

A PRESENTATION MADE BY HON. JUDGE MOSES MUKIIBI, HEAD, LAND DIVISION, AT A REFRESHER COURSE FOR LAND TRIBUNAL STAFF AT LAKEVIEW REGENCY HOTEL, MBARARA FROM 2ND – 5TH APRIL 2006

**TOPIC: LAND TENURE SYSTEMS AND LAND LAW
LAWFUL AND BONA FIDE OCCUPANTS UNDER THE LAND ACT (CAP.227)**

RIGHTS AND INTERESTS OF LAWFUL AND BONA FIDE OCCUPANTS ON REGISTERED LAND

Whenever you have to try land cases which involve, affect or impact on tenants by occupancy.: -

A: Consider the following;

1. The provisions of Article 237 (8) of the Constitution, which creates security of occupancy of those tenants on mailo land, freehold or leasehold land.
2. Section 29 of the Land Act which defines "lawful" and "bonafide" occupants.
3. Section 31(1) of the Land Act which guarantees security of occupancy of those tenants on registered land.
4. Section 31 (2) which deems tenants by occupancy to be tenants of the registered owners.
5. Section 31(3) [as amended by Act 1/2004] which provides for payment by the tenant to the registered owner of an annual nominal but non-commercial ground rent.

6. Section 34 (1) [as amended by Section 16 of Act 1/2004] and (3) of the Land Act which provide that prior to undertaking any transaction such as assigning (which includes "selling"), sub-letting or sub-dividing the tenancy by the tenant by occupancy, he/she has to apply to the owner of the land for his or her consent to the transaction.
7. Section 34(9) of the Land Act which invalidates any such transactions if undertaken without prior consent of the land owner.

"No transaction to which this section applies shall be valid and effective to pass any interest in land if it is undertaken without a consent" of the owner of the land.

8. Section 35 of the Land Act which provides for the tenant giving the first option to the land owner if he wants to sell the tenancy, and the land owner giving the first option of buying to the tenant if he wishes to sell his/her reversionary interest.
9. Section 36 of the Land Act which provides for Mutual Agreement between the Tenant by occupancy and the registered owner where the latter wishes to get a portion of the tenant's Kibanja for his/her development needs.

The parties may agree to sub-divide the land and become owners of individual portions of the sub-divided land.

Each party gets exclusive occupancy or ownership of such portions as may be agreed.

10. Section 64 (2) of the Registration of Titles Act (Cap.230) which makes any land included in any certificate of title subject to the interest of any

tenant of the land, though it (such interest) may not be specially notified as an incumbrance on the certificate.

So, be careful in making orders which affect or impact on the rights of the tenants by occupancy where they have not been parties to a suit, or where they have not been given an opportunity to be heard.

B: During trial of land disputes take keen interest in visiting the locus in quo, and while there: -

(a) Ensure that all the parties, their witnesses, and Advocates (if any) are present.

(b) Allow the parties and their witnesses to adduce evidence at the locus in quo.

(c) Allow cross-examination of witnesses by either party, or his/her counsel.

(d) Record all the proceedings at the locus in quo.

(e) Record any observation, view, opinion or conclusion of the court.

C: Where a dispute is between a previous and a current registered owner of land, and involves determining an issue of ownership/title, avoid making blanket orders, for example: -

(a) For eviction of an unsuccessful party (judgment debtor), or putting the successful party (Decree holder) in possession, when you have

no evidence of whether or not there are tenants occupying the land.

(b) For demolition of structures on the land when you have no evidence of who put up or owns which structure.

D: Where you come to a conclusion that a registered land owner has a right to demolish illegal structures on his/her land be specific about the parties whom he/she sued, the parties who constructed the illegal structures on the land, and the parties who have lost the case.

E: The officers who are responsible for issuing warrants of eviction or to put parties in possession, or to demolish illegal structures should exercise due diligence and avoid merely copying whatever is contained in applications for execution.

F: Where the court orders a sale of immovable property in execution of and to satisfy a decree, or taxed costs, care should be taken not to infringe on the rights of tenants in lawful or bonafide occupation of such property, or persons enjoying easements over the property, or the rights of other lawful encumbrancers.

G: Where you have to determine whether a tenant is a "lawful" or "bona fide" occupant –

(a) Evaluate the evidence carefully;

(b) establish the origin of the tenancy (under the Busulu and Envujo Law 1928, the Ankole landlord and Tenant Law 1937 or the Toro Landlord and Tenant Law 1937).

- (c) establish whether the litigant claims ownership by succession, or acquisition by purchase.
- (d) ascertain whether there were any conditions precedent to be observed or performed before an interest in a Kibanja (Customary holding) could be passed to a new holder (owner)
- (e) consider the effect of the Land Reform Decree, 1975 (Decree 3/1975) on the customary tenancies on –
 - (i) Mailo land;
 - (ii) Freehold land in Ankole and Toro.

[The tenancies on such land were converted into customary tenures on public land, without payment of Busuulu, envujo or customary rent (in Ankole and Toro). A customary occupation of public land was only at sufferance.

A lease of any such land could be granted to any person.

Such customary occupation of land was subject to the development needs of the lessee on conversion (who was a former owner of a mailo in Buganda or freehold in Ankole and Toro).

The Lessee on conversion had to pay compensation to the customary tenant where the tenancy was being terminated to satisfy the development needs of the said lessee.

A lessee on conversion could terminate any customary tenure by notice in writing, being not less than six months, addressed to the holder of the tenure.

A holder of any customary tenure had to give notice of not less than three months to the prescribed authority before transferring his tenure by sale or gift inter vivos.

A holder of any customary tenure had no interest in the land.

Any transfer of a customary tenure could only vest title in the improvements or developments carried out on the land to the transferee.

Any agreement or transfer by a customary tenant purporting to transfer a customary tenure as if it was actual title to land (e.g. selling an undeveloped plot or bush by measurements) was void and of no effect and illegal [an offence – see Section 4(2)].

(f) Consider the evolution of the customary occupation of land from a Kibanja under the former laws of Buganda, Ankole or Toro, into customary tenures on public land, and now tenancies by occupancy under the Land Act, 1998 (Act 16/1998 now Cap.227).

(g) In light of the various laws which have governed the acquisition and holding of customary tenures ascertain the rights of a litigant or claimant, who should fit into either of the two categories of “lawful” or “bonafide” occupant under S.29 of the Land Act.