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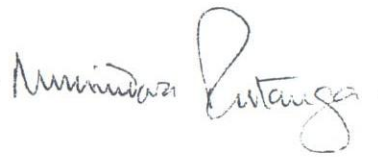

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AGRARIAN STRUGGLES THROUGH LITIGATION WITHIN THE LEGAL DOMAIN IN THE GREAT LAKES REGION : THE CASE OF KIGEZI REGION

MURINDWA RUTANGA

INTRODUCTION

In this paper, we examine the agrarian struggles in Kigezi through litigation over land, fraudulent land sales, and over private and communal property. Kigeai Region, now composed of the Districts of Kabale, Kanungu, Kisoro and Rukungiri lies at the South western part of Uganda. It borders Rwanda in the South and the Democratic Republic of Rwanda in the West. This is a region that is beset by a serious seeting agrarian crisis, which has been calling for epistemological, theoretical, political, and practical interventions to no avail.[1]

Focusing on land fragmentation in Kigezi, Kagambirwe (1972) indentifies its causes in the laws of inheritance, polygamy, land gifting and the nature of initial land acquisition. He explains the advantages and limitations of land fragmentation and the ways through which they affect production, productivity and animal husbandry.[2] Kagambirwe,[3] J. Kigula,[4] M.T. Mushanga,[5] bring out the extremities of land struggles in Kigezi and their tends. Kagambirwe exposes the homicides from land conflicts between 1960-1969.[6] What he does not explain is the indispensability of that land and the politics that arises from that land. It has to be underlined that such a plot of land is the means of livelihood for the household. So, whoever threatens to deprive them of such land is a danger to their social existence and is resisted by all means. Such attempts to encroach on it also constitute a great challenge to manhood of the head of the household, which provokes belligerent responses. Contrary to the historical reality, Kigula restricts the genesis of settled agriculture in Kigezi to colonialism.[7]

Another discourse, the land tenure security discourse, locates the causes of the agrarian crisis to be due to customary land tenure. It decries this form of tenure as an impediment to *inter alia* individual land security, agricultural improvement, land sales, commercial production and bank loans. Its political project is to transform the different land tenure systems to freehold tenure system. This freehold titling was a post World War II

colonial project for East Africa.[8] The colonial authorities attempted to implement it on pilot projects in selected areas of Kigezi and Ankole due to peasant resistance. Within few years of implementation, Kigezi was acclaimed as the only district, which fulfilled the government's criteria for this exercise. Despite this acclamation and glorification, it did not resolve the agrarian crisis in Kigezi.[9] This was because of the technicalities of the solution.

The issue of land productivity has been addressed by various scholars and practitioners.[10] These works explain that registration without economic opportunities is premature, with very little benefit in changing agricultural production. They show that land policies cannot be separated from the basic questions about the society intended to be built and the rights of peoples and groups. What is not mentioned are the land conflicts that arose from trials to implement these theories. Mamdani. (1996), Mukubwa-Tumwine, (1977), Ssempebwa (1977) and Musisi (1996)[11] provide a comprehensive critique to this discourse. They bring out the historical, socio-economic and political dimensions of the different land tenure systems in Uganda. They examine the nature and impact of the state policies and laws, their contradictions, consequences, the role and intensity of merchant capital in these colonies. The main limitation of these works is their failure to focus on the agrarian crisis in Kigezi. This failure tends to create a false impression that Kigezi is not part of Uganda. Yet, Kigezi was integrated into Uganda in 1910 and it is the region that has been beset by a serious agrarian crisis for about six decades.

Ssempebwa posits that the colonial authorities' great concern for land tenure was more for political than economic reasons. A problem arises from his explanation that social unrest from population pressure on land in Kigezi and Bugisu had led to the granting of freehold titles. This may give a false picture that all land in Kigezi and Bugisu was adjudicated and distributed to all the land-hungry population, leading to the elimination of the social conflict arising from land. Yet, the land-titling project in Kigezi was carried out in the sparsely populated Rujumbura and it had narrow targets. The colonial conviction was that:

> If experience in Kigezi District is any guide, the number of applications would increase very rapidly in any specific areas in which it is decided to grant title. ... Government is prepared to meet this demand from individuals by grant of title in a pilot area or areas, in order to demonstrate in any one district the implications of such

grants and the process involved in making them. Already, Kigezi, where there have been 300 applications in writing, the District Council has passed a resolution supporting the grant of title to those persons who want it. Government has accordingly made arrangements to grant titles to some applicants, mainly in a pilot area in Rujumbura county, but also near Kabale. The process of grant is already under way in that District.[12]

The import of these is that land tenure and land security are primarily political issues. No land tenure is inherently characterised by security or insecurity, or investment resources.

A situation where peasants oppose a solution meant to solve their problems reflects existence of problems within the solution. Ssempebwa[13] underlines the imperative of beginning by developing strategies before implementing land reforms. He explains that land reforms imply changes in the status of the population which influence their effective participation in the economy, in the improvement of farm production and land use practices. In the same vein, de Janvry (1981) and Putzel J. (1990) demonstrate how the conservative approach cannot alter significantly the conditions of poverty, inequality and ecological destruction. de Janvry explains that land reforms from above victimise the peasants instead of benefiting them. The question is why the heavily populated areas were not touched. Why did colonialism not effect fundamental land reform in the whole country?

In this paper, we begin by reviewing different cases that were recounted by the respondents. These cases took place in the respondents' areas. They range from boundary disputes to fraudulent land sales, land trespass and take-overs. We then review few litigations within the judicial domain. This is based on court records. These cases revolve around land and the developments on it, property, crops and other rights. They bring out the clashes between societal interests and individual interests and the agressive nature of individualisation of public property for personal benefits – a reflection of the new forms of capital accumulation processes in the agrarian setting. In terms of periodisation, these cases range from 1960 to recently. The divergence in opinion of courts at different levels in their endeavours to redress this issue is examined to demonstrate how this has affected the status quo. The conclusions from these recurrent land struggles and the viciousness, vengeance and brutality that are expressed in the them expose the falsity of the notion by the World Bank and its

scholarship that present customary tenuriality as static, too communal and non-private. They see it as antithetical to individual land ownership, precluding any from of privatisation of land. But as this paper will show, to equate customary land ownership with communal land ownership is to ignore the concrete reality obtaining in the agrarian setting. These issues are examined in details by scholars like Mamdani (1996).

Once celebrated as a society of cheerful, hospitable, industrious and studious people, the land question, poverty, and the attendant problems have contributed greatly to Kigezi's transformation into a terrain rife with bitter land conflicts. It is estimated that it has the highest incidence of land struggles and homicides arising from land disputes in Uganda. We learnt from the field research that land disputes were common within and amongst families and individuals, groups, communities and organisations. It was interesting and shocking to find that most of the respondents or their households had got involved in land disputes at one time or another. While some of these disputes were resolved locally either through the intervention of kin, *Abataka*, the local chiefs and the area Local Councils (LCs), other cases went to LC Courts or area magistrate courts. Those cases that failed to be resolved went on appeal to the Chief Magistrate's Court while some proceeded to the High Court. The oldest cited land dispute by the respondents occurred in 1954. The narratives by the respondents together with the court records in the Chief Magistrate's Court of Kigezi at Kabale from 1960 to 1997 indicated a prevalence of land struggles in Kigezi and their ever-increasing character.

