The Republic Of Uganda

In The High Court Of Uganda At Kampala

Civil Suit No 179 of 2002

Between:

1	**Baleke Kayira Peter**	
2	**Sebwato Patrick**	
3	**Mugerwa Antonio**	
4	**Nanjaye Lusi**	
5	**Kansiime Godfrey**	**Plaintiffs**

VERSUS

1	**Attorney General of Uganda**	**1st Defendant**
2	**Kaweri Coffee Plantations Ltd**	**2nd Defendant**
3	**Engineer Emmanuel Bukko Kayira (Landlord)**	**Third Party**

Before: Hon Mr Justice Anup Singh Choudry

Judgement

James Nangwala and Alex Rezida advocates ordered to pay 37 billion shillings for defrauding the government and the tenants ,and for dishonesty, negligence , theft and misappropriation of client monies, Land Act,, Bias, Eviction, Tenant's compensation , advocates Account Rules

1 Legal representation

Mr JBM Balikuddembe and Mr G. Lule for the Plaintiffs
Mr Wanyama Kadoli for the Attorney General
Mr Bwayo Richards holding Brief for for Nangwala and Rezida Advocates on behalf of second Defendants.
Francis Mugerwa for the Third Party (Landlord).

2 Before the commencement of the hearing I received an application from Messrs Nangwala and Rezida acting for the 2nd Defendant through Bwayo Richard advocate who was on holding brief that the case should be transferred to another judge . The reason was that Messrs Nangwal and Rezida were acting for the Law Society in Constitutional Petition No 11 of 2012 and that I had applied to join that petition as a third party. Uganda law Society's petition sought orders against His Excellency to set up a tribunal to interdict me on ground of alleged misconduct and incompetence. I am also aware that there is another Petition No 34 of 2012 in the Constitutional Court filed by Pastor Bosco Odiro to nullify Law Society's petition as the Constitution gives immunity to His Excellency from any proceedings under Article 98(4)

3 The application did not ask me to recuse from the case but merely to transfer it to some other judge . Until I recuse myself from hearing the case, it cannot be transferred to another judge.

4 In their application Messrs Nangwl and Rezida cite the case of Metropolitan Properties (F.G.C.) Ltd v Lannon (1969) 1 QB 571 in which Lord Denning held that *'… Judgement must be rooted in confidence and confidence is destroyed when right minded people go away thinking the 'judge was biased'.*

5 This case has been cited out of context. In that case it was to the effect that a barrister or a solicitor should not sit as a judge on a case to which one of his clients was a party, nor on a case where he was acting against one of the parties. In that case, Mr Lannon was Chairman ,hearing a rent assessment case, on certain flats in a block, one of which one was occupied by his father(client). The Law Society's conflict rules would disqualify a solicitor acting for one or the other of the parties to a case necessarily bars the solicitor from hearing the case as a judge. There was thus a conflict of interest that would have given the impression of bias.

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6 **In Locaball (UK) Ltd v Bayfield Properties Ltd and Another (2000)QB 451,** His Lordships expressed the principles of partiality by stating *that :*

"Any judge who allows any judicial decision to be influenced by partiality or prejudice deprives the litigant of the important rightto which we have referred and violates one of the most fundamental principles underlying the administration of justice. Where in any particular case the existence of such partiality or prejudice is actually shown the litigant has irresistible grounds for objecting to trial of the case by that judge or for applying to set aside the judgment.

7 Such objections and applications based on what is the case law , is called '*actual bias'. The proof of actual bias is very difficult because the law does not countenance the questioning of a judge about extraneous influences affecting his mind.; and the policy at common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias* without requiring them to show that such bias actually exists

8 '*There is however , one situation in which, proof of the requisite facts, the existence of bias is effectively presumed , and in such cases it gives rise to what has been called automatic disqualification . That is where the judge is shown to have an interest in the outcome of the case which he has decided or is to decide. The principle was briefly and authoritatively stated by Lord Campbell in* ***Dimes v Proprietors of Grand Junction Canal (1852) 3 H.L. Cas.759,793-794.,,*** *when orders and decrees made by and on behalf of the Lord Chancellor were set aside on the grounds that he had had at the relevant time a substantial shareholding in the respondent company'*.

9 In this case before me, I am hearing all the three parties namely the tenants (Plaintiffs), the Government (First Defendant) and the Investors (2nd Defendant) and in order for me to disqualify myself I need to have a pecuniary interest in the outcome of the case to show actual bias. **. See Locabail(UK) ltd v Bayfield Properties Ltd (200) QB451**

10 There is no statutory provision that denies me from hearing any of them. I have not been interdicted. I have been properly appointed a judge under the Instrument of Appointment .And I am here to remain a judge

until I retire. Equally there is no actual or apparent bias when the hearing has not even commenced. None of the three ingredients to show bias have been proved – actual bias; statutory provision or real danger of bias.

11 Advocates for the other 2 parties had no objection to my going ahead. None of the litigants including Messrs Nangwala's clients raised any objection. They were happy for me to go ahead with the case. A lawyer cannot complain when he is not a litigant in the case before the judge. .

12 A lawyer cannot interfere with the independence of the judiciary - Article 128 of the Constitution is specific and states:

1 In the exercise of judicial power , the courts shall be independent and shall not be subject to the control or direction of any person or authority

2 No person or authority shall interfere with the courts or judicial officers in the exercise of judicial functions.

13 lawyers have a duty to act in the best interest of their clients. Every advocate is an officer of the Court and is subject to the jurisdiction of the High Court -Article 16 of the Advocates Act Cap 267.A lawyer cannot choose a judge .As a legal arbiter I am bound to apply the law as I understand it to the facts of the individual case as I find them . I have taken judicial oath and I must apply the law without fear or favour, affection or ill will that is without partiality or prejudice. Justice is portrayed as blind not because she ignores the facts and circumstances of individual cases but because she shuts her eyes to all considerations extraneous to the particular case.

14 My performance in the judiciary has been impeccable and I demonstrated exemplary behaviour in the past five years as a judge. I did not do anything wrong under our Constitution. In the past I also ruled in favour of clients who were represented by Nagwla and Resida. I suspect there is some other motive why James Nangwala and Alex Resida do not want to appear before a grey bearded judge in this case. That will become apparent later because of the scam in this case in

which both James Nangwala and Alex Rezida were involved together with others.

15 Criticism of Unfounded allegations are intended merely to vilify me and may amount to contempt of court. **See R v White (1808)1 Camp359n.**

16 It is questionable whether any imputation of partiality, however temperately expressed, must always be a contempt **see R v Nichos(1911)12 CLR 280(Aus HC)8**

17 Before hearing the case,I perused the file and analysed matters for clarification before the court. On 7th February 2013. I made an order requiring the 2nd defendant and their lawyers to appear before me on 13thFebruary to consider whether they should seek separate legal representation in view of potential conflict of interest which I alluded may arise from omission in the conveyancing procedures: Messrs Nagwala and Rezida had acted for two parties in a conveyacing transaction ; they acted both for Uganda Investment Authority and for the German Investors in the grant of a lease when they knew full well that the freehold title was flawed. At that moment they ought to have disqualified themselves from acting for the second defendant as matter of professional ethics and conduct. They failed to comply with the court order. .

