THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Elizabeth Musoke, Stephen Musota, Catherine Bamugemereire, Monica K. Mugenyi and Muzamiru M. Kibeedi, JJ.SC)

CIVIL APPEAL NO. 0077 OF 2023

**SEKYANZI SEMPIJJA ::::::

the Late Sempijja George, in 1985. However, in his oral testimony, the Appellant stated that the area of his *"Kibanja"* was approximately two acres. The Appellant sought vacant possession of the *"Kibanja"*, general and exemplary damages, interest and costs of the suit.

[3] The Respondent denied the Appellant's claims and stated that since 24th December 1984 he was the registered proprietor of the Mailo land on which the suit "*Kibanja*" was stated to be situate, namely: Busiro Block 447 Plot 5, and that at all times the land was unoccupied until the Appellant started illegally extracting soil from it. However, contended the Respondent, on 23rd January 2007, the parties voluntarily signed an agreement in which the Appellant undertook to stop carrying out any activities from the Respondent's land while the Respondent undertook to give the Appellant the sum of Ugx 175,000/= for transferring his bricks from the Respondent's land. The Respondent further stated that he had since sold the suit land to a 3rd party. Ms. Winfred Lalani.

[4] After conducting a full hearing of the suit *inter parties*, the trial Magistrate held that the Appellant herein was a *bonafide* occupant having adduced evidence to prove that through inheritance he had acquired the interest of his father who had occupied and utilized the suit "*kibanja"* unchallenged by the registered Mailo owner or his agent for over 12 years before his demise in 1985. She ordered the Respondent to compensate the Appellant for his interest as a bona fide occupant on the Respondent's Mailo land at a rate to be determined by the Chief Government Valuer. She further awarded the Appellant UGX. 3,000,000/= (Uganda Shillings Three Million only) as general damages and the costs of the suit.

1st Appeal - High Court Civil Appeal No. 27 of 2010 (Land Division)

[5] Dissatisfied with the decision of the trial Magistrate, the current Respondent appealed to the High Court of Uganda (Land Division) under reference No. Civil Appeal No. 27 of 2010.

[6] After re-evaluating the evidence, the first Appellate Court likewise found that the father of the Appellant had occupied the suit property for over 12 years before his death in 1985. Further, that the Appellant inherited his father's interest in the suit property in 1986 after the demise of the Appellant's father. The years of occupancy of the suit "*kibanja*" by the Appellant and the Appellant's deceased father were added and the first Appellate Court found that they added to more than 12 years prior to the promulgation of the Constitution on the 8th of October 1995. Accordingly, the 1st Appellate Court upheld the finding of the trial Court that the current Appellant is a *bonafide* occupant of the suit property. The Court confirmed the trial Court's order that the Respondent compensates the Appellant's interest as a bonafide occupant at a rate to be determined by the Chief Government Valuer.

[7] The first Appellate Court also upheld the award of general damages of UGX. 3,000,000/= granted by the trial Court to the Appellant herein and dismissed the appeal with costs to the Appellant herein.

2nd Appeal – Civil Appeal No. 240 of 2013 of the Court of Appeal

[8] The Respondent herein was aggrieved by the decision of the High Court and lodged a second appeal in the Court of Appeal under reference No. Civil Appeal No. 240 of 2013.

[9] In the Lead judgment of Hon. Justice Christopher Madrama Izama, JA (as he then was) with which the other Justices of Appeal agreed, the second Appellate Court held that for one to qualify as a bonafide occupant, his/her occupancy must have lasted for a continuous period of 12 years and more prior to the promulgation of the Constitution of Uganda, 1995 on the 08th of October 1995. As such, on his own, the Appellant did not qualify to be a bonafide occupant since his occupancy was for a period of 10 years prior to the promulgation of the Constitution of Uganda, 1995.

[10] As to whether the period of occupancy of the suit land by the Appellant's father of over 12 years before his death in 1985 could be added when reckoning the Appellant's occupancy in order to qualify the Appellant to be a bonafide occupant, the second Appellate Court held in the negative. The reason given by the Court for its decision was that the Appellant's father could not have qualified to be a bonafide occupant under a law which was not in force by the time he passed away in 1985. As such, the Appellant could not have inherited the interest of *"bonafide occupant"* from his father since the deceased had no such interest by the time he passed away in 1985. That in terms of Article 237 (8) of the Constitution of the Republic of Uganda and Section 29 (2)(a) of the Land Act, Cap 227 (Renamed the Land Act, Cap. 236 of the 2023 Revised Edition of the Laws of Uganda), the Appellant did not qualify to be a bona fide occupant.

[11] The second Appellate Court accordingly allowed the appeal, and set aside the judgment and orders of the High Court and the Court below with costs to the Appellant (the Respondent herein).

3rd Appeal - Supreme Court Civil Appeal No. 77 of 2023

[12] The Appellant being dissatisfied with the Court of Appeal decision sought leave of the Court of Appeal to appeal to this Court under reference number:- *Court of Appeal Civil Application No. 111 of 2020*. The Court of Appeal dismissed the application in its Ruling delivered on the 23rd of October 2020, and uploaded onto Ulii and cited as ***Sekyanzi Sempijja v Prof Wavamunno (Miscellaneous Application 111 of 2020) [2020] UGCA 2146 (23 October 2020).***

[13] Thereafter, the Appellant successfully applied to this Court for a Certificate of public importance to file a third Appeal in this Court under reference No. Supreme Court Civil Application No. 37 of 2020. The Ruling of this Court was uploaded on Ulii and is cited as ***Sekyanzi v Prof . Wavamuno (Miscellaneous Application 37 of 2020) [2023] UGSC 28 (27 July 2023).***

[14] In granting the Certificate of general public importance, this Court limited the scope of the third appeal to the determination of only one question which was framed by the Court thus:

> ***"Whether the [Appellant] is a bona fide occupant on the suit land having acquired his interest through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before the promulgation of the 1995 Constitution?"***

Representation

[15] When the matter came up for hearing before this Court, the Appellant was represented Mr. Isa Kavuma and Mr. Abubaker Ssemagulu of M/S Luzige, Lubega, Kavuma & Co. Advocates, whereas the Respondent was represented by Mr. Martin Kakuru of Ligomarc Advocates.

