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THE REPUBLIC OF UGANDA
THE REGISTRATION OF TITLES ACT (CAP.230)
AND
THE LAND ACT (CAP.227)

**REPORT AND AMMENDMENT ORDER OF THE HEARING INVOLVING
OVER LAYED TITTLES REFERENCED AS FRV402 FOLIO 13 AND FRV
WAK6129, FOLIO 9, PLOT 3234, FRV WAK6129 FOLIO 10 PLOT 3235,
FRV WAK6129 FOLIO 11 PLOT 3236, FRV WAK6129 FOLIO 12 PLOT
3237, FRV WAK6129 FOLIO 13 PLOT 3238, FRV WAK6129 FOLIO 14
PLOT 3239, FRV WAK6129 FOLIO 15 PLOT 3240**

By a letter dated the 14th day of September 2022 from State House to Attorney General requesting the fact findings on Block 269 Plot 1322 and 3234-3241 Kyadondo. And the letter dated 21st November 2022 Attorney General wrote to me asking for the right full owner of the abovementioned land where by the Commissioner Land Registration caused the public hearing and parties were invited, State Agencies that is Inspectorate of Government, Directorate of Criminal Investigation Police, Attorney General, Statehouse Ant corruption Unit.

(The abovementioned letters hereto attached for ease of reference and marked ANNEX 1)

AS TO THE FACTS:

On 18th March 2020, State House Ant-corruption Unit Directorate of Criminal Investigation wrote to Commissioner Surveys and Mapping requesting for participation in inquiries vide **CIDHQTRS REF CID/CI31/GEF/049** inquiring on Plot 274, 323, 1322, 3197, 3226 and 3225 requesting for cadastral map, deed plans, jobs record jacket and cartridges of above plot. This was made under section 38 of the anti-corruption act 2009 as amended. (Letter attached **ANNEXTURE 2**)

On 20th March, 2020 Commissioner Surveys and Mapping under REF No. LAD13/14/01 replied to the Director of Criminal Investigation Directorate CID headquarter (**ANNEXTURE 3**).

On 24th June, 2020 the District Drawing Officer Wakiso wrote to the Head Investigation Unit, Investing Directorate CID Head Quarter Kibuli a report on Kyadondo Block 269 Land at Lubowa VIDE CID HQTRS GEF 049/2020 and the following were findings;

- (i) The record in the drawing office show that Plot 97 was subdivided into Plots 272 to 274 by Uganda Company (Holding) Limited. However, the land /registry does not reflect any such subdivision of the said Plot 97 which is still intact. (**See Copy of search letter and copy of the title of Plot 97 ANNEXTURE 3A**).
- (ii) The residue of Plot 97 which is Plot 274 is also titled and still in the name of Uganda Company Holding Limited. There is no record on how it came to be amalgamated on the Title of NSSF comprised in FRV 402 Folio 13.
- (iii) In this case, the mother title is either defective or the subdivision that created Plot 274 because the two cannot exist concurrently.
- (iv) I have also seen a letter which may have created Plot 274, dated 8th August 1995 by Kateera Kagumire. This letter is in respect to Plots 272 & 273 and not plot 97 from which plot 274 was created. The letter shows that the applicant is the Registered Trustees of Lincoln International School who are the registered proprietors. It is not explained how they came to create plots 274 whose registered

proprietors was Uganda Company Holdings Limited.

- (v) I have also seen the records of 98, the area schedule shows it was sub divided to create 321 to 323. However, the search letter shows that this plot 98 is still intact in the name of Uganda Company Holdings Limited. A search letter is attached. The plot 323 which is the Title of NSSF has no records in the registry. **(See copy of Search letter and Title of Plot 98 ANNEX 3B)**
- (vi) In my opinion, the plots on NSSF Title ought to have been titled and by instrument. There is no instrument to that effect.
- (vii) It is shown on the area schedule that Plot 1245 came from a subdivision 586 by National Housing and Construction Corporation. However, from the system, this plot has no records, but it has an area schedule which if you trace it backwards, the area keeps on reducing. This is not normal in the practice of survey because the land ought to have reduced as the subdivisions were done.
- (viii) I have also seen the print of plot 1322 on the NSSF title, but it does not show its origin i.e. Plot 50 is not mapped. The residue which ought to be 1323 is not seen on the map and yet in the area record book it is still intact. It has its acreage at 531. 432ha and it is likely that this residue does not exist physically. I have attached area scheduled to that effect.
- (ix) Plot 2769 has area of 10.864ha, registered on 3rd January 2014 under Instruction of Survey (IS) No. MM/2/951 in the name of Buule Constante and Bukenya Tom I have attached a copy of the area schedule showing the subdivisions and the Instruction Survey creating those plots. These plots are there on the system as per search letter I deliver. **(ANNEXTURE 4)**

On 5th March 2021, the office of the Ministry of lands received petition/complaint from one Lubowa Muhamad Kityo, Bogere Moses, Namanya Betty and Nakanwaji Daphine in respect to the land in issue. **(Complaint Attached ANNEXTURE 5)**

The complaint was that; they were registered proprietors on the land comprised in Block 269 Plot Nos. 3234 to 3240 but NSSF was using the State House Anti-corruption of Lt Col. Edith Nakalema to deny them of the

entitlement over the land. They enclosed on their complaint, copies of Titles together with a letter of Lt. Col. Edith Nakalema Asizua instructing the Permanent Secretary to stop all transactions in respect to Block 269. **(ANNEXTURES 6 and 7)**