18 In the Guide to the Professional Conduct of Solicitors –The law Society of England and Wales 8th Edition 1999 Rule 21.14 states that a solicitor must comply with any order of the court which the court can properly make requiring the solicitor or the firm to take or refrain from taking some particular course of action. A breach of Rule 21.14 may amount to contempt of court.

19 Messrs Nangwal and Rezida,did not disqualify themselves,despite conflict of interest thus misguiding and misleading their client and giving them false hope. They were in breach of the Solicitors Code of Conduct and I shall refer to the English Code although all the major jurisdictions have similar provisions that regulate professional conduct.

20 Under Rule 25.02 a solicitor must not act for a seller and buyer if conflicts of interest exists or arises and in circumstances where a transfer of land is for value at arm's length.

21 Rule 15.01 –When instructions must be refused

A solicitor or firm of solicitors should not accept instructions to act for two or more clients where there is a conflict or a significant risk of a conflict between the interests of those clients.

22 Rule 15.02 - If a solicitor or firm of solicitors has acquired relevant confidential information about an existing or former client during the course of acting for that client , the solicitor or the firm must not accept instructions to act against the client.

23 In Professional Ethics and Practices for Scottish Solicitors 3rd Edition by Webster and Webster:

'a client must at all times be able to look at his solicitor to obtain advice which is independent and impartial and is seen to be so . If the same solicitor acts for both parties, each client is deprived of his right to be independently advised.

24 Virginia P Shirvington in his book Ethics and Conflicts of and Duties refers to the statement of Ethics issued by the law Society of New South Wales which states:-

'A practitioner which includes a law practice, has a conflict of interest when the practitioner serves or attempts to serve two or more interest which are not able to be served consistently or honours or attempts to honour two or more duties which cannot be honoured compatibly and thereby fails to observe the fiduciary duty owed to clients and to former clients.

'A conflict of interest arises where there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer 's own interest or by the lawyer'sduties to another client , a former client or a third person. A

substantial risk is one that is significant, and while not certain or probable is more than a mere possibility'

'A lawyer should be aware that he or she might owe duties to a third person, even though no formal lawyer /client relationship exists. '

25 Mesrs Nangwala and Reizda did not disclose to their clients that the land was encumbered with the statutory rights of the tenants because freeholder for whom they acted did not get vacant possession. Messrs Nangwala andRezida deliberately withheld information in breach of their fiduciary duty and this deliberate omission was a dishonest conduct. Nangwala and Rezida had forsaken their loyalty to the Lessor and Lessee in the grant of the lease, when to their knowledge the title was lumbered with encumbrances . Both advocates were in breach of their fiduciary duty. I cite authorities below

26 In **Moody v Cox and Hatt (1917) 2 Ch 71** , the duty to disclose information was considered by Scrutton L.J in this case –

'it may be that a solicitor who tries to act for both parties puts himself in such a position that he must be liable to one or the other whatever he does. The case has been put of solicitor acting for vendor and purchaser who knows of a flaw in the title by reason of his acting for the vendor, and who if he discloses that flaw in the title which he knows as acting for the vendor . may be liable to an action by his vendor , and who, if he does not disclose the flaw in title , may be liable to action by the purchaser for not doing his duty as a solicitor for him . It will be his fault for mixing himself up with a transaction in which he has two entirely inconsistent interest'

' if a solicitor is unwise enough to undertake irreconcilable duties it his own fault , and he cannot use his discomfiture as a reason why his duty to either client should be taken to have been modified.'

27 In Spector v Ageda (1973) 2 Ch.71 Megarry J stated-

' A solicitor must put at his client 's disposal not only his skill but his knowledge , so far as relevant ; and if he is unwilling to reveal his knowledge to his client , he should not act for him. What he cannot do is act for the client and at the same time withhold from him any relevant knowledge that he has.

28 In Mathew (t/a Stapley and Co) v Bristol and West Building Society (1996) EWCA 533 , *Lord justice Millett giving the main judgement considered the concept of fiduciary duty and states :*

'A fiduciary is someone who has undertaken to act for or on behalf another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single minded loyalty of his fiduciary. '

' a fiduciary who acts for two principals with potentially conflicting interests without the informed consent of both is in breach of his obligations of undivided loyalty ; he puts himself in a position where his duty to one principal may conflict with his duty to another.

' he just serves each as faithfully and loyally as if his only principal. Conduct which is in breach of this duty need not be dishonest but it must be intentional.

Messrs Nangwala and Rezida were on the basis of above authorities guilty of professional misconduct.

29 I also considered the delay of 10 years before this came up for hearing. My fear was that any further delay or adjournments would put off the case for another few years which I was not prepared to do. In fact it was a day of celebration that the hearing came before the court after 10 years and a record that should have been entered into the Guinness Book of Records .Justice delayed is justice denied and if the courts are to reduce the backlog they should be prepared to handle cases in good time and hence a good reflection of the judiciary.

30 A chronology of last 10 years will show that the judges who came across this case were not prepared to hear it and hence it got adjourned every year when the hearings were fixed :

15.08.02 claim filed
10.09.02 2nd Defendant files Defence
1st Defendant filed Defence
13.08.03 2nd Defendant's application that Plaintiff has no authority to bring a representative action is dismissed for being misconceived
17.05.03 Application by 2nd defendant forsecurity of costs.
20.06.03 Order made for security of costs
15.01.04 case set for hearing
19.04.04 case set for hearing
18.01.05 case set for hearing
19.06.06 case set for hearing
17.11.06 case fixed foe scheduling
05.06.07 fixed for hearing
02.03.09 fixed for hearing
24.04.09 scheduling conference Landlord joined as a third art at the behest of the Attorney General
22.10.09 fixed for hearing
25.08.10 Fixed for hearing
29.04.11 Fixed for hearing
07.06.11 witness statements to be filed
15.07.11 fixed for hearing
29.02.12 fixed for hearing
26.03.12 fixed for hearing
day of jubilation when the case was finally heard

31 This is a typical case showing the delay in prosecuting cases and hence piling up backlog. Apart from an application to challenge representative action, and scheduling , no activity took place. Each time a case was fixed continuously for the last 10 years it got adjourned. In my view the case that should have taken 6 months took 10 years. It is a reflection of backlog of cases in the courts.

32 The Plaintiffs

The plaintiffs were customary tenants of the land of four villages of Kitemba, Luwunga, Kijunga and Kiryamakobein Madudu sub county Mubende district which is a registered freehold land known as Buwekula Block 99, Plot No1 and registered in the name of Engineer Emmanuel Bukkoto Kayire .All the 401 tenants were forcibly evicted from their homes without any compensation by the defendants to whom the land was sold and/or leased. The action was brought by the first five Plaintiffs herein in a representative capacity.