The most persistent and recurrent land disputes are the boundary disputes. These occur at every cultivation and are "too trivial, frivolous and irritating" as one magistrate described them. They revolve around uprooting boundary marks, the hoe crossing the boundary marks while cultivating and slicing off portions of the neighbour's land. This is then merged with one's plot of land or the boundary marks are refixed or cross channels are dug underneath the neighbouring land or other underhand acts that prompt such land to collapse into one's land. Significant though, the respondents acknowledged the prompt interventions by the LCs to resolve these boundary disputes. Others end up in the Courts of law.[14]

The respondents cited and reviewed enormous land struggles in their areas, how they unfolded and were settled. Due to limitation of time and space, this review will be limited to a few, albeit illustrative cases. These cases are diverse and they were selected basing on the nature of the

struggles. As such, each of them is representative of the other cases. The intention here is not to bring out the judgments per se but rather to bring out the various dimensions of the land struggles and how the peasants themselves perceive them, locate and identify with these struggles. This is evident through their narratives and commentaries. These give this study and inside glimpse into the agrarian, household and societal politics arising from contradictions over such property rights. It also offers the study opportunity to understand the peasants' views on the legal machinery in resolving the struggles and tensions over property rights. It provides a background for reviewing the peasant struggles within the legal domain. Through the analysis of these diverse cases, the study achieves enormous evidence showing that the peasants have not been a mass of people desperately waiting for saviours from outside to speak for them and liberate them but have been speaking and struggling for themselves. The names of the litigants in the first set of cases from the respondents were left out for security reasons.

The study found that the disputes over surveyed lands are easier to handle as they have mark stones or surveyors are brought in to identify their demarcations. There was a lot of litigation over land trespass and cultivatin. In some cases, individuals formed societies, and registered them with the express purpose of grabbing communal land. Political influence however does not debar the dispossessed parties from legally struggling for their land rights. In extreme cases, the unscrupulous rich aggressors are said to have "killed" the cases through bribery. It is here that one respondent made a succinct observation that the poor can never live side by side with the rich due to lack of money for litigation and bribing. Four of the land disputes recounted by the respondents are very illustrative of the different class struggles over land in Kigezi.

RESPONDENTS' REVIEW OF AGRARIAN STRUGGLES

The first case that was recounted by the respondents involved a rich peasnat and a poor peasant. It is said that the rich peasant took possession of part of a neighbouring banana plantation of one poor peasant. He uprooted the boundary marks separating the two banana plantations and fixed them in the poor peasant's banana plantation. That action was reflective of primitive accumulation of wealth by the rich peasants in the agrarian setting. What needs to be noted here is that banana as a crop was introduced in Kigezi from Ankole and Buganda as a men's crop. This was mainly because it had a ready market since it was a middle class food.

Thus, banana plantations in undergoing a masculinisation process acquired another socio-political aspect. Any encroachment on it became a challenge to the owner's masculinity or manhood. This overtime became ingrained in the peasants' consciousness. There has developed a property consciousness overtime that links property and social standing to the level of manhood. This is reflective of the level of property consciousness in Kigezi.

In this particular case, the rich peasant added insult to injury by despising his poor victim as a man of straw who could not afford to bribe to retrieve his land. The victim brought action in the LC I Court for trespass. The LC I Court established the original location of the boundary by digging on the spots that they were shown as the original boundary, and discovered the uporrted boundary marks. These were then fixed in the original positions, thus in effect reinstating the land ownership. Seen broadly, this was a class struggle at a micro level in the agrarian setting. That is even more evident in the heroic manner the respondents narrated it. The respondents' seething anger against the propertied class meant that any defeat of the latter regardless of its triviality was heroic.

In another case, a rich peasant was accused of grabbing other people's land using money and political influence to protect himself. He brought in surveyors, got it surveyed and processed a land title for it. The peasants responded by resisting this deprivation. The authorities then stepped in, arrested and imprisoned two of the resisteers. This repressive intervention defused the resistance. Another case occurred over a communal swamp between peasants and the emerging dairy farmers. The respondents well-termed it *omunyururano* [tug-of-war]. The latter brought in chiefs who intimidated the resisting peasants into accepting money payments. The fourth case was over Buziba land, in Kamwezi. The land at Rwamatunguru in Buziba is alleged to have been grabbed in 1997. The peasants sued in the Chief Magistrate's court at Kabale but lost the case. Their explanation for this loss was that money changed hands from the Society to the trial Magistrate. We must point out here that charges of bribery are not easy to independently establish as they occur between the donor and recipient in strict confidence. The recent report by the Inspector General of Government that the judiciary ranked second in corruption corroborates such allegations.

The respondents brought out cases of fraud in land sales of various forms. These included surreptitious land selling, selling other people's

land, or denying the buyer the possession and utilisation of the bought property. At times, husbands stealthily or forcefully sell land against their wives' knowledge and consent. In other instances, fraudulent, unscrupulous couples take advantage of this provision to connive and defraud the unsuspecting land buyers. In such frauds, the husband sells the land to the unsuspecting victim in the absence of the wife. The absence of the wife's signature becomes crucial as the wife retains possession of the land and sues the purchaser for trespass. The wives and the purchasers resort to the courts of law for redress. Another noticeable development is of men chasing away their legitimate wives to gain unrestrained freedom to sell their land. One of the commonly cited bunkum cases occurred in July 1996. In that case, a man chased away his wife after she refused him to sell the courtyard of their homestead. The wife unsuccessfully brought the matter to the *Abataka*, and she appealed to the Gomborora court. She successfully got an order barring the husband from selling it and reinstating her to the home.

There were repeated cases of double land selling. One such case proved a puzzle in Rukungiri District and it has been revolving for thirty-three years, thus bringing out new possibilities of dual land ownership. In that case, the double land seller ended up enriching himself while the two buyers equally benefitted from the same land. The seller sold forty (40) acres of surveyed land to the first buyer in 1970 and gave him the land title. He then sold the same land to a second buyer who oblivious of the land title made a sale agreement and henceforth took possession of the land for crop production and animal grazing. When confronted, the seller unsuccessfully tried to refund money to either of the two. The one with the land title used it to secure a bank loan for his investment purposes. The developments that followed the seller's death reflected how he had held together their dual-tenuriality. The title-holder sued to second buyer over the land. The respondents described what followed after the filing of this suit as a game of money in which the magistrate and lawyers were the beneficiaries. One respondent captured it: *"Bakarihereza, bombi battuga gwarema, abaramuzi baariira habiri, ba loya baataahamu sente zaahondana ahamuheru oweekyapa yaasinga."* [There was protracted litigation over that land. Money changed hands as the magistrates got bribes from both parties and lawyers were hired. Finally, the one with the land title won the case.] It is said that on winning the case, he decided to occupy the land. He ferried workers and building materials to the land

and built a house in one day. That night, the one who had lost the case came with his people and burnt the house. Armed with spears and machetes, they kept vigil throughout the night. This was enough lesson to scare away the other party up to the time of the study. He continued to secure bank loans using the land title.