It was later found out that the Permanent Secretary acting on the said letter of Lt. Col. Edith Nakalema consequently instructed the Ag. Commissioner Land Registration who also instructed Senior Registrar of titles to halt all transactions in respect to the Land in issue by the letter dated 3rd March 2021. **(Letter attached ANNEXTURE 8)**

It was found out that the Complaint's contention that the matters raised by Lt. Col. Edith Nakalema as implemented by the Permanent Secretary were already adjudicated upon under M.A No 227 of 2020. **(Court Order by Justice Musa Ssekaana ANNEXTURE 9)**

According to the petitioners, in that case court made a finding that the Commissioner Land Registration had no powers to cancel their titles to the land in issue and that the letter of Lt. Col. Edith Nakalema in regard to the above matter be called and quashed. **(Court Ruling by Justice Musa Ssekaana ANNEXTURE 10)**

The Cabinet Minister of Lands notified the parties about intended investigations, and also made orders that the parties carry out a joint boundary opening of the land with a view confirming the claims of the parties. This was followed with a letter to Lt. Col. Nakalema dated 15th March 2021 on the same issue. **(Letter Attached from Minister to Lt. Col. Edith Nakalema. ANNEXTURE 11)**

Consequently, the Permanent Secretary called the parties for the meeting which was held in the ministry boardroom on 26th March 2021. **(see Letter of the Permanent Secretary calling all parties for a meeting ANNEXTURE 12).**

The purpose of the meeting was to establish the facts pertaining to the ownership of the above property.

In that regard and in light of the several meetings that she held with the worrying parties including the State Agencies the following steps were taken;

1.0 Meeting of all parties including State Agencies

The meeting in issue was held in the ministry boardroom on 26th March 2021. It was attended by the State House Anti-corruption Unit, Uganda Police, Kampala metropolitan Police, NSSF officials, the Petitioners, Administrators of the late Yusuf Suuna and Officers of the Ministry of Lands, Housing and Urban Development.

It was agreed in the said meeting at Ministry that the worrying parties do carry out a joint survey. The terms of reference and the date of survey was also agreed upon 12th April 2021 as indicated (**Attendance List attached ANNEXTURE 13**).

2.0 Constituted a committee of technical persons from the Ministry to do the survey together with the concerned.

The committee was headed by The Commissioner of Survey and Mapping who appointed Mr. Jasper Kakooza the Senior Staff Surveyor at KCCA to be the chief surveyor of the exercise. The parties also appointed their own private surveyors to join the ministry Team.

Notable, of these surveyors was: Matovu Samuel of Atlas consultants Limited for NSSF and Patrick Onyango of Surveytec Solutions Limited for the complainants/ Petitioners.

3.0 Physical Survey of the land and Boundary opening exercise to affirm tittle overlay.

On 30th of March 2021 the joint team of surveyors constituted as agreed by the parties proceeded to Lubowa to carry out the exercise in accordance with the terms of reference.

The Survey was carried out at the site and the whole land inspected by the parties in the presence of all the above-mentioned State Agencies. During the reconnaissance/inspection, the parties agreed to concentrate on **Plot 1322 on the NSSF Title** which was found to be of utmost relevance to the complaint and the survey. The exercise was captured on news and photographs taken for the record

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purposes (**ANNEXTURE 14**).

Following the said survey, the report was made and presented to the Minister of Lands Housing and Urban Development on 21st April 2021 in a meeting held at the Ministry Boardroom.

(See **ANNEXTURE 15**) Minutes of the meeting held and (**ANNEXTURE 16**) Joint survey Report)

4.0 Contents of the Survey Report

The report highlighted the following:

1. The above plots of Lubowa Muhammad and others registered as FRV WAK6129, FOLIO 9, PLOT 3234, FRV WAK6129 FOLIO 10 PLOT 3235, FRV WAK6129 FOLIO 11 PLOT 3236, FRV WAK6129 FOLIO 12 PLOT 3237, FRV WAK6129 FOLIO 13 PLOT 3238, FRV WAK6129 FOLIO 14 PLOT 3239, FRV WAK6129 FOLIO 15 PLOT 3240 and overlap on NSSF Plot 1322 on FRV 402 FOLIO 13.

An application for conversion from Customary Tenure to freehold Tenure/Grant of freehold dated 23rd February, 2015 by Lubowa Muhammad Kityo, Bogere Moses, Nakanwaji Daphine, and Namanya Betty to Wakiso District Land Board (WDLB) has been seen on the File. In reference to an inspection report by the Kajjansi Town Council Area Land Committee dated 31st March, 2015. This application was approved by Wakiso District Land Board on 8th April, 2015. (See **ANNEXTURE 17**)

The Instruction to Survey (I/S), under which the Survey of these plots was carried out, quoted on the deed prints is Z/3/9146. The total area of these plots is 48.26 hectares (119.25 acres). The certificate of Titles for these plots were issued on 27th November, 2019 under Instrument number; WAK00249177. (See **ANNEXTURE 6 above**)

2. Plot 50 existed twice on the same block and area, one created in 1964 and measuring 0.79 acres and the other created in 2003 and creating 1500 acres. Note that the one created in 2003 resulted into subdivision of Plots of 1323 and 1322 which are subject of the title overlay.