33 The Fist defendant

The First defendant is the Uganda Investment Authority represented and sued as the Attorney General on behalf of the Government of Uganda. The Uganda Investment Authority(UIA) is a government parastatal, whose mission is to promote and facilitate investments projects , provide serviced land, and advocate for a competitive business environment. The UIA works with the government and the private sector to promote the economic growth of Uganda through investment and infrastructure development. In this case UIA were a conduit in introducing and facilitating the acquisition of leasehold land by the foreign Investors who cannot otherwise hold freehold land -(Article 237(c) of the Constitution). Hence UIA purchased the freehold land to roll over the lease to the German Investors.

34 Second Defendants who are Kawere Coffee Plantations Ltd .(I shall call them German Investors)

35 The 3rd Defendant is the landlord with freehold interest who sold it to UIA. The 3rd defendant was added as a third party at the behest of the 1st Defendant .I was sorry to learn that he recently passed away but the lawyer of his estate Mr Francis Mugerwa attended court, to inform the Court as Officer of the Court, about the landlord's death and that he had no instruction to appear in this matter. He was discharged from attending the court after I put few questions to him.

36 Plaintiffs Pleaded case

That between 17th August and 21st August 2001 the Plaintiffs were unlawfully and forcibly evicted by the UPDF soldiers together with the RDC of Mubende District Mr Perezi Katamba from their homesteads, and that the soldiers destroyed and burnt plaintiffs houses and other property. A community with families of around 4000 people were displaced without any compensation or relocation.

That the German Investors through their servants and agents cut down and uprooted plaintiffs food and cash crops while clearing the land for cultivation and for planting of coffee trees.

The Plaintiffs are therefore claiming damages in the sum of Shs3,814,570,,050/against first and second defendants and their agents in tort for wrongful and unlawful eviction from the land which is now held by the first defendant and the leasehold title by the German Investors .

37 Pleaded Defence of the First Defendant..

The 1stdefendant denies the claim and puts the plaintiffs to strict proof thereof. They deny that the plaintiffs were customary tenants and that they were evicted forcefully by UPDF soldiers or the RDC or that the crops or the properties were demolished orburnt .

That in the alternative if the plaintiffs were evicted , the UPDF were acting on a frolic of their own an not acting within the scope of their employment and that their actions and/or omissions were if any, for their benefit or for the benefit of the registered land lord for which the defendant cannot be liable.

That the alleged damage, loss, suffering and embarrassment experienced by the plaintiff and their dependents if any is too remote a consequence of UPDF soldiers or any other government agent.

38 Pleaded Defence of the 2nddefendant

The second defendant avers that it is neither the principal nor the agent of the UPDF soldiers or anybody alleged to have evicted the plaintiffs or their principals.That any cultivation by the second defendant was done

in exercise of its as registered owners of leasehold land comprised in the leasehold Register Volume 2954. Folio 24 Plot no 1, Buwekula , Block 99, of which they were registered on 31st December 2001.

That they acquired the land with vacant possession and could not be held liable for any actions prior to its acquisition They deny theclaim and the relief sought.

39 Plaintiff's Evidence

PW1 – Baleke Kayira Peter. Age 51 .farmer. Statement confirmed. All claims were verified by LC1 so that only genuine claims were admitted. Formula applied in computing compensation as listed in Exhibit P1 attached to the Plaint was computed by rates of Mubede District in 1999 because 2001 valuation rates were not available. We looked at each plot and valued it. If it was destroyed we looked at the debris. We entered the land in disguise as workers in order to survey the abandoned and destroyed homes. Valuations were carried out September 2001 soon after we were evicted in August 2001.

The valuations were all signed by the LC1 in Luganda-Exhibit P1 .There is also English version Exhibit P2.

The crops were destroyed by Kawere Coffee Plantations. I was at a meeting on 7.08.2001 when the district officer ran away leaving behind his Note Book Marked ID 1

On 15h June 2001 a meeting was held with RDC Mubende when Patrick Nyaika and Barnabas Tumwesigye ,Assistant Director UIA, Land Development Division UIA ,Greg Strough and Thomas Platter represented Kawere Coffee Plantations Ltd were present . All tenants were asked to vacate by 31st August. That the landlord Kayiwa bought an alternate land at Block 168 at Kambuye for our relocation and that the landlord will pay us compensation after the professional surveyor has valued each person's plot and that the tenants would be given land equivalent to the our existing plots. This was confirmed by letter from Landlord's solicitors Urban Tibamany a dated 11th June 2011.

The Deputy RDC that told us free transport would be provide for relocation. The Secretary , Mubende Dist L.B stated that they would

strictly follow the provisions of Constitution and the Land Act regarding our compensation

Some 115 residents were forced to sign relocation agreements by Dep RDC Baguma Banya. At the meting on 7.08.201Plaintiffs were asked to vacate by 15th August. The meeting ended in a chaos because the residents were angry.

On 17th Aug meeting both Mr Stroug and Mr Platter were present . By a letter dated 11th June from Mr Tibamanya we were informed that Mr Emmanuel Bukkoto Kaiwa the LL has bought alternate land and each resident will get equivalent allocation. Graduated tax is paid on the basis of LC1 report.

For purposes of compensation we used no of trees or acreage or no of plants . Small plot was calculated as quarter acre.

Only 27 people were paid disturbance allowance of Shgs 50,000. No one was paid any compensation. No one was relocated to 168 Kambuye.

39 Other witnesses of Plaintiff were:

PW 2 – Kyambabadde John Patrick Sendijja

Chairman LC3 for Madudud sub county since 1998

PW3 Sebwato Patrick

Chairman of LC1 Kitemba Village since 1998

PW4 Serugo Georg Wilson Salongo

In 2001, 1 was Chairman LC11 in Madudu sub county

PW5- Nakavuba Mangdalena

Since 1998 I am Vice Chairman LC1 Kijunga village

PW6- KaryamarwakiGidion

I am the Chairman of my village Lwunsambya, LC1I was Chairman of Luwunga LC1 from 1998 .

PW7- NsambaYozefati

I am the Vice Chairman of Kiramakobe LC1 since 1998.

PW8- Tibikirira Lauben

40 Summary of Plaintiff's evidence

From the above, the Plaintiff's witness evidence in a nutshell is that most of the residents of the four villages were asked to vacate their properties by 31st August at a meeting addressed by the Dep RDC of Mubende District which was also attended by Greg Stroug and Mr Platter on 18thJune . The residents were informed that they would be relocated to land acquired by the Landlord at Kambuye Block 168. The Dep RDC got some residents to sign prepared relocation agreements and subsequently at another meeting held at Kitemba trading Centre brought forward the date to vacate to **15th August**. On 17thAugust ata public meeting convened by the RDC the residents were asked to vacate forthwith. On 18thAugust many residents were kicked, beaten, by soldiers and their property and crops destroyed . A bulldozer Reg No UG0370W was used to demolish the houses. On 24thAugust HE the President launched the Coffee Project. Immediately thereafter the German Investors through their workers started cutting and destroying the food crops and cash crops in the course of clearing the land. Victims suffered and starved and moved to the forest and make shift shelters. A number of children and old people died because of cold. No professional surveyor was sent as promised and no compensation, or relocation was arranged or no resettlement took place at Kambuye as promised. No 6 months Notice was given as prescribed by law. The Plaintiffs thereafter at their own initiative compiled a list of their lost property and , food and cash crops.

