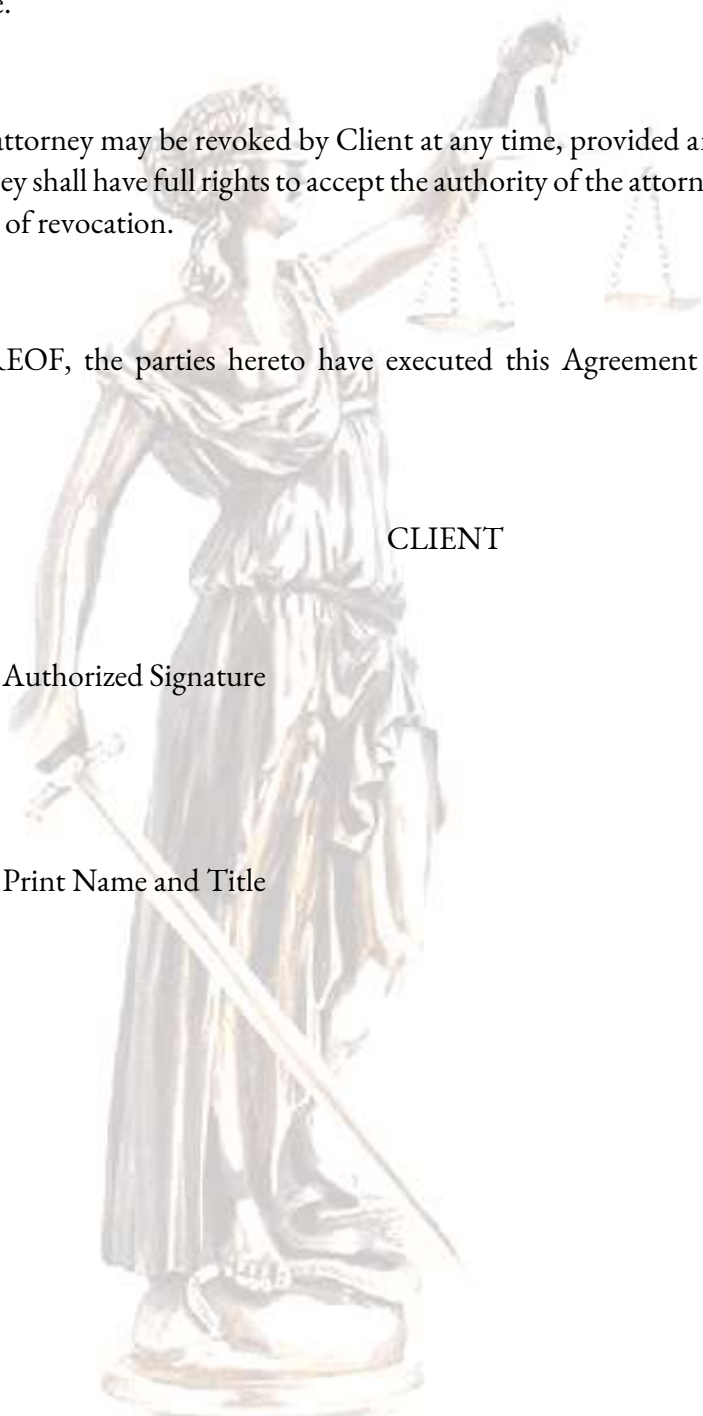
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ATTORNEY

CLIENT

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title



ACKNOWLEDGMENT

State of [state]

County of [county]

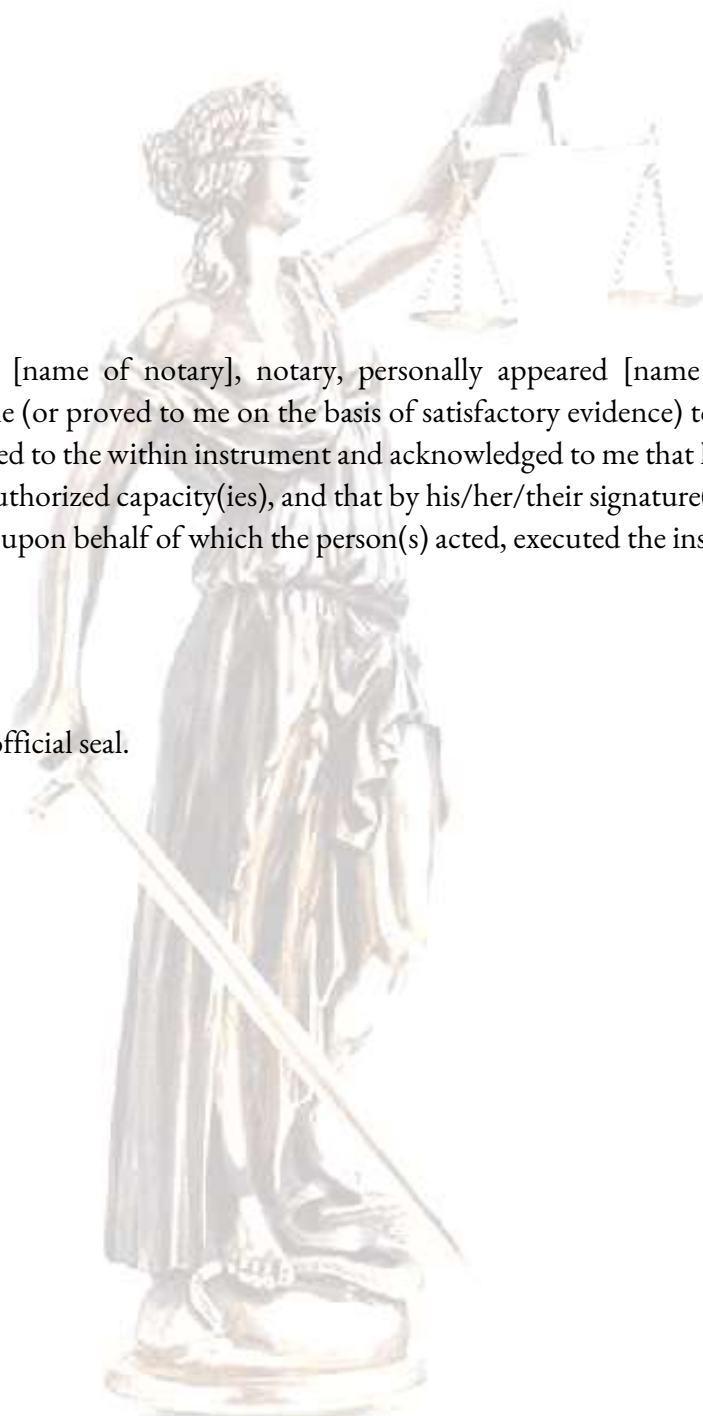
On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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.

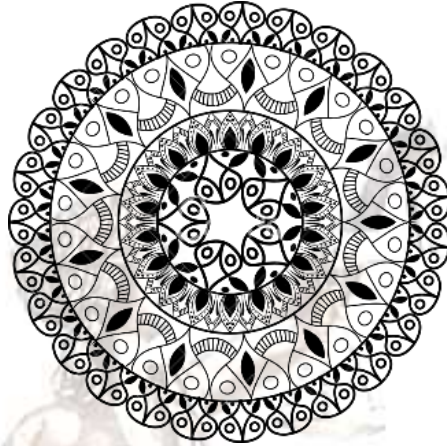
Witness my hand and official seal.

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]

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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.