3. The contestant's titles were approved by Wakiso District Land Board on 8th April 2015. Plot 1322 originated from subdivision of Plot 50 on the survey register herein called the 'Karamazoo' to create Plots 1322 (75.6 ha) and 1323 (531.4 ha) respectively.
4. That the survey register was found to have been altered with white wash and Plot 50 of 1,500 acres was super imposed to increase the acreage by white washing the karamazoo. And it was not clear whether the land now claimed by NSSF on the ground is plot 1323 or 1322.

However as earlier noted from the findings plot 50 was already in existence and on another title having been a subdivision of original FRV 82 Folio 1 on 29th October 2003 by the same registered proprietor. It's therefore questionable how the same plot could be re-birthed on 28th November 2003 with 1500 acres. **(See copy of FRV 402 Folio 3 of Plot 50 surveyed in 1964 marked ANNEXTURE 18).**

Any new subdivision should have followed the plot numbering sequence number as per survey principles.

The land comprised in Block 269 Plot Nos. 3234 to 3240 belonging to the complainants /petitioners was found to exist on the ground and the acreage on their title was matching with survey Records and the current Land management system. **(See ANNEXTURE 6 above)**

FURTHERMORE, I OBSERVED THE FOLLOWING:

The subdivision records on the Karamazoo show that Plot 1322 is 75.6 ha yet as computed on the cadastral its 109.19 ha. (269.83 acres). This creates an anomaly of 33.599 hectares **(See Karamazoo, Area schedule, Cadastral Map (ANNEXTURE 19) respectively).**

Also note that the Karamazoo shows that after the subdivision of plot 50 into Plot 1322 and 1323 with acreage of 531.4 hectares yet on the cadastral its actual acreage is 35.61 hectares (83.00 Acres). An anomaly of 495.82 hectares! Of which all has been subdivided and titled. **(See copy**

of a Cadastral Map (See ANNEXTURE 20)

The survey register also shows that 1323 is still intact while the cadastral shows numerous subdivisions of the same with independent areas schedules! (See area schedule ANNEXTURE 19 above and Cadastral Map ANNEXTURE 21)

Notably these created titles have parcel numbers that are below 1323 e.g. Plot 1138. Yet in practice plot numbers follow an ascending order. Anomaly in survey principles!

Of interest is also the fact that the Karamazoo report that inserted the later plot 50 which created Plot 1322 and 1323 were white washed! Probably this may explain its later insertion with such acreage to create the narrative that this land was originally owned by the vendors of this land to NSSF whereas note.

As a residue by balance of the subdivision of Plot 50, Plot 1323 should have been owned by Uganda Company holdings the vendors to NSSF but numerous titles were created by Wakiso District Land Board to various customary tenants. These hold undisputed titles e.g. Plot 2800, 2769 and 2797. Its therefore surprising why Uganda Company Holdings has never complained nor occupied this 'residue' probably it may be because it never owned the land in question. Notably plot 2800 which is now owned by NSSF staffs (and not subject of contention) through purchase was acquired through Wakiso district land board. Implying that customary land rights were in existence in this area. (See ANNEXTURE 22)

Following the presentation of the survey report the Cabinet Minister of Lands Housing and Urban Development directed that I carry out further investigations on the Registry in regard to the NSSF and the Petitioners' interests. (A copy of the minutes is attached marked "ANNEXTURE 23").

I WAS THEN DIRECTED TO;

- a) Investigate the history of FRV 82 Folio 1. (ANNEXTURE 24).
- b) Investigate FRV 402 Folio 3 Plot 50 measuring (0.79 ha.) and answer the question how does it relate with plot 50 on the Karamazoo that measured 1500 acres?

c) Why was the current NSSF title amalgamated? That is registration process?

On the 29th day of April 2021, I wrote to the Secretary Wakiso District Land Board and the District Staff Surveyor Wakiso Ministry Zonal Office requesting them to explain circumstances under which the land was allocated by the District Land Board and to answer the question as to whether there were customary tenants on the land then. **(A copy of the letter is attached marked ANNEXTURE 25.)**

On the 5th day of May 2021 we held a meeting at the Ministry Board Room where further discussion in relation to the above were discussed and a Technical Committee was formed to further investigate the anomalies on the titles; **(A copy of the minutes is attached marked "ANNEXTURE 26)**

On the 11th day of May 2021, the Secretary District Land Board replied to my office and notably paragraph 2 of the letter stated that "in the instant case the conversion of the said land from customary to Freehold was facilitated by the Board on the advice and recommendations of Kajansi Town Council Area Land Committee upon request by the Sabagabo-Makindye Sub-County Chief". **(A copy of the letter is attached marked ANNEXTURE 27).**

The Technical Committee did not seat and the process stalled until when the office of the Learned Attorney General Wrote to my office on the 21st day of November 2022. **(see ANNEXTURE 1)**

NOTICES UNDER S.91 OF THE LAND ACT AND ACTIONS BY COMMISSIONER LAND REGISTRATION MODE OF SERVICE;

Section 202 of Registration of Titles Act (herein referred to as RTA) provides for Service of notices and states that; -

Any notice under this Act may be served or given by letter posted to the person concerned at his or her address for service or, if he or she has no address for service within the meaning of this section, at his or her last known place of abode.

When a notice is sent by letter posted to any person at his or her address

for service and the letter is returned by the post office, the registrar may if in the circumstances and having regard to the provisions of this Act he or she thinks fit—(a) direct any further notice to be given;(b) direct substituted service; or (c) proceed without notice.