[16] Counsel for each of the parties sought and was granted leave by this Court to adopt their respective written submissions as the parties' legal arguments and the same have been considered.

Appellant's Submissions

[17] The Appellant faulted the second appellate Court for treating the interest of the Appellant herein as separate from the interest of his deceased father with the consequence that the second appellate Court excluded the period of occupancy of the suit land by the deceased's father up to the time of his death in 1985 when computing the twelve years prescribed for the Appellant to qualify to be a bona fide occupant on the suit land. While quoting Article 237(8) and (9) of the Constitution and Section 29(5) of the Land Act, the Appellant contended that the focus of the law is on the existence of an interest and not the particular individual who owns the interest at a particular time. Further, that Section 29(5) of the Land Act extended the protection of the law to any person to whom that interest may be transferred either by purchase, inheritance or otherwise, irrespective of when that person acquired the interest, so long as the interest he/she is acquiring or acquired has been in

existence for a period of more than twelve years prior to the promulgation of the 1995 Constitution.

[18] The Appellant argued that interests in land/immovable property are continuing in nature, and that the continuing nature of interests in land is the same legal principle that informed the mind of the Legislature while enacting section 29(5) of the Land Act which made provision for the recognition of a person who purchases or otherwise acquires the interest of the person qualified to be a *bona fide* occupant under Section 29 of the Land Act. The Appellant cited the case of ***Kampala District Land Board and Another v Venansio Babweyaka and Others, Supreme Court Civil Appeal No. 2 of 2007, [2008] UGSC 3 (11 February 2008)*** and submitted that in that case, this Court considered a similar situation where a person purchased land in the year 1998 from persons who had occupied and utilised it since 1970 and found him to be a bona fide occupant in accordance with Section 29 (5) of the Land Act.

[19] The Appellant further referred to the decision of this Court in ***Kampala District Land Board and Anor v National Housing and Construction Corporation, Civil Appeal No. 2 of 2004, [2005] UGSC 20 (25 August 2005)*** and contended that in the said case, the same view had earlier been upheld by this Court.

[20] The Appellant urged this Court to resolve the issue before it in favour of the Appellant and set aside the decision of the Court of Appeal with costs before this Court and the Courts below.

Respondent's Written Submission

[21] The Respondent supported the decision of the Court of Appeal.

[22] He submitted that the Appellant having been in occupation of the suit land for only 10 years before the promulgation of the Constitution in October 1995, the Learned Justices of

Appeal cannot be faulted for their conclusion that the Appellant is not a *bona fide* occupant of the suit land within the meaning of Section 29(2) of the Land Act.

[23] Further, the Respondent argued that for the Appellant to qualify as a *bona fide* occupant of suit land under Section 29(5) of the Land Act, he ought to prove that his late father was a bona fide occupant. The Respondent supported the finding of the Court of Appeal to the effect that the Appellant's deceased father could not have qualified to be a *bona fide* occupant under a law which was not in force by the time he passed away in 1985. The Appellant contended that the Constitution of the Republic of Uganda having come into force on the 08th of October 1995, it established a new constitutional and legal order. Prior to the 08th of October 1995, opined the Respondent, we did not have the term "*bonafide occupant*" in our laws and, as such, no right of a bonafide occupant existed. Therefore, the Appellant's father having died long before the promulgation of the 1995 Constitution could not have been a bonafide occupant on the suit land. Neither could he, in turn, pass onto the appellant an interest in the suit land as a *bona fide* occupant which he himself did not possess in the first place.

[24] The Respondent sought to distinguish the case of ***Kampala District Land board and George Mutale Vs Venansio Babweyaka and Others, (supra)*** cited by the Appellants and contended that in that case, this Court found that the Respondents had purchased the suit land in 1998 from persons who had settled on the suit land since 1970. As such, the vendors were *bonafide* occupants and could pass onto the Respondents the interest of bonafide occupancy. Similarly, the Respondents who had acquired interest from such vendors likewise qualified to be *bonafide* occupants under section 29(5) of the Land Act. The Respondent opined that contrary to the case of ***Kampala District Land Board and George Mutale Vs Venansio Babweyaka and Others*** **(supra),** in the present case, the Appellant claims to have acquired his interest as a *bona fide* occupant from his deceased father who died in 1985 before the promulgation of the Constitution of Uganda, 1995.

[25] The Respondent prayed that Court resolves the issue in this appeal in favour of the Respondent, dismisses the appeal with costs to the Respondent, and upholds the Judgment and Orders of the Court of Appeal.

Appellant's Submission in Rejoinder

[26] In rejoinder, the Appellant disagreed with the Respondent's argument that the interests of *bona fide* occupants of land did not exist prior to the promulgation of the 1995 Constitution and the enactment of the 1998 Land Act. He submitted that Articles 237 (8) & (9) of the Constitution and Section 29 of the Land Act simply provided for interests that were already existent and were only intended to strengthen the protection of such interests.

[27] The Appellant contended that from the wording of *Article 237(8) and (9) of the Constitution,* the Constitution only introduced the nomenclatures *"lawful"* and *"bona fide"* occupants in respect of interests that were already in existence prior to its promulgation. The Appellant submitted that the said provisions of the law neither created the said bona fide occupants nor gifted them with the rights and/or interest in the land, but simply formally recognised their rights and/or interests in the land. That the provision was remedial in nature and intended by the draftsman of the said law to provide security of occupancy and to protect interests of persons already occupying land with equitable interests as opposed to legal interests.