ISAAC CHRISTOPHER LUBOGO

ASSIGNOR

ASSIGNEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

LESSOR

Authorized Signature

Print Name and Title



OBJECTION MY LORD

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

ISAAC CHRISTOPHER LUBOGO

Print Name and Title

Print Name and Title



ACKNOWLEDGMENT

State of [state]

County of [county]

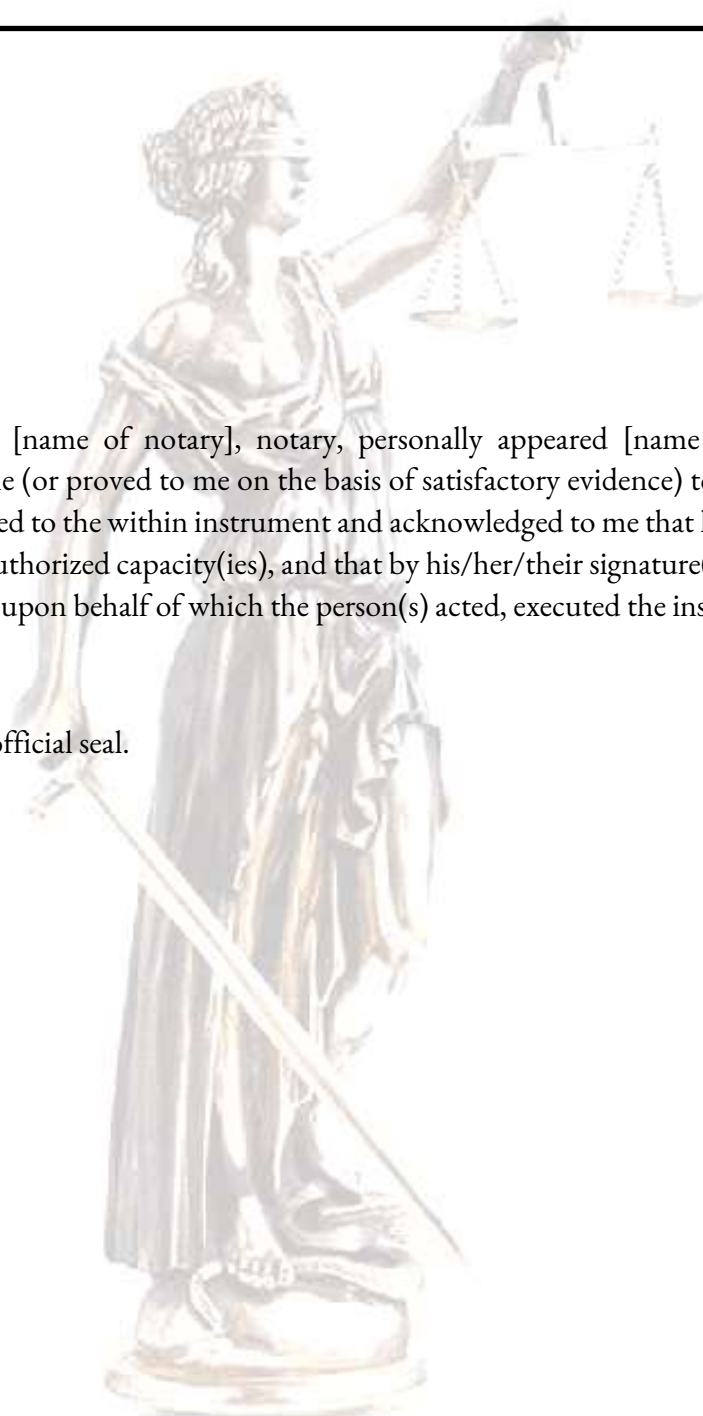
On [date] before me, [name of notary], notary, personally appeared [name of person(s) involved], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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 ESTATE CONTRACT 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 and interest in, to and under said Real Estate Purchase and Sale Agreement;

TERMS

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NOW, THEREFORE, for and in consideration of the sum of [AMOUNT] and other good and valuable considerations, the receipt and sufficiency of which 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

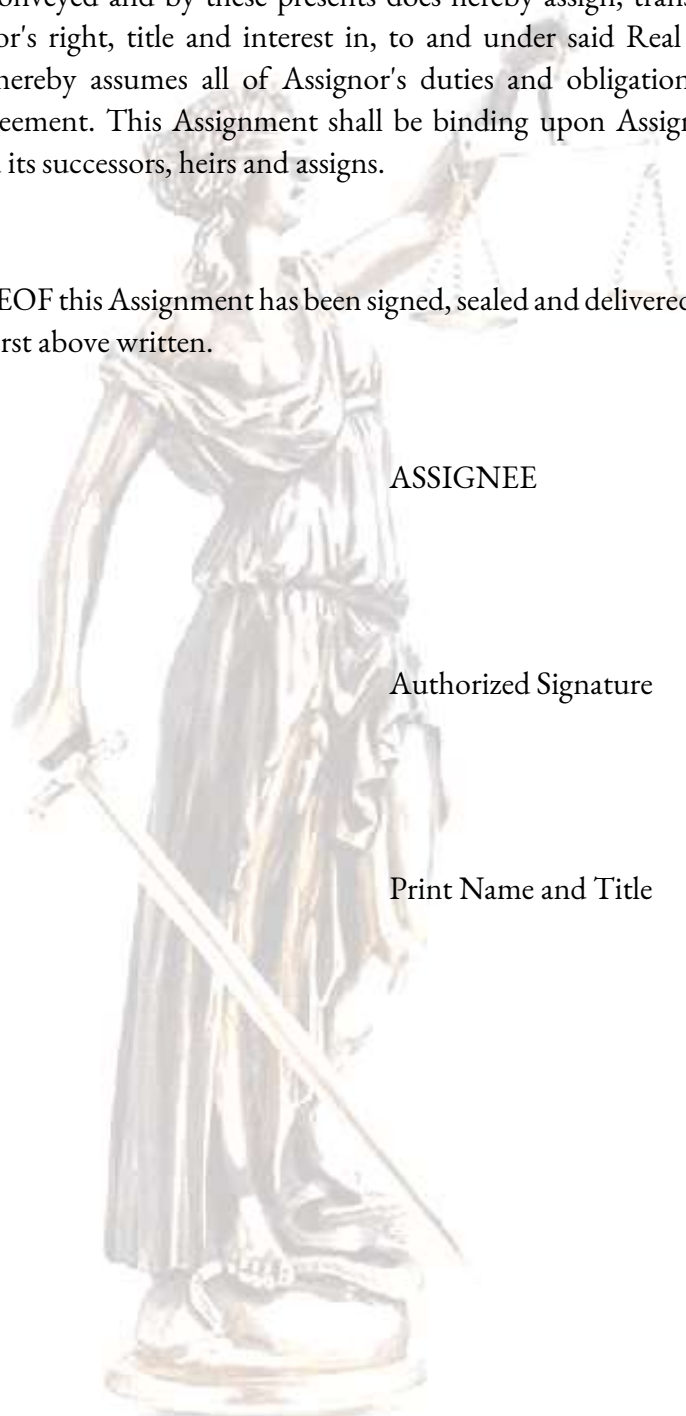
ASSIGNEE

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

OBJECTION MYLORD

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.

OBJECTION MY LORD

- 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.

ISAAC CHRISTOPHER LUBOGO

- 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

OBJECTION MY LORD

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.

OBJECTION MY LORD

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.