Unfortunate as it may be and notwithstanding the unscrupulous, fraudulent circumstances that brought this matter into existence, this case brings out possibilities of dual occupancy. This accidental combined from of ownership enables us to look beyond the celebrated universalised freehold ownership. As this case shows, these parties have been deriving benefits from this land – not by any mutual understanding but because of the sellers' unscrupulousness and the unwillingness of either of the two buyers to receive back money from him. Though the second buyer fulfilled part of the contract of occupancy, still, it was the first buyer with the land title that had an earlier claim to the land. He is the one whom the Court decreed as the owner of the land. Even the respondents were blaming the second buyer for having paid for the land in ignorance without first asking for the land title. The problem today extends beyond the legal confines to the socio-political, economic and moral considerations. First, the two parties paid enormous money to the fraudster for the suit land. Since then, the second buyer's family has been deriving its livelihood from that land. What appears from this case is that they would face problems of where to go and without any means of survival if they were to be evicted from the same. The court ruling in the case between Kakeikuru *versus* Ntomize, Baryenyonza and sixteen others in 1991 would apply to this case too. The other party is also benefiting from the land title by securing bank loans for his commercial purposes. Any move to dispossess either of the two parties of this land would pose real danger. The developments that followed the court judgment confirm the respondents' concerns of the potential dangers over this land. What are the possible ways of avoiding the likely human tragedy arising from this land? What appears most feasible is for the two parties to mutually agree on appropriate compensation for one of them so that he procures another land. Even the failure to enforce this judgment decree for long raises other problems of the xecution being time barred.

The foregoing case has a lot of similarities with the case between Katarikawe versus Katwiremu & Anor.[15] In this case, Katwiremu sold land to Katarikawe in 1971. The latter took possession of it in 1971 and

continued to pay for it in instalments. Katwiremu promised to effect the transfer of the land title to the purchaser but he later turned round and claimed that the title deed had been stolen. He told Katarikawe that he was trying to process a duplicate certificate of title, which he would use to transfer the land title. Latarolawe cross checked with the land office and found that Katwiremu had defrauded him by transferring the title into the names of his borther-in-law Anor in 1972. Katarikawe therefore stopped payment of the remaining Shs. 800/=. This was supposed to be paid on completion of the transfer of title. He therefore filed suit against the two defendants on a breach of contract of sale of the land. By the time of the suit, the first defendant was dead. In his defence, Anor claimed that he had bought the land from Katwiremu in 1968 on an oral contract but could not effect transfer due to lack of funds to pay for the transfer. This delayed until 1972 when he became the registered owner of that land.

In passing judgment, Court noted that Katarikawe had taken possession of land which was part performance of the contract. Court founded that the title had been transferred after the agreement of sale entered into by Katwiremu and Katarikawe. Court deemed mere taking of possession of title deeds as useless unless a caveat was lodged in title. Court observed that a buyer on an oral contract for a sale of land was in the same position as a buyer on a written contract. Court found Anor guilty of fraud and it deemed the transfer of land in his names as void. These two cases expose the duplicities, frauds and other complications characterising the land market in Kigezi.

Another land struggle between two brothers brings to the fore class aspirations and how these are realised through duplicity and other forceful primitive, conspiratorial methods. In this case, a man bequeathed forty acres of land to his two sons. These sons were from different mothers. The two stepbrothers then got this land surveyed and they obtained a title for it. What was to be a source of the problem was that the land title was registered in the name's of the elder stepbrother. They utilised the land till when animosity developed between them. The elder stepbrother responded by chasing the younger stepbrother from the land. The LCs intervened and divided the land equally between them. This obtained for two years until when the new LC elections were carried out. The respondents alleged that the new LC I Chairman ill-advised the elder stepbrother on how to disinherit his younger stepbrother. Through this conspiracy, the duo lured the unsuspecting younger stepbrother into a fight. This formed a sufficient

reason for them to take him to the police station. It was alleged that they conspired with the police officers to force him to sign an agreement relinquishing all his claims to the land in question. It was further alleged that when he left the police station, he tried to contest this but failed as his elder stepbrother produced signed documents in which the claimant had surrendered to him his rights over the land. The elder stepbrother then sold off that land and left him only space for the house and a two-acre piece of land. The study learnt that this loss had estranged relations between the younger stepbrother and his family, which had been disinherited. It was learnt that the family members were accusing him of giving away the land. Such loss of land and the subsequent intra-household pressures have negative effects that could force such a man into any possible desperate criminal acts ranging from revenge, self-destruction to witchcraft.

Cases of daughters against their relatives over land rights featured prominently. In one case, a man bequeathed his land to his daughters. After his death, their mother connived with her sons and sold that land. On learning about this sale, the daughters returned and succeeded in winning back their land through LC court. The mother appealed to the Chief magistrate's Court claiming that her husband had died intestate. The daughters produced supportive evidence to their claim. She lost the case and Court ordered her to return the suit land to the respondents. She therefore sold part of her land to refund the money to the buyer and get back the land of her daughters.

Then, there were cases of credit defaulting and usury. In one such a case, a man borrowed money at a high interest rate against his land as collateral. the interest on the loan and the debt accumulated fast and exceeded the valued of the land and the other case went to court. In reviewing the case, the magistrate unveiled the usurious character of the loan and reduced the interest. This enabled the borrower to repay the debt and redeem his land back. In another case, a man pledged his land as collateral and fled the area after failing to repay the debt. He returned in August 1997 without the money. The creditor then sued him in LC I Court. Court heard the case and ordered him to pay back on a set deadline or else forfeit his land.[16]

The study examined the foregoing cases with a clear understanding that some of them could be flawed with factual and human errors, shortcomings, biases and manipulations. These cases did not have supportive documentary evidence from the courts for authentication. As

such, the study could not be able to identify any shortcomings, loopholes and exaggerations that could emerge from distortions, malice, prejudices, lies, fabrications, twisting of cases, casuistry and misrepresentation. Another possible source of problems could arise from forgetting the track of things overtime. This is because these peasants in Kigezi depend on their heads as the repository of knowledge. Another problem could sometimes hail from getting the information from second-hand sources rather than being present during the court proceedings.

Cognisant of these shortcomings. the study found it prudent to leave out the respondents' evaluations of the judgments. It has to be pointed out however that despite these possible sources of error, still, the cited cases provide basic facts about these cases. One indicator is the consistency and coherency in these cases. Secondly, these cases unfolded within the respondents' environment and some of the respondents got involved in them in some ways. To overlook these cases and put total faith in written court records would be to disregard and dismiss the actors of history from the narrative and recording of their own history.

First, the court cases are constructed during the case hearing. The fact is that one of the litigants will be lying. The other fact is that it is not always the case that courts will establish the truth. Secondly, depending on written material has its own problems. This is well demonstrated by the case between Kamuzinzi and Rutasheka; and another one between Kakare and fifteen cattle owners.[17] These two cases demonstrate ways through which magistrates may twist court records and judgments to defeat the ends of justice. Therefore, to rely on such a judgment alone and hold it as absolute truth and factual would prevent the study from understanding the facts and truths about the different land struggles. It is for this reason that the study examined all the available documentation of the court cases right from the lowest arbitration and court process to the highest level.

Another important fact is that the cases that the respondents reviewed have a lot of similarities with many of the court cases that the study unearthed. They arise over similar issues and some follow similar patterns. Other cases that the respondents reviewed were retrieved from the court records. As such, the foregoing cases constitute a rich background and a dependable launching pad for the analyses of the peasant struggles within the judicial domain. Notwithstanding the eralier cited limitations, still, they offer the study more insights, clues and appreciation of the variances in litigation, judgments and the malpractice within the judiciary. These

cases bring out important facts on the peasants' ceaseless defence for their rights, their understanding of the legal terrain and its rules. The overall lesson from these cases is that the peasants are not pathetically huddled in the agrarian setting but that they stand up for themselves and their rights in different fora and apply all forms of tools of defence.