41 Defendants evidence

1stdefendant's Counsel Mr Wanyama Kodoli was given an opportunity to cross examine Plaintiff's evidence but he sought a copy of the Exhibit Marked Vol 1 (English translation) of the computation of compensation compiled by the tenants which he said he had not been served. I arranged for the Exhibit to be copied and it was provided to Mr Odoli. He then sought adjournment on the pretext that he had to analyse the contents. The adjournment was granted as requested to the following morning but Mr Odoli did not turn up nor did he send any explanation for his absence.

I later found that the document had actually been served with the Plaintiff's claim. Mr Odoli had conduct of the case from the outset. And if he had not received the Exhibit as alleged he would have requested for it particularly when there was ample opportunity within the last 10 years. My view is that the claim was served with the Exhibit .This is endorsed by the fact that the 1st Defendant filed a properly constituted Defence and would not have done so without the Exhibits. The Plaintiffs solicitors were credible and confirmed that he had been served by them.

The key question in cross examination of those exhibits would have been the manner of computation of 400 claims. I looked at these individual claims with the smallest claim from G Stakange for Shgs 376,000 (p183 Exh P 1) to largest claim for Shgs 134,081,050 from Baleke kayire (p167 Exh P1). I could not fault the claims. In my view and from common knowledge of land prices and the plant prices these claims were realistic. On average each plaintiff was claiming around 9.5 million shillings or $ 3800.

42 This was a serious case with a quantum including interest that stood at 14 billion shillings. But no seriousness or desire to protect government's interest was shown by the Attorney General's office.

I found that Mr Odoli mislead and deceived the court contrary to Article 74 (1) (b) of the Advocates Act. I found the conduct of this Principal State Attorney was conduct unbefitting a lawyer. I shall refer him to the law Council.

43 The 2ND defendant's advocate who was on a holding brief did not make any cross examination of the plaintiff's witnesses.

44 At the close of the hearing Plaintiff's sought leave to file written submissions, which they did on 12th March 2013. I concur with their submissions.

44 Agreed ISSUES

At the Scheduling conference the issues agreed were ;

1 Whether plaintiffs were occupants of the suit land. If so, whether their occupation was Lawful

2 Whether or not the second defendant took over vacant possession of the suit land

3 Whether or not the plaintiffs were lawfully evicted by agents of the defendants

4 Whether or not the defendants were vicariously liable for the eviction of the plaintiffs

5 What remedies to the parties.

45 I shall deal with Issue NO 1-:

Issue No 1- Whether Plaintiffs were occupants of suit land . If so , whether their occupation was lawful.

The Plaintiffs exhibited P1 to their claim showing the computation of damages. Each plaintiff's computation has shown the date on which they occupied the land. This is certified by the LC1, conversant with their social and economic status

The 1st defendant in their Defence deny that the plaintiffs were customary tenants but have not given any evidence to support their contention

The first Defendant's Counsel was given an opportunity to cross examine and rebut the plaintiff's evidence as stipulated in the Exhibits P1 which was not challenged.

The 2nd Defendant's Counsel did not challenge Plaintiff's evidence either**.**

The Statute namely the Land Act Cap 227 Article 2, recognises the lawful ownership of customary tenants which states that all land in Uganda shall vest in citizens of Uganda and shall be owned in accordance with the land tenure system which inter alia includes customary land.

I am satisfied that the customary tenants were in lawful occupation of their holdings and that they have the statutory right to be there as lawful occupiers thereof **.**

This issue is proved in the affirmative**.**

Issue No 2.Whether or not the second defendant took over with vacant possession of the said land.

The purchase of the freehold land by the Uganda Investment Authority from the landlord was with vacant possession. But the Uganda Investment Authority completed subject to all the encumbrances mentioned in the sales agreement Para 6.

In case law, legal impediments have often acted as barriers to vacant possession. Sellers must make sure not only that premises are empty and ready to use but that there are no outstanding legal claims to land or property.

In order to give vacant possession, the vendor must eject not only those lawful in possession but also any person who has no claim of right

See Cumberland Consolidated Holdings Ltd v Ireland (1946) KB 246

A provision for vacant possession does not merge with the conveyance on completion.

In this case the vendor must sell subject to clearing any encumbrance.

See Hissett v Reading Roofing Co Ltd (1969) 1 WLR 1757

The obligation to give vacant possession is breached where people are in lawful possessions of the property under a licence or statue :

See Beard v Porter (1948).

The Uganda Investment Authority that gave lease to the 2nd Defendants had flawed title because they completed without obtaining vacant possession because of failure to obtain evidence of payment of compensation to the tenants by the vendor. The purchasers solicitors by their omission waived their contractual obligations to be given vacant possession.

Since the Freehold title is encumbered with the statutory rights of the tenants in occupation who were unlawfully evicted ,any leasehold title to the German Investors would be subject to those encumbrances and rights.

Answer to this issue is in the negative.

Issue No 3 -whether or not the plaintiffs were lawfully evicted by agents of the defendants.

There is overwhelming evidence that the tenants were violently evicted without any relocation or compensation. I am satisfied on facts of the plaintiff's evidence, that the tenants were evicted by agents of the defendants although there is no evidence to suggest that the UPDF soldiers acted on the instructions of the government.

The officers of the German Investor's company Mr Stroug and Mr Platter were active participants at the meetings on eviction of the tenants and the ground was cleared by their works during their presence after the President's inauguration. . The defendantsdid notchallenge plaintiffs evidence in cross examination and they had direct and constructive knowledge that the tenants were to be evicted and were indeed evicted forcefully when they knew that they had not been relocated at Kambuye. They well knew that compensation was not paid by the landlord because they knew he did not have the capacity to compensate the tenants. There was no evidence of payment of compensation by the Landlord in accordance with the sale agreement or the provisions of the Land Act. It is for that reason that the German Investors were asked to pay certain monies which would be deducted from the purchase price.

I am satisfied that the plaintiffs were not lawfully evicted by agents of the defendants.

The answer to this Issue is in the negative.

Issue No 4) Whether or not the defendants were vicariously liable for the eviction of the tenants.

46 The Plaintiffs submit that it was the government that directed their eviction at the behest of His Excellency the President. I am not persuaded by that argument and in my view it is a bad point. The government has itself passed enactment to protect vulnerable tenants from being evicted. **Article 26** of the Constitution protects individuals

from deprivation of their property. And article **26(2)** is more specific- No person shall be compulsorily deprived of property or any other interest in or right over property of any description except where the following conditions are satisfied.:

47 Article 26 (2) (b) – the compulsory taking of possession or acquisition of property is made under a law which make provision for –

(i)prompt payment of fair and adequate compensation prior to taking of possession or acquisition of the property ,and

(ii a right of access to a court of law by any person who has an interest or right over the property.