ISAAC CHRISTOPHER LUBOGO

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

SUB-TENANT

Authorized Signature

Authorized Signature

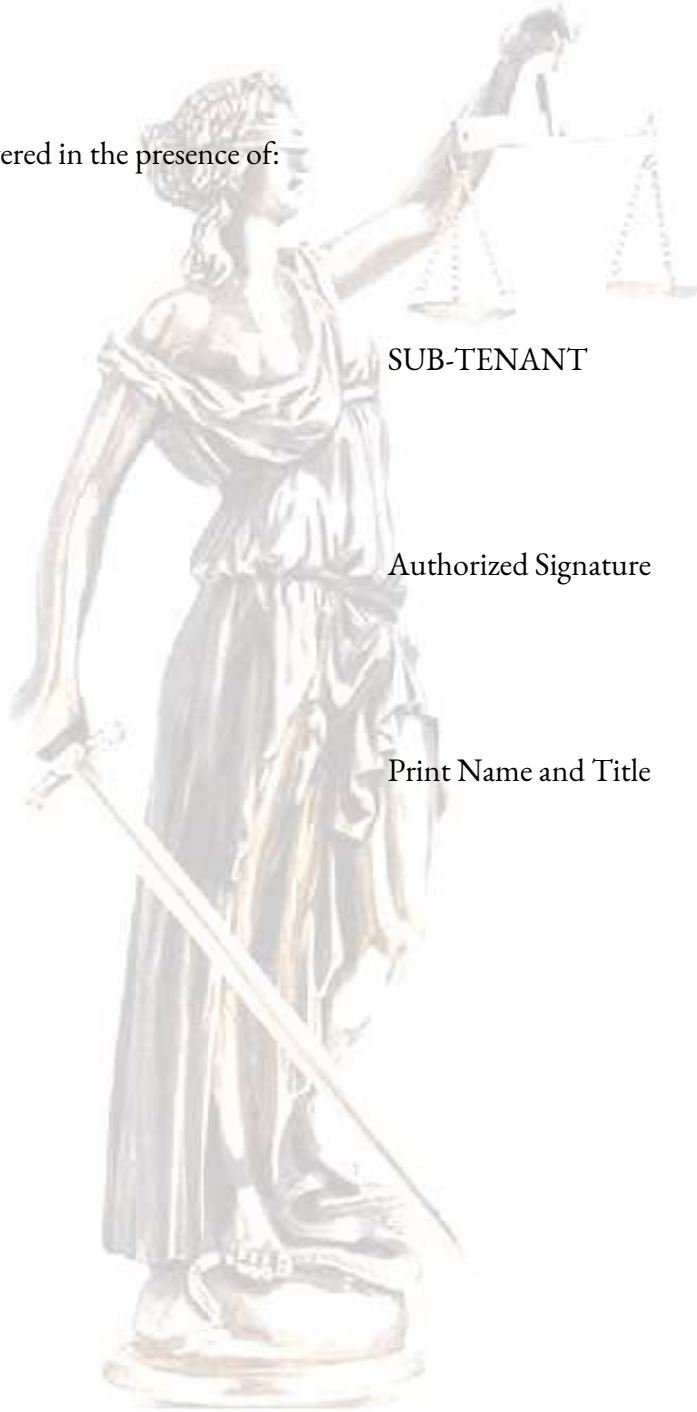
Print Name and Title

Print Name and Title

LANDLORD

Authorized Signature

Print Name and Title



OBJECTION MY LORD



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

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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

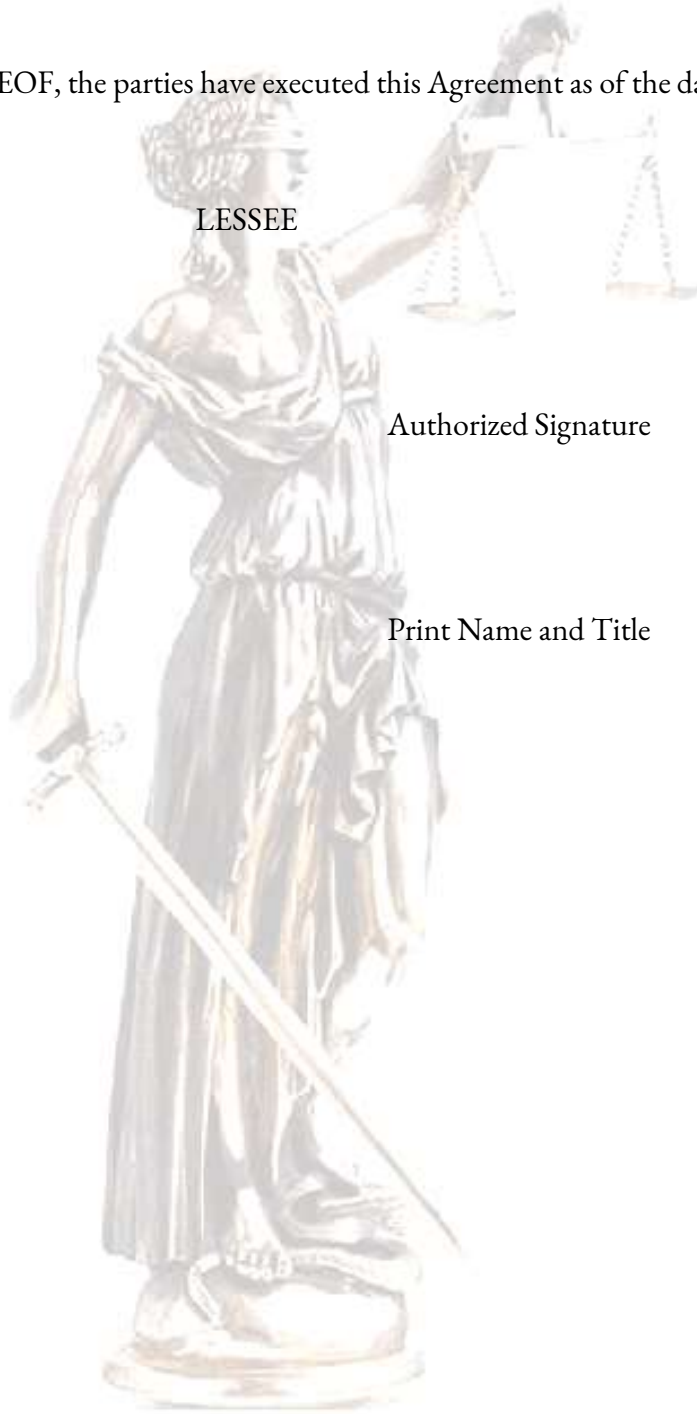
LESSEE

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

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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.

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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.