It is in this background that we now shift our focus to the recorded legal struggles over property and other rights, obligations and responsibilities. The contestation may being from the families and locales and gradually shifts to the courts of law. In other cases, the legal contestation may being in the courts and be resolved there. Other cases are withdrawn from courts for out of court settlement. In other words, there is no general fixed pattern for these cases.

We shall review only four court cases to demonstrate the new forms of deagrarianisation, attempts to appropriate and privatise lands and other agrarian property belonging either to individuals or the community. These cases include on of indecisive sale of banana plantation, trespass over *shambas* of trees and the forms of corruption that it generated, while another one leads to fatal battery and bloodshed. The fourth case involves the community resisting an individual from appropriating communal grazing land for private use.

LEGAL STRUGGLES OVER INDECISIVE LAND SALE

In examining the nature, dynamics and processes of Kigezi's agrarian economy, Murindwa-Rutanga (1999) brings out how demographic increase, unequal access to resources and power were seen as increasingly resulting in unequal distribution and ownership of land, property, education and other social facilities. This process, tracing from mid 1950s gave rise to a continuous accumulation and concentration of these resources by fewer and fewer people. The passage of time, demographic changes, internal commercial dynamics within the agrarian economy, diminishing land limits to the annexable resources, public outcries and awareness, interventions to protect the environment and communal resources together with popular struggles have either singularly or combined set a limit to land acquisition and accumulation. This gave prominence and a monopoly to commoditisation of land and property.

The main land buyers include members of the business class, politicians, those employed by banks, awarding them fatty loans, tenders; government parastatals, and lucrative posts with opportunities of forgeries.

embezzlement, corruption, bribery, requisition and outright stealing and sale of public property. It is this money that is used to buy land in the agrarian setting.

There has developed a practice over time by the land buyers and their agents to influence and control land transactions. They study the peasants and design strategies to buy their land. Through informers and agents, they identify the peasants with good land, analyse the problems confronting those peasants and then embark on luring them into selling the identified land. They offer them attractive prices. The umpteen cases filed annually over land sales are indicative of how commoditisation of land is compounding the agrarian crisis.[18] What comes out from these cases is the complexity of the deagrarianisation process that Kigezi is undergoing. Some show how poor peasants are ensnared and lured into unplanned land sales and its futility, while others bring out the fraudulence and greed of some of these peasants in their efforts to defraud the land purchasers. We shall begin by examining one such a case to elucidate this phenomenon.

This case is between two individuals, representing two different households, located in two hostile classes, those from the same area and probably clan and religion. Bushoberwa sold a banana plantation to Babinaga at Shs. 3 million in October 1986. Babinaga made a down payment of Shs. 1.5 million and promised to pay the rest at the beginning of the following month. They put there a precondition that in case the buyer failed to pay the remaining money at the agreed upon time, then, the seller would return the initial payment and repossess the land. This was a tricky proviso that later saved the buyer from being defrauded by the land seller in this transaction. Land buying has become increasingly more complicated in Kigezi. The land buyers know the temptations of money and the peasants' inability to keep money. The most vulnerable targets are drunkards, those in debts, or taxation and those with school going children. In this particular case, the buyer was aware of the incapacity of the seller to keep such lots of money for a whole month. There was no bank in the agrarian setting where he could keep it. He, as an individual must have been assailed with competing socio-economic demands for money. This precondition served to hold the seller in a condition of mutual guilt so that even if the buyer delayed payment of the last instalment, the seller would not accuse him of breaching the contract since he, too, would be guilty of the same for not refunding the initial payment. In this particular

case, that double-edged proposition was to benefit and protect the buyer and disadvantage the seller. Secondly, the way Bushoberwa tried to defraud the buyer dispels any notion that holds the peasants as naïve masses.

The problems arose when the buyer did not pay the last instalment at the agreed upon time. As a result, the land seller was incapacitated from buying another banana plantation that he had planned to buy in order to replace the one that he had sold. The last payment was brought late and he refused it. His argument was that he did not have any more use for it since the banana plantation that he had planned to purchase had been sold off. The problem was that he did not refund the buyer's money as stipulated in the sale agreement. Neither could he explain why he did not refund it nor give the time frame when he would refund it. Babinaga therefore sought intervention of the *Abataka* in this matter but Bushoberwa refused to co-operate. The *Abataka* gave Babinaga a written authority to continue using the land. Then, Bushoberwa made futile attempts to reposess the banana plantation in July 1989. He was arrested, taken to the area court and charged with trespass, threatening violence, theft and malicious damage of property. The quantum of the claimed losses included forty-six bunches of bananas, and 821 banana plants that he had wilfully and unlawfuly destroyed.

In passing judment, Court noted that both perties were at fault by not honouring the agreement – non-payment of the last instalment and non-refund fo the initial payment. Court explained that after the expiry of the agreed date, Babinaga only owed a debt to accused. As such, the accused had no right to trespass on the said banana plantation. The only remedy would have been to obtain redress by court action, which he failed to do. Court fined the aceused Shs. 10,000/= or in default to six months' imprisonment.

Thus Bushoberwa could not get his land and banana plantation back. Neither could he buy the banana plantation that he originally planned to buy. Worse still, he was now being imprisoned and forced to pay fines for trespass on what he still assumed to be his land. This was undergoing a process of impoverishment. Bushoberwa made unfruitful efforts to repossess the land through arbitration of *Abataka* and LCs. Some of the members suggested the solution of splitting the plantation into two and dividing it between the two parties. This impasse continued until when Bushoberwa retook possession of the plantation. This resulted in his second arrest in mid 1991 and the matter was taken to the Chief Magistrate's

court.[19] In this case, the plaintiff prayed Court to allow him pay the final instalment to the defendant in new currency. On his part, the defendant wanted Court to divide the banana plantation between the two litigants.

In passing judment on September 5, 1991, the Court found fault with Bushoberwa for refusing to accept the last payment but failing to refund the initial payment. Yet, he continued attempts to take possession of the banana plantation. Court expained that by failing to return Babinaga's money as expressly stated in their agreement, Babinaga retained the right of possession of the suit banana plantation. Court therefore entered judgment for the plaintiff with costs. Court ordered the plaintiff to pay the defendant Shs. 150,000/= and complete the last payment.

This case reinforces the earlier cases that were reviewed by the respondents to show the crimes that are arising from the intensified land sales in Kigezi. These include secretive land sales, fraudulence, refusal to hand over the sold land, delays by buyers to complete the last payments, uplanned moves to sell land and misuse of the proceeds from the land sales. These cases also bring out the role of arbitration by the *abataka*, the LCs and the courts in resolving these problems. These cases raise the need for counselling and advising the peasants on matters related to land. They also raise the need to make laws and bylaws aimed at protecting the household members from land sales by the men. They also underline the need for vigilance by the household members, the *abataka*, the LCs, the administration to prevent unplanned land sales. Above all, they underline the need for agrarian reforms to change the agrarian relations, taking into consideration the different rights, gender, age and actual occupancy and usage of land.