48 The land Act Cap 227 was particularly enacted to regulate any acquisition of land by the government.

49 Section **76 (1)(b**) -The District land tribunals have the jurisdiction to determine any dispute relating to the amount of compensation to be paid for land acquired by the government(sec 42)

(1 Computation of Compensation is specified in Sec 77and under Sec 76(1) (b) they must take in to account the following:

(a) in the case of a customary owner, the value of land shall be the open market value of the unimproved land.

(b) the value of building on the land, which shall be taken at open market value for urban areas and depreciated replacement costs for the rural areas.

(c)the value of standing crops on the land , excluding annual crops which could be harvested during the period of notice is given to the tenant.

(2) In addition to compensation assessed under the this section , there shall be paid as adisturbance allowance of 15 percept or , if less, than six monthsnotice to give up vacant possession is given, 30% of any sum assessed under subsection (1)

3) The rates set out in the list of rates of compensation referred to in sec 59(1)(e) shall be used in determining the amount of compensation payable

50 Sec 59(1)(e) requires District Land Board to compile and maintain a list of rates of compensation payable in respect of crops , building of a non permanent nature, and any other things that may be prescribed. And under para (g) to review the above list annually.

51 The First defendant in their defence plead that if the soldiers evicted the tenants, they were not on the instructions of the government and that they acted on a frolic of their own for their own benefit or for the benefit of the landlord . I accept this defence as there is no evidence by the Plaintiffs that the UPDF soldiers or the RDC's in Mubende acted on the instructions of the government. It would be wrong to infer that just because the President was coming to inaugurate the event , that the eviction of the tenants was also organised by the government.

52The witnesses of the 1st defendant in their sworn affidavits exhibited the sale agreement dated 20th April 2001 to their Affidavits which were served as their witness statements. I shall refer to that sale agreement under the Civil Evidence Act Cap 6 Section 91 and 92. In my view the sale agreement is the nucleus of the whole case before this court because it is evidence that the government had entered into a binding agreement with the landlord to compensate the tenants before they purchased the land. This is further evidence of why there was no reason for government to have illegally evicted the tenant when all the provisions of compensation were legally made. And in my view if all the provisions in this sale agreement had been performed , the tenants would not have been in this horrible dilemma ..Compensation is specified in the sale agreement Clause 2.1a –d and Clause 6.2 and 6.2 a, b and thereafter the pages were removed and or/ concealed. I suspect the missing pages dealt with the compensation in accordance with the provisions of the Land Act.

53 On 13th February I ordered the first and 2ndDefendants to produce the missing pages of the sale agreement– Clauses 6-11., at the hearing on 26thFebruary. The order was not complied with.

54 What is important is the fact that before completion the purchaser's solicitors were to check and verify that compensation was paid as per terms of the contract below:

55 Clause 2 (1) (b) of the Sale agreement / contract - *up to 50,00,000 shillings may be withdrawn at anytime for the purposes of* ***purchasing alternative land*** *for the occupiers of the land now being sold* ***PROVIDED that the VENDOR furnishes proof of securingsuch alternate land*** *.* ***The sum under this clause may only be withdrawn when the land title is kept by the purchaser's representative hereinbefore named.(ie Mr Alez Rezida)***

56The rest of the withdrawals shall only be made if the following conditions have been complied with:

Clause 2.1.(c) *all the occupants of and Intuitions on the land are ready to receive compensation and move to a place outside the current borders of land****. Written proof of their willingness to move upon receipt of their respective compensation shall first be provided*** *and in the case of local occupants such written proof shall be duly witnessed by local Council 1 officer.*

57 Clause 2.3 The balance of the purchase price shall be paid to the vendor within 10 days of the removal of all the encumbrances stipulated herein and being ready to handover vacant possessions of the entire land*.*

58 Clause 6.2 The encumbrances existing on the land are as followsand the Vendor undertakes to handle them conclusively

59 Clause 6.2.a *: There are a number of occupants on the land with various structures, , interests and crops thereon.*

60 Clause 6.2b*.:There are complete and occupied institutional structures on the land and another institutional structure under construction in the middle of the main road crossing the land* from north west to south east.

61 In my view government cannot be criticised for eviction of the tenants when they entered into a binding contract to buy the land with vacant possession from the landlord that is subject to the tenants right to compensation that was payable by the landlord as per the sale agreement.

62 If the land was purchased without vacant possession then there may be liability in negligence.

The Plaintiffs have claimed damages in tort against the defendants and their agents. Solicitors are agents of their client. In this case Messrs Nangwala and Rezida were acting as agents for the Uganda Investment Authority.

63 Negligence

The Tort of professional negligence comprises subset of the general rules of negligence. The general situation covered by professional negligence is a situation in which the defendant has represented himself or herself as having more than average skills and abilities with respect to services they offer and supply. There is generally implied by law that the professional will exercise **reasonable skill and care**.

64 In principle liability in Tort runs parallel to the liability in contract

It is not uncommon that a plaintiff may have a course of action in contract and in tort. However in each case the quantum of damages is limited to actual loss suffered and does not increase merely by virtue of the fact that there is liability in contract and in tort to the plaintiff.

It is no doubt the case that the existence of a contract is important for the purposes of deciding whether to impose a **Duty of Care in Negligence.**

65 .A tort of negligence is achieved when a duty of care is established between the plaintiff and defendant ; the defendant has acted , or omitted to act and ; and the plaintiff has suffered damages as a consequence of the breach.

66 The formulation of **Duty of Care** in Tort which is now generally accepted is as that stated in **Anns v Merton London Borough Council (1978)AC 278 House of Lords.,** as follows:

'--- the question has to be approached in 2 stages. First one has to ask whether , as between the alleged wrongdoer and the person who has suffered damage , there is sufficient ***relationship of proximity., or neighbourhood,*** *such that, in the contemplation of the former , carelessness on his part may be likely to cause damage to the latter- in which case a prima facie Duty of Care arises. Secondly, if the answer is yes it is necessary to consider whether there are any considerations which ought to negative or reduce or limit the scope of the duty or the class of persons to who it is owed, or, the damages to which that breach may give rise'*

A client places ' reasonable reliance' on the skills of the professional

see Hedley Byrne v Heller and Partners Ltd.

67 The law of professional negligence has been substantially extended to include cases where the professional has been held to owe a duty of Care to an increasingly wide range of persons , who are not his or her clients.

68 One such case is the decision of the **Supreme Court in Doran v Delaney (9th March 1998)**, In these proceedings the plaintiffs purchased a piece of land which they believed had planning permission and also was accessible from the road. The intention was to construct a property on the land**.**

69 After completion, they discovered that the planning permission had been granted due to submission of an incorrect map with the application by the vendors. They also discovered that the land providing access was not owned by the vendors and had not been included in the purchase . They had no right of access to their property and as such their land was left land locked.