[28] The Appellant reiterated his earlier submission that the principles of Land Law focus and are entirely based on interests and that is why Parliament thought it important to enact *Section 29(5) of the Land Act, Cap 227* which provides for continuity of bona fide interests in land despite any change of ownership of that land either through purchase, gift, inheritance or otherwise. It is for this reason that a person who acquires any property through purchase or otherwise, obtains the exact interest in that property which the person from whom he/she acquired the property had. The Appellant argued that if the interests in land were to extinguish upon surrender or death of the owner, then the principles of land law in respect to

continuity of interest and the succession laws that enable acquisition of land through inheritance would be rendered obsolete and redundant.

[29] The Appellant reiterated his earlier prayers that the appeal be allowed with costs.

Resolution of the appeal

[30] For the sake of emphasis, the question that is before this Court for resolution is:

> ***"Whether the [Appellant] is a bona fide occupant on the suit land having acquired his interest through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before the promulgation of the 1995 Constitution?"***

[31] The Record of Appeal shows that the trial Magistrate relied on subsections (2)(a) and (5) of Section 29 of the Land Act, Cap. 227 in arriving at the decision that the Appellant herein qualified to be a *bonafide* occupant having adduced evidence proving that through inheritance he had acquired the interest of his father who had occupied and utilized the suit "*kibanja*" unchallenged by the registered Mailo owner or agent for over 12 years before his demise in 1985. Thus held the trial Magistrate:

> *"Although, it has been submitted by [the] defence that the Plaintiff [Appellant herein] has been on [the] "Kibanja" for 10 years which the Defendant [Respondent herein] is not disputing, [Section 29(5) of the Land Act] brings in (sic!) that the Plaintiff is a bona fide occupant in that, the Plaintiff on inheritance, at his father's death, he acquired the interests of his father who by evidence of PW2 and PW3 confirmed to the Court that he was their neighbour and had been on this "Kibanja" and he had planted coffee trees (cultivated). By the evidence of the Plaintiff and his witnesses it indicates that the Plaintiff's father qualifies to be a bona fide occupant, therefore, the Plaintiff acquired the same interests when he became the heir."*

[32] In upholding the decision of the trial Magistrate to the effect that the Appellant herein is a *bonafide* occupant, the first Appellate Court stated thus:

" ...the question as to bonafide occupancy is that of law and facts. The law is set out in Section 29(2) and (5) [of the Land Act]. According to the facts of the case as stated by the Respondent [Appellant herein] and his witnesses, the suit Kibanja belonged to the Respondent's father [Appellant herein] since the defendant's childhood where the deceased had planted coffee trees. By the time the deceased died in 1985, the Respondent [Appellant herein] was about 11 years old. The Respondent [Appellant herein] inherited the Kibanja in 1986. By 1995 the Respondent [Appellant herein] had clocked 10 years on the Kibanja. It can therefore be presumed on the balance of probability that the interest of the deceased was more than twelve years according to Pw2 and Pw3 and the nature of use the "Kibanja" had been put to. The Respondent [Appellant herein] had clearly discharged the legal burden of the deceased adverse possession, thereby shifting the burden on the Appellant [Respondent herein] to prove otherwise...

In the premises, it is my conclusion that the learned Trial Magistrate was correct to rule that the Respondent [Appellant herein] qualified to be a bonafide occupant."

[33] The second appellate Court did not accept the reasoning and decision of the first Appellate Court that the Appellant was a bona fide occupant and overturned it. The reason given for taking this position was that the Appellant's father having passed away in 1985, he did not quality to be a bonafide occupant under a law which was not in force by the time of his demise in 1985. As such, the period of occupancy of the suit land by the deceased's father should not have been included when reckoning the 12 years prescribed by the Land Act for one to qualify to be a bona fide occupant of land as the Appellant could not have inherited an interest in the suit land as a bonafide occupant which his father did not have at the time his demise in 1985. Thus held the second appellate Court:-

"The facts which were accepted by the learned trial magistrate as well as the learned first appellate court judge are that the Respondent's father died in 1985. That means that he died about 10 years prior to the promulgation of the 1995 Constitution. The court considered the earlier occupancy of the Respondent's father which was considered proved by the oral testimonies of PW2 and PW3 who knew the Respondent's father.

The question is whether there was continuity in the occupancy of the Respondent's father as well as the subsequent occupancy of the Respondent which commenced in 1986. To interpose the issue of whether the estate of the deceased was administered presupposes that one is dealing with the interest of a bona fide

occupant which had already accrued. The Respondent's father could not have qualified to be a lawful occupant under a law that was not in force by the time he passed away in 1985. It is therefore the occupancy of the respondent, which is in issue, because it is the occupancy considered under Section 29(2) of the Land Act and the term bona fide occupant was used by the trial Court in application of Section 29 of the Land Act. This means occupancy before the coming into force of the Constitution of the Republic of Uganda 1995 for 12 years or more. The question of inheritance does not arise in the context of article 237(8) of the constitution and section 29(2) of the Land Act. In that context, it should be the family of the Respondent's father and their interest which should be of concern. The real question of controversy is whether occupation can be inherited? Occupation is the physical act of control over the land in question in terms of the definition in section 29(2) of the Land Act...

Secondly, as a matter of fact, the learned first appellate court judge agreed with the trial magistrate that the Respondent occupied the suit property for 10 years prior to the promulgation of the 1995 Constitution of the Republic of Uganda. It follows that in terms of Section 29(2) of the Land Act, the Respondent does not qualify to be a bona fide occupant. He could only have inherited an interest that his father had by the time he passed away in 1985, but as submitted by the Appellant's Counsel, the Respondent's right to the estate of the deceased father has not been established. I would add that, in any case the interest of the estate was not established in the lower court as a matter of fact. Bona fide occupancy only arises in the context of Section 29(2) (a) of the Land Act. By proceeding under the law of bona fide occupancy, there is no basis for finding for the Respondent in the lower Court.