OBJECTION MY LORD

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

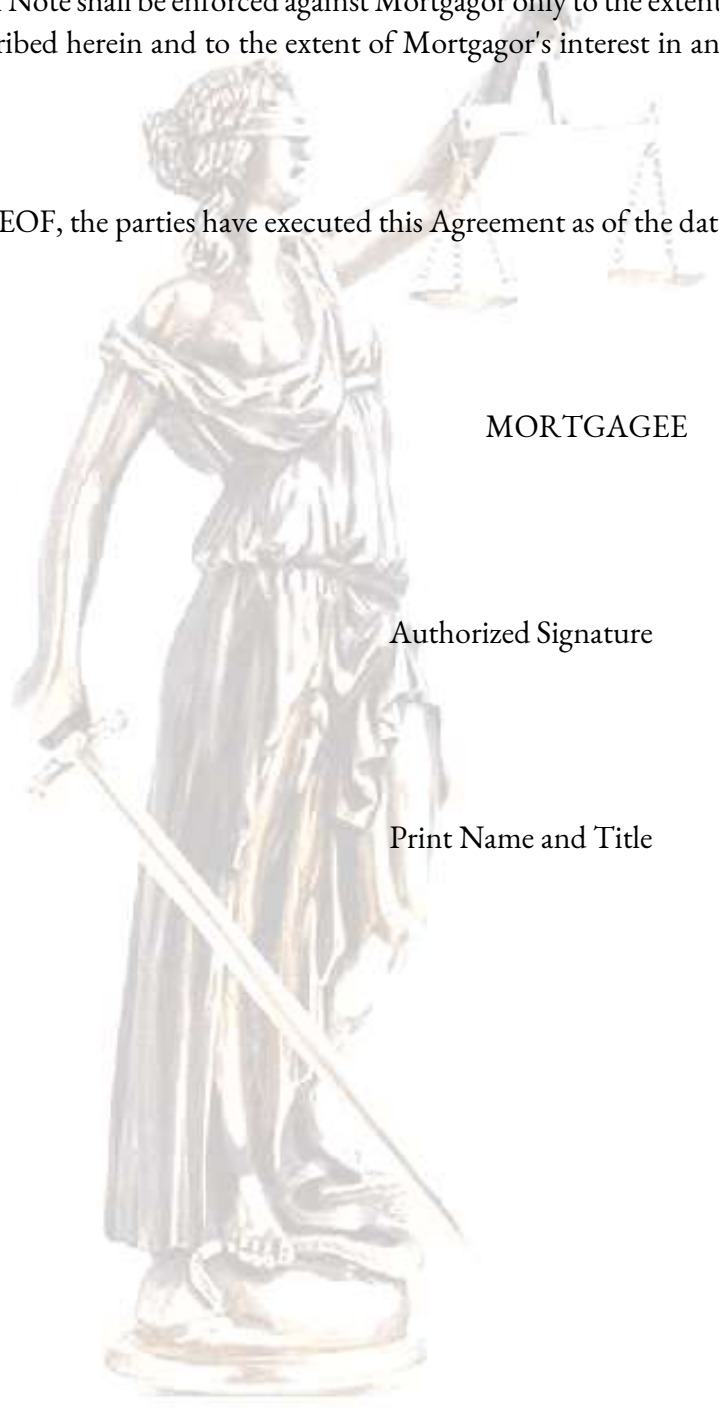
MORTGAGEE

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

OBJECTION MYLORD

September 14, 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

OBJECTION MYLORD

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



ISAAC CHRISTOPHER LUBOGO

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].

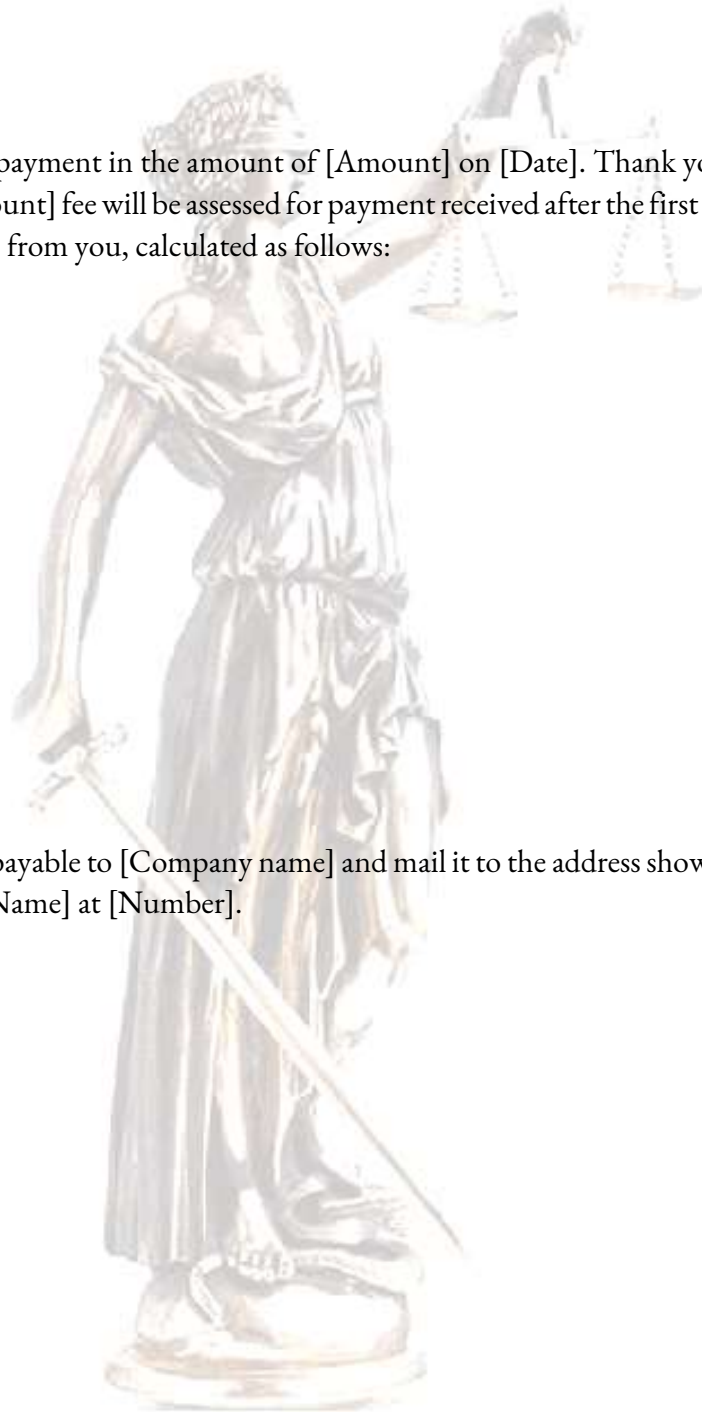
Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com



OBJECTION MYLORD

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



ISAAC CHRISTOPHER LUBOGO

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

September 14, 2022

OBJECTION MYLORD

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.

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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

ISAAC CHRISTOPHER LUBOGO

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

- A. 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.
- B. 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.

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- C. 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.

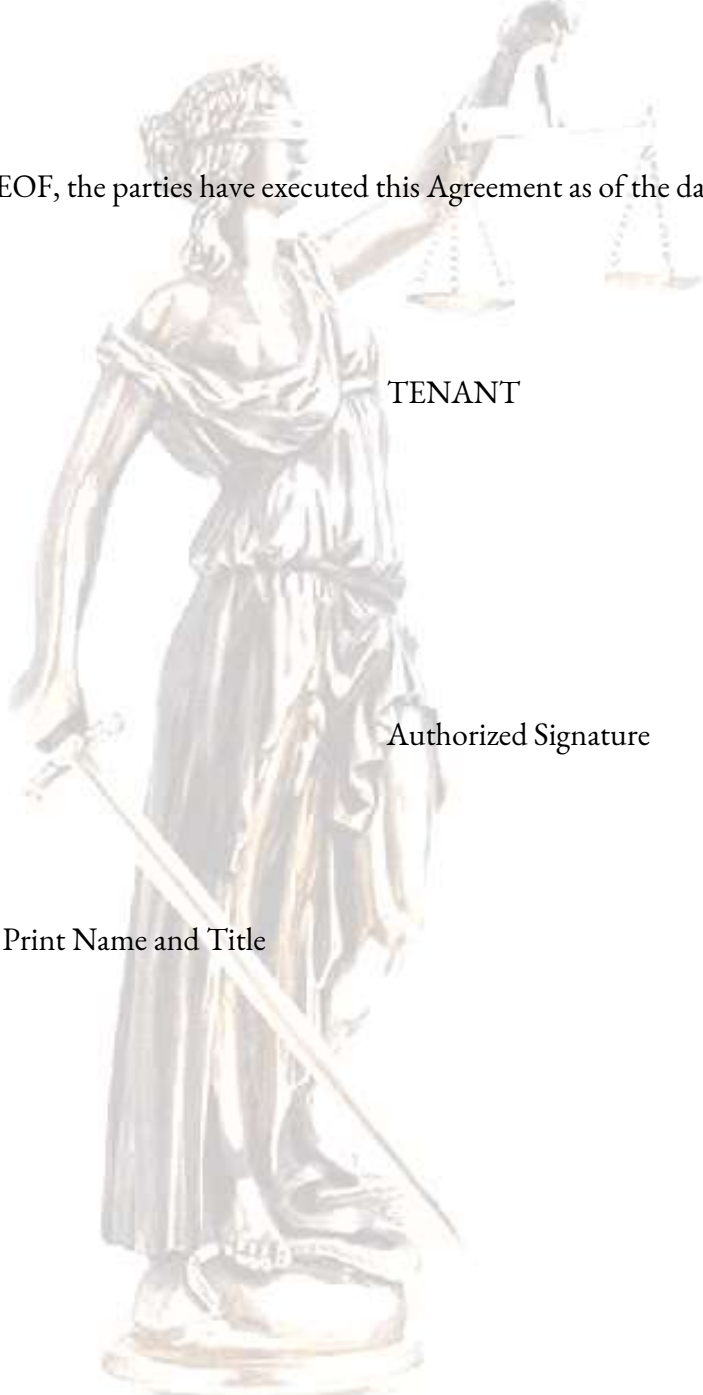
LANDLORD

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

OBJECTION MY LORD

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

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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