70 The purchasers being the Plaintiffs were not told that that the adjoining owner claimed to be owners of part of the land or neither that there was a dispute with the adjoining owner. Requisitions on title were raised in the ordinary course by the plaintiff's solicitors who were the purchasers. When asked if there was any dispute with an adjoining neighbour, the reply was ' vendors says no'. When asked if there was any litigation pending or threatened the answer was 'vendor says none'

71 It transpired that the vendor's solicitors knew that there was a dispute with adjoining owner. Apartner in the firm had informed the solicitor

dealing with the sale that the dispute had been resolved. However neither solicitor ascertained from the vendors the terms upon which the dispute had allegedly been settled. As it turned out the matter had not been settled. In that case the Purchasers issued proceedings against their own solicitor claiming damages for negligence , breach of duty and breach of contract and also issued proceedings against the Vendors and the Vendors solicitors claiming damages for negligence , misrepresentation and breach of warranty .

72 In the High Court damages were awarded to the Plaintiffs against their own solicitors and the vendors. On appeal, the Supreme Court found that the solicitors for the vendors were also liable to the Plaintiff for negligence. The Supreme Court held that whilst there was no contractual relationship between the plaintiff and the Vendors Solicitors that would not in and of itself negate the existence of **the duty of care.**

73 The Supreme Court held that the vendors solicitors owed a duty of care to the Purchasers and that by failing to ascertain the terms on which the dispute had been resolved and by indicating that there was no dispute , they were in breach of that duty.

74 **In Doran v Delaney** case the solicitors were fixed with the knowledge of the dispute with the adjoining land owners in relation to ownership of the access road. The negligence arose by reason of the failure on the part of that firm to satisfy themselves that the dispute was indeed at an end and had been satisfactorily been settled. In reality the purchaser was misled by reason of the replies given , and , it is clear that the Supreme Court held that the solicitors were negligent in that they could have investigated the matter further , they negligently misstated the position.

75 The Uganda Investment Authority bought the land subject to encumbrances mentioned in Clause 6.2 of the contract but the court's finding is that those conditions were never satisfied. Effectively Messrs Nangwala and Rezida waived the condition to purchase the land with vacant possession when they failed to satisfy themselves that the conditions in the contract had been fulfilled and they went ahead and negligently completed the transaction.Hence the tenants were not compensated and the purchase was completed without vacant possession; and without obtaining any

valuation reports on the land sold, evidence payment of compensation, payment of disturbance allowances and as well as allocation of alternative land.

76 The principles in the Supreme Court case in **Doran v Delaney can** be applied to the duty of care owed by Messrs Nagawala and Rezida, as the lawyers for the purchaser, who had duty to the tenants because they were fixed with the knowledge that the tenants were to be paid compensation under the contract but they failed to make enquiries to satisfy themselves that the respective conditions in the contract had been satisfied to the detriment of the tenants. They became liable for breach of duty care in tort to the tenants who were not their client under the tort of negligence. The solicitors are liable in negligence to their client the UIA but they are also liable to the tenants under the decision in Doran v Delaney. Plaintiffs are claiming damages in tort against the 1st defendant and their agents. The solicitors are agents of their client and hence liable to their client but also jointly and severally liable with the First defendants as their agents , to the third parties i.e. the tenants. :

77 Nangwala and Rezida did not display any competence or skill when they represented themselves out as having more than average skills or abilities with respect to conveyancing services they offered as professional people: Basic procedure in a conveyancing transaction were not carried out. I do give allowance for the fact that conveyancing law , which is so extensive is not developed in our jurisdiction and lawyers cannot be criticised for that but elementary pre enquiries before a contract should have been carried out even by the least competent advocate and these SHOULD have been:

- *Please confirm the number of tenants on the land?*
- *Can you confirm that a professional surveyor would be sent to survey and compute the compensation of each tenant?*
- *Please confirm that appropriate agreements for compensation will be sent to us for our approval. ?*
- *Can you please confirm that all the provisions of compensation as set in Article 72 of the land Act will be included in the contract such as compensation for the properties, cash and food crops. disturbance allowance and any transport. ?*

- *Please confirm supervision by local council representatives as checks and balances each of the enquires have them signed and stamped by the local representatives.*
- *Can you confirm the manner in which the tenants shall be paid whether through the landlords solicitor or through the RDC's?.*
- *Please confirm the amount of total compensation likely to be paid and when and whether it would be paid from landlord's own resources.*
- *Please confirm the Notice period you propose to give to tenants to* vacate.Can we have copy of the Notice?

78 After exchange of contracts and before completion Messrs Nagwala and Rezida should have raised Requisitions on title as follows:

- *Please confirm that land titles in relation to Block 99 and Block 168 will be available on completion.?*
- *Confirm that copies of all the compensation agreements duly signed and surveyors report will be given to us with the title deeds.?*
- *Would you also supply evidence of relocation and where each resident has been allocated land in the alternative land together with a plan of each relocated household.?*
- *Would you supply evidence of payment of alternative land as per the contract*
- *Finally please confirm that you will execute a deed of Covenant as per the draft herewith? .*

Where any solicitor was acting for the Lessee he should have raised similar enquiries but in addition should have obtained one off covenant of title insurance in the event of any adverse claims.

79 A deed of covenant to the title should have been executed before completion that would have given such protection as is extended pursuant to six covenants namely covenant of right to convey; covenant of seisin; covenant of encumbrance, covenant of quite enjoyment; covenant of warranty; andcovenant of further assurance.

80 These basic procedures in a conveyancing were not followed. My findings are that James Nagwala and Alex Rezida as senior partners of their firm were grossly , recklessly and deliberately negligent in failing to complete the purchase of the land contrary to the conditions in the sale agreement. They should have been more diligent because the overall quantum of the transaction including the compensation that was payable under the contract was in the region of billions of shillings; and the issue of compensation of tenants in the contract could not have been overlooked. They would have known full well the negligent implications of not concluding the terms of the sale agreement.

81 The effect of this negligence was that the 1st Defendant purchased the land that was encumbered with the statutory rights of the tenants and there was legal impediment that did not secure vacant possession.

82 When I observed that couple of pages in the contact were missing I made an order on 13th February inviting Nangwala and Rezida to give explanation why they completed the transaction without satisfying conditions in the sale agreement. I also ordered the First and second defendants to produce copy of the missing pages of the sale agreement at the hearing on 26th February. The purpose was to find the extent of conflict of interest with their client before the hearing on 26th February so that the litigant was given the opportunity to seek independent advise.I wanted to ensure that our Investors did not suffer through ill advise of their lawyers and I also sent copies of the orders to the German Embassy. But my message that there was something wrong was not picked up and the German Investors failed to appear in the court.

The order was not complied with and it was contempt of court.

83 In this case the contemnor was served with the Order to produce missing pages and clauses of the sale agreement which they had prepared , they had the knowledge of the order because it was served and acknowledged by them ; thy had the ability to comply with it ; and they failed to comply with it

All the four elements of contempt were thus proved.