The Commissioner land registration when exercising its mandate is bound to effect service as prescribed by section 202 R.T.A as was emphasized in Mukiibi and Anor v Commissioner Land Registration Civil Appeal 113 of 2020 [2023] UGCA 268

Section 91(2)(b) of Land Act Cap 227 as amended provides that the Commissioner shall conduct a hearing, giving the interested party under subsection (2) an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law.

Thus, where an illegality or error arises and has come to the knowledge of the Commissioner, the Commissioner shall as per Section 91(2) Land Act give not less than twenty-one days' notice, of the intention to take the appropriate action, in the prescribed form to any party likely to be affected by any decision made under this section.

On the 20th day of February 2023 I replied to the letter advising that "On investigation by the Department of Land Registration, I noted illegalities in the Register that may need address through section 91 of the Land Act", and further that "...as part of the process of cleaning the Register, to answer " the question you raised, about the true legal ownership of the subject land" all the parties that participated in the Inter-ministerial stakeholders meeting shall be invited in the hearing process. **(A copy of the letter is attached marked "ANNEXTURE 28).**

On the 6th day March 2023, I issued summons to the Acting Managing Director National Social Security Fund, the Secretary Wakiso District Land Board, the Petitioners' and the State Agencies inviting them for a meeting on the 13th day of March 2023 and requested them to bring documents in relation to the certificates of titles. **(A copy of the notice is attached marked "ANNEXTURE 29).**

Notices of intention to effect changes in the register was issued by the Office of the Commissioner Land Registration as above stated and accordingly parties kept appearing before me. There was only one hearing

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notice posted to the parties and since all the parties concerned kept appearing at the hearings there was no need for further summons. On 13th day of March 2023 parties invited appeared, they submitted documents as requested and I advised them that a one Gilbert Kasozi had written to my office denying his signature on the Petitioners' documents alluded to him as the Senior Land Management Officer Wakiso.

All the relevant parties attended the hearing. The petitioners were represented by M/s Jason and company advocates while NSSF was represented by M/S Nagwala Rezinda and company Advocates.

I advised further that I would refer the documents for forensic analysis to confirm the veracity of the statement made by Gilbert Kasozi and on the 15th day of May 2023 I wrote to the Deputy CID/SID requesting for forensic analysis. **(A copy of the letter is attached marked ANNEXTURE 30).**

On the 13th day of September 2023, the office of the Deputy CID/SID wrote to my office forwarding a copy of the forensic analysis report vide SID/GEF/63/2023. **(Copies of the letter and report are attached marked ANNEXTURES 31 & 32 respectively).**

That from the report, it was noted that there was need to obtain and send original documents for analysis.

On the 15th day of September 2023, I wrote to the office of the Head State House Anti-Corruption Unit requesting for the original files that were in their custody to enable the office of the Commissioner Land Registration peruse the same and make a decision. **(A copy of the letter is attached marked "ANNEXTURE 33).**

I advise that as of the date of compiling this report the original file has not been availed to my office.

I was further advised that there was an ongoing criminal case Uganda versus Lubowa Mohammed Kityo and 4 others Vide Makindye Chief Magistrates Court Criminal Case No. 1524 of 2023 where the Petitioners' herein and their surveyor Onyango Patrick were charged of Fraudulent Procurement of Certificate of Title under Section 190 of the Registration of Titles Act Cap 230 based on a complaint by NSSF. Among the documents presented to my office following the summons is a copy of the record of

proceedings in the above criminal case where the following were noted;

- a) That Kasozi Gilbert admitted that Wakiso District Land Board approved the minute and the Certificates of titles were duly issued in Police Statement;
- b) His Worship concluded that the petitioners were not reliable for crimes under S.190 of the RTA implying that the state couldn't prove the allegations of illegalities, forgeries in their Title registration process.
- c) That Mr. Ebunyu Wilson Ogalo former Ag CSM testified in court that the deed plan for NSSF Plots 274 and 323 doesn't have in struction to survey number and Plot 1322 has a mailo land instruction to survey number yet the land is freehold. That a deed plan must have an IS number and that it can't leave his office without it. Furthermore, that the original plot 50 had an acreage of 0.79 hectares and the supper imposed one that resulted into a subdivision that created Plot 1322 was 75.609 hectares! **Copies of the letter forwarding the documents, statements and record of proceedings are attached marked ANNEXS 34, "35", "36", "37", "38" "39" & "40")**.
- d) I also requested and sent these documents for forensic investigations and which authenticated signatures that did the title.

Further Notice Under Section 91 of the Land Act;

The office further issued on the 23rd day of January 2024 inviting parties for a public hearing on the 19th day of January 2024 based on the ruling in Misc. Cause No. 132 of 2021 wherein the administrators of the estate of the late Prince Yusuf Suuna Kiweewa were invited. This was suspended as the ruling in question was stayed. (ANNEXTURE 41)

AS TO THE LAW AND ADRESSING THE ILLEGALITIES ABOVE;

Whether NSSF tittle is indefensible in light of the recommendations of the Commissioner Surveys and Mappings report?

The principle of indefeasibility of tittle is an essential feature of the Torrens System of Land Registration in Uganda. Indefeasibility means that such a

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claim can't be annulled or made void.

Section 59 of the registration of title Act is to the effect that once a person acquires a title/interest on land no one can challenge his proprietorship. Under the Torrens System, security of title is based on the four principles of; (i) indefeasibility (cannot be impeached), (ii) registration (title is by registration), (iii) the curtain principle (abolition of notice or exhaustive inquiry), and (iv) assurance (compensation upon detrimental reliance).