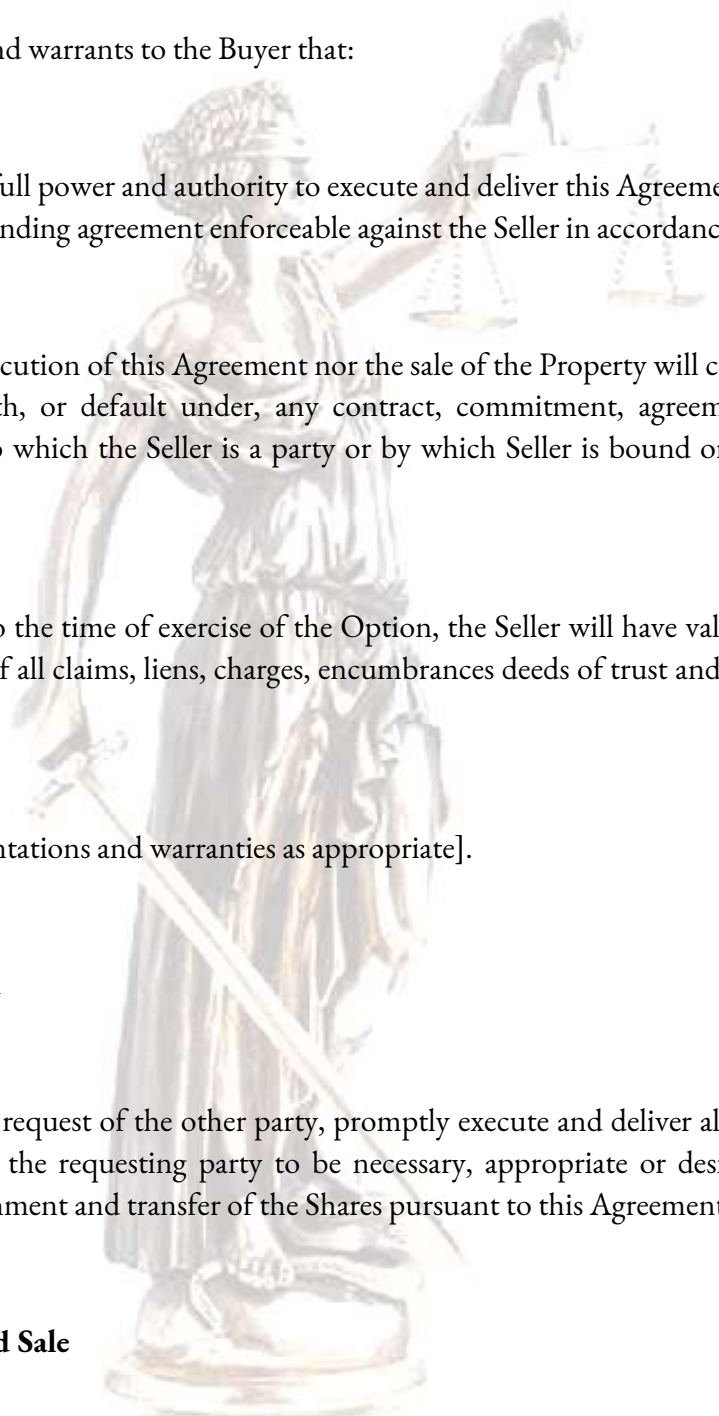
The other terms applicable to the purchase are as follows:

[describe condition of property; title insurance to be obtained; treatment of deeds of trust and encumbrances; who pays closing costs, etc.]

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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.

OBJECTION MYLORD

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

September 14, 2022

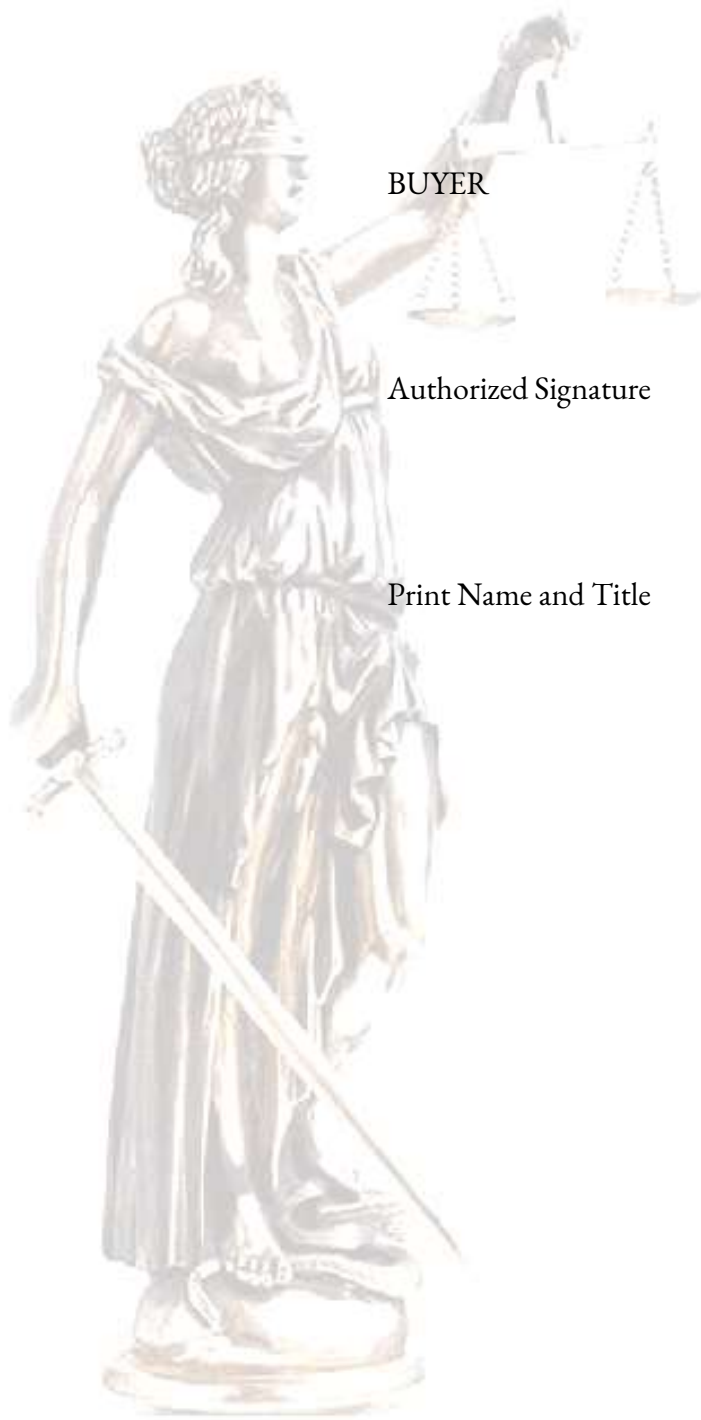
Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



ISAAC CHRISTOPHER LUBOGO

**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



OBJECTION MY LORD

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

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- 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

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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.