STRUGGLE AGAINST TRESPASS OVER SHAMBAS OF TREES

Struggles over land trespass and appropriation of the property thereon are numerous and widespread. They sometimes result in batteries, bloodshed and homicides. For purposes of this study, we shall review two cases revolving around *shambas* [plantations] of trees. The first case between Z. Kamuzinzi and F. Rutasheka was selected because of its uniqueness. Though seemingly a straightfroward case, it was tried by five different magistraters, including two Chief Magistrates. This case brings out the unyielding, persistent struggle for one's rights and justice. It also exposes the extra-judicial interest of magistrates in certain cases and the efforts by the higher courts to check this. It brings out the heavy costs that

the plaintiff incurred in terms of resources, time and patience. The second case arises from criminal violence by a father and his son. In this case, Barirarahe, with the assistance of his son and his two fierce dogs attacked a woman over an alleged trespass on a contested *shamba* of trees. He hit her head with his hoe and inflicted grievous harm on her. The victim the took court action against them. Both these cases help in shedding light on the nature of struggles over *shambas* of trees, the levels to which the iitigants can go in bribery, viciousness and violence. They also reveal the role of courts in resolving the individual cases. They also reveal the role of courts in resolving the individual cases. They demonstrate the incapacity of the laws and courts to abolish them. We now turn to these cases to examine them in detail.

Kamuzinzi sued Rutasheka in the area Court for trespass over nine strips of land consisting of trees in 1977. He accused the defendant of cutting the trees that were growing thereon. The plaintiff claimed that he had acquired this land through succession. In his defence, the defendant first claimed that he acquired it from his father in 1949. He later changed this version and attested that he bought it. Court entered judgment in favour of the defendant with costs on June 15,1978. The plaintiff appealed to Chief Magistrate's Court.[20]

In his judgment on August 7,1979, the appellate Court identified serious problems with the judgment. First, the trial court had ignored to refer to an important document related to this suit land. Though this was an important exhibit, the trial Court did not enclose it in the case file. Its absence impaired the Court from evaluating its probative value. Court therefore concluded that its omission caused a miscarriage of justice. The second problem was the failure of the trial Court to scrutinise the evidence by the respondent. The respondent had in his evidence in chief claimed to have acquired the land from his father in 1949. He then changed this in cross-examination and claimed that he had bought the same. Yet, the trial Court failed to consider this abrupt change of mind, which would have exposed the respondent as a liar. Court then explained that the trial Court had removed the parties from the arena and he entered it. He on his volition called five witnesses from the side of the respondent whom he examined. All of them gave evidence in favour of the respondent. This was in contravention of what the appellant had earlier told Court that the people around that place were all from the side of the respondent and therefore were bound to favour him. The Court concluded that this constituted a

miscarriage of justice. Another problem was the absence of a sketch plan of the place at the *locus-in-quo*. Thus, Court found no record to support the trial Court's holding. Court therefore found that there was a miscarriage of justice in the lower court. Court allowed the appeal and ordered a retrial *de novo* by Byabasheija.

A new problem arose from the fact that the retrial was carried out by a different Magistrate. The explanation for this may be found in the departure of the then Chief Magistrate to private practice. The Magistrate might have found the situation ripe for taking up this case for pecuniary interests rather than for purposes of administering justice and this came out when the Chief Magistrate was reprimanding him for this judicial interference. This was the time when the country had emerged from amin's dictatorship. There was some anarchy in the country. In this retrial, the plaintiff lost the case with costs. The trial court ordered the Court Brokers to attach and auction the judgment debtor's property comprising of two cows to pay the defendant Shs. 25,182/=. The plaintiff appealed to the Chief Magistrate's court.[21] This however did not prevent the Court Brokers from executing the Court Warrant. While the appeal was awaiting hearing, the Court Brokers attached the appellant's banana plantation and sold it.

In his judgment on November 24, 1983, the appellate Court pointed out illegalities and problems with this retrial. He quashed the judgment and reprimanded the trial Magistrate: "Either Mr. Kasigaire does not understand simple English or he does not care for orders. ...A retrial conducted by a magistrate, not named by the appellate court to do the jub is a nullity in law." The Court questioned why Kasigaire assessed costs to the sum of Shs. 25,182/= whereas the appellate court had ordered the parties to meet their own costs. The Court wondered why he ordered immediate attachment and sale of the two cows of the appellant but instead changed and sold his banana plantation. The Chief Magistrate had suspended the Court Broker over this issue until when he returned the banana plantation to the plaintiff. He had also summoned Kasigaire to the Chief Magistrate's Chambers to quiz him over this malpractice. The Court therefore allowed the appeal with costs in the sum of Shs. 5,000/=. He ordered a retrial by another Grade II Magistrate on 16 January 1984. Court then exposed the fraudulence through taxing of the bill of costs.

> The item No. 17 was not allowed by magistrate, but no reason was given for the same. Was the claim disallowed for being untrue? What does it mean? Does it mean the learned magistrate did not take food or does it mean that food eaten by him was not worth Shs. 3,600/=. I wish have explained the point while disallowing bill of costs. If contents of item No. 17 were untrue, prima facie an offence within the meaning of section 332 PC. A appears to have been committed by respondent. It was all the more service as it attributed something false to visiting court.[22]

The Court cited another problem where the trial Court granted Shs. 250/= per day to the respondent for the loss of his earning as night watchman. Yet, no watchman earned such money per day. Contrary to this, the respondent had earlier on told Court that he was a cultivator. The Court therefore wondered whether the trial Court had personal knowledge in regard to the occupation of the respondent. The Court concluded that the trial Magistrate was anxious to grant the respondent the maximum money that he could.

The two judgments by the lower courts bring out craftiness by the magistrates to deny justive and rights to the plaintiff. This is exposed and discouraged by the two appellate Courts. Though they do not interdict and prosecute the lower courts, still, they subject them to rigorous questioning and expose their malpractice for personal benefits. They proceed and nullify their judgments. The Court Broker is also subjected to punitive measures. This particular case shows the delays and injustices that the plaintiff was subjected to. It also reveals the defendant's capacity to influence the course and results of the case process. We now turn to a case in which blood is shed because of trespassing on a disputed *shamba* of trees.

MURDERING OVER AGRARIAN PROPERTY

In this particular case, the assailants and the husband of the victim were disputing the *shamba* of trees. The case arose from criminal violence in which a father, with the help of his son and two fierce dogs inflicted grievous harm on Mrs. M.T. Mubonehe, on January 26, 2980. Criminal charges were therefore lodged against the two culprits.

The case was that while the complainant was in her husband's *shamba* collecting firewood, Y. Barirarahe came running with his two dogs. He was carrying a hoe and swearing that the person who was trespassing on his *shamba* of trees would meet with instant death. The victim to flee from the charging fierce assailant with his fierce dogs but she could not. She called on the son of the charging assailant to save her by holding his

father's dogs. He came but instead of offering her the solicited help tripped her with his foot and she fell. His father was just arriving at the scene. He lifted the hoe that he was carrying and struck her on the head. Culturally, this was unheard of in Kigezi culture for a man to attack a woman, let alone being defenceless. In this particular case where he inflicted a blow on this women was reflective of the new capitalist developments. The capitalist logic of accumulation could not be subject to the cultural or gendered logic. People who were watching the act from the neighbouring gardens made alarms, rushed to the scene and arrested the man as he tried to run away. The son managed to run away and he was arrested some days later. The injured victim reported to police and proceeded to hospital for treatment. Her treatment took three months before healing.

In judging the case, the Court concurred with the case by the prosecution. The Court was distrubed by the sadistic, murderous behaviour of the old man that he had displayed throughout the trial. The Court therefore convicted the two culprits on September 3, 1980 and sentenced them to one year imprisonment apiece.