There need not have been inheritance for the Respondent to occupy the suit premises for a period of 12 years or more prior to the promulgation of the Constitution of Uganda 1995." [Empasis added]

[34] There is no doubt that as a fundamental rule of statutory interpretation, a statute, other than one dealing with procedure, shall not be construed so as to have retrospective effect unless the intention of the legislature that it should have such effect appears in clear terms and or by necessary implication. *See:* ***Daniel Greenberg and Alexandra Millbrook, Stroud's Judicial Dictionary of Words and Phrases sixth edition, 2000, Vol 3, p2315)***.

[35] As such, the Land Act of 1998 having been enacted in 1998, did not have retrospective application. Further, under the literal rule of statutory interpretation, the second Appellate Court cannot *prima facie* be faulted for excluding the period of occupancy of the suit land by

the Appellant's father when reckoning the 12 years of occupancy prescribed by Section 29 of the Land Act in order for the Appellant to qualify to be a bonafide occupant. The Appellant could only inherit what his father had at the time of his death in 1985.

[36] However, there is also no doubt that the result arising from the use of the literal rule of interpretation in the circumstances of this case would be absurd to the extent that the Appellant, and other families falling in the Appellant's situation, whose inheritance is derived from persons who had occupied registered land for a period of over 12 years before the promulgation of the Constitution on 08th October 1995 but died somewhere between 09th October 1983 to 08th October 1995 - before the promulgation of the Constitution on 08th October 1995, face the risk of automatic extinction of their inheritance on the sole ground of the demise of their benefactors before the promulgation of the Constitution on 08th October 1995. On the other hand, their counterparts whose inheritance is derived from persons who had likewise occupied registered lands for a period of over 12 years before the promulgation of the Constitution but died after the promulgation of the Constitution on 08th October 1995 are protected by the definition of "*bona fide occupant*" as set out in Sections 29(2) and 29(5) of the Land Act. The question that arises in such a situation is: *Could it have been the intention of the legislature in enacting Section 29 of the Land Act to extinguish the security of occupancy of land hitherto enjoyed by individuals and families in category of the Appellant on the sole ground of the demise of their benefactors between 09th October 1983 and 08th October 1995?*

[37] In order to ameliorate the exigencies and absurdities created by the strict application of the literal rule of statutory interpretation, the Courts developed the *"mischief rule"* of statutory interpretation. The rule is traceable to ***Heydon's Case (1584) 76 ER 637***, where the Barons of the Exchequer held that Courts should consider the law before the statute, the defect or mischief the statute aimed to address, and the remedy Parliament provided to resolve the issue.

[38] The *"mischief rule"* has since evolved into what is now known as ***"the purposive construction"*** which focuses on the legislative intent and statutory objective. And in England, for the purpose of facilitating the establishment of the legislative intent by the Courts of Law, the House of Lords in 1992 overruled the more than two centuries' ***"Exclusion Rule"*** which had hitherto barred the Courts from making references to Parliamentary material as an aid to statutory construction. This was in the case of ***Pepper (Inspector of Taxes) v Hart [1993] 1 All ER 42.*** Lord Browne-Wilkinson, who wrote the lead judgment, in reaching the decision to depart from the *"Exclusion Rule"* stated thus:

> *"My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modification to the existing rule (subject to strict safeguards) unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised, I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria…*
>
> *I therefore reach the conclusion, subject to any question of parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to parliamentary materials where: (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of statements by a Minister or other promoter of the Bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect; (c) the*

statements relied upon are clear."

[39] In his supporting judgment in the case of ***Pepper (Inspector of Taxes) v Hart (ibid),*** Lord Griffiths stated as follows with regard to the purposive approach to statutory interpretation:

> *"The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted."*

[40] In our bid to establish the mischief or pain-points sought to be addressed by the Constitution of the Republic of Uganda of 1995 and the Land Act of 1998, an historical review of the legal regime governing the occupancy of land by persons and families in the class in which the Appellant and his father fall becomes necessary.

[41] Exclusive and uninterrupted occupancy of registered land for a period of over 12 years has long been recognised under the common law as conferring rights to the occupant to deal with the occupied land as its owner irrespective of whether the original entry was unauthorised. While elaborating on the operation of the law of adverse possession, the learned authors of the legal treatise, ***Megarry & Wade: The Law of Real Property, 9th Edition, Stuart Bridge, Elizabeth Cooke and Martin Dixon, Sweet & Maxwell, London, 2019 at paragraphs 7-007; 7-014; 7-029 to 7-110)***, state thus:

> *"...Possession is a legal concept which depends on the performance of overt acts, and not on intention. It requires an appropriate degree of physical control of the land and it must be a single and exclusive possession...it is in the public interest that a person who has long been in undisputed possession should be able to deal with the land as owner. It is more important that an established and peaceful possession should be protected than that the law should assist the agitation of old claims. A statute which effects this purpose is* "an act of peace." *Long dormant claims have*

often more cruelty than of justice in them…Adverse possession runs counter to the principle of the indefeasibility of a registered title and can only be justified in limited circumstances…To establish adverse possession, a squatter must prove both factual possession of the land and the requisite intention to possess (animus possidendi)…The principles which determine whether conduct amounts to adverse possession were affirmed by the House of Lords in Pye (Oxford) Ltd v. Graham [2002] UKHL 30; [2003] 1 AC 419…the House held that where licensees remained in possession of grazing land for more than 12 years after the expiry of the licence, they had acquired title to the land by adverse possession, because they were in factual possession and shown the requisite intention."