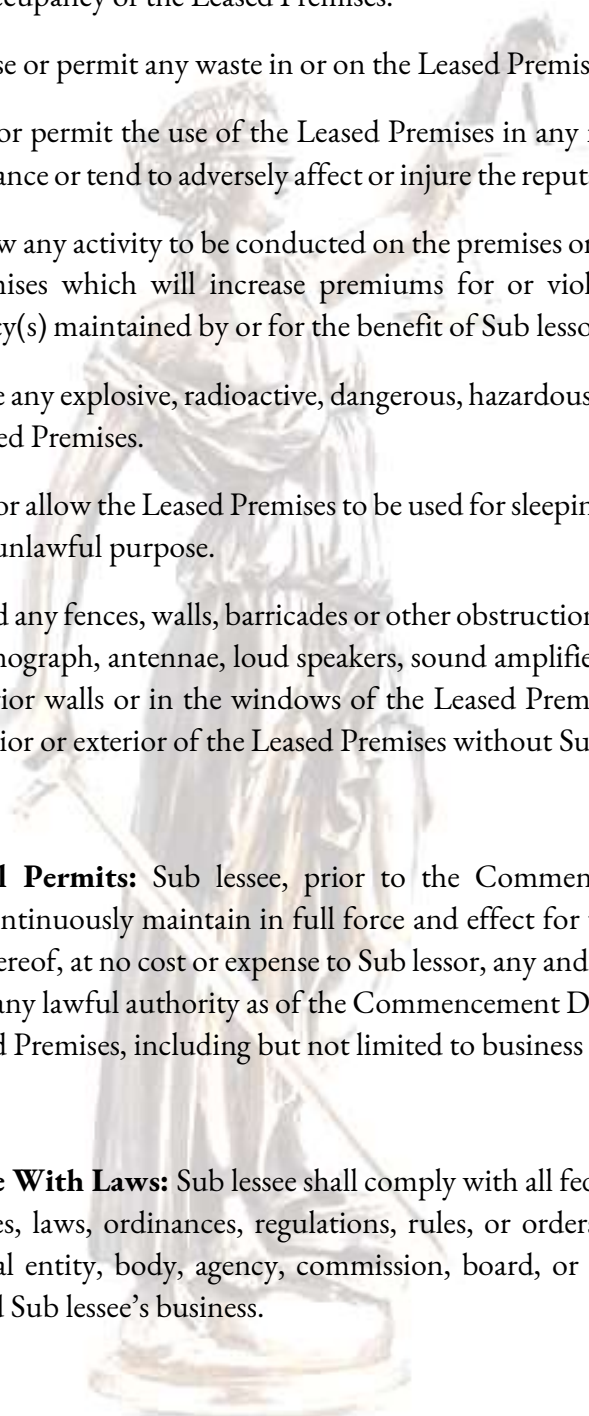
9. Security Deposit

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:

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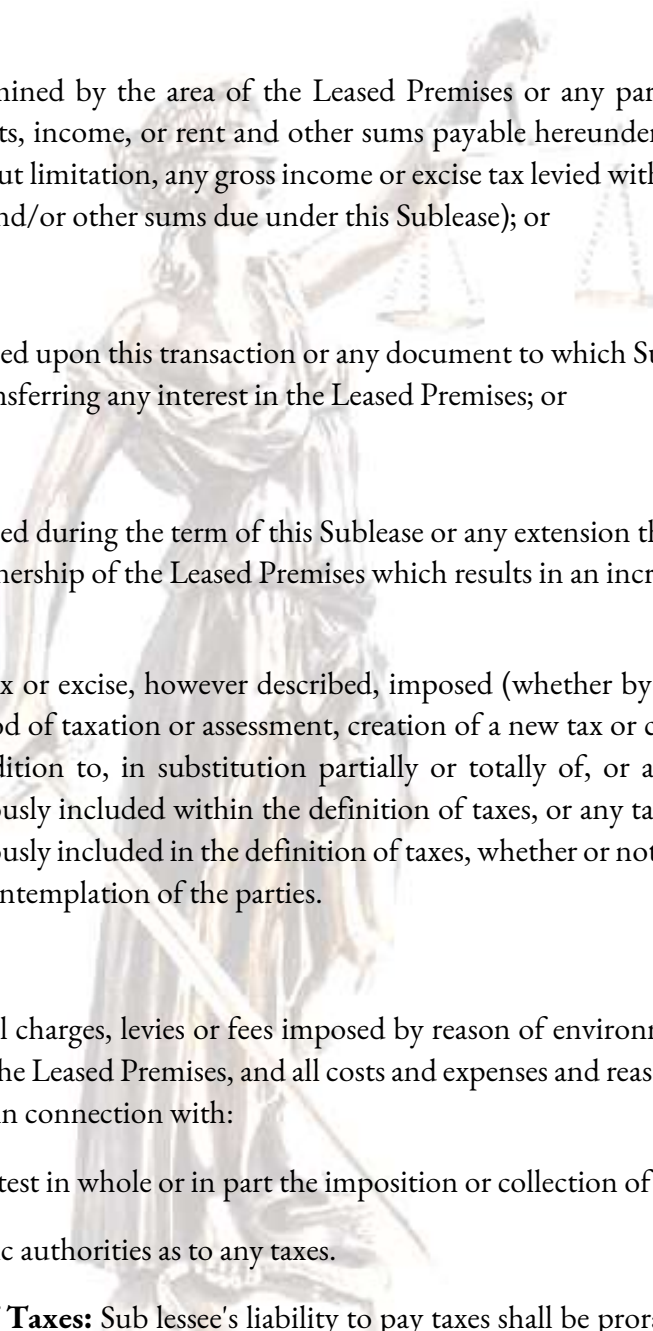
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- i. Use or permit the Leased Premises to be used for any purpose in violation of any statute, ordinance, rule, order, or regulation of any governmental authority regulating the use or occupancy of the Leased Premises.
 - ii. Cause or permit any waste 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

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- 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

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- 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

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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

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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

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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

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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

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- 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 and 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

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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

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- 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

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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

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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;

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- 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

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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.

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- 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

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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

OBJECTION MY LORD

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

OBJECTION MY LORD

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

OBJECTION MY LORD

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 breach 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

OBJECTION MY LORD

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

SUB LESSEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

EXHIBIT A

TO SUBLEASE

DESCRIPTION OF LEASED PREMISES



OBJECTION MY LORD

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.

ISAAC CHRISTOPHER LUBOGO

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

EVICTIONS.

September 14, 2022

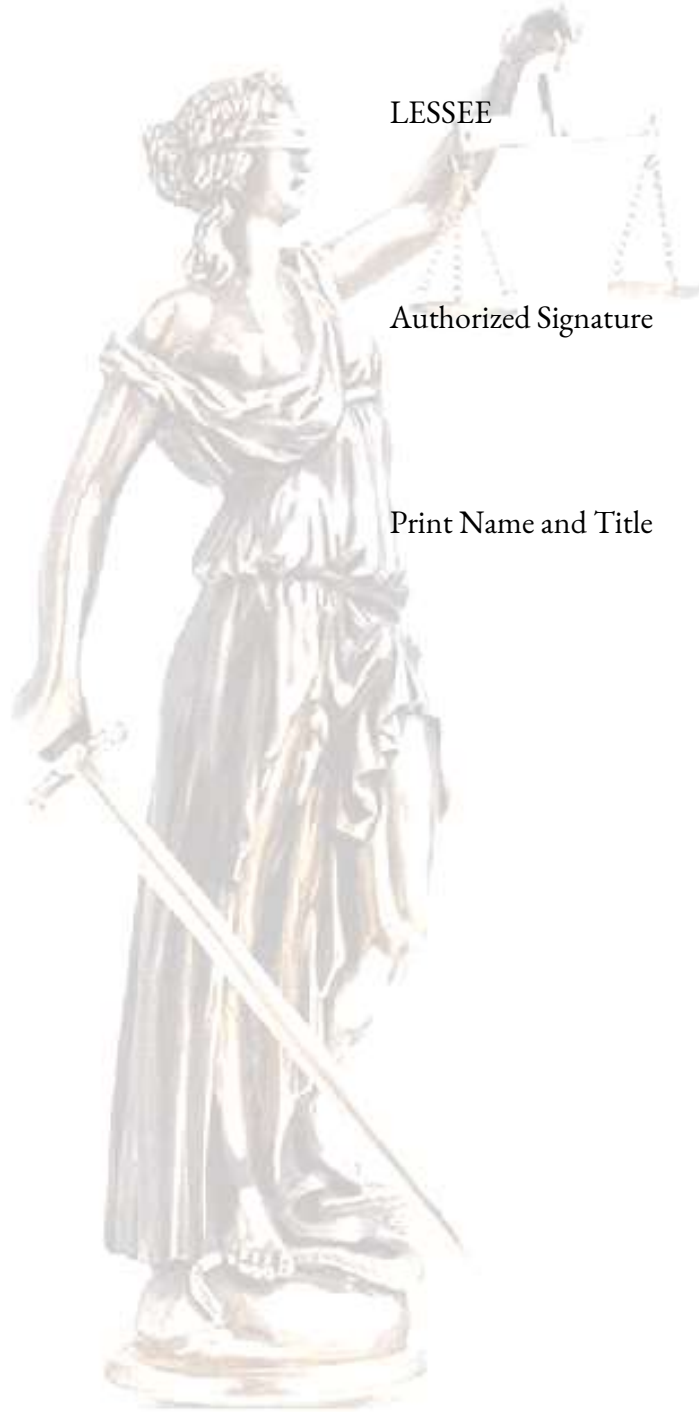
Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

ISAAC CHRISTOPHER LUBOGO

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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.