> I cannot find any other remedial sentence to award to an old man. He is too heartless to learn and needs just a sentence in a way of strict punishment. Even in court the old man is not repentant. He is the type who would be released today and go back and attack the complainnt again. All throughout the trial of this case he has acted as if he was having the greatest fun of his time yet I am fully aware that there is nothing wrong with his sense. ...
>
> Even if he be old, I have no misgiving in sending him to prison because he is utterly heartless.
>
> The fear that he may perhaps die there is not my concern after all he never thought twice before cutting the complainant with a hoe which blow could have easily killed her.[23]

The complainant also filed a civil suit.[24] Unfortunately, the first convict died before the civil suit camp up for hearing and the charges against him were withdrawn. In his Judgment on November 29, 1984, Court found Tisasirana guilty of assaulting the plaintiff. He had aided the crime by trapping the plaintiff to the ground, giving chance to his father to inflict the injuries. It was explained that in criminal law where two or several persons are found to have a common itention in the committing of an

offence, all are held responsible for that offence irrespective of the varying degrees each one played. In this instant case, both defendants were liable for assault jointly, irrespective of what part each one played because they were assisting each other.

The Court found defendant guilty of the fatal injuries which plaintiff had suffered. The Court considreed the fatal natrure of these injuries and their likely consequences on the patient as the medical witness had testified to court. He had told the Court that after the wound healing, the patients could easily develop other complications such as fits plus severe headaches. He had told court that the plaintiff had come back to him twice after treatment complaining of the same. The Court concluded from this that the plaintiff must have undergone severe pain of suffering. He therefore awarded her Shs. 20,000/= as general damates for assault and costs of the suit. The defeiant appealed to the Chief Magistrate's Court,[25] but it was finally dismissed.

This case sheds light to the nature of violence characterising land struggles in Kigezi. It shows how some people do atach more value to their pieces of land then to people's lives as Kagambirwe noted in 1972. The same view was to be repeated by the Court while pronouncing sentence for the main culprit in this case.[26]

> Thsese assaults are too many and virtually I handle over 90% of the criminal cases all concerning assaults from flimsy reasons. Sometimes they have been so agravated, that victims die, and I am aware that the murder cases in this District are alarmingly high. People in Kigezi, whether young or old should learn to be more temperament and not give vent to violence.[27]

Having reviewed these cases that are characterised by bribery and other forms of corruption, duplicity, lying and violence, we now turn to a case where an individual within the emerging propertied classes in the agrarian setting attempted primitive accumulation of wealth through grabbing of public grazing land and contesting for it within the legal domain.

PEASANT RESISTANCE AGAINST PRIVATISATION OF COMMUNAL GRAZING LAND

The agrarian economy is characterised by different forms of property regimes. Some are private and others are still owned and utilised

communally. What has been happening in post-colonial period is that the resources that are still owned and used communally have been the main victims of encroachment and expropriation. These include sources of water for household use, swamps, grazing areas and bushes. This encroachment process has transformed them into arenas of arduous collective struggles. These struggles take various forms – physical, political, judicial or administrative. Cattle owners resort to crop destruction by animals or by the cattle owners themselves. This new phenomenon had become a source of resource acquisition for the emerging propertied class together with the government authorities, the dispensers of justice and the lawyers. At the same time, it has had a corresponding effect of impoverishing the peasants. These isues come out clearly in the case between Kakare and fifteen *Abataka* over three and half acres of communal grazing land.[28]

This case brings out the conflict between individual interests and community interests. It brings out the forms and ways through which the law and administration come in to protect particular class interests. This is a clear case of class struggle in the agrarian economy. It is a struggle between the community versus the emerging rural rich peasants over communal resources. In this suit, the rich peasant trespassed over the suit land, took possession of it and applied fraudulent methods to retain it. The members of the community sought an open politico-administrative solution to defend their communal property. In response to this, the rich peasant sought a legal solution to bolster his property aggrandisement scheme. He hired legal services and swayed the trial court to hold in his favour. This case however alienated him socially and led to his imprisonment and eventual ecconomic ruin.

In this case, Kakare encroached on the suit land. He merged it with his one strip of land, enclosed it and planted trees on it. In the process, he closed the public path on this land. His actions were triggered off by his long-term efforts to expropriate this land. He had earlier on applied for a lease offer for this land before the Uganda Land Commission. The procedure was that the District Land Committee would first visit the land to assess its quantum, ownership and utilisation to ensure that there were no other claimants for the same. When Kakare was informed that the District Land Committee was to visit that land on April 16, 1985, he made hurried moves to merge the public land with his one strip of eucalyptus trees. He enclosed it and planted eucalyptus trees. That was reflective of one of the commonest methods of land grabbing.

The *Abataka* resisted his encroachment and they petitioned the District Commissioner (DC) on April 19, 1985. The DC instructed Kabunga on April 24, 1985 to open the people's path and free the grazing land. Kabunga was by then the area Saza Chief. The DC explained in the letter that the District Land Committee, had on April 16, 1985 visited the land that Kakare had applied for a lease offer. The committee sat the following day and it rejected his application over the public grazing land. It only recommended him to get a lease offer for his plot of land with eucalyptus trees at the bottom of the grazing land. The DC reiterated government's policy not to lease communal grazing areas to private individuals. He enclosed a circular from the Commissioner of lands and Surveys on communal grazing areas and swamps. The circular read:

> When the public Lands Act, 1969 was enacted, an important regulation regarding Government Policy on land was non-leasing of land then known as communal grazing areas as well as swamps. However, during the Military adminstration of the seventies, although this policy was not officially reversed, implementation of the land policy did not bother about it. In fact it was literally ignored as the pressure on land increased.
>
> The effect of that were serious consequences socially and environmentally. Socially, thousands of citizens especially cattle keepers were deprived of land hitherto communally used which was leased to individuals who in most cases never really developed it. These hapless citizens are facing unnecessary hardships. Environmentally, large areas of swamps were destroyed which resulted in climatic changes never known before in most of these swamp areas. This destruction of non-renewable natural resource had caused great concern to Government. The little that remains therefore must be jealously protected even if it may appear too late![29]

Government had directed the District Land Committees not to entertain any applications for communal grazing land and swamps by private individuals. They were to remain in their form for community use. The swamps had to be preserved in their natural state as a source of water.[30] The DC therefore directed Kabunga to ensure that Kakare did not tamper with public land. Kabunga communicated this decision to Kakare, to the chiefs and *Abataka*. Kakare wrote back on April 29, 1985 warnign Kabunga against any interference with his land, as he would take legal

action against him. This threat could not hold Kabunga from the DC's directive and in which Kabunga had a vested interest. On being armed politically with the DC's letter, the *Abataka* went ahead and demolished the fence on May 6, 1985. True to his word, Kakare shifted the case from the political domain to the judiciary. He hired legal services and sued the defendants for trespass, forceful destruction of his fence and the developments thereon.

During the court proceedings, the plaintiff claimed that he had acquired this suit land from his father in 1949. He alleged that he had used the suit land undisturbed till when he litigated with Kabasharira five times in court. He attested that he had got it by writ of court after winning the cases and that the Court Brokers put him in possession of it on January 31, 1985. He further claimed that the District Land Committee had visited this land and recommended his application for a lease offer. The defendants rebutted this by arguing that he could not have litigated over it was a communal grazing land. They averred that the suit land was demarcated and registered in the *Bataka* Book as grazing area and that the plaintiff was a signatory to it. They informed Court that the plaintiff had litigated over another small piece of land before Kasigaire. They further averred that he had never litigated before Ntegamahe as plaintiff and his counsel alleged.