The person who is registered as proprietor has a right to the land described in the title, good against the world. There are a limited number of exceptions to this principle of indefeasibility and these are listed in sections 64, 77, 136 and 176 of *The Registration of Titles Act*; AND S.91 of the Land Act which essentially relate to fraud or illegality, error committed in procuring the registration.

Of importance is S.61 of the RTA that talks about land included by wrong description 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 the effect of the exception is that, title to such land remains of the owner and he or she can bring an action for ejection or have mistakes rectified. The title of a registered proprietor is not indefeasible with respect to any part of their folio whose boundaries were erroneously miss-described this means that the benefit of surveying mistakes (which normally arise during the process of converting general law to Torrens land) is not passed to the registered proprietor. The process of rectification by the office of titles is under S91 of the Land Act.

To this extent the property register is made up of first the survey registers which in turn feeds in the title register. The title register is under the CLR while the cadaster is under the Commissioner Surveys and mapping. The cadastral data is provided to the CLR for purposes of titling. *The cadastral boundaries are lines connecting points that have unique identities and records, through which they may be located on the ground. Accurate placement of these points on the cadastral drawing improves the accuracy of the definition of the boundary, which must be documented on the deed plan. The purpose of accurate plotting is simply to make the deed plan more useful in locating the land on the parcel of land to which it relates, on the ground. Land subdivision requires surveying, and associated field work, mapping, and recordation must follow prescribed*

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standards and so do the resultant descriptions. Parcel records are associated with individuals and legal entities claiming an interest to a parcel of land. As a result, the juridical cadastral is a routine file of parcel-related data designed to meet special purposes with efficiency.

The Cadastral and its baby the deed plan the fundamental roots of a title, the Block and Plot numbering that appear on title are determined from the survey register. Therefore, a title cannot be valid if it has gross inconsistencies and illegalities on its deed plan and cadaster.

UNDER S.150 of the RTA, the delineations of property boundaries by field surveys is approved by the Commissioner Surveys and Mapping as the sole person responsible for this role. Any parcel-identifier system can only work if one agency has the sole authority for assigning identifiers. Indeed, our Land information System is based on unique parcel identifier of block and plot, freehold register and folio that are based on accurate measurements. The role of commissioner surveys and mapping office is to enforce standards for cadastral surveys formulated with respect to identifiers for all boundary points, monumentation (materials, dimension, reference points), information required on monuments (surveyor's name, monument number, dates), investigation of survey errors and their correction, monitoring of surveyors' work performance, verifying the topographic works done in the field, check the spatial accuracy of location data, ascertainment of data required in the record of each boundary segment (identities of end points and identities of parcels bounded), plans or plats of survey (seals, detail, cartography, approvals, materials), field books, and so on. Ties of property boundary surveys to the geodetic coordinate system (concerned with very high precision measurement of the earth's surface for the determination of geographic meridians of latitude and longitude) being essential in modern times, and currently supported by our geographical information system based land information system tool of administration.

As shown above the commissioner surveys and mapping has clearly indicated gross errors in the survey register that resulted into illegalities in the creation of this title that was sold to NSSF.

More illegalities have also been observed as follows:
Uganda company holding the vendor to NSSF wrote to the chief register of titles on 23rd October 2003 and requested chief register of titles to subdivide plot 50 MEARSURING 0.79 ACRES from FRV 82 FOLIO 1 OF WHICH A TITLE NOW EXISTS AND IS OWNED BY Katungye Charles

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and Bukimanyana Angella of P.O. Box 4307 Kampala. **(ANNEXTURE 42)**

And yet a month later on 28th November 2003 the same vendor wrote requesting him to subdivide plots 274, 323 and 1322 from FRV82/I Which on the Karamazoo as discussed above was supposed to be from plot 50 MEARSURING 1500 acres. Therefore, how could the same plot number birth two titles of different acreage? It implies that at the time of the second request plot 50 was owned by another person and not available for subdivision to birth 1322 and 1323 as residue and transfer to NSSF. **(ANNEXTURE 43)**

As consequence of the separation, the title to be sold to NSSF was registered the same day of 28th November 2003. This has the following anomalies: the plots that were amalgamated are not next to each other and have other plots in between! Yet under land registration amalgamation principles you can only amalgamate neighboring plots.

I also observed that the instruction to survey of plot 1322 is **MA/Z/2/0253** which refers to Mailo land yet this title is freehold. Could this have been used to cover up the above anomalies?

Still the deed plans of NSSF title **FRV 402 Folio 13** holds more two deed plans issued on 17th January 2000 but on observation they **don't have an instruction to survey number**, could this explain the tampering of the Karamazoo mentioned in the survey report? Surprisingly these deed plans were used to register this title three year later yet by practice deed plans expire after six months! **(NSSF Title ANNEXTURE 44)**

The Commissioner Survey and Mapping in his boundary opening report he mentioned cadastral print of Plot 1322 in the NSSF title, it is in Imperial Units were as by 2003, meaning that by the time of creation of that plot, all such plots ought to have been created and entered on Record in metric system (meters for length and hectares for Area). There was no explanation as to why plot 1322 on the NSSF Title was maintained in imperial units which had already been abolished by the Ministry. Even the machines that were being suctioned to carry out survey at that time could not carry out measurements in Imperial Units. Could this explain why they couldn't get an authentic instruction to survey number? This instrument was signed on 5th December 2003 while the title was registered on 28th November (7 days earlier) and NSSF was registered on 16th December. Thus, the due diligence and purchase (procurement) was done in about 18

days! Though time of transaction has nothing to do with illegalities May be had more time been used in the due diligence process the above anomalies could have been detected.