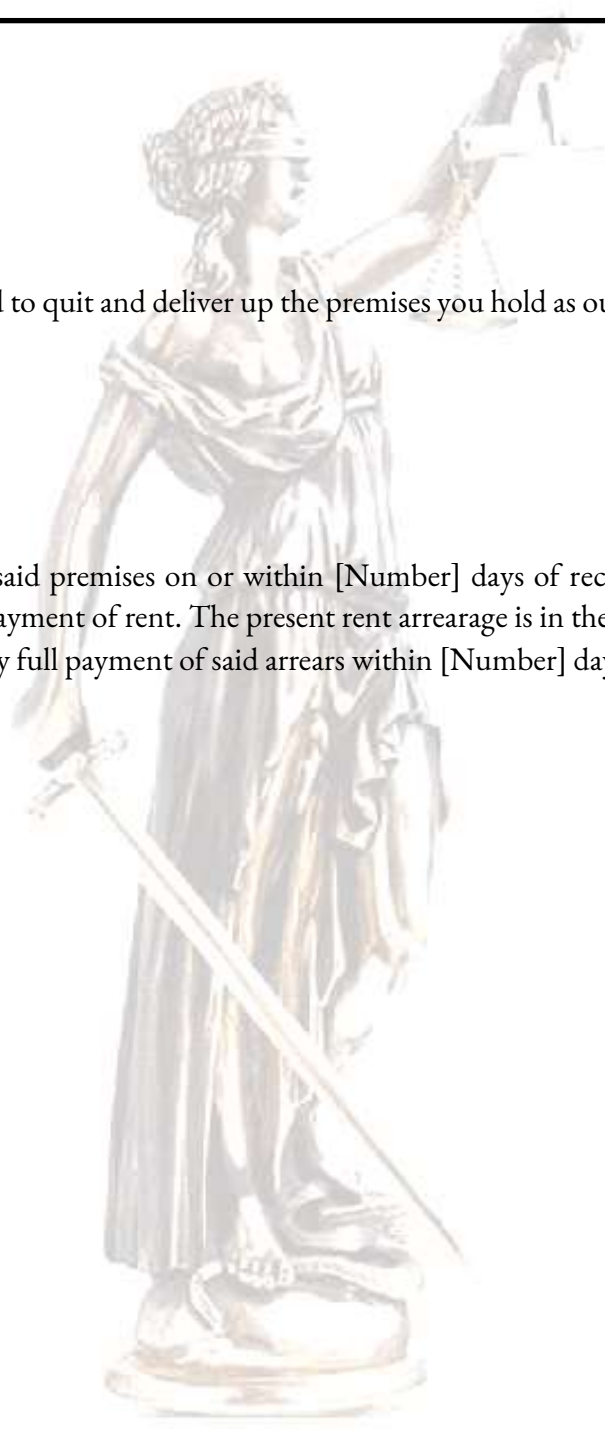
Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com



ISAAC CHRISTOPHER LUBOGO

CERTIFIED MAIL, Return Receipt Requested

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

ISAAC CHRISTOPHER LUBOGO

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

ISAAC CHRISTOPHER LUBOGO

CERTIFIED MAIL, Return Receipt Requested

THE DOCTRINE OF NOTICE.

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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 your cooperation.