In his forty-four page judgment of May 16, 1989, the Court found that the defendants had failed to prove their case, and show why the plaintiff could be given only one piece of land while the rest of the land remain unclaimed. The Court further found that they had failed to show the demarcation s of the claimed communal grazing land. The Court held the plaintiff's claim that he had acquired this land customarily through inheritance from his father in 1949, then disputed over it various times and finally got it decreed to him by writ of court in Civil Suit No. 140/80. The Court further acknowledged that plaintiff had then applied for the same land from the Uganda Land Commission and was granted lease offer Ref. No. ULC/Min. 4/285 on August 27, 1986. The Court took off time to educate the defendants that all land in Uganda belonged to the Uganda Land Commission and that it was the only organ with powers to dispose of land in any desirable way established by the law. The Court found the defendants had admitted the offence of trespass and destruction of plaintiff's property. The Court stressed that once a subject matter had been declared by a writ of court to belong to someone, then no any other

authority other than a higher court could nullify that order. The Court declared that the defendants were holding the law in their hands when they removed the fence that the plaintiff had erected on his land. The Court therefore entered judgment in favour of the plaintiff and awarded him damages of Shs. 3,300/=.

The defendants appealed to the Chief Magistrate's Court on June 15, 1989 challenging this judgment and orders. Their grounds of appeal were: that the trial Court had not considered the letter of the DC as evidence in support of their case; that it had relied on the lease offer and judgments in past cases; that it had not listened to land neighbours; and that it had decreed communal grazing land to the respondent. As this appeal was awaiting hearing, four of the appellants trespassed on the suit land. the respondent's lawyers lodged a complaint to the Court over this trespass and the Court wrote to the appellants on November 1, 1989 warning them to refrain from committing any further acts of trespass and breaching of peace.

In reviewing the appeal on March 21, 1991, the Court identified serious problems with the judgment. First, the respondent's customary claim to the suit land was never proved. None had told the Court the respondent's form or ownership over this land and how he acquired it. The appellate Court found on the other hand that the appellants had maintained that this suit land was communal grazing area and that the respondent had also been party to its demarcation and endorsement in the cattle graziers registration book. Another anomaly was the absence from the file of the copies of the proceedings, judgments and maps of the disputed lands in the previous court cases that the trial Court had heavily relied on. The Court concluded that in their absence, Kakare could not be said to have proved ownership through a writ of court. The other problem that the Court cited stemmed from within the purported earlier judgments. The land in dispute had been of one strip while Kakare was now claiming a big parcel of land. The Court therefore accepted the appellants' version that the earlier land ispute between Kakare and Mutiansi was over different land. The Court pointed out another problem by the trrial court to ignore the two documents from the DC throughout his judgment. These documents disclosed that the Land Committee had rejected Kakare's application for the public grazing land and recommended his for a lease offer for his one plot of eucalyptus trees at the bottom of the suit land. This was in compliance with government policy of not leasing out common

grazing lands and swamps. The Court concluded:

> So where you find that both Counsel for the respondent and the trial magistrate have emphasised the importance of the visiting of the land by the District Land Committee before a lease offer is made, and at the same time the trial magistrate ignores the recommendation of the very District Land Committee, of which the District Commissioner is a secretary, then one wonders what the trial magistrate was up to.

The Court held that the ignoring of those two letters caused a substantial miscarriage of justice. The Court therefore allowed the appeal and declared the land in dispute as communal grazing land for the *Abataka* of that area and awarded appellants costs there and below.

Kakare received a bill of Shs. 129,600/=. He applied for appeal to the High Court[31] but it was dismised with costs on March 9, 1992. He failed to pay the bill. On July 1, 1993, Court issued a warrant of attachment and sale of his movable property to reover Shs. 136,000/= including Shs. 6,400/= on account of fees on the decretal account to pay the Judgment Creditors and further interests as aforesaid and the court brokers' fees. Then, Court issued a warrant for his arrest on December 22, 1993 unless he paid Shs. 139,000/= plus Shs. 10,000/= as costs for executing the process.

The question to ask is who was responsible for Kakare's ruin: the lawyer who instead of advising him simply earned his legal fees for defending this land grabbing, the trial magistrate who colluded with him to twist the case for extralegal earnings, the Chief Magistrate who reversed that judgment and orders or his successor who dismissed with costs the application to appeal to High Court? Its whole unfolding and the crooked methods that he employed revealed Kakare ruining himself right from when he applied for the public grazing land. He then trespassed upon it and embarked on falsifying facts for fraudulent aims, offering inducements to the dispenser of justice, then legal fees and other expenses that he incurred during the litigation process. On top of all these expenses came the cumulative bill of costs from the court. All these parties were merely aiding him in his self-destruction process. Seen rationally, all those resources put together would have bought larger. fertile pieces of land. In trying to self-catapult to the propertied class through fraudulence and duplicity, he landed himself into impoverishment, destitution and social conflicts.

GENERAL DISCUSSION ABOUT THESE LEGAL STRUGGLES

This paper began by examining some legal struggles that were reviewed by the respondents. Many of these cases were principally over land and other agrarian property. They arose over trespass, grabbing, fraudulences and duplicities in sales. Other cases revolved around different rights, responsibilities and obligations. Though not supported by court records, still, they brought out the different forms of struggles that take place in the agrarian setting over different rights and the capacity of the aggrieved sections of society to struggle for their rights. They also revealed the respondents' identification with these struggles, which in the final analysis was reflective of the respondents' concern for social justice. It also reflected the class struggles and the respondents' involvement through their narrative of these social struggles – physical, political and legal. These cases constituted a springboard for the subsequent analysis of the court cases. The four court cases were selected and reviewed thematically basing on their richness and diverse information and lessons on the agrarian struggles in the legal domain, the criminal violence, corruption and lying that characterised them.

The other area that the men have carved out for themselves and jealously protect are the perennial crops. These include banana plantations, coffee, tea and *shambas* of trees. These bring in ready cash and they demand little labour. Men are assumed to be the custodians of society and are therefore expected to defend communal resources. This is partly because men are assumed to be the owners of livestock. Allowing individuals to expropriate communal resources means the permanent effacement of these crucial resource for their livestock. It implies surrendering communal rights to the individuals encroaching on these resources. Men have to continue projecting themselves as the political heads of families, clans and society. One way of doing so is to defend the communal resources. It needs to be noted here that those cases do not preclude women either as witnesses or as claimants. This explains why it is impossible today to get agrarian land struggles, which preclude women.

The enigmatic but irritating case in which a peasant sold his banana plantation but refused to hand it over to the buyer brought out the perilous ordeals that the land sellers pass through, the costs they may incur, and inconveniences. These include imprisonment, late payment of the remaining money which will have been undermined by inflation and which will hinder the seller from carrying out his/her original plans.

One case over nine strips of land with trees brought out the self-interest of magistrates in cases. The case became a very lucrative source of extra-legal earnings for the magistrates, and self-enrichment for the defendant. This case brings out the internal efforts to check corruption from the legal domain and their limitations. The other case arising from the *shamba* of trees brings out the brutality, cruelty, and malignant criminality by some men over land and property. The judgment of this case brought out revelations of the increasing trend of criminal violence in Kigezi from flimsy reasons. These cases do not however amount to indicators of genocide as claimed by King. The case over public grazing land and the earlier one over nine *shambas* of trees bring out loopholes within the judicial system. They expose ways through which cases and judgments can be manipulated by privileging or marginalising, discarding or refuting certain important information, concocting or soliciting partisanly new information to favour particular litigants. The final judgments of these two cases however reveal the heavy costs from such malpractice, duplicity and corruption. Two cases bring out another agrarian problem of crop destruction. They bring out ways through which the courts handle the sly livestock owners and make them compensate the ravaged crops.