[42] In our statutes, the security of occupancy on the land by an adverse possessor for an uninterrupted period of over 12 years was guaranteed by the Limitation Act following its enactment in 1959. This protection is currently found in Sections 5 and 6 of the Limitation Act, Cap. 290 of the 2023 Revised Edition of the Laws of Uganda in so far as the fact of adverse possession for 12 years is *ipso facto* a shield against any action against an adverse possessor for recovery of the land. The sections are couched thus:

"5. Limitation of action for recovery of land

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.

6. Accrual of right of action in case of present interests in land

(1) Where the person bringing an action to recover land, or some person through whom he or she claims, has been in possession of the land, and has while entitled to it been dispossessed or discontinued his or her possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance …"

[43] The above shield was further reinforced by Section 16 of the Limitation Act which automatically extinguishes the title of anyone who would have otherwise sought to recover

the land occupied by the adverse possessor after the continuous occupation thereof for a period of over 12 years by the adverse possessor. Section 16 provides thus:

> ***"16. Extinction of title after expiration of period***
>
> *Subject to sections 8 and 29 of this Act and subject to the other provisions thereof, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action), the title of that person to the land shall be extinguished."*

[44] With the enactment of the Land Reform Decree No. 3 of 1975, all the land in Uganda was decreed to be *"public land"* to be administered by the Uganda Land Commission in accordance with the Public Land Act No. 13 of 1969. *(**See**: **Section 1 of the Land Reform Decree**).* The Decree abolished any interest in land in Uganda greater than leasehold interest and converted Freehold interest in land and Mailo ownership into leaseholds. However, Section 3 of the Decree permitted customary occupation of public land to continue but *"only at suffrance and a lease of any such land [could] be granted by the [Uganda Land Commission] to any person, including the holder of the [customary] tenure, in accordance with [the] Decree."*

[45] I have closely reviewed the Land Reform Decree. Nowhere did it provide for the repeal of the provisions of the Limitation Act relating to title by adverse possession which I have laid out in this judgment. As such, I can safely infer that in the aftermath of the Land Reform Decree, such occupancy of land continued but subject to the overriding changes ushered by Land Reform Decree, 1975 vesting all the Land in Uganda in the Uganda Land Commission. It is in this context that I am constrained to find that by the time of the demise of the deceased's father in 1985, his interest in the suit land which he had occupied for over 12 years was one by adverse possession. That is the same interest that the Appellant inherited from his father when he started occupying the suit land after the death of his father.

[46] With the unfolding of the Constitutional making process, ***"security of occupancy"*** on registered lands and redress of "historical land injustices" was high up on the legislative agenda of the makers of the 1995 Constitution. This is clear from the wording of Article 237 (8) of the Constitution of Uganda, 1995, which is couched thus:

> *Upon the coming into force of this Constitution and until Parliament enacts an appropriate law under clause (9) of this article, the lawful or bonafide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.* [Emphasis added]

[47] The Constitution did not lay out a definition of "*lawful and bonafide occupants*" on registered lands whose security of occupancy was guaranteed under the above Article. Neither did it lay out the qualification criterion for determining *"lawful and bonafide occupants"* on registered lands. But it is apparent from Article 237 (8) that the Constitution was simply acknowledging already existing occupancy on registered lands whose security it sought to enhance. In the circumstances, I opine that the Appellant's occupancy acquired by inheritance of his father's interest of adverse possessor of the suit land was one of the intended beneficiaries of the Constitutional guarantee of security of occupancy on registered lands set out in Article 237(8) of the Constitution even though the term *"title by adverse possession"* was not used in the Constitution. What matters is not the name but the substance of the occupancy. As Shakespeare succinctly put it in **Romeo and Juliet, Act 2, Scene 2:**

> *"What's in a name?*
>
> *That which we call a rose*
>
> *By any other name would smell as sweet"*

[48] Article 237(9) of the Constitution thereafter gave the Parliament an express obligation to enact a law to regulate the relationship between the lawful and bonafide occupants and the

registered land owners, and to make provisions to enable occupants acquire registrable interest. Article 237(9) was worded thus:

> *"Within two years after the first sitting of Parliament elected under this Constitution, Parliament shall enact a law—*
>
> *a) regulating the relationship between the lawful or bonafide occupants of land referred to in clause (8) of this article and the registered owners of that land;*
>
> *b) providing for the acquisition of registrable interest in the land by the occupant."*

[49] The visible objective underlying the above constitutional provisions was still to enhance the security of occupancy of lawful and bonafide occupants on registered lands. It even accorded them the possibility of acquiring a registrable interest in the land they occupy. Persons in the category of the Appellant who, at the time of the promulgation of the Constitution, had inherited the interests of adverse possessors on registered land were not excluded from the scope of persons encompassed by the term "lawful or bonafide occupants" used in Article 237(9) of the Constitution.

[50] In 1998, the Parliament of Uganda, in discharging its Constitutional mandate under Article 237 (8) and (9) of the Constitution, enacted the Land Act No. 16 of 1998 which defined the terms *"lawful occupant"* and *"bonafide occupant"* in Section 30 thereof. Section 30 of the Land Act, 1998 was subsequently renamed Section 29 of the Land Act, Cap. 227 of the 2000 Revised Edition of the Laws of Uganda, and the Land Act Cap. 236 of the 2023 Revised Edition of the Laws of Uganda. It is couched thus:

> *"**29. Meaning of "lawful occupant" and "bona fide occupant"**.*
>
> *(1) **"Lawful occupant"** means—*
>
> *(a) a person occupying land by virtue of the repealed—*
>
> *(i) Busuulu and Envujjo Law of 1928;*

(ii) Toro Landlord and Tenant Law of 1937;

(iii) Ankole Landlord and Tenant Law of 1937;

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

(c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

*(2) "**Bona fide occupant**" means a person who before the coming into force of the Constitution—*

(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or

(b) had been settled on land by the Government or an agent of the Government, which may include a local authority.