Sincerely,

Your name

Your title

Telephone contact

youremail@yourcompany.com

CERTIFIED MAIL, Return Receipt Requested

ISAAC CHRISTOPHER LUBOGO

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

September 14, 2022

Contact Name

Address

Address2

City, State/Province



ISAAC CHRISTOPHER LUBOGO

Zip/Postal Code



OBJECTION MYLORD

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

September 14, 2022

ISAAC CHRISTOPHER LUBOGO

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

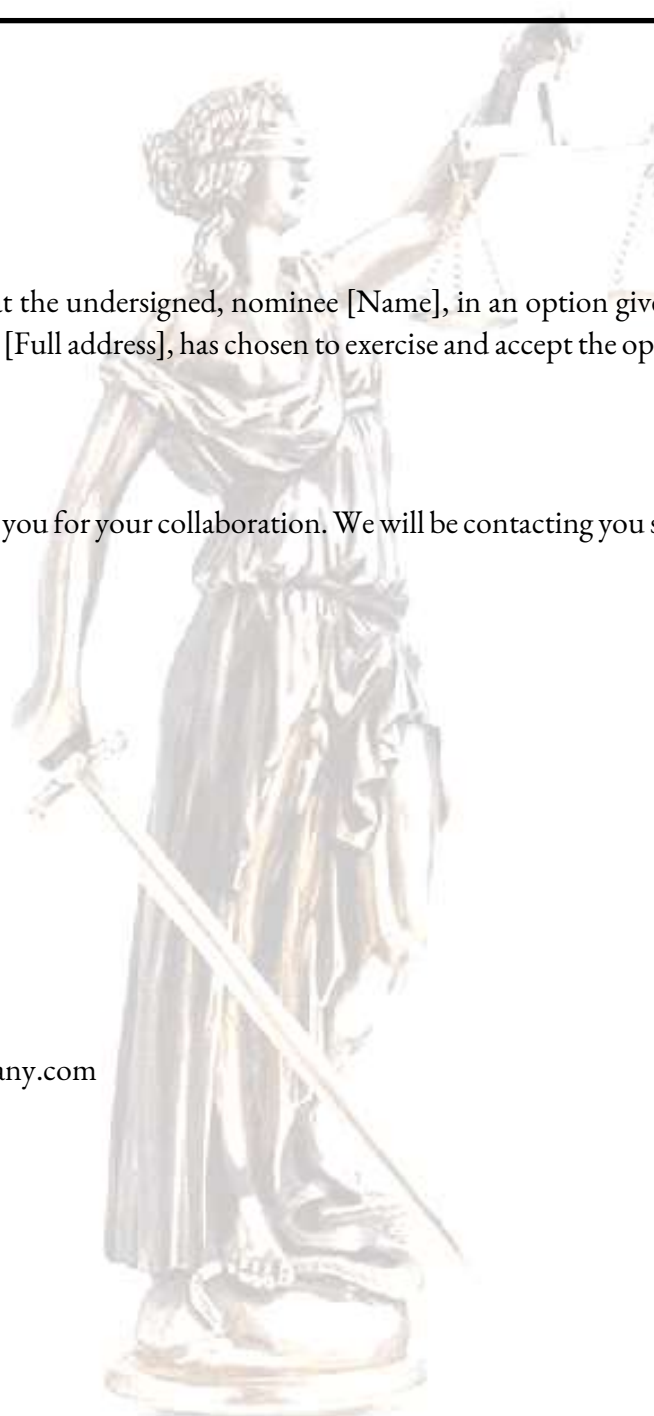
youremail@yourcompany.com

September 14, 2022

Contact Name

Address

Address2



ISAAC CHRISTOPHER LUBOGO

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

OBJECTION MYLORD

September 14, 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

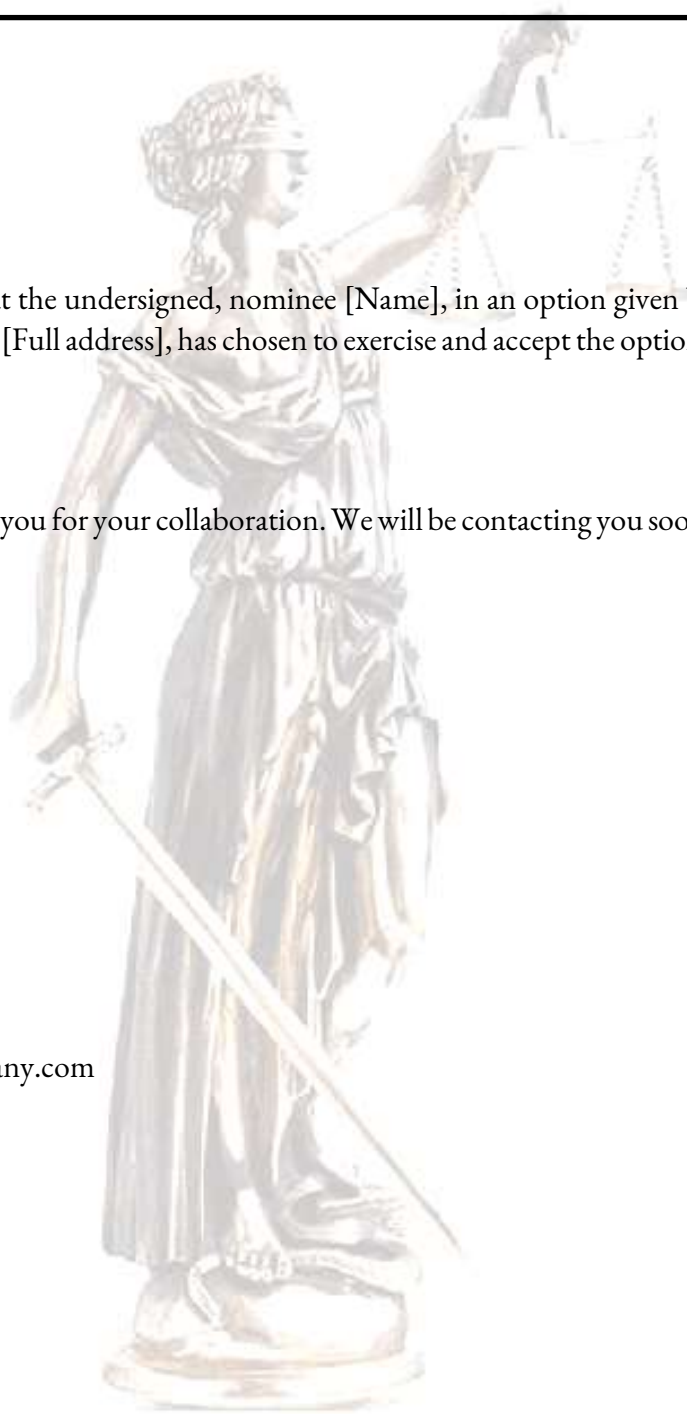
youremail@yourcompany.com

September 14, 2022

Contact Name

Address

Address2



OBJECTION MYLORD

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

ISAAC CHRISTOPHER LUBOGO

September 14, 2022

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



OBJECTION MYLORD

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

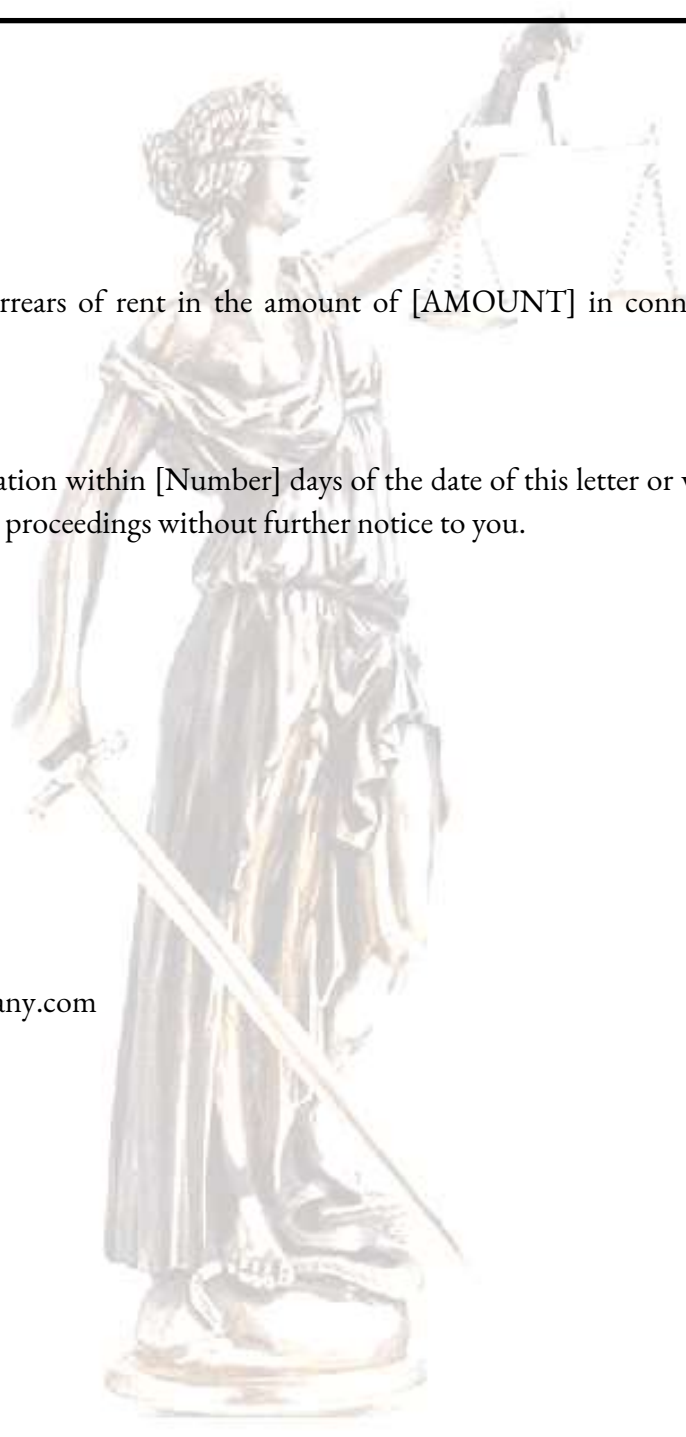
youremail@yourcompany.com

September 14, 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

OBJECTION MYLORD

youremail@yourcompany.com

September 14, 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

September 14, 2022

OBJECTION MYLORD

Contact Name

Address

Address2

City, State/Province

Zip/Postal Code



ISAAC CHRISTOPHER LUBOGO

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

September 14, 2022

Contact Name

Address

Address2



OBJECTION MYLORD

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.

ISAAC CHRISTOPHER LUBOGO

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

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE..... COURT OF.....HOLDEN AT
CRIMINAL APPN NOOF

(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 of20.....

APPLICANT

Lodged in the Court Registry this Day of 20..

.....

ASSISTANT REGISTRAR



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE COURT OF

HOLDEN AT.....

CRIMINAL APPN NO..... OF20... (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)

ISAAC CHRISTOPHER LUBOGO

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

Drawn and filed by: THE APPLICANT

OBJECTION MY LORD

BEFORE ME

.....
.....

JUSTICE OF
PEACE



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 Of20... The 1st 2nd prisoner in the case No of the calendar of 20... was convicted before me

.....

Of the offence of under section and 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.

OBJECTION MY LORD

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 aton th e 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







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.

ISBN: 978-9970-445-77-6



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