It was also revealed that the NSSF title comprised in Block 269 FRV402 Folio 13 particularly Plot 1322 is not digitized and vectorized in the current land management system probably due to illegalities detailed above. The time in itself doesn't invalidate the transfer had the title not been sold by foreigners.

Whether customary tenancies are an exception to indefeasibility of title?

S.64 (2) of the RTA further gives exceptions to the principle of indefeasibility of title where a right of any tenant on land exists. It states that the interest of any tenant whose possession is not adverse prevails over the title of a registered proprietor even though his or her interest is not entered as an encumbrance on the register's book. This includes lawful and bonafide occupants and customary held land.

The fact who is a lawful or customary tenant legally is determined by the area land committee (S.64 of the land Act) and District land Board (S.59 of the Land Act) through the adjudication of rights and facilitation of title registration and bringing of land under the RTA. To this end unregistered customary ownership claims are unexceptional to indefeasibility of title.

During the hearing they were allegations that the processes of title registration by the petitioners were forged, however I wasn't able to see any supportive evidence of this as in my communication to the land board mentioned earlier I got confirmation that's these titles were registered through the District Land Board.

THEREFORE, AS SHOWN ABOVE THESE RIGHTS HAVING BEEN DETERMINED BY THE DISTRICT LAND BOARD AND AREA LAND COMMITTEE THEREFORE THE TITLES OF THE PETITIONERS MAY NOT BE IMPUGED BY THIS OFFICE.

Whether they are Exception to the principle of priority of instruments and why it may not apply to illegalities of double titling?

More still Section 48 of the Registration of Titles Act is to the effect that

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Instruments are given priority according to date of registration. That is the first in time, first in right. Though the NSSF title was issued earlier this principle doesn't apply where there **two competing Equities affected by illegalities hence the exceptions under S.64 (2)**. Thus priority of instruments applies among two competing equities. (ie. Without illegalities) which isn't the case in this scenario. For although registration grants priority of instruments, earlier registration doesn't validate an illegal instrument. Thus having appreciated that there is a title overlay in different names with different claims, one of the titles have to be cancelled as there can only be one registered proprietor at one time. (See Mohammed Abdallah v Diana I. Nayiga civil appeal. No. 213 of 2019.)

The title office cannot maintain an illegal registration. As pointed out and guided by court in **Makula international v Cardinal Nsubuga civil appeal. No. 4 of 1981**. Double titling is gross error, an illegality contrary to the principles of land registration. Thus S.48 of the RTA cannot be used to justify or validate an illegality. (e.g. Supreme court in **Simba vs UBC SCCA No.3/2014** Court held that " an illegality vitiates the transfer)

Whats the implication of purchase of land from foreigners contrary to S.40 of the land Act?. Whether the transfer to NSSF was it valid?

I note also the Uganda Company Holdings Limited had no valid title in free hold to pass on to NSSF as the law prohibits non-Ugandan from holding that proprietary interest in land. See Section 40(4)(5)(6)(7) of the land Act. (see Commissioner's letter requesting documents from URSB, Certificate of incorporation, Articles and memorandum of Association and transfer form **ANNEXTURE 45**).

Although this is may be curable as the land is now owned by Ugandans, its important in the sense that it shows the negligence exhibited by the NSSF at the time of purchase! For how could such an agency with all the technocrats at its disposal miss this yet the transfer instrument clearly indicated that the vendors were non-African? (**ANNEXTURE 46**)

Article 237.2 (c) of the Constitution of the Republic of Uganda is to the effect noncitizens may acquire leases in Land in accordance with the laws prescribed by Parliament, and the laws so prescribed that a noncitizen cannot own a freehold interest in land.

Under S.40 of the Land Act non citizens only acquire leases and by implications transfer of land by a foreign company was an illegality.

In brief I found it very difficult to conclude that Uganda company Holdings Limited which is a foreign company could hold and pass to NSSF land in freehold Tenure.

Whether the claims of descendants of Ssunna Kiwewa are valid?

I NOTE THAT these claims are not based on any competing Mailo Tittles on block and plot register but on micro film records that we call closed registers.

These were closed by Registration of Tittles Ordinance in 1924 and now S.32 of the RTA. We retained these records for record purposes but not as evidence of ownership, for the register kept on moving and interests kept on moving until 1961 when we attained the block and plot register. The closure marked the end of the 1908 register that is Provisional certificates and Final certificates.

That aside the courts have settled this claim as follows, therefore, the claim by the SUNNA family of Mailo land without Mailo titles is farfetched.

1. By the letter dated 23RD July, 2021 to chief registrar of family court Makindye and in the reply dated 29th July, 2021 I retrieved the Will and Letters of Administration Cause No. 406 of 2007 Estate of the late Prince Yusufu Ssunna Kiweewa (Deceased) and there is nowhere in the Will where the late states that he had land in Lubowa Block 269 (**Will ANNEXTURES 47 and 48**).