(3) In the case of subsection (2)(b)—

(a) the Government shall compensate the registered owner whose land has been occupied by persons resettled by the Government or an agent of the Government under the resettlement scheme;

(b) persons resettled on registered land may be enabled to acquire registrable interest in the land on which they are settled; and

(c) the Government shall pay compensation to the registered owner within five years after the coming into force of this Act.

(4) For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bonafide occupant under this section.

(5) Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act."

[51] It is apparent that Parliament in defining a "*bonafide occupant*" in Section 29(2)(a) to be "*a person who before the coming into force of the Constitution had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner*

for twelve years or more" was greatly influenced by the common law principle of *"title by adverse possession"* as guaranteed by the Limitation Act of Uganda as I have shown.

[52] However, the definition did not expressly cover the occupants of registered land for a period of less than 12 years at the time of the promulgation of the Constitution on 08th October 1995, but who derived their right of occupancy from persons who had been in adverse possession of land for over 12 years before they passed on before the promulgation of the Constitution on 08th October 1995. This class includes the occupants who inherited the rights of occupancy from the deceased adverse possessors of registered lands in the period between 08th October 1983 and 07th October 1995. The Appellant belongs to that class of occupants since he acquired his interest through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before his demise. But as I have already opined in this judgment, the Appellant's occupancy on the suit land is one of those interests whose security the makers of the Constitution sought to guarantee and enhance at the time of the promulgation of the constitution in 1995 through the provision of Article 237(8) of the Constitution, even though the term *"title by adverse possession"* was not used in the Constitution.

[53] Accordingly, it is my finding that the definition of the term *"bona fide occupant"* as set out in Section 29 of the Land Act was not exhaustive. Neither was it exclusive of the occupancy on registered land for less than 12 years before the coming into force of the Constitution of the Republic of Uganda, 1995 on 08th October 1995 by persons who derived their right of occupancy from persons who had enjoyed occupancy rights under the limitation Act as adverse possessors of registered lands for over 12 years before their demise. This is the class to which the Appellant belonged having acquired his right of occupancy through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before his demise and qualified to be an adverse possessor of the suit land under the Limitation Act. It is through the adoption of a purposive construction of the law that the Court can adequately identify and speak to the pain-points that the legislature intended to resolve

through the enactment of Article 237(8) and (9) of the Constitution and Section 29 of the Land Act. The second Appellate Court's strict construction of the law on bonafide occupants to exclude the rights inherited by the Appellant from his father, an adverse possessor of the suit land, on the sole account that the Appellant had not occupied the suit land for more than 12 years at the time of the promulgation of the Constitution carried with it an unintended consequence of extinguishing such an interest on the sole account of the demise of the benefactor (or original adverse possessor) within the period less than 12 years before the promulgation of the Constitution on 08th October 1995. Such an interpretation would not only perpetuate the historical injustice that was intended to be redressed by Article 237(8) and (9) of the Constitution, but also run contrary to the intention of the Constituent Assembly in enacting Article 237(8) and (9) of the Constitution which I have demonstrated as having been to enhance the security of the occupants on registered land. Extinguishing of the interest of persons in occupancy of the registered lands was not one of the discernable objectives of the legal provisions. As such the decision of the second Appellate Court should not be allowed to stand.

[54] **Conclusion**

(1) I would allow the appeal and answer the question set for the resolution by this Court in the affirmative thus: ***the Appellant is a bona fide occupant on the suit land having acquired his interest through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before the promulgation of the 1995 Constitution.***

(2) I would accordingly set aside the decision and orders of the Court of Appeal in Civil Appeal No. 0024 of 2013 and cited as **[2020] UGCA 2170**

(3) I would reinstate the orders of the High Court – albeit for the reasons which are different from those used by the first Appellate Court to arrive at the same conclusion that the Appellant was a bonafide occupant of the suit land.

(4) I would award the Appellants one half of the taxed Costs before this Court and the Court of Appeal as their submissions were only partially useful in the resolution of this appeal.

(5) The costs before the High Court and the Magistrate's Courts shall remain as ordered by the respective courts.

Signed:

MUZAMIRU MUTANGULA KIBEEDI
Justice of the Supreme Court

Delivered and dated at Kampala this 13th day of November 2026

Registrar of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT AT KAMPALA

CIVIL APPEAL NO. 0077 OF 2023

{Coram: Elizabeth Musoke, Stephen Musota, Catherine Bamugemereire, Monica Mugenyi and Muzamiru Kibeedi, JJSC}

SEKYANZI SEMPIJJA :: APPELLANT

VERSUS

PROF. GORDON WAVAMUNNO :: RESPONDENT

JUDGMENT OF CATHERINE BAMUGEMEREIRE JSC

1]. I had the opportunity to read the judgment, in draft, of Learned Brother, Muzamiru Kibeedi JSC, and I agree with his conclusion. I join issue with my brother on the grounds of appeal and submissions.

2]. This is a third appeal. The matter originated in the Magistrates Court. It was appealed to the High Court. The High Court became the first appellate court. From the High Court, it was appealed to the Court of Appeal as a second Appellate Court. The duty of a second appellate Court was exhaustively specified in **Tito Buhingiro v Uganda SCCA No. 8 of 2014,** as hereunder:

> *"It is trite law that as a second appellate court, we are not expected to re-evaluate the evidence or question the concurrent findings of fact by the High Court and Court of Appeal. However, where it is shown that they did not evaluate or re-evaluate the evidence or where they are proved to be manifestly wrong on findings of fact, the court is obliged to do so and to ensure that justice is properly and timely served."*

3]. A third appeal concerns questions of law of considerable public or general importance. An appeal to the Supreme Court of Uganda is not an automatic right. It requires either a certificate of importance from the Court of Appeal or leave granted by the Supreme Court in the interests of justice under Section 6(2) of the Judicature Act. Such an appeal is strictly limited to questions of law or matters of great public or general importance and excludes the re-evaluation of facts. The memorandum of appeal must clearly identify the legal issues alleged to have been wrongly decided by the Court of Appeal.