84 *According to Halsbury's Laws of England 4th Edition Par 89b – in the case of contempt in the face of court the offender may be committed instanter, and no notice of formal institution of proceedings is necessary. The contempt must be stated distinctly , and an opportunity of answering given.Any branch of the High Court and each division of the court of appeal has jurisdiction to punish contempt in its face.*

85 In Watt v Ligertwood (1874)LR 2 Sc and Div 362,HL The power *of the High Court or the Court of appeal to commit for contempt in its face of its own motion is expressly preserved by RSC Ord 52 r5. Although the power of the court to commits of its own motion is not expressly confined to contempt committed in the face of the court , the power of conferred by Order 52 r5 , should only be exercised when it is urgent and imperative to act immediately.* ***See Balogh v St Alban's Crown Court 3 All ER 383 C***

85 The breach of court order itself may not be contempt but the contents of the order requiring missing documents, which were vital in determining the outcome of this case of pubic interest, where the government was accused of eviction, became crucial to the disposal of the case. Such withholding or concealment of documents was not only contempt but it amounted to perverting the course of justice by James Nangwala and Alex Rezida.

87 Fraudulent Concealment of Documents

Any person disposing of property or any interest in it for money or moneys worth to a purchaser, or the solicitor or other agent of such person , who with intent to defraud conceals from the purchaser any Instrument or encumbrance material to the title is guilty of an offence punishable by fine or imprisonment not exceeding 2 years or both.- Law of Property Act 1925 - Sec 183(1)9a)

88 On examining Plaintiff's witness evidence with the terms of the contract I became concerned as to whether the alternative land at 168 Kambuye where the tenants were to be relocated, was a reality or fiction*:*

Clause 2(a) the contract - ***US 50,000 dollars shall be paid into an escrow account to be opened in Kampala with Standard Charter Bank and to which the joint signatories shall be Mr Urban Tibamanya representing the vendor and Mr Alex Rezida representing the Purchase****.. The signatories*

shall be joint signatories for all the transactions on the account and shall only effect a withdrawal of funds upon receipt of written instructions from their respective principals . The purpose of the payment is to enable the Vendor at his request , ***handle the removal of all the encumbrances specified herein*** *below and the money so paid into the escrow account shall only be withdrawn in the following manners.*

Clause 2(b)-Up to 500,000,000 shillings may only be withdrawn at any time for ***the purpose of purchasing alterative land for*** *the occupants of the land now being sold Provided that* ***the vendor furnishes proof of securing such alternative land*** *. The sum under this Clause may only be withdrawn when the land title is kept by the purchaser 's representative herein above named (* that is Alex Rezida).

89 I therefore obtained copies of the title of Block 168 from Mityana District Registry. . My reservations were confirmed that the landlord had never acquired the said land either Mailo or leasehold in 2001, as was promised. I enclose copies of the title marked **Court Exhibit C 1. The promise and assurance of alternative land at Kamabuye by the RDC's and the landlord were all lies, fibs and stories. They were deliberate lies to defraud the tenants to evict them and violate their human rights.** The plaintiffs evidence was therefore credible that they had violently been evicted without any relocation or compensation. And the lawyers of both the vendor and purchaser connived to facilitate legal fraud against the tenants. These lawyers were Urban Tibamanya ,James Nangwala and Alex Rezida.If they had religiously complied with terms of the sale agreement there would have been no fraud. :The scam involved a number of people including local leaders , RDC's, some thugs hired as policeman and soldiers as well as the lawyers and the landlord. The German investors and some officers of UIA cannot be ruled out.

90 As per the terms of the contract no alternative land was acquired; non of the encumbrances were cleared as per page Claue 6.2a and 6.2 b of the agreement; title deed were not given to Mr Alex Rezida as there was no land acquired, principal's consent to withdraws funds from the escrow could not be there if there was no alternative land purchased . I am satisfied that this sale agreement drawn by Nangwala and Rezida and

signed by Alex Rezida, , Mr Tibamanya and the Assistant director of Uganda Investment Authority was a bogus document intended to defraud the government and the tenants.

91 My findings are further confirmed when the cost of compensating 400 tenants is nearly 1-6million dollars and the purchase price was $351,658 dollars. The equation does not stack up. No right minded vendor would have entered into such a transaction unless there was a hidden agenda or Plan B which the Government did no know but the Vendor might have been appraised of. Mr Rezida and Mr Nangwala who prepared the agreement for sale should have been put on notice and should have made further enquiries before they advised their client to sign a bogus contract that did not make sense.

92 Mr Francis Mugerwa solicitor acting for the estate of the deceased landlord informed the court that the landlord did not have the capacity to pay such compensation and that his current estate was worth 100 million shillings.

93 The funds in the escrow account had Mr Resida and the Mr Tibamanya as the joint signatories The funds were provided by the UIA . These funds in escrow account could not have been applied for the purposes for which they were meant because no alternative land was purchased to relocate the tenants; and there is no evidence before this court that the monies in esc row account were reimbursed to the UIA, and hence there was misappropriation of clients monies or theft of clients monies in broad day light. It is most serious offence a solicitor can commit. This dishonesty by Mr Resida, Mr Nagwal and Mr Tibamanya was criminal dishonesty because of theft of client money. I should mention that Mr Tibamaya had sworn a witness statement on behalf of the UIA but he did not come to the court to give evidence- he was the lawyer for the landlord and acted for him in the sale of the land to UIA who were apparently defrauded and ended up burning their fingers.

94 In the law Society's Code for Advocacy England, it says in Para 2..1

That Advocate must not engage in conduct whether in pursuit of their profession or otherwise which is dishonest or otherwise discreditable to an advocate; prejudicial to the administration of justice; or is likely to diminish

public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.and

Para 2.2 Advocates have an overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved :they must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court.

2.3 (3) must act towards the clients at all times in god faith.

95 It also means that if monies were not used for clients purposes the Advocates Accounts rules were breached.:

Article 40 of the Advocates Act requires advocates to keep accounts in compliance with Rules

Under Article 43

If any advocate contravenes or fails to comply with any of the Advocates Accounts Rules , he or she may be guilty of professional misconduct and an offence against Advocates Accounts rules.

96 On any proceedings against an advocate for disciplinary offence and the offence in relation to Advocates Accounts rules, the Disciplinary Committee may require the advocate to produce his or books of accounts, bank passbook, statement of accounts , vouchers, and any other necessary documents for the inspection of any person so appointed by the disciplinary committee for that purpose so that a report is produced on the result of the inspection.

97 I have quoted the above provision because the court did not have the benefit of considering any of those documents. If the monies were misappropriated it is most unlikely that those books were kept. Advocate account rules also apply to monies held in escrow account.

98 Under Advocates Accounts Rules, of the Advocates Act, Schedule 1 Para 1 (client money means money held or received by an advocate on account of a person for whom he or she is acting in relation to the holding or receipt of the money either as an advocate or in connection with his or her practice as an advocate , as agent , bailee, stakeholder or in any other capacity.

99 Rule (9 (1) Every advocate shall at all times kept properly written up such books and accounts as may be necessary to show all his or dealings with client's money held or receive or paid by him ;and any other money dealt with by him or her through a client account

100 My findings are that the whole transaction was bogus and fraud on the tenants and the government. This was a double whammy fraud. And a wholesale fraud in which several people were involve – Local leaders, RDC's, lawyers, landlords, and thugs hired such as the policemen and soldiers. These scams have given the President and the Government a bad name because people believe that it is the government instigating these horrified evictions.