2. According to Court record several cases were dismissed by different judges where by the Administrators of Yusuf sued different entities in the High Court That is;

❖ Land division of Uganda; **HCC No. 591 of 2015**

- Administrator of the Estate of the late Prince Yusuf Ssunna Kiweewa **Versus** (i). The Attorney General of Uganda
(ii). Uganda Company Holdings Ltd

- (iii). National Housing and Construction Co
- (iv). Mitchell Cotts Uganda Ltd
- (v). Roofing's Ltd

❖ **HCC No. 467 of 2015**

• **Saava Stephen Kikonyogo Versus**

- (i) Uganda Company Ltd
- (ii) Uganda Company Holding Ltd
- (iii) Mitchen Cotts Uganda Ltd
- (iv) Joint Clinical Research Centre Limit
- (v) National Housing and Construction
- (vi) National Social Security Fund.

This matter came up for final disposal on 25th Feb,2021 Lordship **KAWEESI HENRY** and it was dismissed under s of Judicature ACT CAP 13 and O17R6 (Amended) Civil Rules(ANNEXTURES 49 and 50)

❖ **HCC No. 176 of 2020**

- Phic Group Ltd. As the lawful Attorneys of the Adm the Estate of the late Yusuf Ssuuna Kiweewa
Versus
National social Security Fund

This matter came up for hearing on 9th Nov, 2020 before **KEITIRIMA JOHN EUDES** and it was dismissed on ord the Civil Procedure whereby the Administrators of the Prince Yusuf Ssuuna Kiweewa for noncompliance. (AM

❖ **HCC No. 757 of 2019**

- 1. Fredrick Jjunju
- 2. Steven Kikonyogo Saava,
- 3.The Administrators of the Estate of late Esteri
Administrators of the Estate of the late Prin
Kiweewa

Versus

- 1. The Attorney General of Uganda,
- 2. Uganda Company Ltd,

3. National Housing & Construction Co. Ltd,
4. National Social Security Fund,
5. Mitchell Cotts Uganda Limited,
6. Finasiroko Construction SPV Ltd,
7. Joint Clinical Research Centre,
8. The Commissioner Land Registration.
9. Roofing's Limited.

This suit was filed September 2019 and it was dismissed under O.11AR.1(2) and (6) of the civil procedure amendment rules of 2019. (ANNEXTURE 52)

- ❖ **HCC No. 597 of 2015**
 - The Administrator of the Estates of the Late Prince Yusuf Ssuna
Kiweewa Versus
 - (i) The Attorney General of Uganda
 - (ii) Uganda Company (Holdings) Ltd
 - (iii) National Housing and Construction Co. Ltd
 - (iv) National Social Security Fund
 - (v) Mitchell Cotts Uganda Limited
 - (vi) Roofing's Limited

Hon. Justice KAITIRIMA JOHN EUDES ordered the dismissal of the above case on 4th of Nov. 2019 on grounds of prosecution under order 17 Rule 6 of the civil procedure Rule Section 17-1 (ANNEXTURE 53)

- ❖ **HCC No. 236 of 2021**
 1. Fredrick Jjunju
 2. Steven Kikonyogo Saava
 3. The Administrators of the Estate of the Late Esteri Nabunya, As Administrators of the Estate of the late Prince Yusuf Ssuna
Kiweewa

Versus

1. The Attorney General
2. Uganda Company Holdings Ltd
3. National Housing and Construction Co. Ltd
4. National Social Security Fund

5. Mitchell Cotts Uganda Ltd
6. Roofings Limited
7. Finasoroko Construction SPV Limited
8. Joint Clinical Research Centre
9. The Commissioner, Land Registration

❖ **HCC No. 508 of 2014**

1. Fredrick James Junju
2. Luwedde Luwedde Victoria

Versus

1. Madhivan Group Limited
2. Commissioner for Land Registration

And this was dismissed on lack of evidence to prove the claim by the administration of Yusufu Ssuuna Kiweewa. **(ANNEXTURE 54)**

By the letter dated 5th March 2024 from Bazirengedde and Company Advocates Council to the claimants / petitioners to Senior Staff Surveyor of Kyadondo Wakiso the plots (Kyadondo Block 269, Plots 2035 at Nakukuba Mutungo and Kyadondo Block 269, Plot 3034 at Lweza, Lubowa and Nazziba) that were mentioned in miscellaneous cause no. 132 of 2021 Kiggala Joseph and 4 others Verses Attorney General and commissioner land registration, area schedule indicates that above plot numbers are registered in different proprietors. **Copy of the letter and area schedule attached. (ANNEXTURES 55 and 56)**

According to the report dated 5th November, 2018 to M/S Lawbert Consults Agencies Ltd Former commissioner land registration Mr. Opio Robert. It was mentioned very well the genesis of the Land and it not consider late Yusufu Suuna as at one time registered proprietor of the Land on Block 269 Lubowa, Lweza and Nazziba. **Letter of Mr. Opio Robert. (ANNEXTURE 57)**

By the Ruling of High Court of Uganda at Kampala Land Division **CS-535-2017 PRINCE KALEMERA H KIMERA, PRINCESS NALINYA NANDAULA**, administrators of the Estate of H.R.H SIR DAUDI CHWA II **VERSUS KABAKA OF BUGANDA, BUGANDA LAND BOARD, COMMISSIONER LAND REGISTRATION AND ATTORNEY GENERAL.** Before Hon. Justice Dr. Flavian Zeija page 11 where he stated that *It is*

quite baffling why the plaintiff as a 3rd descendant would turn up in 2017 to claim property which does not even belong to him. Unfortunately, courts have been labored to face numerous land disputes like the instant one where even the very last descendants to a deceased arise decades later to bring claims in the pretext of "**Fighting**" for what they assume to belong to them. This must stop. The law on succession was designed in a detailed way to protect the courts from such scenarios. In the premises therefore, I find that both the Plaintiffs did not have **locus standi** to bring this suit. This objection therefore succeeds. Upholding this objection has the effect of disposing off the matter. I shall however still determine the other objections raised.