4]. The Appellant filed Civil Suit No. 028 of 2007 in the Chief Magistrate's Court of Entebbe, seeking, among other relief, a declaration that he is a bona fide occupant of the suit land and an order directing the respondent to compensate him in the sum of UGX 59,879,350/=, relying on the evidence of PW1 and PW2.

5]. The respondent appealed to the High Court, which upheld the Chief Magistrate's judgment that the Applicant is a bona fide occupant of the suit land and is entitled to compensation at a rate to be determined by the Government Valuation Surveyor. The respondent subsequently appealed to the Court of Appeal, which set aside the judgments of the High Court and the Chief Magistrate's Court of Entebbe. Upon perusal of the judgment, the Applicant discovered that the learned Justices of the Court of Appeal had misinterpreted the law governing bona fide occupancy in light of the facts of the case and had erroneously held that the Applicant is not a bona fide occupant of the suit land.

6]. With the deepest respect, I cannot agree with the second appellate court's reasoning insofar as it disregarded the trial court's and the first appellate court's concurrent findings of fact regarding the continuity of occupation of the disputed land. In my view, the central question is whether the respondent's occupation, which commenced in 1986, was sufficiently continuous to qualify him as a bona fide occupant within the meaning of Section 29 of the Land Act, having regard to the nature and duration of his father's prior occupation.

7]. Having seen and heard the witnesses, the trial court accepted evidence that the continuity of occupation was demonstrated by the cultivation of trees and other perennial crops on the land. On reconsideration of the evidence, the first appellate court upheld that finding. These concurrent findings were grounded in law and the evidence on record and were material to determining the respondent's claim to lawful occupancy. In my view, the second appellate court ought not to have departed from those findings without demonstrating a sufficient legal or evidentiary basis to justify the interference.

8]. The difficulty with the second appellate court's reasoning lies in its apparent focus on the respondent's period of personal occupation, without adequately considering the legal significance of the evidence of occupation that preceded it. By isolating the respondent's period of occupation and treating it as decisive, the court failed to give due weight to evidence of the family's continued use and occupation of the land. The cultivation of trees and other perennial crops was not merely incidental evidence; it is demonstrable proof of continuity of occupation over time

and supports the inference that the respondent's occupation did not arise in isolation from that of his predecessor.

9]. In my view, the question of whether the estate of the respondent's deceased father had been administered must be approached with a proper appreciation of the nature of the right asserted. The issue is not simply whether the father had acquired a legally recognised status under a statutory regime that was not yet in force at the time of his death. Rather, the evidence of his occupation, considered alongside the respondent's subsequent occupation, establishes the continuity required to satisfy the statutory requirements applicable to the respondent's claim.

10]. It is correct that the respondent's father died in 1985 and could not, by virtue of his occupation alone, have acquired a status created by legislation that came into force after his death. However, that proposition alone does not dispose of the question of whether his prior occupation is relevant to assessing the respondent's claim under Section 29(2) of the Land Act. The distinction lies between the deceased's acquisition of a statutory status and the evidentiary and legal significance of his occupation to a claim his successor later advanced. Those questions ought not to be conflated.

11]. In this regard, the term ***bona fide occupant***, as used by the trial court, must be understood in the context of the Land Act 1998, as amended, under which the court considered the respondent's claim. The material inquiry is whether the respondent satisfies the applicable statutory test, having regard to the circumstances of his occupation and

the evidence concerning its continuity. The respondent's father's prior occupation is relevant to that inquiry, not because the father must retrospectively be deemed to have acquired a statutory status unavailable to him during his lifetime, but because the circumstances of that occupation may illuminate the character and continuity of the respondent's own occupation.

12]. Section 29(5) of the Land Act also raises the question of how interests in land may be acquired and recognised. To the extent that it allows acquisition by means other than purchase, it is necessary to consider whether succession and continued occupation fall within its scope. The provision should be interpreted in light of its wording, statutory context and purpose. Where the evidence shows that occupation continued across generations, the court should be slow to conclude that the predecessor's death automatically broke the factual continuity of occupation, unless that consequence was intended by the Land Act.

13]. The law must of necessity distinguish between the transmission of an existing proprietary or possessory interest and the satisfaction of statutory conditions for recognition as a bona fide occupant. Succession cannot, by itself, confer a status that the law does not recognise or dispense with requirements expressly imposed by statute. Equally, however, the death of an occupier should not be treated as necessarily extinguishing every legally relevant consequence of that person's occupation. The proper approach is to determine the nature of the interest, if any, that existed, the legal consequences of the predecessor's death, and the extent to which the successor's subsequent occupation satisfies the applicable statutory requirements.

14]. The preceding approach is also consistent with the broader legal principles governing the protection of property and security of tenure. Article 237(8) of the Constitution of the Republic of Uganda recognises the protection of the rights of women, children and other vulnerable groups in respect of access to land and property. While that provision does not, of itself, establish an automatic right of succession to bona fide occupancy, the constitutional framework within which land legislation operates reinforces the importance of interpreting and applying the law in a manner that respects legally recognised interests in land and avoids arbitrary deprivation.

15]. The common-law principle that property interests may survive the death of their holder and pass to successors, subject to the nature of the interest and the applicable law, likewise provides relevant context. It does not follow that every factual occupation is necessarily inheritable or that every successor automatically acquires the statutory status of a bona fide occupant. Rather, the principle underscores the need to identify the right or interest in question and to determine whether the law permits its transmission. The statutory provisions must ultimately govern that inquiry.