101The Government through His Excellency has given warnings about such evictions and I shall quote the most recent statement made by His Excellency published in the New Vision on 27th February in the interest of justice and Court's inherent powers under Article 98 because of allegations against His Excellency:

*102 '**President Yoweri Museveni has issued a stern warning that anyone who connives to evict peasants illegally from their land will face criminal prosecution.***

President Museveni held a press conference at his home in Rwakitura to re affirm his order stopping all eviction of peasants from their land.

He blamed the ongoing evictions on developers , who have recently amassed wealth dubiously through corrupt practices and have contempt of the peasants.

He said land Act 2008 amendment criminalises evictions of tenants from their lands and sets a prison term of 7 years for whoever is found guilty of evicting people illegally .He sais developers collude with local leaders , resident district commissioners , the Police and army personnel to evict the voiceless peasants

103However the evidence is overwhelming that the lawyers colluded and connive with the local leaders , RDC's the Police and the army personnel to evict the voiceless peasants . The lawyers had to protect their clients

interest which they did not do but aided and abetted it through the legal contract. This scam echoes His Excellency's sentiments.

104 I should point out that whilst defendant's witnesses did not give evidence, the Plaintiffs did not seek to exclude them .They remained on the court file as hearsay evidence. It was for the judge to give weight to it if any. All I can say is that the sworn affidavits by Barnabas Tumwesigye, Acting Director of UIA, sworn on 16.01.2001,, and affidavit of Mr Urban Tibamanya sworn on 20th Nov 2011 on behalf of UIA , and Mr Stroug sworn on.9.2. 2011, on behalf of German Investors that the landlord had bought alternative land at Block 168 Kambuye and that terms of the agreement were satisfied and vacant possession was given are fabrications to defraud the tenants and their sworn testimony is a perjury. I have given no weight to this evidence except for the purposes of referring these affidavits to the DPP.

105There is public outcry that the litigants do not know whether their lawyer is acting for them or for the other side. It is known as double dealing or connivance. This case is a clear example where both Alex Rezida and James Nangwala in whom the government had put their faith were defrauded. And connived with Urban Tibamanya to commit wholesale fraud on the tenants and the government. It is not for this court to carry out criminal investigations because that will fall within the purview of IGG and the DPP.

106The fraud was also facilitated by the failure of some responsible Officers at the Uganda Investment Authority to carry out due diligence, supervision and checks and balances. Slight prudence would have been enough to have detected that the whole transaction was suspicious. UIA failed to check land values and the compensation amounts payable as well as obtaining signed compensation agreements with the title deeds and other documents of title such deed of covenant. Any claim by UIA against the landlord is otiose because they waived their right to have vacant possession by completing the contract; hence causing loss to the government.

Issue 4 is affirmed in the positive.

107 I pay tribute to the plaintiffs and their legal team for the perseverance, resilience and patience in waiting for 10 years in bringing the case to this court.

107 Remedies.

I hold Nangwal and Rezida as agents for the 1st Defendant liable in negligence in contract and negligence in tort and order them to pay the following damages as the Government cannot be an open cheque book for the negligence, fraud, dishonesty and theft of their lawyers.

The German investors had a duty to ensure that our indigenous people were not exploited. They should have respected the human rights and values of people and as honourable businessman and investors they should have not moved into the land unless they had satisfied themselves that the tenants were properly compensated , relocated and adequate notice was given to them. But instead they were quiet spectators and watched the drama as cruel and violent and degrading eviction took place through partly their own workers. They lost all sense of humanity.

***I Order**:*

1 ***special damages*** *to the Plaintiffs in the sum of* ***shgs 3,814,570,050 as*** *pleaded.*

2 ***disturbance allowance*** *as per the Sec 76(2) of the land Act being 30% of the claim if Notice to evict is less than 6 months This is the sum of shgs* ***1,144,371, 015.,***

3 ***general damages*** *for eviction and gross violation of the plaintiffs human rights in the sum of 5 million shillings each making a total of* ***2,005,000,00*** *billion shillings.*

4 ***exemplary damages*** *for the oppressive and violent behaviour suffered in the sum of 5million per each plaintiff making a total of* ***2,005,000,000*** *billion shillings .*

5 I order damages in pain and suffering in the sum ***of 1 billion shillings to*** *all the 401 plaintiffs .* In Thake v Maurice (n 1984) 2 ALL ER 513 the Court

of Appeal held that the damages should be awarded for pain and suffering in tort rather than in contract.

6 *Interest for 10 years years. 7 months and 13 days on No 1-5 above ie. Shgs 9,338,941,065 = Shgs 27,746,633,541.3 making the total claim with interest at Shgs* ***37,085,574,606.3. This sum should be paid to the plaintiffs in 30 days.***

7 *I allow the Plaintiffs to put a charging order on the mailo land Buwekula Block 99 Plot No 1*

8 *I allow the Plaintiffs to put* ***a charging order*** *on the leasehold interest of the German Investors at Buwekula , Block 99 ,Plot registered under title LRV2954 Folio 24*

10 *Leave to appeal is allowed subject to Messrs Nangnwala and Rezida paying into the court the sums specified in 1-4 above with interest making a total of* ***Shgs 37,085,574,606.3***

11 *Any application for stay of this judgement is refused pending payment of* ***Shgs 37,085,574,606.3 into*** *the court.*

12 *I further direct the Chief registrar to send a copy of this judgement to the IGG for appropriate enquiries of corruption in this case.*

13 *I further direct the Chief Registrar to send a copy of this judgement to the Law Council for Disciplinary action against, James Nangwla, Alex Rezida, Urban Timanya and Wanyama Kadoli .*

14 *I further direct the Chief Registrar to send a copy of this judgement to the DPP so that he may consider preferring appropriate criminal charges against James Nanagwal and Alex rezida as well a Wanyama Kodoli , and Urban Tibmanya*

15 *I further direct the Chief Registrar to send a copy of this judgment to The legal Department State House Kampala .*

16 I allow costs to be paid within 14 days of assessment or agreement . Cost must follow the event. I order Uganda Investment Authority, German Investors and Mr James Nangwla and Mr Alez Resida jointly to pay the total costs including VAT if any , in equal in one third ratio each

17 I order 20 million shillings deposited in the court to be released to the plaintiffs forthwith

18 Interest on the sum of shall continue to run from the date hereof to the date of payment at 25%

19 In the event James Nangwala and Alex Rezida are not able to discharge the debt, the Plaintiffs may apply to the Law Society or Law Council to be paid from the Compensation fund where a member of the public has suffered from the dishonesty of the lawyers.

20 Mesrs Nangwal and Rezida should inform the court whether they were having indemnity insurance. And if they failed then plaintiff's can also seek indemnity from the Law Society for their failure to allow lawyer to practice uninsured. In those circumstances plaintiffs will be at liberty to apply for a charging order on the Law Society assets, if the indemnity is not given.

21 The Chief Registrar is directed to notify me of the progress

AS CHOUDRY

JUDGE

28.03.13

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