It needs to be noted that litigation is too costly for many peasants. This involves court fees, expenditures on feeding, accommodation and transportation of the litigant and the witnesses. There is also the fear of the heavy fines in the event of losing the case. These are major barriers that preclude numerous aggrieved peasants in the agrarian setting from pursuing their rights within the legal domain. Some of them resort to fights, assaults, homicides, witchcraft, poisoning and suicides. Some married women may despair and leave the matter or they may opt for separation with their husbands or they may go to solicit for love potion [*kibwa nkurata*] from the local medicine persons. In other situations, they may result in conflictual relations, family feuds and new hostilities. Others might use their relatives who are highly placed politically or in administration to resolve these matters.

In conclusion, these cases are mere indicators of the different, sharp peasant struggles over land, property and other rights. These rights may be individual, familial, collective or communal. They also show the roles played by the arbitration centres, the LCs and the courts of law. They help to cast the court in new light from the long-held peasant notions of courts

being insulated institutions of corruption and oppression. These cases bring out the need to examine the whole case proceedings and judgments, rather than uncritically dismissing or embracing such claims. Finally, these cases and their increasing in quantum, variance, virulence and malignancy demonstrate the peasants' continued quest for their land, property and other rights. They also show the prevalence of individuals, groups and organisations that threaten the peasants' rights. The multiplicative nature of these cases, together with the decreasing sizes of the land under dispute clearly demonstrate that the solution lies outside the courts of law. The courts are limited to settling the petty disputes between individuals and groups at micro level within the courts' jurisdiction. These disputes are limited to only those that are filed by the individuals and groups who can afford court fees. The solution lies in formulating and implementing a comprehensive agrarian reform for the whole country. It is only such a reform that will efface the bases for these land and property struggles. Nothing short of that seems to offer any hope for resolving this agrarian crisis in Kigezi. This agrarian crisis in Kigezi must be understood in totality of Uganda's socio-political and economic realities.

NOTES AND REFERENCES :

1. For new epistemological efforts on this area, see, Murindwa Rutanga (1996, 1999, 2002); Lindbladcetal, (1996)
2. Kagambirwe 1972, p. 124. On the other hand, Kigula (1993) castigates polygamy without examining its historicity and functionality. Then, M.T. Mushanga, "Polygamy In Kigezi", *Uganda Journal*, 1970, restricts the analysis to one causative factor of polygamy.
3. Kagambirwe, ibid. p. 14.
4. Kigula John, (1993) *Land Disputes in Uganda : An Overview of the Types of Land Disputes and the Dispute Settlement Fora.* Kampala: MISR.
5. Mushanga, M.T. (1970) "Polygamy in Kigezi," *Uganda Journal.*
6. Kagmbirwe p. 161; Kigula p. I.
7. Kigula, op. cit. p. 8.
8. These were published in: "Land Policy of the Protectorate Government in Uganda" (1950), "The Uganda Protectorate Land Tenure Proposals" (1955) and "The Report of the East African Royal Commission" (1955).
9. Barrows R. and M. Roth (1989); and Beverly, Brock (1968) "Customary Land Tenure. "Individualization" and Agricultural Development in Uganda", *East African Journal of Rural Development.*

10. Opio-Odong 1992; and the Areal District Agricultural Officers, 1930s-1997. Musisi, J.A.S. "The Legal Superstructure and Agricultural Development: Myths and Realities in Uganda"; 1996:73-78. Kagambirwe, 1972 p. 155. Also see Lawrence, J.C.D. & Byagagaire J.M. (1957), op. cit. Lawrence J.C.D. (1963) op. cit. These two provide the insights in the official background to land titling in Kigezi.

11. Mamdani (1976) *Politics and Class Formation in Uganda*. London: Heinemann. Mukubwa-Tumwine (1977) and Ssempebwa E.F. (1977) "Recent Land Reforms in Uganda", *Makerere Law Journal*. Vol. I, No. 1.

12. J.C.D. Lawrence, to PCEP on October 27, 1958, replying to PC's letter of October 21, 1958.

13. Ssempebwa, op. cit.

14. Boundary disputes are too frequent and very widespread. The following Court cases will demonstrate this. MKA 21/91: Ndihamwago & Kabusheija Versus Twanguhirwe; MKA 161/81: Nyenenturu D. Versus Keiru S.; No. 82/89: Uganda per Ngirabakunzi Y. Versus Twisime, Nyiramwiza, & 4 others; MKA 37/96: Byanyima F. Versus Nyinemiti.

15. Katarikawe Versus Katwiremu & Anor, (1977) Uganda High Court Bulletin. Here, the study is indebted to Messrs. Rwaganika Henry and Akampumuza James both of Rwaganika & Co. Advocates, Kampala, for drawing my attention to this case.

16. Under Ugandan laws, contracts to lend money on interest, other than by licensed moneylenders and banks are illegal and void.

17. MKA 24/91 : Kakare E. Versus Kabunga D. & 14 others.

18. Examples include: MKA 66/91 : Babinaga Versus Bushoberwa; MKA 14/93: Igambiraine Versus Byabagambi F.; MKA 53/96: Twinomugisha C. Versus Tukacungurwa; MKA 79/83: Mpagazihe and Tibhweza Versus Mbabajende; MKA 30/96: Bushuga Versus Rutagira; MKA 72/93: Mburobwegamo (Mrs) Versus Kabafunzaki (Mrs); MKA 18/95 : Oyorobize B.H. Versus Kyenserikora A.

19. MKA 66/91, Babinaga Versus Bushoberwa.

20. MKA 67/78.

21. MKA. 16/83.

22. Ibid.

23. MKA 28/80: Uganda per Mubonehe M.T. Versus Y. Barirarahe and T, Tigarihare. Other similar cases include MKA 18/81: Uganda per Bigyemano K. Versus Mazirane E.; MKA 115/90: Uganda per Banga J. Versus Birikano C. and Nkinamubanzi B.; MKA 5/82: Uganda Versus Bazariwaki S.

24. MKA 134/81.

25. MKA 22/84.

26. op. cit.

27. op. cit.

28. MKA 159/85 and MKA 24/91: Kakare E. Versus Kabunga D., Tumwine and 13 others. Other cases of similar nature include MKA 98/86: Bwangi R. and 46 Others Versus Kyasimire E.; MKA 42/93: Bakaturuhira, Mutungirehe and 7 Others Versus Nkweiseki E.; Civil Suit 26/79: Mazirane Versus Ruhaya Bataka; MKA 10/87: Kibirigi F. Versus Sebatware and Rugora for Kicumbi Primary School; MKA 69/80: Kicumbi-Muyebe Kweterana Growers Co-operative Ltd. Versus Kabakanga and 3 Others; MKA 9/90: Mukibaya Primary School Versus Nduhira; MKA 21/80: Mukahungye Tusiime Versus Bariisa Kweterana; MKA 106/85: Kanyamusoro and 8 Others Versus Bukorwe D.; MKA 11/83: Nyamarogo Bariiisa Kweterana Co-operative Versus Bishop Girls School, Muyebe; MKA 18/96: Munga Y. for Nakatare and Kizinga Bariisa Versus Tibikumbya P. and MKA 133/89: Zatwoshaho J. Versus Kakima E.

29. Circular from Ministry of Lands And Surveys dated April 18, 1984 on "Communal Grazing Areas And Swamp Areas."

30. ibid.

31. Civil Misc. Application No. MKA 24/91.

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