16]. In the present case, the trial court's and the first appellate court's concurrent findings regarding the cultivation of trees and other perennial crops provided an evidentiary basis for assessing continuity of occupation. In my view, the second appellate court did not adequately consider that evidence when it confined its analysis to the duration of the respondent's personal occupation. Such an approach risks substituting an unduly narrow temporal analysis for the broader factual inquiry

required to determine the character and continuity of occupation under Section 29 of the Land Act.

17]. The consequences of adopting such a narrow approach extend beyond the immediate dispute. Land tenure in Uganda must be determined in accordance with the Constitution and governing legislation, but it must also reflect the realities of occupation, family succession, and interests recognised by law. An interpretation that disregards relevant evidence of longstanding occupation merely because the original occupier died before the governing statutory regime was enacted may, in an appropriate case, undermine legitimate expectations and expose successors to avoidable uncertainty. Such considerations do not justify departing from the statutory text; they reinforce the need to interpret and apply that text faithfully and in its proper context.

18]. Ultimately, the court's role is neither to grant rights out of sympathy nor to deny them by mechanically desegregating a continuous tenure. Instead, it must determine, from the evidence and the applicable law, whether the respondent qualifies for recognition as a bona fide occupant. In doing so, the court must give due consideration to the lower courts' findings, the evidence regarding the land's use and occupation, and the statutory provisions governing the acquisition and recognition of occupancy rights.

19]. For these reasons, I am of the considered view that the second appellate court's analysis paid insufficient attention to the concurrent findings of fact and to the distinction between the deceased father's legal status during his lifetime and the relevance of his occupation to the respondent's subsequent claim. The father's death in 1985 did not,

without further legal analysis, render his prior occupation irrelevant to the determination of the respondent's claim commencing in 1986. Whether that occupation, together with the respondent's own occupation, satisfies the requirements of Section 29 must be determined by applying the statute to the evidence as a whole.

20]. In light of the foregoing analysis, I find that the respondent's claim to bona fide occupancy must be assessed under the statutory continuity-of-occupation test in section 29 of the Land Act. The evidence demonstrates an unbroken chain of occupation traceable through succession, and the law recognises such continuity, even where the predecessor's occupation commenced before the current statutory regime was enacted.

21]. Having determined that the Appellant qualifies as a bona fide occupant within the meaning of the Act, I find that the appeal succeeds on this ground. I concur with my brother, Kibeedi JSC, in disposing of the appeal as he does and in his determination of the issue of costs.

Signed this 9th Day of November 2026

CATHERINE BAMUGEMEREIRE
JUSTICE OF THE SUPREME COURT

Delivered on the 13th Day of November 2026

Registrar Supreme Court



THE REPUBLIC OF UGANDA

THE SUPREME COURT OF UGANDA
AT KAMPALA

(Coram: Musoke, Musota, Bamugemereire, Mugenyi & Kibeedi, JJSC)

CIVIL APPEAL NO. 77 OF 2023

BETWEEN

SEMPIJJA SEKYANZI ..... APPELLANT

AND

PROF GORDON WAVAMUNNO ..... RESPONDENT

(Appeal from the Court of Appeal (Kakuru, Kiryabwire & Madrama, JJA) in Civil Appeal No. 24 of 2013)

JUDGMENT OF MONICA KALYEGIRA MUGENYI, JSC

1. I have had the benefit of reading in draft the judgment of my brother Kibeedi, JSC in this Third Appeal on the following singular question:

> ***"Whether the [Appellant] is a bona fide occupant on the suit land having acquired his interest through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before the promulgation of the 1995 Constitution?"***

2. I agree with his finding that the appellant is a bona fide occupant and the conclusion that the Appeal fails on that basis. I do similarly abide the consequential orders proposed.

Dated and delivered at Kampala this 19th day of October, 2026.

Monica K. Mugenyi

Justice of the Supreme Court

Delivered at Kampala this 13th **Day of** November **2026**

Registrar/ Deputy Registrar

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 0077 OF 2023

Coram: Musoke, Musota, Bamugemereire, Mugenyi & Kibeedi; JJSC

SEMPIJJA SEKYANZI :::::::::::::::::::::::::::::::: APPELLANT

Versus

PROF. GORDON WAVAMUNNO :::::::::::::::::::: RESPONDENT

(Appeal from the Judgment of the Court of Appeal at Kampala before Justices Kenneth Kakuru, JA, Geoffrey Kiryabwire, JA and Christopher Madrama, JA in Civil Appeal No. 24 of 2013)

JUDGMENT OF STEPHEN MUSOTA, JSC

I have had the privilege of reading in draft the judgment prepared by my learned brother, Justice Muzamiru Kibeedi, JSC and I am in full agreement with his analysis, conclusions and orders he has proposed.

Dated at Kampala this .....13th..... **day of** .....November..... **2026.**

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Hon. Justice Stephen Musota
Justice of the Supreme Court

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 0077 OF 2023

SEKYANZI SEMPIJJA::APPELLANT
VERSUS

PROF. GORDON WAVAMUNNO::::::::::::::::::::::::::::::RESPONDENT

(Appeal from the decision of the Court of Appeal (Kakuru, Kiryabwire and Madrama, JJA) dated 19th June, 2020 in Civil Appeal No. 240 of 2013)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC
HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JSC
HON. LADY JUSTICE MONICA KALYEGIRA MUGENYI, JSC
HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the benefit of reading in draft the judgment of my learned brother Kibeedi, JSC. I agree with his conclusion and reasons and with the orders he has proposed.

As the other members also agree with Kibeedi, JSC, the Court disposes of the appeal on the terms that Kibeedi, JSC proposes in his judgment.

It is so ordered.

Dated at Kampala this ..... day of.....2026.

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Elizabeth Musoke

Justice of the Supreme Court

Delivered at Kampala this.....13th.....day of.....November.....2026.

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Registrar, Supreme Court