The pleading does not show that his father had an interest in the disputed land and no mention of his father's presence on the land is alluded to. (See **ANNEXTURE 58**). As mentioned in the facts above the above land isn't in the will of Prince Ssuna Kiwewa.

Therefore, guided by the ruling by the principle judge in the above case third generational claimants shouldn't claim estates that therefore fathers never claimed, I find the above claim unattainable on ground of illegality.

As stated earlier final certificates and provisional certificates (micro films) were closed by statute under current s.32 of the RTA. At the time of closure of these registers only running instruments were retained, implying that if you didn't get an MRV and block and plot title by 1961, you had no interest to claim.

Therefore, PCs and FCs aren't evidence of ownership of land today but just a record of it as it was 100 years plus ago!

Relying on them would imply redistribution of the 1900 Buganda land agreement as it was then yet the land register has moved on! The facts they never acquired an MRV and a title on block and plot register means that these claims were not valid by 1961 when the colonialists made the final transition on mailo land. On assertion of independence of 1962, any claims based on the 1900 British Agreement with Buganda lost expired! Therefore, new mailo titles cannot be created today except by sub division of an existing title, amalgamation of existing titles and closure of blue page.

IN NUTSHELL

a) NSSF bought Land comprised in FRV 402 Folio 13 Block 269 Plot 274, 323 and 1322, from Uganda Company Holdings Ltd in 2003. All shareholders of Uganda Company Holdings Ltd are foreigners, they could not hold a valid title in Freehold tenure to pass onto NSSF since the 1995 Constitution of the Republic of Uganda and Section **40(4)(5)(6)(7) of the land Act** forbids foreigners from holding Freehold or Mailo proprietary interest in land.

(b) The certificate of title comprised in FRV 402 Folio 13 Block 269 Plots 274 and 323 and 1322 measuring 285.07 Acres registered in the name of NSSF appear on the same Certificate of Title without following the laid down procedure on amalgamation of titles which explains its overs short on the cadastral and Karamazoo. NSSF did not explain NSSF did not explain how plots 50 of only 0.797 acres come to create plot 1322 of 186.6 acres. As explained by the CSM and others, this was not practically possible.

c) The certificate of title has three deed prints for the respective plots with Mailo Instructions to survey plot 1322-**MA/Z/2/0253**, plots 274 and 323 have no instructions to survey and this explains why they were not digitized and vectorized in the current land management system due to the irregularities sighted above.

d) The above implies that land comprised FRV WAK6129 FOLIO 9 PLOT 3234, FRV WAK6129 FOLIO 10 PLOT 3235, FRV WAK6129 FOLIO 11 PLOT 3236, FRV WAK6129 FOLIO 12 PLOT 3237, FRV WAK6129 FOLIO 13 PLOT 3238, FRV WAK6129 FOLIO 14 PLOT 3239, FRV WAK6129 FOLIO 15 PLOT 3240, were registered in accordance with land boards grants under S.59 and 64 of the land Act.

e) The claim by the Estate of the Late Yusufu Suuna Kiweewa could not be established in the records at the Registry kept by the Commissioner Land Registration as FC and PC are closed under S. 32 of the RTA, limited by the limitation Act because they are civil in nature and above all they have been rejected by court.

Once an illegality has been put to the attention of the office such an illegality cannot stand under S.91 of the Land Act.(same principle applied by the supreme court in Makula International v Cardinal Nsubuga SCCA No. 4/81)

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Once an illegality has been put to the attention of the office such an illegality cannot stand under S.91 of the Land Act. (same principle applied by the supreme court in Makula International v Cardinal Nsubuga SCCA No. 4/81)

NOW THEREFORE BY THE POWERS CONFERED UPON ME UNDER 3.91 OF THE LAND ACT I RECALL FRV 402 FOLIO 13 PLOTS 274, 323 AND 1322. I RECALL THIS TITLE FOR RETIFICATION TO CORRECT THE ERRORS AND ILLEGALITIES MENTIONED HEREIN.

AND BY COPY OF THIS AMMENDMENT ORDER REQUEST THE COMMISSIONER SURVEYS AND MAPPING TO CORRECT THE IRREGULARITIES MENTIONED IN THE SURVEY REPORT TO THE EXTENT OF THE TITTLE OVERLAY AND CORRECT THE CADASTRAL AND KARAMAZOO. THEREAFTER THIS SHALL ENABLE THE DIGITIZATION OF THIS TITTLE ON THE LAND INFORMATION SYSTEM WITH ACCURATE DATA MINUS THE OVERLAY.

POSSIBLE ACTION POINTS AWAY FROM THIS ORDER:

NSSF should explore an amicable settlement with the complainant in order to acquire the extra land lawfully from them.

The state agencies in conjunction with NSSF should institute criminal proceedings against individuals that may be criminally liable.

The Commissioner Surveys and Mapping should increase the surveillance, oversight and supervision of the Survey Register to ensure compliance to standards that will help avoid overlaying of surveys to create double titling.

The title to land comprised in FRV 402 Folio 13 Plots 274,323 and 1322 ought to be recalled, re surveyed and Karamazoo corrected to the extent to which it doesn't overlay on the petitioner's title.

Dated this... 20th day of... April 2024.



Mugaino Baker
Ag. COMMISSIONER LAND REGISTRATION